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The Gazette of the Democratic Socialist Republic of Sri Lanka

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අංක 1349/9 – 2004 ජූලි 13 වැනි අඟහරුවාදා – 2004.07.13
No. 1349 /9 – TUESDAY, JULY 13, 2004

(Published by Authority)

PART I : SECTION (I) – GENERAL

Government Notifications

My No.: T23/P/141/2000.

THE INDUSTRIAL DISPUTE ACT (CHAPTER 131)

The award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Messrs. A. K. Gnanaratne of No. 33, Suduhumpola, Kandy and D. M. G. Abeyrathne, who are presently employed at Mahanuwara Bus Company Limited of the one part and Mahanuwara Bus Company Limited, No. 333, Katugastota Road, Kandy of the other part was referred by order dated 24.08.2001 made under Section 4(1) of the Industrial Disputes Act Chapter 131, (As amended) and published in the *Gazette of the Democratic Socialist Republic of Sri Lanka Extraordinary* No. 1,200/22 - 07.09.2001 for settlement by arbitration is hereby published in terms of Section 18(1) of the said Act.

MAHINDA MADIHAHEWA,
Commissioner General of Labour.

Department of Labour,
Colombo 05.
30th June 2004.

Arbitration Case No.: A/2874

IN THE MATTER OF AN INDUSTRIAL DISPUTE

between

Messrs. A. K. Gnanaratne of No. 33, Suduhumpola, Kandy and D. M. G. Abeyratne who are presently employed at Mahanuwara Bus Company Limited of the one part

AND

Mahanuwara Bus Company Limited, No.: 333, Katugastota Road, Kandy of the other part

STATEMENT OF MATTER IN DISPUTE

The matter in dispute between the aforesaid parties is: Whether Messrs. A. K. Gnanaratne and D. M. G. Abeyratne are entitled to the encashment in lieu of unavailed leave for the year 1998 of which was paid to them from the year 1980 and onwards in terms of the Personnel Division Circular of the Sri Lanka Central Transport Board dated 12. 12. 1980 and to what relief each of them is entitled.

The Minister of Labour by virtue of the powers vested in him by Section 4(1) of the Industrial Disputes Act, Chapter 131 of the Legislative Enactments of Ceylon (1956 Revised Edition), as amended by Acts Nos. 14 of 1957, 62 of 1957, 4 of 1962 and 39 of 1968 (read with Industrial Disputes (Special Provisions) Act No. 37 of 1968 referred the aforesaid dispute to me for settlement by arbitration.

This matter was taken up for inquiry. Both parties were present. Applicants appeared in person, while Mr. S. M. Abeyratne, Attorney-at-law, appeared for the Respondent.

I have examined the evidence, both oral and documentary of the Parties and the written submissions of the parties. The evidence of the A. C. L. Mr. Jinadasa of the Trade Union Division shows that there was a complaint by the Applicant Gnanaratne to ACL. Kandy by document A: 1 dated 27/5/99. Thereafter the Commissioner of Labour held an inquiry and parties submitted their written submissions, A2 by the Applicant and A3 by the Respondent. Commissioner of Labour made order by document A4, that payment for unavailed leave for the year 1998 should be paid by the Respondent to the Applicants. Respondent did not comply with the Order and the matter was referred to Arbitration. His evidence was in terms of the Documents in file No. B/23 - P/ 141/2000.

In cross examination, Witness stated that by A4, the Respondent was ordered to pay the Applicants for the unavailed leave for the year 1998 in terms of the Circular instructions. Witness was shown Personnel Division Circular No. 25/80, marked R1 and the admitted that the said payment as approved by the Cabinet is for bus crews and Engineering floor level staff. He admitted that the applicants do not fall into any of these categories. He further admitted that there are no Circulars to substantiate the order made by the Commissioner of Labour by document A:4.

On the evidence of ACL, I am of the view that the Order of the Commissioner of Labour by document A:4 was not based on any Circular instructions.

The evidence of Applicant Gnanaratne shows that he is due payment for unavailed leave for the year 1998 in terms of Personnel Division Circular of the SLCTB dated 12/12/80. His evidence Shows that he was paid for unavailed leave from 1980 to 1997 but it was stopped for the year 1998. Thereafter, on a complaint made by him to the Labour Department. The Commissioner of Labour by Document A4 dated 27/9/2000, made order that the Respondent should make the payment for the year 1998. The Respondent did not comply with the Order and the matter was referred to Arbitration.

