

**19. Non - Recurring Cost of Living Gratuity.**-(1) As the scales of consolidated wages set out in the First Schedule hereto have been fixed on the basis of the Colombo Consumers' Price Index being 3070 an employee shall, subject to the provisions of the succeeding sub-clause, be entitled to receive and the employer shall be liable to pay a Non - Recurring Cost of Living Gratuity to the employees in December each year, in respect of the preceding twelve (12) months (1st December to 30th November, hereinafter referred to as "the qualifying period" commencing from the First day of December Two Thousand and Three ascertained in accordance with the under - noted formula :-

**FORMULA .-** If the average of the Colombo Consumers' Price Index figure for the qualifying period exceeds 3070 a sum computed at Rupees Two (Rs.2/-) for each complete point (i.e.1.0) by which such average exceeds 3070 in respect of each month of service during the qualifying period.

(2) When at the expiry of each twelve month period commencing on the First day of December Two Thousand and Three, the scale of consolidated wages have been revised in the manner set out in Clause 16(3) hereof, the base Index figure in the formula for the purpose of calculating the Non-Recurring Cost of Living Gratuity shall thereafter be increased by the number of points by which the Colombo Consumers' Price Index figure has risen during each twelve month period as specified in Clause 16(3) hereof.

(3) The Non-Recurring Cost of Living Gratuity shall be payable by an Employer to an Employer to an Employee who is eligible to receive the same by virtue of his service under the Employer during a part of the qualifying year by reason of the fact that he is not in the Employer's service when the Non-Recurring Cost of Living Gratuity becomes due in December of any year or he joined the Employer's service during the course of the qualifying year.

(4) The Non-Recurring Cost of Living Gratuity shall not be payable to an employee in respect of any period for which he received no wages for whatever reason.

(5) No Provident Fund, Trust Fund, Overtime or any other payment shall be due or calculated on the Non-Recurring Cost of Living Gratuity.

**20. Provident Fund.**-(1) The Employer and Employee shall contribute to the Provident Fund at rates prescribed by the Employees' Provident Fund Act, No. 15 of 1958.

(2) Subject to the provisions of the Employees' Trust Fund Act, No. 46 of 1980, where the Employer and the Employee as at the date hereof were contributing to a Provident Fund at rates more favourable than those prescribed by the Employees' Provident Fund Act, the more favourable rates of contribution will continue.

**21. Terminal Benefits.**-(1) The Employer will, subject as hereinafter provided, pay terminal benefits to employees in accordance with the scheme of terminal benefits set out in this Clause.

(2) The scheme shall apply to every employee in the service of the Employer on the first day of May Two Thousand and four or who joins the service of the Employer on any day after the First day of May Two Thousand and Four as long as this Agreement continues in force.

(3) As and by way of terminal benefits the Employer shall pay an employee a sum equivalent to one month's wages for each year of service less the Employer's contribution to the Provident Fund and Trust Fund but excluding interest thereon.

(4) The wage on which the said terminal benefits under Sub-clause 3 hereof shall be payable will be the last monthly wage receivable by an employee on which Provident Fund is payable and shall not include any Non-Recurring Cost of Living Gratuity.

(5) For the purpose of calculating terminal benefits under this Clause an year of service shall be a period of not less than six months.

(6) The terminal benefits provided for in this Clause shall be payable to an employee on the cessation of his services arising from death or any other cause whatsoever. Provided, however, that if at the date of cessation of an employee's services there is due to his employer from the employee any sum on account of fraud misappropriation or on any other account and the same cannot be recovered from the amount to the Employee's credit in the Provident Fund, the same shall be recovered from the terminal benefits provided for herein.

(7) On the death of an employee whilst in service who is eligible to receive terminal benefits under this Clause, the Employer shall pay such terminal benefits in the manner and to the persons hereunder set forth:-

(a) If there is a valid nomination in force for the purpose of the deceased Employee's Provident Fund at the date of his death, to the nominee or nominees of such Employer in conformity with the form of nomination where such nominee is surviving and of full age.

(b) When there is no valid nomination or in the event of the nominee or any or more of the nominees having pre-deceased the employee or in the event of the nominee being a minor at the time that the payment of the terminal benefits become due, the Employer shall make payment only after the person or persons entitled to the payment have established their claim in law and furnished proof thereof.

(8) In the event of the gratuity payable under the Gratuity Act, No. 12 of 1983, providing for the payment of gratuity being more than the terminal benefits herein provided, the more favourable scheme shall apply but not both.

