

## PERMANENT ARBITRATION TRIBUNAL

## AWARD

RN 816

Before:

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

In the matter of:-

Clency Bibi and 13 others

And

Central Electricity Board

The present disputes have been referred for Compulsory Arbitration by the Minister of Labour, Industrial Relations and Employment in accordance with **Section 82 (I) (f) of the Industrial Relations Act 1973** as amended.

Mr A. Domingue, of Counsel, appears for the Applicants.

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

The points in dispute are:-

- 1. Whether as from 1.1.01 the basic salary scale of the Assistant Shift Foreman, Switchboard Attendant and the Shift Operator should be revised from Scale 6*

*Rs 9300 x 300 – 9600 x 400 – 12000 x 500 - 15000*

*To Scale 7*

*Rs 10000 x 400 – 12000 – 500 -15000 x 600 - 15600 (per month and consolidated at 1.423 or 1.369 as applicable) or otherwise;*

2. *Whether as from 1.1.01 the basic salary scale of the shift Foreman should be revised from Scale 8*

*Rs 11200 x 400 – 12000 x 500 -15000 x 600 - 17400*

*To Scale 9*

*Rs 12000 x 500 – 15000 x 600 - 18000 (per month and consolidated at the approved formula of 1.423 or 1.369 as applicable ) or otherwise;*

3. *Whether as from 1.1.01 the basic salary of the System Operator should be revised from Scale 10*

*Rs 13000 x 500 – 15000 x 600 - 19200*

*To Scale 11*

*Rs 13500 x 500 – 15000 x 600 - 19800 (per month and consolidated at the approved formula of 1.423 or 1.369 as applicable) or otherwise;*

4. *Whether the “additional remuneration” under the various Additional Remuneration Acts paid to shift workers in July 1999 and thereafter should be included in the basic salary for the purpose of computing the “consolidated salary”, based on the agreed formula applicable to shift personnel in terms of the minutes of proceedings of the “Technical Committee” held with the Central Electricity Board Staff Association on 31.8.01, or otherwise.*

5. *Whether in the formula for the computation of “consolidated salary” (i.e. basic salary x 1.369) for shift workers appointed as from 1986, the figure “1.369” should be amended to “1.386” in view of the increase in the number of Public Holidays from 12 to 15 on the basis of an existing agreement as per JNC minutes 11<sup>th</sup> November 1987, or otherwise;*

6. *Whether those shift workers, appointed/promoted as from January 1997 and thereafter should be granted a consolidated salary as per “224 JNC of 11 November 1987 agreement,” or otherwise.*

### Applicants' Case

1. Disputes Nos. 1,2 & 3

On 1 June 1988 the shift workers i.e the Assistant Shift Foremen, Switch Board Attendants and Shift Foremen reported an industrial dispute to the Ministry of Labour and Industrial Relations regarding an anomaly between them and the next lower grade i.e the Chief Fitter/Senior Technician. The dispute was referred for compulsory arbitration and dealt with by the Tribunal in record RN 240. The case was called before the Tribunal on 30 October 1990. In its Award of 5 April 1994 the Tribunal awarded in favour of the applicants i.e. the Shift Workers and the anomaly was corrected.

2. Following an Award of the Tribunal in RN 333 on 1 December 1998 the Board of directors of the C.E.B approved the setting up of a Salary Commission to review the salary and conditions of service of the employees of CEB. In April 2000, the Bundhoo Report was released. The Salary Commissioner recommended an overall increase in salary for manual and staff grades. For the latter grade, the Salary Commission recommended a compression of scales from 24 to 20, whereas for the manual grade the number of scales remained unchanged i.e. 5 scales. The compression of scales for staff brought the salary scale of Assistant Shift Foremen, Switchboard Attendants and Shift Operators from scale 8 to 6 and the Shift Foremen from 10 to 8 thus re-introducing the anomaly corrected in 1994 by the PAT Award.

3. Further the Commission recommended a separate structure for those Shift workers who draw Consolidated Salary which when de-consolidated results in a basic salary different to that recommended in the classification table and the master scale. This separate scale brought much confusion to what is in fact the basic salary of the shift employees.
4. Those consolidated on the basis of 880 hrs have a basic salary different from those consolidated on the basis of 768 hrs and both those consolidated on 880 hrs and 768 hrs have basic salary completely different from those classified in scales 6,8 and 10 with a top salary which is lesser.
5. A table of comparison is reproduced to illustrate the point that it is anomalous to have different basic salaries for the same work and the same posts:  
e.g. Scale 6 (Assistant Shift Foremen, Switch Board Attendants, Shift Operators)

9495.98 x 365.23 - 10956.90 x 438.28 - 14463.11 (consolidated 768 hrs)

9486.00 x 351.37 - 10541.00 x 419.58 - 14335.91 (consolidated 880 hrs)

9300 x 300 – 9600 x 400 – 12000 x 500 - 15000 (Scale 6)

9600 x 400 – 12000 x 500 - 14500 (Chief Fitter/Senior Technician)

The above table makes the point that the Chief Fitter/Senior Technician is drawing a higher salary than the Assistant Shift Foreman with less rungs for him to reach the top salary.

6. It is to be noted that “Consolidated Salary” consists of two components namely:
  - a. The Basic Salary of the scale of salary in which the shift personnel is classified.
  - b. Overtime elements to compensate for work performed on Sundays and Public Holidays.

The scales should be considered by themselves, and not on the “consolidated” basis. It is not proper to compare the salary scales of the non-shift workers, who do not do overtime, or who, while doing overtime, are paid overtime rate.

7. It is averred that classification is a matter of relativity and is not an absolute concept. In that connection, any classification exercise must ensure that relativities are safeguarded. Shift workers were classified in scales 6,8,13 before 1994 and in scales 8,10,13 after the Tribunal’s Award of 5<sup>th</sup> April 1994.
  - a. It is anomalous to have different “Basic Salary Scale” for the same category of workers;
  - b. It is not in line with the Award of 5<sup>th</sup> April 1994;
  - c. The proper scale for “Assistant Shift Foreman, Switch Board and Shift Operator should be “Scale 7”
  - d. The proper scale for “Shift Foreman” should be scale 9.
  