In Cross examination, the Applicant admitted the position that the issue referred by the Commissioner of Labour for Arbitration is based on the Personnel Division Circular No. 25 dated 12/12/80. His evidence shows that he was a Driver Instructor in the year 1998 when he was not made the payment for unavailed leave for the year 1998. Personnel Division Circular No. 25 dated 12/12/80 was marked in evidence R1 and Circular relating to Floor Level Employees was marked as R2.

Taking the evidence of the Applicant into consideration I am of the view that the payment for unavailed leave for the year 1998 is based on the said Personnel Division Circular dated 12/12/80 marked in evidence R1.

Two witnesses for the Respondent gave evidence. They are Mr. Wijekone Banda, Director Finance and Mr. Samarakone, Personnel Manager.

The evidence of Director Finance shows that applicant Gnanaratne was a Driver Instructor and applicant Abeyratne was a Forman. Before Mahanuwara Bus Co. Ltd. was formed, there was a cluster of Depots known as Janatha Santhaka Pravahana Sevaya. Before this, the Organisation was Central Transport Board. Witness was in service from the year 1975. Certain categories of workers were paid for their unavailed Medical and Casual Leave. This commenced from the year 1980. This payment was made to bus Crews namely Drivers, Conductors and Engineering Floor Level Staff only. Witness referred to document R1 Circular No: 25 dated 12/12/80. This Circular was issued with Cabinet approval. He referred to letter issued by Chairman Central Transport Board, marked R2 dated 20/4/79, to show that the Applicants were not entitled to this payment. Applicant Gnanaratne was a Driver prior to his appointment as a Driver Instructor and this payment was made to him and when he become a Driver Instructor, he was not entitled to this payment. His evidence shows that the applicants were treated in a similar way as the other Employees regarding this payment in terms of Circulars R1 and R2.

In Cross Examination, witness stated that R1 and R1: A is a photo copy of the relevant Circular and a true copy. Witness was referred to Document R2 and he stated that R2 is a letter sent by the Chairman CTB to the Regional Managers. There is a reference to Circular No: 25 of 1980 - R1, in document R2. Witness was referred to the order of the Commissioner of Labour to the Respondent to make the said payment to the Applicants. Payments were not made and the matter was referred to Arbitration.

I have given my consideration to the evidence of this witness. I am of the view that the document R1 was produced in evidence and there was no objection that it should be accepted subject to Proof. When this document R1 was shown to the witness, ACL, of the Labour Dept. there was no objection to this document and Witness ACL gave his evidence relating to this document R1.

The evidence of Samarakone, Personnel Manager, shows that he maintains the position as stated in document R1 and R2. He was shown Document R3 letter of appointment of Applicant Gnanaratne, dated 9/2/70. He was a Bus Driver and he was entitled to this payment until he became a Driver Instructor, Grade 8 by Document R4 dated 1/1/92. Thereafter this applicant was not entitled to this payment. Witness was shown letter of Appointment R5 of applicant Abeyratne. He was and Asst. Mechanic Class 3. He was entitled to this payment from 1987. In 1994, Abeyratne became a forman Grade 8: A by letter of appointment R6 and thereafter he was not entitled to this payment.

In cross examination, witness was shown document A4 dated 27/9/2000, wherein the Commissioner of Labour made order to the Respondent to make this payment to the applicants. Witness stated that the order was not complied with. Witness stated that the Applicants are not entitled to this payment as Applicants are not entitled to this payment as Applicant Gnanaratne was a Driver Instructor and Applicant Abeyratne was a Froman.

I have considered the evidence of this witness. I am of the view that in terms of Documents R1 and R2, the Applicants are not entitled to this payment.

Applicant Gnanaratne in cross examination of witness. Samarakone stated that inquiry into this matter in this Arbitration Case No: A/2874, is not on the question whether the Applicants are entitled to this payment or not but it is whether you have complied with the order of the Commissioner of Labour, Page 7 of the Proceedings of 12/1/04.

I am of the view that Applicant Gnanaratne is completely erroneously misconstruing the issue to be decided by me in this case. The issue referred to me for Arbitration is whether the Applicants are entitled to the encashment in lieu of unavailed leave for the year 1998 of which was paid to them from the year 1980 and onwards in terms of Personnel Division Circular of the Sri Lanka Central Transport Board dated 12/12/80 and to what relief each of them is entitled.

