

PERMANENT ARBITRATION TRIBUNAL

AWARD

RN 818

RN 819

Before:

Rashid HOSSEN	-	Ag President
Binnodh RAMBURN	-	Member
Rajendranath SUMPUTH	-	Member

In the matter of :-

RN 818 – Mr Govinden CANDASAMY and 54 Others

and

Dyers and Finishers Ltd

RN 819 – Mr Devanand GOORYE and 124 Others

and

Consolidated Dyeing Co. Ltd.

The following disputes have been sent by the Minister responsible for Labour and Industrial Relations for arbitration by virtue of **section 82 (1)(f) of the Industrial Relations Act 1973** as amended.

The points in dispute as amended are:-

RN 818 - “Whether Dyers and finishers Co. Ltd should revert to the previous shift system,

or else – introduce

- (i) an immediate basic salary increase of 22%***
- and***
- (ii) a Special Shift Allowance or otherwise.”***

RN 819 - “Whether Consolidated Dyeing Co. Ltd should revert to the previous shift system

or else introduce

- (i) an immediate basic salary increase of 22%***
- and***
- (ii) a Special Shift Allowance, or otherwise”.***

- Mr Govinden Candasamy and 54 others and Mr Devanand Goorye and 124 others would be referred to as the applicants.
- Dyers and finishers Ltd and Consolidated Dyeing Co. Ltd would be referred to as the Respondents.

Both parties were legally represented.

Consolidation of cases RN 818 and RN 819

At the sitting of the Tribunal on the 11th of May 2007, a joint motion was made by both Counsels to the effect that Cases RN 818 and RN 819 be consolidated. The motion was acceded to and a single award is being delivered with respect to the two cases. Counsels aver that the issues are the same, as well as the terms of reference and the evidence required to support the cases are the same. Furthermore, the two companies fall under the same group of companies.

Applicants' Statement of Case:-

1. Both Dyeing and Finishers Ltd (DNF) and Consolidated Dyeing Ltd (CDL) are part of the CIEL: group of industries and all applicants are employed either by DNF or CDL with the same conditions of employment.
2. As from 1991 to the 27th January 2003, they were working on an 8 hrs shift in a lapse of 24 hrs from Monday to Friday and two shifts of 12 hrs in a lapse of 24 hrs on Saturdays and Sundays. The average weekly hours of service was 36.95 hrs.
3. They are governed by the Export Enterprises (Remuneration Order) Regulations 1984.
4. Management took a unilateral decision to introduce a 12hrs shift in November 2002 and that the changes would be made in consultation with workers.
5. At a consultation meeting, the management proposal for a 12 hrs shift was not accepted by the workers' representatives.
6. In a letter dated 9th of January 2003, Management informed applicants that the 12 hrs shift would be introduced as from the 20th of January 2003.

7. Three representatives of workers were elected to declare a trade-dispute and this was done on the 17th of January 2003, following which, management accepted to negotiate with the workers and at the same time it would go ahead with the 12 hrs shift effective 27th January 2003.
8. In a formal meeting dated 27th January 2003 management conceded that there was no agreement reached.
9. The Export Enterprise (Remuneration Order) 1984 stipulate in Section 5 that:-

Nothing in the regulations shall:-

- 1(a) prevent an employer from paying a worker remuneration at a rate higher than that specified in the first schedule or from providing him with conditions of employment more favorable then those specified in the Second Schedule.
 - (b) authorise an employer to reduce a workers' remuneration or to alter his conditions of employment so as to make them less favorable to the worker.
10. Prior to the 27th of January 2003, applicants were working for an average of 36.95 hrs a week. The average is now roughly 52.5 hrs weekly.
 11. Prior to the 27th of January 2003, overtime payment started after 8 hrs shift. Now it is made on a weekly basis after 45 hrs work.
 12. The consequences of the increase in the number of the working hours have considerably increased the risk of accidents. Prior to the 27th of January 2003,