**22. Bonus.**-(1) Without prejudice to existing bonus schemes and without prejudice to the Employers' claim that bonus payments in the past and as provided in this Agreement are ex-gratia, each Employer will, subject as hereinafter provided, continue to pay to each of this

employees a bonus, which will not be less than the sum of money paid to him as his bonus for the year immediately preceding the signing of this Agreement. If in any year the Employer in his discretion reduces the bonus to an amount less than the sum of money paid to each of his employees as bonus for the year immediately preceding the signing of this Agreement, the employees may canvass such reduction of bonus with the Employer concerned. If the Union is not satisfied by the Employer in the matter, the Union may pursue this matter with the Employers' Federation of Ceylon (hereinafter called the "Federation"). If the dispute as to the reduction of bonus is not settled with the Federation, the same shall be referred to a Committee of three persons (hereinafter referred to as "a Bonus Committee") which shall be constituted in accordance with the provisions of sub-clause (2) for settlement in the manner hereinafter set forth.

(2) At the written request of the parties to the dispute as to the reduction of the bonus, the Commissioner of Labour will constitute a Bonus Committee which shall consist of three Senior Accountants nominated by the Council of the Institute of Chartered Accountants of Sri Lanka. The said Chartered Accountants shall be persons with at least 10 years post qualification experience. The selection of the three Chartered Accountants will be communicated by the Institute of Chartered Accountants to the Commissioner of Labour, to the Employer, the Employees and the Federation. Thereupon, the Commissioner of Labour will communicate in writing to each member of the Bonus Committee shall be bound in settling the dispute pertaining to the reduction of bonus.

(3) Upon receipt of the submissions and the Statement of the Principles and Procedure from the Commissioner of Labour, the Bonus Committee shall in accordance with the said Principles and Procedures decide whether the reduction of the bonus by the Employer was justified and if the reduction was not justified, to what extent, if any, the bonus shall be reduced. The Bonus Committee shall communicate the decision in writing to the Federation, the Employees and the Commissioner of Labour. If the decision of the Bonus Committee is unanimous, such decision shall be final and binding on the parties to the dispute and the employees or any one or more of them and/or its members shall not pursue the matter further by any form of Trade Union action or otherwise during the continuance in force of this Agreement. If, however, the Bonus Committee is divided by its decision, then the decision of the Commissioner of Labour on the matter shall be final and binding on the parties to the dispute and the Commissioner's decision shall be communicated in writing by the Commissioner of Labour to the Federation and the Union and/or its members shall not pursue the matter further by any form of Trade Union action or otherwise during the continuance in force of this Agreement.

(4) The Bonus Committee shall not be entitled nor be competent to decide that in any year an Employer should pay his employees a bonus exceeding the sum of money paid as bonus in the year immediately preceding the signing of this Agreement.

(5) The fees payable to the members of such Bonus Committee shall be borne equally by the parties to the dispute as to the reduction of bonus and be payable on demand by the Commissioner of Labour.

(6) The payment of a bonus exceeding the sum of money paid as bonus to employees in the year immediately preceding the signing of this Agreement, shall be at the sole discretion of the Employer and shall not be called in question by the employees nor shall the Employer's failure or refusal to pay such bonus be the subject of any dispute.

(7) The provisions of such Clauses (1), (2), (3), (4), (5) and (6) shall, *mutatis mutandis*, apply to existing bonus schemes.

(8) At the request of the Commissioner of Labour the Council of the Institute of Chartered Accountants of Sri Lanka will nominate three Chartered Accountants with not less than 10 years of post qualification experience drawn from professional Accountancy Firms to serve on the Bonus Committee.

(9) Any dispute relating to the payment of bonus shall be resolved only in terms of provisions (1) to (8) above and no other provision in this Agreement shall be applicable.

23. **Annual Increments.** - The annual increments provided in each of the scales of consolidated wages in the First Schedule hereto shall be automatic unless as a matter of punishment for general inefficiency including irregular attendance or unpunctuality or disciplinary action on account of serious misconduct an increment is suspended, stopped, deferred in which case where an increment is-

- (a) deferred, the loss of increment shall be continuous throughout the year
- (b) stopped, the loss of increment shall only be for the period of stoppage during the year.
- (c) suspended, the increment is suspended pending a decision to defer or stop an increment, such decision being dependent upon a consideration of the factors giving rise to the suspension. Where on such decision an increment is neither stopped nor deferred, then the suspension shall be treated as waived and the full increment from the date of suspension thereof shall accrue to the Employee concerned.

Deferment, stoppage or suspension of an increment shall only be effected in cases where the employee has been notified in writing of a complaint against such employee and has been found guilty after due inquiry of inefficiency fraud or misconduct, which in the circumstances does not merit termination of employment.