8. To maintain the relativity with the “System Control Operator”, which is a promotional post for either Switch Board or the Shift Foreman, applicants propose that their scale be revised from scale 10 to scale 11, i.e. from:
 

Scale 10	-	Rs 13000 x 500 -15000 x 600 - 19200
Scale 11	-	Rs 13500 x 500 – 15000 x 600 - 19800

9. **Dispute No. 4**

**Conditions of Employment**

The shift workers are called upon to perform shift duties, and accordingly work on a 24-hour basis on a roster basis, including Sundays and public holidays. In 1967, instead of continuing to pay overtime for work done on Sundays and public holidays falling within their normal weekly roster, an agreement was reached to consolidate their salaries. As already alluded, the consolidated salary is made up of two elements, namely:

- (a) The basic salary (inclusive of “COLA decreed by government”) relative to classification;
  - (b) Overtime element (i.e compensation for work performed on Sundays and public holidays falling within the normal roster) except for pension purposes, which is calculated on the consolidated salary (which has been subject to an agreement between parties where the shift workers contribute for their pension on the basis of their consolidated salary so as to maintain their standard of living when retired), all other fringe benefits are calculated on the basic salary.
10. In the employer’s Case in **BiBi and others RN 240** at page 3 the CEB shared the view expressed by the first applicant. Further, agreements have been reached at Joint Negotiating Committee (JNC) level on this issue. As per procedural agreement between the CEB and the trade union and the minutes of proceedings of “the note of conciliation meeting held in the conference room of the Ministry of Energy and Internal Communication on 13 June 1983, “all agreement reached at JNC level are binding, the CEB has not apply this agreement by adjusting the COLA of the shift workers as from July 1999.”

### **Dispute No 5**

11. The formula for the calculation of the consolidated salary:
- (a) Before 1987 :  $\frac{3}{4} [(52+21) \times (8 \times 2)] = 876$  hours rounded to 880 hours per annum.
  - (b) After 1987:  $\frac{3}{4} [(52+12) \times (8 \times 2)] = 768$  hours per annum.
12. Before 1987, the number of public holidays was 21 and the consolidated salary took into account the then number of public holidays and the number of hours was as above. With the reduction of the number of public holidays as from 1987, the CEB wrote to the applicants’ trade union (CEB Staff Association) in

view to amend the formula and to take into account the decrease in the number of public holidays.

13. On 11 November 1987 an agreement was reached to amend the consolidated formula as per (b) above for those appointed/promoted as from 1986 with provision to review the said formula in case there are changes in the number of public holidays. Since the year 2000 the number of public holidays has increased and as the number of public holidays is one of the elements in the computation of the consolidated salary, the new formula for those appointed after 1987 should be amended to take into account these changes in conformity with the agreement reached at JNC level, which is binding in terms of the procedure agreement.

**14. Dispute No. 6**

As from 1 January 1986, the formula for consolidated salary was reviewed for new entrants and an agreement was reached between the CEB and the Association for the application of this formula. But as from 1 January 1997, the CEB unilaterally stopped granting consolidated salary to newly appointed shift employees/promoted shift employees even though they were being paid consolidated salary before their promotion.

15. This unilateral way of changing the condition of service without negotiation or agreement with the union is in contravention with the 'Procedural agreement' between the CEB and the Union. The recommendation of the IRC of 26 April 2004 expressly provides that:

“changes in condition of employment should be discussed with the union”

16. Consolidated salary has been subject of an agreement between parties. Consolidated salary forms part of the package for those appointed on a permanent basis on shift and is part and parcel of the contract of service of shift

workers. Consolidated salary is pensionable (as the shift employee is deemed to contribute to the pension fund on the consolidated salary).

The Respondent, in its Statement of Case, avers that:-

1. This Tribunal as presently constituted cannot entertain the disputes in as much as the issues raised constitute a review of the salary scales, proposed, accepted and endorsed by the Applicants themselves and executed by the Respondent through an irrevocable instrument signed between both parties since January 2001 for a determinate period up to July 2005.
2. The salary recommendation of the Bundhoo Report having been agreed by Applicants and the Respondent it is not subject to any alteration, amendment, appeal, review or challenge before this Tribunal as agreed and duly signed in the Memorandum of Understanding by both parties.
3. The Applicants by declaring their dispute before this Tribunal are asking this Tribunal to act as an appellate body or a substitute to the salary commissioner (Vide CEBSA v/s CEB RN 33 of 23.4.97) .
4. The Applicants cannot retract, revoke or alter in any manner whatsoever a binding and irrevocable instrument which has been validated unconditionally by both parties.

### **Disputes No 1, 2 and 3**

- The first, second and third issues concern employees of CEB in the grade of Assistant Shift Foreman, Shift Foreman, System Operator, Switchboard Attendant and Shift Operator. The element giving rise to the dispute is that they are requesting an upgrading in their salary scale and a reclassification with the Master Salary Scale recommended by the Bundhoo Salary Commission.



- The Salary Commission was set up following negotiations with the 3 Unions recognized by the Board and Terms of reference were accordingly agreed.
- The Terms of Reference are as follows:-
  - A review of the Salary Structure, classification, grading of posts and other conditions of service pertaining to the whole organization for period July 1999 to June 2002.
  - A review of the productivity bonus scheme based on losses of electricity.
- The commission paid regard to the following:
- The need to take into account the economical and financial status of the organization;
- Pay relativities in line with market relativities, whilst considering the specificities of the Board;
- The need to establish and maintain reasonable differentials in rewards between different categories of skills and levels of responsibilities;
- The need to develop a rational pay structure by results and to relate as far as possible remuneration to increase productivity;
- The need to update the job descriptions and job specifications in line with latest technological developments and new exigencies in the power sector;
- The need to re assess the conditions of service so as to attract and retain competent and efficient resource persons required to maintain a high standard of service; and
- The need to review the internal regulations.