- only minor injuries were reported. Since then, there have been at least 7 cases of major injuries including severe burns and one fatal accident. The risk of accidents and injuries have considerably increased.
13. Social and family life has been greatly disturbed.
 14. The number of employees operating DNF machines has decreased. Prior to January 2003, there were 15 workers in one crew and three shifts of 4 crews which mean hat there were 60 workers operating the DNF machines. With the introduction of the new shift, only 48 workers are operating. The number of dyeing machines, dryers, travelling crane have increased, resulting for more work for less workers.
 15. Applicants' request is to revert to the 8 hrs shift or for a compensation for the dangers and risks involved, detrimental consequences on their health and the deprivation of their normal social life.
 16. A 22% increase in basic salary is requested as well as a shift allowance calculated to compensate for the extra work done if a worker in a team is absent.
 17. Prior to 1994, workers received a yearly increase of Rs 75.00 in their basic salary. Since 1994 management has discontinued this system of yearly increments.

18. Demand for a Special Shift Allowance:-

The shift allowance is based on the fact that whenever a worker is absent on any working day, he is not replaced. On the 8 hrs shift it was possible to replace absent workers on the spot as there were 4 crews of 8 hrs shift. With the 12 hrs shift only 3 crews are working and it is practically impossible for worker/workers

of previous shift to continue work on replacement. Instead of compensating workers for extra work, management introduced a “Shift allowance” of Rs 100 on a flat rate.

Respondent Statement of Case:-

1. The Respondent supplies dyed loose wool and dyed cotton yarn to Tropic Knits Ltd, which is a manufacturer of polo shirts and T-shirts. The costs of these products have a direct incidence on the end products of the factory. The difficult conditions which have been prevailing on the world market for the textile industry and the considerable reductions in the production capacities due to the crisis in Madagascar have compelled the Respondent to revise its operational costs..
2. The change of shift system for these companies were among preventive measures taken by the Respondent:
 - (a) to face fierce competition from Asian countries on the world market and the end of the multi fibre agreement in 2005
 - (b) to ensure bank supports and
 - (c) to secure everyone’s job and sustain the socio-economic role of the enterprise.

Previous Shift System

Prior to 27th January 2003, the Respondent and Dyers and Finishers Ltd were the only dye house in Mauritius to run its operations with four crews working in three shifts of eight hours in a lapse of 24 hours from Monday to Friday and two shifts of 12 hours in a lapse of 24 hours on Saturdays and Sundays:-

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Week 1	7-15	15-23	23-7	Off	7-15	Off	19-7
Week 2	Off	7-15	15-23	23-7	Off	7-19	7-19
Week 3	23-7	Off	7-15	15-23	23-7	Off	Off
Week 4	15-23	23-7	Off	7-15	15-23	19-7	Off

Each employee enjoyed two rest times of thirty minutes each when on eight hours work and eighty minutes for three rest times when on 12 hours work, so that the effective working hours were as follows:-

- Week 1: 38.7 hours (44 hours less 5.3 hours rest time)
 Week 2: 42.4 hours (48 hours less 5.6 hours rest time)
 Week 3: 28 hours (32 hours less 4 hours rest time)
 Week 4: 38.7 hours (44 hours less 5.3 hours rest time)

The average hours worked per week were 36.95 and employees were paid their basic salary on 45 hours weekly. The mode of payment included the following:

1. Double pay on Saturday morning between 18.00 and 19.00 hours
2. Double pay on Saturday night between 19.00 and 07.00 hours
3. Double pay for first eight hours on Sunday morning and triple pay between 15.00 to 19.00 hours
4. Triple pay on Sunday night between 19.00 to 07.00 hours and Rs 300 paid as social disturbance allowance
5. Night allowance at 50% the basic hourly rate when on night shift between 20.00 and 07.00 hours
6. Shift attendance bonus at 13% of basic salary, special attendance bonus at 5% of basic salary and shift compensation 3.6% of basic salary.
7. Production bonus of Rs 520 with eligibility criteria.

The New Shift System

Introduced on 27th January 2003, the new shift system consists of three crews with two shifts of 12 hours in a lapse of 24 hours. It helps make savings in labour costs and other related costs such as transport, canteen benefits and personal protective equipment.