24. **Carrying out Employers' Instructions As To Duties.** - (1) If an employee considers that any duty which he is required to perform by the Employer does not fall within the scope of his employment under the Employer, the employee shall be entitled to bring such matter to the notice of the Employer. If notwithstanding such notification the Employer requires the employee to carry out such instructions then the employee shall be entitled to request the Employer to give him instructions in writing.

(2) If the Employer gives the employee such instructions in writing, the employee shall carry out the same but without prejudice to the right of the employee to dispute such matter with the Employer thereafter, as provided in this Agreement.

(3) If the Employer refuses to give such instructions in writing, the employee shall be entitled to refuse to carry out such instructions and in that event, the Employer shall have no right of action against the employee.

(4) If the Employer gives such instructions in writing, but the employee fails to carry out the same, the Employer shall be entitled to suspend the employee immediately without any pay and to take disciplinary action against him without prejudice to the right of the employee to dispute such suspension or such disciplinary action as may be taken against the employee as provided in this Agreement.

25. **Warning.** – If in the opinion of the Employer an offence warrants a warning the same shall be conveyed to the Employee by a letter, a duplicate of which shall be signed by the employee. If the employee refuses to sign the duplicate the warning may be given to the employee by the Employer in the presence of two witnesses.

26. **Suspension.** – (1) An employee may be suspended without pay by his employer. –

- (a) pending an inquiry to be held by such Employer on a charge or charges of misconduct which warrants dismissal.
- (b) in order to avoid a breach of peace or damage to the property or disturbance of the business of the employer.
- (c) as a punishment for misconduct for a period not exceeding seven (7) working days after due inquiry.

(2) At the time of suspension under Sub-clause (1)(a) or within forty eight (48) hours thereof, the Employer shall provide the employee with a written order of suspension specifying the reason or charges in terms of Clause 26 hereof.

27. **Disciplinary Action.** – Where the Employer proposes to proceed against the employee then –

- (1) Irrespective of whether an employee has been suspended under Clause 26 hereof or not, the employee shall be furnished with a show cause notice which shall set out the particulars of the charge or charges of misconduct alleged against such employee and such show cause notice shall give the employee not less three (3) clear working days in which to give the answer or explanation to the charge or charges preferred.
- (2) Within three (3) clear working days after the date of the show cause notice, the employee shall furnish in writing to the employer the answer or explanation to the charge or charges preferred against such employee. Provided, however, that if in the circumstances it is reasonable, the employee may ask the employer for an extension of time within which to furnish the written answer or explanation to the show cause notice and where such request is made by an employee for such further period of time as is deemed necessary in the circumstances of the case.
- (3) If the employer is satisfied with written answer or explanation of the employee, the employee shall, if he is under suspension, forthwith be reinstated and shall be paid all wages and entitlement due for the period of such suspension.
- (4) If the employer is not satisfied with the written or explanation of the employee to the show cause notice and such answer or explanation is rejected by the employer, the employer shall commence an inquiry within ten (10) working days from the date of receipt by him of the written answer or explanation to the show cause notice.
- (5) After holding such inquiry the employer shall notify the employee of the findings on each of the charges in the show cause notice and the punishment, if any, imposed by the employer. Provided that if the employer fails to make an order except for reasons beyond the control of the employer on the charges in the show cause notice within thirty (30) working days from the conclusion of the inquiry into such charges the employee shall not be liable to be punished thereafter in respect of such charges and no inference adverse to the employee in respect of such charges shall be drawn from such charges.
- (6) If the employee is under suspension and the employer after such inquiry makes order that –
  - (a) the employee shall not be dismissed, then, the employee shall resume employment forthwith and shall subject to the provisions of sub-clause 26(1)(c) hereof be paid all wages and entitlement due for the period of suspension irrespective of such other punishment less than dismissal that may be imposed by the employer on the findings as to the charges in the show cause notice
  - (b) the employee shall be dismissed, then the employee's dismissal shall take effect from the date of the employee's suspension and accordingly the employee shall not be paid for the period of such suspension
  - (c) in view of the serious or involved nature of the charges in the show cause notice against the employee the employer is unable to make a final order as it is necessary and desirable that the matter be referred to the police or other authorities for further investigations or inquiries and that the matter be therefore referred to the police or other authorities or if in view of the serious or involved nature of the charges preferred against the employee the matter has been previously referred to the police or any other authorities for investigation or inquiries that the outcome of such investigations or inquiries be awaited, then in either of such circumstances the employee may remain suspended without pay.