- The applicants, as well as their Union, were invited to make written submissions to the commission on matters falling within the framework of the agreed terms of reference, and in the particular case on revision of salary and classification of post.
- The Salary Commission published its report in April 2000.
- The implementation of Bundhoo salary Commission's report was made following the signature of a Memorandum of understanding on 26 December 2000 between the CEB and the CEB Staff Association.
- The salary Commission made his recommendation of a revised salary structure taking into consideration the submission made by the Applicants and their Union. The Applicants have accepted the recommended revised salaries.
- Item one of the Memorandum of understanding reads as follows:  
Pending the signature of New Collective Agreement based on "Inter alia" on the salary commission's report, it is hereby agreed and covenanted as follows:
- The implementation by the party on the one hand, of the New Salary Structure and other conditions of service as recommended by the Salary Commission with effect from January 2001, and the conversion of salaries from the existing structure to new salary be made as per Salary Commission's Master salary Conversion table on a hypothetical basis with effect as from 1 July 1999.
- Management issued options forms to implement the recommended revised salaries and the Applicants had duly signed the option form which clearly signified their acceptance to their salary Scale as recommended by the Salary Commission.

The application of the employees purports to bring an amendment to the Undo Report to favor a specific category of workers.

If their application is accepted, it will be an upgrading to the detriment of other workers.

#### **Dispute No. 4**

- The fourth dispute concerns additional remuneration paid to all employees of CEB as per the table published in the Government gazette and is governed by Additional Remuneration Act which in no circumstances could be amended. The argument put forward by the applicants will result in an increase in the approved rates enacted by the National Assembly.
- The technical committee cited by the applicant looked into the issue but Management on a legal point of view, could not entertain the request of CEB Staff Association.
- The Respondent further states that the Act cannot be amended by way of a dispute.

#### **Disputes Nos 5 & 6**

- The fifth dispute is as follows:
- The formula referred to comprises of the following elements:
  - 52 Sundays plus 21 public holidays x 1.5x8hrs = 876 rounded to 880 hrs
  - 52 Sundays plus 12 public holidays x 1.5x8 hrs =768 hr
  - Overtime performed on a number of Sundays and a number of Public holidays
- The issues raised under this dispute was submitted to the salary commissioner Bundhoo and dealt with therein. The facts and matters raised at the meeting of 11 January 1987 were superseded by the implementation of the new report.

- The Applicants were aware through a Joint Negotiating Council held on 1 August 1997 of the Board's decision not to grant consolidated salary to newly appointed shift workers.
- The new appointees would draw their basic salary according to the scale plus increases at approve rates per month and overtime as per standing regulations.

Applicants accepted the position as per conditions of service offered to them.

Mr Bibi, examined by Counsel Domingue, confirms all the facts that appear in his Statement of Case.

Furthermore, he avers that:-

1. The Employer is saying that the Option Form of 2001 is irrevocable.
2. The CEB Staff Association has signed a Memorandum of Understanding/Agreement with the CEB on 26 December 2000 as regard the application of the Bundhoo Report, Para. 7 of the MOU/Agreement reads as follows:

*“The Party on the One Hand accepts para. 4 above without prejudice and reserves its right to proceed in accordance with the terms of Clause 1.4 of the agreement reached by the parties on 21 June 1999.”*

Para. 1.4 of the agreement of 21 June 1999 reads as follows:

*“The recommendation of the Salaries Commission shall not be binding on either party, and in the event of any dispute whatsoever arises there from, such dispute shall in the last resort be reported by the aggrieved party to the Permanent Arbitration Tribunal”.*

3. Regarding the Option Form, a 'reservation' was made by the Union in the interest of its members. Para. 2 of the covering letter dated 10 January 2001 enclosing Option Form reads as follows:

*“An agreement has been reached between the Board and the CEB Staff Association, Union of employees of the CEB and CEB Workers Union for the implementation of the report of the Salary Commission on Review of Pay and Grading Structures and Conditions of Employment with effect from 1 January 2001, subject to changes as agreed between Management and Unions on the eventual collective agreement and to such other changes that would come into force with award of any Arbitrator on issues not resolved with Unions.”*

4. Following agreements with the CEB, the Employer decided for the payment of the consolidated element on the COLA with effect from January 2005. As regards the accrued back pay from 2001 to 2005, management stated that same would be paid as an ex-gratia allowance. However, as from January 2006, this COLA is not being integrated to the basic salary.

The witness, under cross-examination, avers that:

1. The Tribunal recommended that the CEB reviews its classification of posts and today and as before there are two major classifications-Manual Workers and the Staff.
2. The Chief Fitter falls under the category of Manual Workers and the Assistant Shift Foreman falls under the Staff Grade.
3. An anomalous situation has been created as far as salaries in certain grades are concerned. For instance, the top basic salary of the Assistant Shift Foreman is Rs 14463 whereas the Chief Fitter's basic top salary is Rs 14,500. The post of Assistant Shift Foreman is a promotional post for the Chief Fitter.

4. The three Unions of the CEB made representations before the Bundhoo Commission regarding the conditions of service.
5. Following the Bundhoo Report, there was the signature of a Memorandum of Understanding on 26 December 2000 between the CEB and the CEB Staff Association. In the Memorandum of understanding it was specified that disputes or differences shall be subject to Arbitration.
6. Thereafter the employees signed the Option Form.
7. The demand of the Applicants concerns a specific category of workers and not all other grades.
8. Anomalies have cropped up in the Bundhoo Report for a category of employees and they should be corrected. For instance, the post of Assistant Shift Foreman being a promotional post for the Chief Fitter, the latter cannot earn more in his salary than the Assistant Shift Foreman. The Assistant Shift Foreman is superior in grade to the Chief Fitter and shoulder more responsibilities.
9. The consolidated salary is calculated on the basis of (a) the basic salary and (b) the number of Sundays and Public Holidays.
10. Employees are paid for 39 Sunday's work ( $\frac{3}{4} \times 52$ ) as they do not work on all Sundays throughout the year. In real term they work on 42 Sundays a year taking into consideration that there might be two or three public holidays falling on Sundays; thus the formula is respected.
11. When there are 12 public holidays, the formula is calculated on 12 public holidays. When there are 15 public holidays, the formula is still being calculated on 12 public holidays and this is from where this point in dispute arises.