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Week 1	7-19	19-7	Off	7-19	19-7	Off	7-19
Week 2	19-7	Off	7-19	19-7	Off	7-19	19-7
Week 3	Off	7-19	19-7	Off	7-19	19-7	Off
Week 4	7-19	19-7	Off	7-19	19-7	Off	7-19

Each employee enjoys three rest times of thirty minutes for each 12 hours work, so that the effective working hours were as follows:

- Week 1: 52.5 hours (60 hours less 7.5 hours rest time)
 Week 2: 52.5 hours (60 hours less 7.5 hours rest time)
 Week 3: 42 hours (48 hours less 6 hours rest time)
 Week 4: 52.5 hours (60 hours less 7.5 hours rest time)

The average hours worked per week are 49.88. The mode of payment is the same as before with the exception that the night hours have increase by 28.57% monthly, from 77 hours to 99 hours. The production bonus of Rs 520 is paid monthly without eligibility criteria. A special shift allowance of Rs 100 monthly has been introduced. The payment of overtime has increased by 44.4.% from 90 to 130 hours monthly. All other benefits such as canteen medical scheme expenses, yearly attendance competition prizes are being maintained despite difficult economic conditions.

Mr Dhaneshwar Boobun, Respondents' witness deponed to sustain arguments brought forward in the Statement of case and further averred that production per day which was 4.5 tons daily before January 2003 has increased to 6 tons daily during peak period i.e

November to March. He pointed out that the average working hours have increased by 12.92 hrs weekly and basic salary is the same as before January 2003. The only compensation has been the shift allowance of Rs 100 monthly and the night allowance has increased as they are working 3 hrs more per night. According to him 13 out of 33 operators were given a salary increase in March 2005 based on absenteeism, good conduct and performance. The increase was of Rs 200/300. A team leader was also chosen in each section with an increase of Rs 150 on their basic salary. The witness also stated that his basic salary after 14 years service is of Rs 3,644 monthly. A new recruit salary is of Rs 3,178 and the salary after 25 years service is of Rs 4,450.

CIEL group of companies to which belongs DNF and CDL is 2nd among the 100 top companies in Mauritius.

During his cross examination, Mr Boobun agreed that the two companies DNF and CDL form parts of the CIEL group together with FERNEY, TROPIC, AQUAREL among others; CIEL group made a profit but he cannot say whether there is any profit for DNF & CDL.

He did not agree that workers were getting more overtime prior to the change since they were getting overtime after 8 hrs shift work and after the change, they are called for extra work only during week-ends. Work during week-end depends on Management, if there is no work, there is no overtime.

He agreed that the workers are getting a production bonus of Rs 520. The night allowance has increased. There is also a shift allowance of Rs 100 and a medical scheme of Rs 2,000 yearly. An attendance bonus of 21.6% is paid when the Export Enterprise Remuneration Orders minimum is of 5%.

Mr Gajnarain Ramgoolam, applicants' witness deponed with regard to his suspension from work following his sickness and produced his medical certificate to that effect.

During his cross-examination he agreed that during the period 26th June to 15th July, he worked for only 2 days as he was sick.

Mrs Mariella LI FOOK avers that she is the financial controller of CDL and that the company has been making losses as from 2003-2004 up to now:-

Part Ending	June 2003	-	Rs 25 millions Loss
	June 2004	-	Rs 15 million Loss
	June 2005	-	Rs 16 million Profit
	June 2006	-	Rs 42 million Loss

She avers that Profit in 2005 was due to a tax-adjustment and that though there was a re-structurisation and changes in the shift, the loss has worsened. During her cross examination, she admitted that the change in the shift system has decreased the Labour bill. She also produced a document on Pay comparisons for CDL & DNF when workers were on 8 hrs shift and 12 hrs shift:-

CL/D&F LTD

Pay Comparisons

Pay items	3 shifts/4 crews	2 shifts/3 crews
Basic salary	3000	3000
OT 1.5	0 (0 hour)	161.49 (7 hours)
OT 2	645.96 (21 hours)	922.80 (30 hours)
OT 3	369.12 (8 hours)	922.80 (20 hrs)
Night allowance	530.61 (69 hours)	761.31 (99 hours)
Att bonus 5%	150	150
Shift att bonus 13%	390	390
Shift compensation 3.6%	108	108
Production bonus	520 (not fix)	520 (fix)