- (7) If in any case where an employee is suspended as provided for herein the employer fails to make an order under paragraphs (a) to (c) of the preceding sub-clause for any reason other than that of the employee's own seeking within thirty (30) working days from the date of the employee's suspension, the employee shall be entitled to half his normal remuneration for the period of thirty (30) days from the date of such suspension in excess of thirty (30) days up to the date on which the employer makes an order under paragraphs (a) to (c) of the preceding sub-clause irrespective of the outcome of the inquiry.
- (8) In any case where an employee is suspended as provided herein the employer shall make an order under paragraphs (a) to (c) of sub-clause 6 within ninety (90) days of the date of suspension of the employee unless he is prevented from so doing by reason of the employee's own seeking or for reasons beyond the control of the employer or it is agreed between the employer and the union that in the circumstances of the case the period of ninety (90) days be extended for such further time as may be agreed.
- (9) The employer shall not be required to hold an inquiry as referred to in sub-clause (4) and (5) hereof where the employer proposes to warn the employee or where the employee admits to the charge or charges. Provided however, that if the union disputes the warning or punishment imposed on the employee by the employer and requests the holding of an inquiry the employer shall comply with such request and the provisions relating to the holding of an inquiry shall then apply subject to the exception that the fact that the inquiry had not commenced within ten (10) working days after receipt of the employees explanation shall not be material or relevant.

28. **Retirement.**— On reaching the age of fifty five (55) years an employee shall *ipso facto* retire and cease to be employed by the employer and there shall be no obligation on the employer to give the employee any notice of such retirement provided, however, that an employee who has retired may, in the discretion of his employer, be employed after his retirement on a temporary basis on such terms as may be mutually agreed.

29. **Termination of Service.**— (1) Every contract, whether oral or written, for the hire of any employee by the employer except for work usually performed by the day or by the job, or by the journey, shall (subject to the provisions of Clause 6 hereof or unless otherwise expressly stipulated) be deemed and taken in law to be a contract for hire and service for the period of one (1) month and to renewable from month to month and shall be deemed and taken in law to be so renewed, unless one month's notice be given be either party to the other of his intention to determine the same such month has expired.

(2) Where an employee is engaged for a particular job or period such as casual or temporary work he shall be informed thereof at the commencement of his employment and his contract of service will terminate on the completion of the job or period or on the failure of the employee to complete the job within a reasonable time.

30. **Disputes Procedure.**— (1) In the first instance the Union shall submit any demand on behalf of its members to the employer and give the employer at least ten (10) days' time within which to reply. If in the Union's opinion the employer's reply is unsatisfactory the Union and the employer shall explore the possibility of reaching a settlement.

(2) When the Union concludes that negotiations with the employer have been abortive it shall ask the Department of Labour to intervene and give the Department not less than ten (10) working days to arrange a conference and / or discussion with a view to a settlement of the dispute. Negotiations under the aegis of the Department of Labour shall then proceed until the Department of Labour reports failure.

(3) Subject to the provisions of Clause 33 hereof all disputes between the parties shall be settled in accordance with the provisions of the Industrial Disputes Act and the regulations made there under.

(4) Any party to this Agreement shall not instigate, support or engage in any unfair labour practice during the currency of this Agreement.

31. **How Anomalies in the Course of Implementing this Agreement shall be dealt with.**— Any anomaly arising from the implementation of this Agreement shall be settled by negotiation between representatives of the Federation and the Union. If the matter cannot be settled by negotiations, the matter shall be settled in accordance with the provisions of the Industrial Disputes Act and the regulation hereunder.

32. **Trade Union Action.**— The Union and its members and the employees covered and bound by this Agreement jointly and severally agree with the employer that during the continuance in force of this Agreement they shall not engage in any strike or other form of trade union action against the employer in respect of any dispute between the employer on the one hand and the union and / or its members and / or any employee covered and bound by this Agreement on the other hand whether or not such disputes has been cause by an act of the employer which in the opinion of the controlling body (by whatsoever name called) of the union is *mala fide* or vindictive or calculated to threaten or undermine the existence of the legitimate activities of the Union and/or its members or grossly unfair or seriously detrimental to the interests of the union and/or its members. Provided however, that at least seven (7) days' notice in writing shall be given by the union to the employer and the Commissioner of Labour before the date of commencement of any intended strike or other form of trade union action consequent to an act of the employer which in the opinion of the controlling body (by whatsoever name called) of the union is *mala fide* or vindictive or calculated to threaten or undermine the existence of the legitimate activities of the union and/or its members or is grossly unfair or seriously detrimental to the interests of the union and/or its members.