12. Shift workers who are appointed/promoted as from January 1997 are not granted consolidated salary as their colleagues appointed/promoted before them. This decision was taken unilaterally by Management. Before their promotion they were being paid consolidated salary. So they are now placed in a situation where different salaries are being paid to them compared to their colleagues doing the same work as them.
13. Pensions are paid on the consolidated salary whereas the end of year bonus and other benefits are calculated on the basic salary.
14. All categories of workers contribute to the pension at the quantum of 6%.
15. The COLA is not taken into account for overtime pay for those on consolidated salary whereas those who are on non-consolidated salary have their COLA accounted for overtime pay.
16. The COLA should be included in the basic salary for the purpose of computing the consolidated salary based on the agreed formula. For example if the basic salary is Rs 6000 and the COLA is Rs 135, Rs 6135 should be taken and multiplied by 1.369 or by 1.423 whichever is the case. Management agreed to that in respect of the previous years. As from 2006 Management changed its decision.
17. The *agreed formula* exists as it enables to calculate the basic salary for the purpose of payment of the end of the year bonus which is paid on *basic salary* not on consolidated salary.
18. The Chief Fitter may solicit for a post in the staff Grade if he has the requirements but his salary for the promotional post should be higher than that of his present post.

On re-examination, Mr Bibi affirms that:-

1. The consolidated salary, as per the Union's demand, should be calculated by taking the basic salary and adding the COLA and multiplying by the applicable co-efficient.
2. An agreement was reached in 2004 with Management for the payment of the consolidated element of the COLA but as from the year 2006 Management ceased to pay this consolidated element.
3. He is asking the CEB to re-compute his consolidated salary, otherwise he will be losing in his salary. He was appointed on terms of a consolidated salary scale of 768 hours.
4. There was an agreement which was signed between the CEBSA and the CEB on 9 January 2006 where it is specified in the *Conditions of Employment* para 3.5 that:  
  
*“In case of any conflict, a special provision in a letter of appointment or any other written instrument pertaining to the employee shall prevail over these general terms and conditions”.*
5. Although the Bundhoo Report can be taken as a whole, anomalies that arises shall be reported by any parties for arbitration.
6. The promotion line to Assistant Shift Foreman/Switchboard Attendant is from the Chief Fitter.

Mr Goranah Asiriah, Principal Human Resources Officer, examined by Mr Ribot affirms and confirms the facts that appear in the Respondent's Statement of Case. Furthermore, he avers that:

1. To obtain the consolidated salary, the basic salary is multiplied by 1.423 for those who are under the 880 hours regime and by 1.369 for those who are under the 768 hours regime. This formula is used to take into consideration for works performed on Sundays and on public holidays. The shift employer works on 3 Sundays out of 4 in a month.



2. Overtime are paid to the consolidated shift workers when they work above their normal shift.
3. The Bundhoo Report has recommended a consolidated salary scale for employees who are on consolidated salary.
4. After the Bundhoo Report, this formula of 1.423 or 1.369 has disappeared for those on consolidated salary.
5. In addition to shift workers who are on consolidated salary, there are other shift workers who are *on basic salary plus overtime*.
6. When the Bundhoo Report was implemented, the COLA of July 2001 was not consolidated. However, in 2005 the CEB accepted to pay *ex-gratia* the consolidated COLA for period July 2001 to June 2005 following representations by the Union.
7. In February 2006, a Collective Agreement was implemented which took effect from 1 July 2005 whereby as per the Price Waterhouse Coopers Report of 2006 the element of consolidated salary has disappeared.
8. There was also the issue of public holidays which applied to all shift workers. The Report of 2006 recommends only one consolidated salary scale – the element of 768 or 880 hours does not exist now.
9. Employees who were appointed as from 1987 were appointed on the 768 hours regime based on 12 public holidays. In the year 2001, however, the Union drew the attention of Management that there were more than 12 public holidays in 2001 and it was agreed to pay overtime for additional public holiday as per the formula prior to the Bundhoo Report. This Agreement was also for years 2002 to 30 June 2005. However, it was paid

only for the year 2001 as for the other years there were not more than 12 public holidays falling on a Sunday.

The witness, under cross-examination, concedes that:

1. He does not remember that the present dispute dates since the year 2004. The Price Waterhouse Coopers Report has been implemented as per Agreement of 9 February 2006.
2. He is not agreeable to the fact that the Union has made a 'reservation' regarding *the implementation of the PWC Report*.
3. He agrees that the present dispute arises following the Bundhoo Report No 1.
4. He agrees that the Option Form is accompanied by a covering letter specifying Conditions of Employment and where there are 'reservations' also.
5. A draft collective agreement dated 6<sup>th</sup> June 2003 was put up by Management where at para. 12 mention was made that:
 

“The Consolidated salaries shall henceforth be computed on the basis of actual number of public holidays falling on weekdays and Saturdays in the year.”

The CEBSA proposed that “*Existing agreement be maintained.*” There was therefore a dispute about this and the draft was not signed.
6. He is aware that a dispute was referred in 1988 regarding their salary scales and an Award (RN240) was delivered on 5 April 1994 where it can be read that:
 

“It was anomalous that the Assistant Shift Foreman should be on the same scale as a Chief Fitter who is a subordinate and who shoulder less duties and responsibilities”. The Tribunal found that :”The proper scale for the post referred to should be Scale 8.”
7. He does not agree that the compression of scales from 24 to 20 for the staff in the Bundhoo Report 2000 has resulted in the re-introduction of the anomaly which was corrected in 1994 by the Tribunal.

8. He does not agree that for drawing consolidated salary mathematical calculation shows that the proper scale for Shift Foreman should be scale 9 and for the System Control Operator it should be revised from Scale 10 to Scale 11.
9. The Tribunal decided that Shift Workers who were classified as Scales 6,8 and 13 before 1994 should after the Award of 1994 be classified at Scales 8, 10 and 13 respectively.
10. There is no mention of any formula in the PWC Report to calculate consolidated salary.
11. As from 1997 there is no consolidated salary for new recruits and also for those who are promoted. He agrees that the Union was not consulted when this policy was implemented, but does not agree that it is against the procedural agreement.
12. He does not think that it is unfair that those employees drawing consolidated salaries have their pension calculated on consolidated salary compared to other groups who draw their pension only on basic salary (overtime not being taken into account).
13. Para 12 of the draft collective agreement dated 6 June 2003 embodies the position of Management.
14. The Bundhoo report has recommended consolidated salary for those who are under consolidated salary and who do not wish to opt for basic salary.