On examination of the evidence as a whole, I am of the view that the order of the Commissioner of Labour by Document A4 requesting the Respondent to make this payment for unavailed leave for the year 1998, is not based on any Documents or Circulars. The ACL Mr. Jinadasa from the Trade Union Division of the Labour Dept. admitted this in his evidence. As such, I hold that the Order of the Commissioner is not supported by any documentary evidence and not a valid Order. The said ACL. admitted in evidence that Document R1 _ Circular of 25/80 relates to the payment for unavailed leave only to Bus Crews and the Engineering Floor Level Staff, which has been approved by the Cabinet.

The issue to be decided by me is whether Applicants A. K. Gnanaratne and D. M. G. Abeyratne are entitled to the encashment in lieu of unavailed leave for the year 1998 of which was paid to them from the year 1980 and onwards in terms of the Personnel Division Circular of the Sri Lanka Central Transport Board dated 12/12/80 and to what relief each of them is entitled.

Taking into consideration the evidence as a whole, both oral and documentary. I hold that the Applicants are not covered by the said Personnel Division Circular R1 from the year 1998 and they are not entitled to the payment for the unavailed leave for the year 1998.

On the evidence as a whole, and the balance of evidence and the preponderance of probabilities, I hold that the Applicants are not entitled to any relief.

I make award accordingly and I dismiss the Application.

K. R. M. N. LAWRENTZ,
Arbitrator.

Dated on this 15th day of June, 2004.

My No.: T23/P/253/2001.

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

The Award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mr. Premananda Ratnayake, C/o 104, Kade, Udawela, Maligatenne, Pattiyagedara, Bandarawela and Ceylon Fertilizer Co. Ltd., No. 62, Chatham Street, P. O. Box 841, Colombo 01 was referred order dated 14.09.2002 made under Section 4(1) of the Industrial Disputes Act, Chapter 131 (as amended) for settlement by Arbitration is hereby published in terms of Section 18(1) of the said Act.

MAHINDA MADIHAHEWA,
Commissioner General of Labour.

Department of Labour,
Labour Secretariat,
Colombo 05,
30th June, 2004.

IN THE MATTER OF AN INDUSTRIAL DISPUTE

between

Mr. Premananda Ratnayake, C/o. 104, Kade, Udawela, Maligatenne,
Pattiyagedara, Bandarawela

Case No.: A/2948.

AND

Ceylon Fertilizer Co. Ltd., No. 62, Chatham Street, P. O. Box 841,
Colombo 01

THE AWARD

The Hon. Minister of Employment and Labour by virtue of the powers vested in him by Section 14(1) of the Industrial Disputes Act, Chapter 131, of the Legislative Enactments of Ceylon (1956 Revised Edition), as amended by Acts Nos. 14 of 1957, 62 of 1957, 4 of 1962 and 39 of 1968) appointed me as Arbitrator by his order dated 14.09.2002 and referred the aforesaid dispute to me for settlement by arbitration.

The matters in dispute between the aforesaid parties are -

- 1 Whether Mr. Premananda Ratnayake, District Marketing Officer, Ceylon Fertilizer Co. Ltd. is entitled to receive the arrears of salary for the period of interdiction of his service from 07.03.1995 to 13.06.1996 and if not, to what relief he is entitled.
2. whether Mr. Premananda Ratnayake is entitled to the post of Deputy Marketing Manager Executive Grade III of the Ceylon Fertilizer Co. Ltd. with effects from 01.03.2000 if so, whether he be entitled to the respective salary of the said grade and the post and
3. whether Mr. Premananda Ratnayake is entitled to receive a sum of Rs. 109050 as earned Marketing Target Exceeding Incentive in terms of the circular No. 4/4/12 dated 02.05.1994 of Ceylon Fertilizer Co. Ltd. if not, to what relief he is entitled.

Whilst the matter was being inquired into the parties had reached a settlement by the company appointing the workman to Executive Grade Three with effect from 01.01.2004 and the workman withdrawing all these matters which were the subject matter for settlement by arbitration.

In view of the above settlement I make no award.