Shift allowance	0	100
Social disturbance	0	Rs 300 (each Sunday night)
TOTAL	5713.69	7036.40

Pay increased by 23.15%

Mr Sydney Woozear, Senior HR Officer at Respondents' place, in his examination, explained that before the implementation of the new shift system, workers were working an average of 42.8 hrs weekly and were paid for 45 hrs. With the new shift system, they are working an average of 53 hrs weekly. With the increase in night allowance, overtime, production bonus, shift allowance, workers have benefited an increase of 28% in their salary. A social disturbance allowance of Rs 300 is paid for work performed on Sunday night and on public holidays. While Production bonus is now fixed, productivity is not fixed.

He added that the new shift system was necessary for the economic safeguard of the industry considering the situation prevailing in the country.

He agreed that there was a fatal accident but he is in no position to say that it was linked with the new shift system. He also agreed that some workers have benefited from 10 to 25% increase, although the average is 10%. There has been an increase in the earnings of the workers following longer hours of work and agreed that working for 12 hrs is very hard.

He also agreed that there was no agreement for the introduction of the new shift system and since the very beginning there was some friction between workers and management and then the situation returned normal. However, the workers are still not agreeable to the new shift system and they are still working "Under Protest".

He affirmed that the workers obtained a special payment of Rs 1,000 in 2005 but cannot say with respect to the Cadre and Managers.

Counsel for the Applicants submitted as follows:-

There has been a drastic change in the conditions of employment of the workers; the change was unilateral with no agreement between parties. The changes brought about, not necessarily, in quantum, but in essence, for the number of hours work and there is less money paid, less revenue for the workers. In quantum they may obtain more money but as a result of working hours, and working on Saturdays and working on Sundays, where there were shift bonuses among other things, explained why there is an increase in the pay pocket but also automatic increase in the amount of hours worked. There has been a variation in the terms and the contract of employment that has led to a decrease in the revenue of the workers, hence the demand for the 22%.

The new shift system has not improved the financial situation of the company, Production has remained the same and recent losses have gone from 25 to 45 millions rupees.

Counsel for the Respondents submitted:-

With regard to the cost factor, it has decreased with the introduction of the new shift system. Losses are still being sustained and no profits are being recorded.

Tribunal's Findings:-

- A new shift system of 12 hrs was introduced unilaterally on the 27th of January 2003 without any hint of agreement between management and workers.
- The number of hours of work increased from 36.95 hrs to 49.88 hrs weekly.
- Following the introduction of the 2 shift system instead of 3, there was a decrease in the number of workers per shift. At DNF instead of 60 employees only 48 were required.
- Production was high while the labour bill went down.

- The DNF & CDL are in the CIEL group of industries and are regularly accumulating losses whereas the CIEL group is the 2nd best in the 100 top enterprises in Mauritius. The Respondents' are primary industries for the other industries in the group which are making profit.
- All factors remaining the same, while there has been a cut down in the labour bill, workers are asked to work with less man power and for longer hours; while productivity remained the same, the companies made a profit of Rs 16 million in 2005 and a loss of Rs 42 million in 2006.
- The losses as presented by the Respondents' cannot be attributed to the workers' performance and other factors therefore should be considered.
- The Companies have introduced the new shift system without any agreement and by-passing section 5 (1) (b) of the Export Enterprises (Remuneration Order) Regulations 1984:-

“Nothing in these regulations shall:-“

1 (b) Authorise an employer to reduce a worker's remuneration or to alter his conditions of employment so as to make them less favorable to the worker”.

- It has not been challenged that the companies can no longer replace absent worker/s in the 12 hrs shift and that workers on duty have to perform more and a compensation of Rs 100 is paid.
- Before 1994 a yearly increment was paid and this has stopped and replaced by increases as and when to be decided and on criteria devised by management.
- A document produced by the Respondents' witness on an 23.15% increase in pay is not increase in real term. The said increase is not in basic pay but in earnings of the worker who worked during week-ends, and is not absent and it is a bonus and not pay.
- The Tribunal does take into consideration the effort made by the Respondents to take prevention measures to face the firm competition from Asian countries in the

- world market, and the end of the multifibre agreement in 2005 to secure everyone's job as well as sustain the socio-economic role of the enterprises.
- And have introduced certain kind of compensation for long hours of work.