In re-examination, the witness testifies that:

1. The scales regarding Assistant Shift Foreman, Switch Board Attendant and Shift Operator are to be found in the Bundhoo Salary Report 2000. This report was ordered by the CEB following the Tribunal's Award RN 333 of 23 April 1997.

2. The Bundhoo Report 2000 caters for the whole personnel of the CEB, both manual and staff.
3. The Union speaks of anomaly in the Report. One example is that of the Scale of Assistant Shift Foreman. They state that it is anomalous that the Assistant Shift Foreman earns less than the Chief Fitter. He is of the view that this is not a correct example cited by the Union because the Chief Fitter is the top grade in the manual grade, whereas the Assistant Shift Foreman is the lowest grade among the shift workers in the staff grade.
4. The Chief Fitter works under the supervision of a Maintenance Foreman or a Supervisor. The Chief Fitter does not work on shift, but on normal working hours from 7 a.m. to 4.00 p.m. A Fitter works under the supervision of the Assistant Shift Foreman. So the Fitter looks to the Assistant Foreman and this is the promotional route.
5. The second example of anomaly the Union has cited is at the end of page 2 of their Statement of Case. They state that it is anomalous to have two different basic salaries for the same work and the same post. There are 4 lines which look like salary scales. The Union has taken the recommended salary and has divided it by the 'co-efficient' (1.369 or 1.423) to reach these figures.
6. As regard dispute No 5, the union is asking that the 'formula' be amended in view of the increase in public holidays. Since 2001 this formula does not exist. Prior to year 2000, the formula was based on 21 public holidays and it gave 876 hours but was rounded to 880 hours and was converted into a coefficient which was 1.423. Later when there were only 12 public holidays, the formula was revisited. Instead of 880 hours it became 768 hours and the co-efficient became 1.369 and was applied to new employees at the time when the public holidays were 12 yearly. The employees who benefited from the 21 public holidays co-efficient retained their acquired right.
7. For the purpose of calculating overtime over and above the required Sundays and the required public holidays for shift employees, the scale was deconsolidated.

8. In 2003, the CEB made a proposal that the consolidated salary be calculated on the exact amount of public holidays in a year, but was not accepted by the Union.
9. In 2005 the PWC Report recommended a new consolidated salary with no reference at all based on any number of hours consolidation. The 768 hours and the 880 hours were merged to become one salary scale.
10. (a) Para 343 of the PWC Report reads as follows:  
“Considering that the number of public holidays has since 1986 up to now been less than 21 and the salary levels presently reached by the incumbents since the seventies, we do not find any justification in maintaining two distinct scales for the same grade on consolidated salaries the more so as the employees are given an option. We are therefore recommending only one scale for each level.....”  
  
(b) Para 343 of the PWC Report reads as follows:  
“Conversion for the employees who chose to continue to receive consolidated salary, shall be as per the same Master Scale Salary Conversion Table. However, those employees who convert to a salary point higher than the recommended top salary of his grade will draw the salary at that converted point on a personal basis.
11. The Union is asking, that the COLA be consolidated by multiplying by the “co-efficient”. This is not feasible.

Mr Domingue, for the Applicant, submits to the effect that:

1. Disputes 1,2 and 3 relate to the claim of the shift workers for a revision of their basic and consolidated salary scales on account of an anomaly which was identified and corrected in 1994, but which has albeit unwittingly, been introduced in the Bundhoo Report of 2000, as a result of compression of the salary scales for the staff grades from 24 to 20 salary scales.

2. It is pointed out that the salary scales for the manual grades were not compressed and still consists of 5 salary scales.
3. In its award of 5 April 1994 (RN 240) the Tribunal has, with retrospective effect as from 1 July 1993, rectified the anomaly which then existed.
4. As a result of the correction of the then anomaly, the Shift Foreman moved from scale 8 to 10, whilst the Assistant Shift Foreman, Assistant Foreman and the Switchboard Attendants moved from scale 6 to scale 8.
5. Following another Award RN 333, on 1 December 1998, the CEB appointed Mr Bundhoo as Salary Commissioner. He produced his report and made recommendations in April 2000.
6. The present disputes have arisen following the recommended salary scales. A “*separate structure*” was provided for the Shift Workers “*who choose to continue to receive consolidated salaries*”.
7. In paragraph 4.53 of the Bundhoo Report 2000 it was again stressed that in the case of employees who choose to continue to receive a consolidated salary the conversion from their existing scale to the recommended salary scale would be as per the Master Salary Scale.
8. The separate structure provided for the express reference to 768 and 880 hours and the reference to the option open to the shift workers to “*continue to receive consolidated salaries*” show that Management is wrong to consider that the Bundhoo Report has done away with the concept of consolidated salary for shift workers.
9. Mr Bundhoo filed two reports – one for staff grades and another for the manual grades.

10. True is it that the Chief Fitter is no longer on shift but it is not correct to say that he does not receive instructions from the Assistant Shift Foreman. The Chief Fitter has at all the material times taken his instructions from the Assistant Shift Foreman who is an “*Authorised Person*” within the meaning of the safety regulations in force at the CEB.
11. The applicants submit that the Assistant Shift Foreman, the Switchboard Attendants and the Shift Operator should be reclassified from Scale 6 to Scale 7 so as to remove the anomaly which has been reintroduced in 2001.
12. Applicants point out that the consolidated scales recommended at para 4.52 of the Bundhoo Report recommend six consolidated salary scales for the shift workers on the staff side.
13. However, it stands to reason that the recommended consolidated salary scales provided under a separate structure for shift workers who draw consolidated salaries would not fit within the Master Salary Scale which is based on 20 basic salary scales. Applicants point out that all their benefits are calculated on their basic salary and not on their consolidated salary.
14. The applicants submit that the revision from Scale 6 to 7, from Scale 8 to 9 and from Scale 10 to Scale 11 is in respect of the corresponding basic salary. This is why the applicants have in their Statement of Case drawn the Tribunal’s attention to the anomalous situation which is illustrated in the table at the end of page 2 of the applicant’s case. The basic salary under scale 6 for the Assistant Shift Foreman who do not draw a consolidated salary is Rs 9300 – Rs 15,000.
15. By comparison the basic converted salary scale, for the consolidated Assistant Shift Foreman comes to much less i.e. 9495 to 14463 (on the basis of 768 hrs) and from 9486 to 14335 (on the basis of 880 hrs).