A. SRI NUMMUNI
Arbitrator.

Dated at Colombo, This 07th day of June, 2004.

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE Memorandum of Settlement entered into between the Free Trade Zone Workers Union, No. 141, Ananda Rajakaruna Mawatha, Colombo 10 and Jaqalanka Ltd., Katunayake, on 16th October, 2003, in the presence of Dr. P. Saravanamuthu, who was appointed by me as the Authorised Officer for the settlement of the said dispute by virtue of the powers vested in me under Section 3(1) (c) of the Industrial Disputes Act, is hereby published in terms of Section 12(6) of the Act.

MAHINDA MADIHAHEWA,
Commissioner General of Labour.

Department of Labour,
Labour Secretariat,
Colombo 05,
30th June, 2004.

Jaqalanka Limited and Free Trade Zone Workers' Union (FTZWU) Dispute Settlement Process

Nature of Dispute.— A dispute arose in April, 2003, between Jaqalanka Limited and the FTZWU on the formers' failure to recognize the latter.

Steps taken to Settle the Dispute.— A round table discussion was held on the 14th and 16th of October, 2003, at which the two parties reached an agreement.

Terms of Settlement reached.— Please see Annex 1 for the Memorandum of Settlement.

Recommendations made to the Parties for Settlement .— Further to the agreement and at the request of the parties CPA has facilitated a series of discussions in which important decisions were taken and considerable progress made.

* INTRODUCING THE AGREEMENT.— On the 22nd of October a meeting was held at the Jaqalanka Limited factory to introduce the Agreement to the management and the employees.

Consequently progress has been made in the following areas –

* TRAINING AND CAPACITY BUILDING.— It was decided at the review meetings that Jaqalanka Ltd., would undergo ILO training focusing specifically on freedom of association in the context of the present situation. About 45 staff members belonging to both the management and employee categories of Jaqalanka Limited, have duly undergone training covering relevant issues such as Freedom of Association as applicable to Jaqalanka Ltd., rights of the workers under Sri Lankan law, experiences of non union and unionized employees working together. Further training programs to be undertaken by the parties will be discussed at future review meetings.

* INTERNAL GRIEVANCE PROCEDURE. (IGP)— As per the agreement the Jaqalanka Limited, IGP was revised. One of the changes made was to accommodate representation of the trade union members by the branch union. The other change was to make certain steps of the IGP optional with the aggrieved having the discretion to access higher levels of authority directly. The revised IGP has been in effect since 17th November.

* MODALITIES OF ACCESS AND ORGANIZING RULES.— A set of practical arrangements for FTZWU activities was agreed upon on the understanding that these arrangements would not interfere with the Company's production and productivity. The following were agreed upon –

The procedures for branch union meetings, branch union management meetings, union annual general meetings and modalities of meetings. **(The first meeting between the branch union and the management was held on the 19th of December, where a number of issues have been discussed in a cordial environment.)**

Provision of a notice board to the FTZWU at the factory premises. **(A notice board has been granted in a conspicuous location.)**

Ways of recruiting new members and deducting union membership fees.

* PUBLIC DECLARATIONS.— It was also agreed that public declarations relating to the process may be made by either party with notice to the other party and CPA.

At the end of the first review meeting the following statement was issued by the parties.

JOINT COMMUNIQUE BY THE JAQALANKA LTD., AND FTZWU

At the end of Part 2 of the first review meeting convened by CPA and held on 13th November, 2003, the parties continued to demonstrate commitment to the process and agreed upon the following specific measures towards the implementation of the agreement.

* The Jaqalanka Ltd., Internal Grievance Procedure which covers work related issues, abuse and harassment was discussed and finalized.

* A set of practical arrangements for the union operations.

* Time frame for the implementation of the above.

While Jaqalanka Ltd. appreciated suspension of the international solidarity campaign by FTZWU, the FTZWU gratefully acknowledged the progressive steps taken by Jaqalanka Ltd. to implement the agreement.

** INFORMAL DISCUSSIONS*

CPA held a series of informal discussions with over 45 members of the Jaqalanka Limited staff whose understanding and cooperation are important for the implementation of the Agreement. The purpose of the discussions was to explain important issues raised by the Agreement and to answer any questions they may have. During these discussions the agreement reached between the parties was explained and the progress made so far outlined. The concept of freedom of association and the law pertaining to trade unions were also discussed. CPA also had an informal discussion to discuss the same issues with the branch union committee. We feel that these discussions were helpful in many ways.