TRIBUNAL'S CONSIDERATIONS

"Shiftwork" is referred in **European Employment & Industrial Relations Glossary: UK (1991) By Michael Terry and Linda Dickens:-**

" **SHIFTWORK:** According to a survey undertaken in 1984, nearly 40 per cent of establishments employing 25 or more employees reported some shiftworking, with a significant correlation between shiftworking and size of plant. Shiftworking is more prevalent in the nationalized industries than the private manufacturing sector, with high rates in transport, posts and telecommunications, the Health Service, electricity supply and coal. The most common shift pattern was the double day shift. Workers who work shifts normally receive a supplementary shift premium payment on top of their basic pay."

In **Cigarette Manufacturing Employees Union v/s The British American Tobacco (Mtius) PLC SCJ 364 of 1995:**

"the applicant is a registered trade union which represents the majority of the hundred or so employees of the respondent. There exists between the two parties a collective agreement which regulates the terms and conditions of employment of the members of the applicant with the respondent and which, it is averred, cannot be amended unilaterally. Negotiations started between the two parties some time in June 1995 to provide for a new collective agreement which would pave the way for the introduction of shift work. The union avers that it had made it quite clear that any agreement would have to be vetted by its General Assembly. After several meetings, the representatives of the applicant signed an agreement with the respondent on 27 July 1995 relating to the introduction of shift work "as from September 1995." This agreement was not submitted to the General Assembly of the applicant. On 23 August 1995 the respondent informed its employees that it would be introducing shift work as from Monday 11 September 1995."

"... although it is agreed on both sides that the introduction of shift work would bring some inconvenience and hardship to the employees, there is unrebutted evidence that the respondent

had invested in new machinery and equipment in order to maintain its competitive edge in the region. This new equipment could never give a positive return unless the shift system was introduced.”

It is interesting to observe what was held in **Hong Kong Restaurant Group Ltd v/s Mr T. Chummun SCJ 105 of 1957:**

“Whilst the Catering Industry (Remuneration Order) Regulations 1987 provides that a worker is required to work 48 hours per week excluding meal breaks, there is nothing which prevents an employer from granting more favourable conditions of employment.

We read at note 73 of Encyclopédie Dalloz: Droit du travail, Verbo contrat de travail (Modification) that:-

“La durée du travail est généralement considérée comme un élément substantiel, ne serait-ce que parce qu'elle détermine le salaire. »

The change in the number of hours of work is a substantial one in the present case and this cannot be done unilaterally. However, we hasten to add that nothing prevents the employer from modifying those hours for the better running and exigencies of the business provided he pays for the overtime.

Coupled with the right to change the number of hours of work, there is also the right of the employer to modify the time at which work must start. But this does not entitle the employer to fix odd hours of work unless the concern has odd business hours. It must be borne in mind that the employer has the inherent power of administration and he can organize his business according to the exigencies of the service but within the labour law and its remuneration orders (vide: Encyclopédie Dalloz: Droit du travail – Verbo Contrat de travail (Modification) notes 32 and 34.

Now, can an employee refuse to accept a unilateral change in one of the substantial terms of his contract of employment and if so, what would be its consequence?

At notes 37 and 91, encyclopédie Dalloz: Droit du travail, Verbo Contrat de travail (Modification), we read that :-

« note 37 :- Le salarié a le droit de refuser d'effectuer des tâches non prévues par le contrat, de se plier à un horaire différent de celui qui a été déterminant de son engagement, même si l'ordre est justifié par l'intérêt de l'entreprise.