16. This is why it is prayed that the Tribunal should rectify this glaring anomaly by revising the scales from basic scale 6 to 7, 8 to 9, and 10 to 11.
17. Further, it is also prayed that such revised basic scale should be converted in accordance with the appropriate co-efficient of 1.369 or 1.423 as applicable, so as to rectify the recommended salary scale to be found at para 4.52 of the Bundhoo Report.
18. Applicants also submit that this being a post Bundhoo 2000 Report dispute there is no point in referring to the Bundhoo/PWC Report of 2005 which is certainly not relevant and not applicable to the present case.

Regarding dispute No. 4, Counsel submits that:-

- The consolidated salary is calculated by multiplying the basic salary by the applicable co-efficient (1.4.23 or 1.3.69).
- The “Additional Remuneration” should be calculated by reference to the basic salary in the first place following which the consolidated salary must be automatically revised in accordance with the formula which still holds good. We are invited to refer to the express and unequivocal agreement embodied in para (ii) the Minutes of the Technical Committee of 31 August 2001, captioned “Consolidate Salary of Shift Workers”, an agreement which is well after the Bundhoo Report 2000 and which clearly establishes that contrary to what has been asserted the formula has been retained and is still applicable to the shift workers who have opted to retain their consolidated salaries.
- The Tribunal is also referred to the agreement reached by the parties (annex 10 in S.O.C of Applicant and Doc P).
- Further, under the procedure agreement (annex 11) it is clearly stipulated that all such agreements shall be binding on both parties.
- As far as dispute No. 5 is concerned, it is significant that when the number of public holidays was reduced from 21 to 12, the CEB in agreement with the CEBSA re-viewed the formula so as to bring it in line with the corresponding reduction.



Applicant submit that the formula should be recomputed to take account of the material increase in the number of public holidays from 12 to 15. Public holidays falling on a Sunday vary from year to year.

- The shift workers draw their pensions on the basis of the consolidated salary. Throughout their career these workers have contributed to the Pension Fund on the basis of their respective consolidated salaries.
- It is fair and reasonable that the co-efficient should be recomputed as of now as otherwise they stand to lose in terms of pension benefits if the present coefficient were to be applied at the time of their retirement.

As regard dispute No. 6, the principle of equal pay for equal work is often disregarded. Common justice demands that all shift workers should receive the same package for same work both in terms of consolidated salary, a corresponding pension benefits as the pension benefits are calculated on the consolidated salary whereas the overtime pay is not taken into account for calculation of retiring benefits.

In his submission, Mr Ribot, for the Respondent, submits that:-

1. The Tribunal in its Award RN 333 stated that it cannot substitute itself for a salaries commission which has entirely different functions.
2. Salaries were recommended by a salary commission who was appointed by the CEB in consultation with the Unions to look into, inter-alia, “a review of the salary structure, classification/grading of posts and other conditions of service pertaining to the whole organization for period July 1999 to June 2002.”
3. Should the salary scale of one grade be moved upwards, it would inevitably affect other grades in same scales and also grades in higher scales.
4. The Applicants have advanced two examples of what they term “anomalies”. Those “anomalies” they allege, is a proof that the posts described in dispute 1, 2 and 3 should be upgraded in the scale of salaries.

5. The first anomaly they advance is that the Chief Fitter, on the manual grade, when he applies for a post of Assistant Shift Foreman is moving to a scale which is less than that of a Chief Fitter. It is submitted that the comparison is wrong. The promotion path is that it is a fitter that should normally apply to be an Assistant Shift Foreman. The evidence provided by Mr Asiriah for the CEB (Doc V) establish that in all the power stations Fitters are under the direct responsibility of the Assistant Shift Foreman.
6. In the 2<sup>nd</sup> example the applicants have given, they refer to basic salaries and consolidated salaries. The table of comparison they refer to is as follows:-
- a) 9495.98 x ..... ..(Consolidated 768 hours)
- b) 9486.99 x ..... ..(Consolidated 880 hours)

This table is a fictitious one obtained by “deconsolidating” the true-figure earned; it cannot therefore be the basis for a case of anomaly. There is no justification in performing such a mathematical exercise in reverse. In the new scale devised by the salary commission there is no indication that the resulting scale was arrived at by adopting the old consolidated formulae with its co-efficient. In fact the commission stated clearly that the existence of such different salary regimes generates frustration.

7. Dispute No. 4 cannot be entertained and it would be against the statutory rates contained in the Addition Remuneration Act. The Applicant is asking compensation be added to the basic salary to which must be added an overtime component in fact using the 768 hours or 880 hours formula.
8. During negotiation 25 November 2004 it was agreed that the Applicant would against the payment of an allowance:-
- (i) withdraw dispute No. 4 and
- (ii) Refer all other dispute to P W C, the Consultant.

9. An ex-gratia allowance calculation of what is termed as “consolidated element” was paid in February 2005 and Management agreed to put in force “ the agreement reached by parties ..... with effect from February 2005”.
10. Subsequently, the CEB did not implement the agreement with the result that dispute No. 4 is still alive. Since 2000 with the Salary Commission Report the formula which formed the basis for calculating a consolidated salary is otiose. The Bundhoo Report did not use the formula to reach the figures on the new recommended salary scale. The Master Salary Conversion Table was also drawn without making use of the formula.
11. It would therefore be impossible and unrealistic to introduce such a formula since that concept has disappeared.

Furthermore, it is against the spirit of remuneration order. In fact in the PWC Report the reference to the 768 hrs and 880 hrs has disappeared.

12. Dispute No. 5. The formula 1.369 or 1.423 does not exist following the implementation of the Bundhoo Salary Commission Report in 2001. However, further to the JNC Meeting of 4 March 2001 it was agreed that all shift employees drawing consolidated salaries based on 768 hours who worked on the additional public holiday should be paid overtime accordingly.
13. The manner of determination of those “consolidated salaries” created two salary regimes for same employees depending on whether there were 21 or 12 public holidays. Since 2000 the Bundhoo Report gave a clear indication that such a regime created frustration. There is absolutely no indication that the salary of Rs13,000 given to the Assistant Shift Foreman was calculated on the basis of that formula.
14. Dispute No. 6 cannot be entertained. What the Union is asking is tantamount to going back completely before the two Reports. One can ask oneself what would have been the

purpose of all those report if credit was to be given to that application which purports to ask the Tribunal to go back to the old consolidated formula.