A third review meeting is scheduled for mid - January where further matters are to be discussed. Except for a few minor issues, no major disputes have arisen during the last few months. As the above account clearly shows the two parties have displayed good faith and commitment to the process.

DR. PAIKIASOTHY SARAVANAMUTTU,
Executive Director.

MEMORANDUM OF SETTLEMENT

between

The Free Trade Zone Workers Union, 141, Ananda Rajakaruna Mawatha,
Colombo 10

AND

Jaqalanaka Ltd., Katunayake

It is hereby agreed between the Free Trade Zone Workers Union (FTZWU) and Jaqalanka Ltd., Katunayake that the dispute over union recognition be settled on the following terms:

The FTZWU, for its part -

- (1) Seeks acceptance by Jaqalanka Ltd. as the representative of FTZWU members concerns.
- (2) Agrees to respect the right of workers to form and join, or not, organizations of their own choosing.
- (3) Agrees not to harass, victimize, discriminate against or otherwise subject non union workers to any unfair practices.
- (4) Reserves the right to resume the international campaign if the good faith understandings reached herein are not respected by the company, subject to the union exhausting all precedures for the resolution of disputes set out in this agreement.
- (5) The FTZWU agrees to request that the complaints suspend their complaint (dated 21st July, 2003, filed by the ICFTU and 22nd September, 2003 filed by the ITGLWF) to the ILO Committee on Freedom of Association pending the successful outcome of the review after six months as provided for in this agreement, which period will begin on the signing of this agreement. If the parties agree that real progress has been made towards ensuring freedom of association at Jaqalanka Ltd., the FTZWU will request that the complaints amend their complaint to remove all prejudicial references to Jaqalanka Ltd.

The Jaqalanka Ltd. for its part –

- (1) Accepts the FTZWU as the representative of FTZWU members concerns.
- (2) Agrees to respect the right of workers to form and join, or not, organizations of their own choosing.
- (3) Agrees that no workers or union members will be harassed, victimized discriminated against or otherwise subjected to any unfair labour practices

Both the FTZWU and Jaqalanka Ltd agree –

- (1) An internal grievance procedure for Jaqalanak Ltd. be formulated by the parties at a meeting to be convened by the CPA within 14 days.
- (2) That the future relationship of the parties to collective bargaining will be governed by the Industrial Disputes Act, as amended by Act, No. 56 of 1999, or any decision mutually agreed upon by the parties.
- (3) The parties will meet as and when the company or the union requests a meeting to discuss grievances of union members. For this purpose the parties may call upon the CPA to facilitate the meeting.
- (4) Upon conclusion of this agreement the parties will make a written request to the Commissioner General of Labour to appoint an authorized officer in terms of Section 3(1)(c) of the IDA to conciliate in the event of any deadlock in the internal grievance procedure.
- (5) No party issue any public declaration on the merits of a case while under review by the grievance procedure or the authorized officer.
- (6) The parties request training and capacity building on issues of freedom of association and sound industrial relations to be facilitated by FLA/CPA.
- (7) Both parties commit to a process of healing and reconciliation and to uphold the rule of law, including practical arrangements for the union activities, to be negotiated within seven days of the signing of this agreement. This will include the cessation of negative campaigning and publicity.
- (8) The company will exhibit a copy of this agreement in all three languages on the company notice board for the information of the workforce in order to publicize the understanding reached between the parties including the company's recognition of the right of workers to freedom of association.
- (9) The parties issue a statement to the workforce in order to clarify the principles of freedom of association and the understandings reached at the present meeting. The FTZWU, FLA and CPA will be present at that meeting. Jaqalanka Ltd. and FTZWU request Labour Commissioner to be present.
- (10) This forum meet in six months to consider progress made in implementing this agreement. The parties will, in the first instance, jointly request the Commissioner General of Labour to convene the meeting.

Signed at Colombo, 16 th October, 2003.

On behalf of

JAQALANKA LTD.
HARIN FERNANDO,
DWIEL ORTIZ,

On behalf of

THE FTZWU
ANTON MARCUS,
General Secretary.

WITNESSED BY:

AURET VAN HEERDEN

FLA

PALITHA ATUKORALE
Chief Organizer, JSS