Note 91 : Le salarié n'a ni à accepter ni à refuser une modification non substantielle, qui s'impose immédiatement à lui. Mais son acquiescement est nécessaire si la modification est majeure pour la formation d'un avenant au contrat du travail. Et il a le droit de refuser la modification substantielle, son refus ne pouvant justifier une sanction. »

Another authority for the proposition that the employer has the right to modify hours of work is **S. L'Ingénierie v/s Baie du Cap Estates Ltd SCJ 171 of 2000:**

“ It must be borne in mind that the employer has the inherent power of administration and he can organize his business according to the exigencies of the service but within the labour law and its remuneration orders. No doubt the number of hours of work is one of the substantial terms of employment and as such cannot be changed unilaterally. (Vide **Hong Kong Group Ltd v Manick (1997).**”

True it is therefore that the Employer has the prerogative of organizing and re-organizing its work structure, although in the present case it chose not to sack but to re-shuffle.

However, on the principles of good practices of good industrial relations as provided for in section 47 of the Industrial Relations Act, as amended, it is essential that there should be an 'entente' between the Employers and the Employees. Good human relations between Employers and Employees are essential to good industrial relations. Indeed, reducing the number of hours of work that has an impact on the overtime hours and therefore in the end, monthly pay packet without any sort of compensation can only lead to a deterioration of harmonious industrial relations. One should not lose sight of the fact that both Employers and Employees have a common interest in the success of the undertaking. We need to place on

record here that the Union had not backed out from their place of work and offered a temporary measure to allow the factory to run pending a final decision. We salute this initiative on the part of the Employees.

In Cayeux Ltd. v De Maroussem (1974 MR 166) it was held that “ a unilateral modification by the employer of the conditions of a workman’s contract of employment of indeterminate duration may entitle the worker for the purposes of a claim under the Termination of Contracts of Service Ordinance, 1963, to treat the agreement as having been terminated by his employer. An employer has, on the other hand, the right, in the discharge of his responsibility to ensure the efficient running of the undertaking, to modify the organization of his services and the functions of his employees. Neither of the principles involved in those two propositions is absolute and both must be taken into account by the Court when adjudicating upon a claim for severance allowance....”

No sound enterprise would survive if a policy of cost reduction is not applied seriously and especially when economic realities are facing the red light. We cannot lose sight of the provisions laid down in **section 47 of the Industrial Relations Act 1973**, as amended.:

“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 –

- (a) the interests of the persons immediately concerned and the community as a whole;
- (b) the principles and practices of good industrial relations; and
- (c) the need for –
 - (i) Mauritius to maintain a favourable balance of trade and balance of payments;

- (ii) To ensure the continued ability of the Government to finance development programmes and recurrent expenditure in the public sector;
- (iii) To increase the rate of economic growth and to provide greater employment opportunities;
- (iv) To preserve and promote the competitive position of local products in overseas market;
- (v) To develop schemes for payment by results, and as far as possible to relate increased remuneration to increased labour productivity;
- (vi) To prevent gains in the wages of employees from being adversely affected by price increases;
- (vii) To establish and maintain reasonable differentials in rewards between different categories of skills and levels of responsibility; and
- (viii) The need to maintain a fair relation between the incomes of different sectors in the community.”

The Terms of Reference provides for the maintaining of the present shift system should an increase in salary be considered. It is clearly borne out from the evidence adduced that the workers would be prepared to carry on with the present shift system if they receive an increase in pay and in the shift allowance.

The change in the shift system appears to have been done unilaterally i.e without consultation with the Union.

The Employees being more concerned with a compensation rather than the changing hours of work, and the Employer having the right to organise his business according to the exigencies of the service as long as he remains within the parameters of the labour laws and the remuneration orders, we consider it would be inappropriate at this juncture to recommend the return of the shift system as it was prior to 27th January 2003,

however an increase in basic pay will be more suitable and will enable workers to sustain the increase in the number of working hours as well as to cope with the policy of the industries to maintain and increase productivity.

The Tribunal therefore awards with respect to the two cases that:-

- (1) The present shift system as introduced on the 27th of January 2003 be maintained.
- (2) An increase of 12% in the basic salary of all workers be effective as from the 1st May 2008.
- (3) The Special Shift allowance of Rs 100 be increased to Rs 200 as from 1st May 2008.

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Rashid HOSSEN
Acting President

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Binnodh RAMBURN
Member

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Rajendranath SUMPUTH
Member

28th March, 2008