15. The Salary Commission in 2000 and the PWC Report in 2005 have considered this issue and have recommended that:-

In 2000

“all shift employees presently on consolidated salaries should be allowed to opt for the basic salary more presently for their respective grades and be entitled to overtime payment at the approved rates for effective extra hours of work put in”.

For those who decide not to opt but choose to continue to receive consolidated salaries, a separate structure was recommended.

In 2005

“We recommend as in the Bundhoo’s Report that these employees be again given the opportunity to opt for the recommended non-consolidated salaries provided for their counter parts”.

Again for those who choose not to opt, salary scales were recommended.

**Tribunal’s Considerations**

The Tribunal before commenting on the disputes and giving its determination would like to point out that:-

1. The Bundhoo Salary Commission Report was released in April 2000 and it is only in February 2004 that the Tribunal has been seized of the disputes.

2. For the Staff Grades, the Bundhoo Report recommended a compression of scales from 24 to 20, whereas for the Manual Grades the number of scales remained unchanged, i.e 5 scales.
3. In 2005 the Price Waterhouse Coopers Report was released. This Report catered for both the manual and staff personnel.
4. It transpires from the whole evidence that the applicants can report the disputes in spite of some agreements reached. We see in Doc. H produced, the following:-
 

*“In case no agreement is reached between the parties hereto as to the implementation of the recommendations of the Bundhoo Report, or any part thereof, the party on the one hand may resort to the procedure outlined in Clause 1.4 of the agreement reached by the parties hereto on 21<sup>st</sup> June 1999”.* This document is dated 28 July 2000.

Clause 1.4 of the agreement provides:-

*“The recommendations of the Salaries Commission shall not be binding on either party, and in the event any dispute whatsoever arises therefrom, such dispute shall in the last resort be reported by the aggrieved party to the Permanent Arbitration Tribunal. Any uncontroverted issues might only implemented after mutual agreement between the Board and the Association”.*

5. The disputes were referred to us only in 2004, no doubt after negotiations had failed.

### **Disputes Nos 1,2,& 3**

We consider that disputes 1, 2 and 3 may be taken together as they are related.

The shift workers are asking for a revision of their salary, claiming that there is an “anomaly” in their salary scales. In 1988, the Assistant Shift Foreman, the Switchboard Attendants and the Shift Foreman reported an industrial dispute to the Ministry of Labour

and Industrial Relations regarding an “anomaly” in respect of salary between them and the Chief Fitter/Senior Technician of the manual grade. The case was called before the Tribunal and the Tribunal in its Award of 5 April 1994 (RN 240) determined in favour of the employees. Now the Applicants were advancing that the “anomaly” had been introduced in the Bundhoo Report of 2000 as a result of compression of the salary scale of the staff grades from 24 to 20.

The Award of 5 April 1994, pointed out that:-

- (a) It is desirable that on promotion an employee should receive salary in a higher scale.
- (b) It is anomalous that the Assistant Shift Foreman should be on the same scale as a Chief Fitter who is a subordinate and who shoulder less duties and responsibilities.

The relevant part of the Bundhoo report reads as follows:

*“4.52 The Commission is, however, providing a separate structure for those employees, who decide not to opt but choose to continue to receive consolidated salaries. The separate structure is given below.*

<b>Post</b>	<b>Recommended Salary Scale</b>
<b>Asst. Shift Foreman – 768 hrs Switchboard Attendant</b>	<b>Rs 13,000 x 500 – 15,000 x 600 – 19,800</b>
<b>Asst. Shift Foreman – 880 hrs Switchboard Attendant</b>	<b>Rs 13,500 x 500 – 15,000 x 600 – 20,400</b>
<b>Shift Foreman – 768 hrs</b>	<b>Rs 15,000 x 600 – 21,000 x 750 – 23,250</b>
<b>Shift Foreman – 880 hrs</b>	<b>Rs 15,600 x 600 – 21,000 x 750 – 24,000</b>
<b>System Operator – 768 hrs</b>	<b>Rs 18,000 x 600 – 21,000 x 750 – 25,000 x 800 – 25,600</b>
<b>System Operator – 880 hrs</b>	<b>Rs 18,600 x 600 – 21,000 x 750 – 24,000 x 800 – 26,400</b>

4.53 *Conversion in the case of the employees who choose to continue to receive consolidated salary shall be as per the Master Salary Conversion Table.”*

We accept the view that the salary commissioner clearly differentiated between those whose consolidated salary was calculated on the basis of 768 hours and those whose consolidated salaries were calculated on the basis of 80 hours. As shown above, para. 4.53 of the Bundhoo report of 2000 stressed that in the case of employees who choose to continue to receive a consolidated salary, the conversion from their existing scale to the recommended salary scale would be as per the Master Salary Scale. The separate structure provided for, the express reference to 768 and 880 hours, the reference to the option open to the shift workers to “continue to receive consolidated salaries” show that Management is wrong to consider that the Bundhoo report has done away with the concept of a consolidated salary for shift workers.

On the basis of what has been adduced before us, we are inclined to accept the fact that although the Chief Fitter is no longer on shift, he still receives instructions from the Assistant Shift Foremen.

It is agreed that the Chief Fitter has the responsibility of the maintenance of important machines at the CEB. However, it should also be borne in mind that the Assistant Shift Foreman is an “authorized person” to give instructions to his subordinates including the “Chief Fitter”. The Assistant Shift Foreman is a team leader having workers under his responsibility. When hierarchy is taken into consideration, it is the Assistant Shift Foreman who gives instructions to the Chief Fitter, not the reverse. A Chief Fitter will apply for the post of Assistant Shift Foreman, whereas the latter will not apply for the post of Chief Fitter, taking into consideration the promotional route.

The Respondent is claiming that should the salary scale of one grade be moved upwards, it would inevitably affect other grades in same scale and also grades in higher scale. However, the Tribunal cannot fail to intervene when it views that there is an anomaly that has cropped up be it unwittingly.

For all the reasons stated above, the Tribunal finds that there is merit in the claims of the Applicants.

To maintain relativity, the Tribunal also awards in favour of the Shift Foreman and the System Control Operator.

#### **Dispute No. 4**

It was submitted to us that this dispute cannot be entertained as it would be against the statutory rates contained in the Additional Remuneration Act. We have gone through the said Act but failed to see in what way this could be so.

Employees drawing non-consolidated salary have their COLA accounted for overtime pay, whereas for those on consolidated salary the COLA is not taken into account for overtime pay. The Tribunal views that it is not fair as those who are on consolidated salary are incurring losses.

The employee who is on non-consolidated salary finds his COLA increased when he performs overtime work. The following is an example to illustrate this point.

<b>Basic Salary</b>	<b>Overtime</b>	<b>COLA</b>	<b>TOTAL</b>
Rs10,000 (without COLA)	Rs3,000	Rs400	Rs13,400
Rs10,000 + Rs400 COLA	Rs3,120		Rs13,520

So we find that the COLA has increased from Rs400 to Rs520.

The employees on the consolidated salary find their COLA remaining unchanged as it is only added to their consolidated salary.



The Tribunal is of the view that the COLA should be included in the basic salary for the purpose of computing the consolidated salary based on the agreed formula. Even Management at a time prior to 2006 agreed to that. Contrary to what Management is advancing, the agreed formula exists as it enables to calculate the basic salary for the payment of the end of year bonus and other fringe benefits.

#### **Dispute No. 5**

The Respondent is pointing out that the formula 1.369 or 1.423 does not exist following the implementation of the Bundhoo Report 2000. However, this has not been proved. Shift consolidated employees are still receiving their end of year bonus and other fringe benefits on the basic salary. This means that the formula is still being used.

When the number of public holidays was reduced from 21 to 12, the Employer in 1987 with the agreement of the Union decided to amend the consolidated formula for those appointed/promoted as from 1986 with provision to review the said formula in case there are changes in the number of public holidays.

After the year 2000 the number of public holidays has increased and as from the year 2003 it is not less than 15 yearly. It should be borne in mind that in 2001 for the additional public holiday (from 12 to 13) which was on Friday 2 November 2001, all shift employees drawing consolidated salary based on 768 hours were paid accordingly. Now that as from 2003 the public holidays being 15, it would be unfair on the part of the Employer not to review the formula. The employees are saying, and this has not been contested that they are working on 42 Sundays yearly instead of 39 to compensate for the public holidays falling on Sundays. The Tribunal is of the view that the claim of the applicants is justified.

#### **Dispute No. 6.**

The consolidated salary dates since 1967. Instead of continuing to pay overtime to shift workers for work performed on Sundays and public holidays falling within their normal weekly roaster, the CEB decided to pay consolidated salary to their workers after an agreement was reached between parties. However, as from 1997 the CEB, without consulting the Union, stopped granting consolidated to promoted shift employees and to new entrants. The promoted shift employees were paid consolidated salary before their promotion.

It is not in order that someone getting a promotion finds himself in a less favourable situation than he was prior to his promotion. It should be borne in mind that pensions are paid on consolidated salary. Those employees earning basic salary and overtime have their pension calculated on basic salary only, overtime pay not being considered. Depriving an employee of his consolidated salary tantamount that the employee loses considerably at the time his retiring benefits are computed. Above all, the contract of a worker should be respected. One having been offered employment on consolidated salary cannot find oneself on different terms and conditions of service without one's consent.

The Tribunal views that the Employer has not acted fairly in changing unilaterally the conditions of service of the employee, thus going against "procedural agreement". The Tribunal views that the shift recruited prior to January 1997 and promoted thereafter should retain their acquired rights and continue to be on consolidated salary. However, workers recruited after January 1997 should be employed as per their contract of employment as it is the Board which decides the terms and conditions of service.

The Tribunal awards as follows:-

### **Dispute No. 1**

The basic salary scale of the Assistant Shift Foreman, the Switchboard Attendant, and the Shift Operator should be revised with effect from 1 July 2001,

from Scale 6 Rs9,300 x 300 – 9,600 x 400 – 12,000 x 500 – 15,000 per month.

to Scale 7 Rs10,000 x 400 -12,000x 500 – 15,000 x 600 – 15,600 per month

And consolidated at 1.423 or 1.369 as applicable.

### **Dispute No. 2**

The basic salary scale of the Shift Foreman should be revised with effect from 1 July 2001,  
from Scale 8 Rs11,200 x 400 -12,000 x 500 – 15,000 x 600 – 17,400  
to Scale 9 Rs12,000 x 500 – 15,000 x 600 – 18,000 (per month and consolidated at the  
approved formula of 1.423 or 1.369 as applicable)

### **Dispute No. 3**

The basic salary scale of the System Operator should be revised with effect from 1 July 2001,  
from Scale 10 Rs13,000 x 500 – 15,000 x 600 – 19,200  
to Scale 11 Rs13,500 x 500 – 15,000 x 600 – 19,800 (per month and consolidated at the  
approved formula of 1.423 or 1.369 as applicable).

### **Dispute No. 4**

The additional remuneration (COLA) should be included in the basic salary with effect from 1 July 2006 for the purpose of computing the consolidated salary of the shift workers based on the agreed formula.

### **Dispute No. 5**

The formula for the computation of consolidated salary ( i.e basic salary x 1.369) for shift workers appointed as from 1986 should be amended from 1.369 to 1.386 with effect from 1 January 2003 in view of the increase in the number of Public Holidays from 12 to 15.

**Dispute No. 6**

Shift workers recruited prior to January 1997 should retain their consolidated salary when promoted as from January 1997 and thereafter.

It is apposite that the Tribunal should point out that this Award is restricted to only those who drew the consolidated salary i.e. the 14 applicants.

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**Rashid HOSSEN**  
**Acting President**

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**Binnodh RAMBURN**  
**Member**

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**Masseelamane GOINDEN**  
**Member**

**Date: 15<sup>th</sup> April, 2008**