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The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

අංක 1457/10 - 2006 අගෝස්තු 08 වැනි අඟහරුවාදා - 2006.08.08

No. 1457/10 - TUESDAY, AUGUST 08, 2006

(Published by Authority)

## PART I : SECTION (I) — GENERAL

### Government Notifications

My No. : CIE/33/2001.

and

Watawala Plantations Limited,  
228/1, Galle Road,  
Colombo 04.

#### THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mr. Rukmal Perera, 'Pearlton', Bopitiya, Pamunugama of the one part and Watawala Plantations Limited, No. 228/1, Galle Road, Colombo 04 of the other part was referred by order dated 16th August, 2004 made under Section 4(1) of the Industrial Disputes Act, Chapter 131 (as amended) and published in the *Gazette* of Democratic Socialist Republic of Sri Lanka Extraordinary No. 1354/17 of 19.08.2004 for settlement by arbitration is hereby published in terms of Section 18 (1) of the said Act.

Case No.:  
A—3055.

*Respondent*

#### THE AWARD

The Hon. Minister of Labour Relations and Foreign Employment by virtue of 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 No. 14 of 1957, 4 of 1962 and 39 of 1968 (read together with the Industrial Disputes [Special Provisions] Act, No. 37 of 1968 had appointed me to be the Arbitrator in the above industrial dispute ;

And whereas the matters in dispute between the aforesaid Parties are :

1. Whether the underpayment of bought leaf incentives for the months of February, May and July 1997 to Rukmal S. Perera who was employed as an Estate Manager by Watawala Plantations Limited is justified and if not, to what relief he is entitled ;
2. Whether the non-payment of bought leaf incentives for the period from August to November, 1997 and from February to May 1998 to Rukmal S. Perera by Watawala Plantations Limited is justified, and if not, to what relief he is entitled.

D. SOMAWEERA EDIRISINGHE,  
Commissioner General of Labour.

Department of Labour,  
Labour Secretariat,  
Colombo 05,  
12th July, 2006.

**In the Matter of the Industrial Dispute under the Industrial Disputes Act, No. 43 of 1950 as amended**

*between*

Rukmal Perera "Pearlton",  
Bopitiya, Pamunugama.

*Applicant*

STATEMENT BY THE WORKMAN - APPLICANT

PROCEEDINGS

At the hearing into the dispute in the Industrial Court, the workman who was abroad was represented by Ms. S. B. N. Ranaraja who held a duly registered Power of Attorney dated 04.03.2005.

The workman by his statement submitted to the Court stated that he had been employed by the Respondent Watawala Plantations Ltd., from 25.11.1996 to 31.12.1999 on which date he had resigned from the said Respondent Watawala Plantations Ltd.

The workman stated that he had been employed by the Respondent by letter dated 06.11.1966 and by Circular dated the same date i.e. 06.11.1996 he was also informed that the bought leaf incentive payment was to be calculated at 5% of the net profit on bought leaf and was also informed of the rates of disbursement of the payment to the Manager, Assistant Manager and Factory and Office staff.

The workman also stated that though initially there was no dispute in the payment of incentives under the aforesaid scheme of payment, the incentive payments for the months of February, May and July 1997 were underpaid and the incentive payments for August, September, October and November 1997 and for the months February and May 1998 were not paid in full. The workman also states that in justifying the non-payment of under-payment of the bought leaf incentive to him the Respondent alleged that the Green Leaf made tea-out turn during the months in dispute were less than the notified minimum as per A4 dated 19.03.1998 and of the parameters laid down by Circular dated 16.07.1996 and marked as P5.

The workman prays that the non-payment or under-payment of bought leaf incentives were unlawful and in breach of his letter of employment and seeks payment of the non-payment or under-paid amounts as a forestated.

THE STATEMENT OF THE RESPONDENT-EMPLOYER

The main contention of the Employer Respondent is that the substance of Circular marked A3 dated 06.11.1996 can not be read in isolation from Circular marked A5 dated 16.07.1996 in terms of the usage and trade practices in the tea trade. The Respondent contents that Circular A5 is a detailed document addressed to all Estate Managers regarding the bought leaf incentive scheme which is designed to motivate achieving maximum General Sales Average whilst maintaining a green leaf to make tea average ratio of a minimum of 22.22% and that minimum average will attract an incentive of 10%. The Respondent argues that the rest of the Circular A5 describes the method of computation of the bought leaf incentive.

The aforesaid dispute was argued before the Arbitrator from 12.11.2004 up to 20.01.2006 and written submissions were lodged by both Parties on 22.02.2006.

The questions at issue are to do with the under-payment or non-payment of the bought leaf incentive at the rate of 5% of the net profit.

The interpretation of the workman that the Circular A3 should be considered in isolation from A5 is an incorrect premise. A3 refers to the calculation of bought leaf incentive payments at 5%, and by A3A, "supercedes all other circulars in respect of bought leaf incentive payments and should be the basis on which calculations should be worked out for the future".

Circular A5 dated 16.07.1966 sets out the method of calculation of the bought leaf incentive and the method of computation of the said incentive.

A3 sets out that the Manager could calculate bought leaf incentive payment at 5% for purposes of disbursement to the staff but does not state the method of computation of the bought leaf incentive as does the circular A5.

The Respondent further argues that A5 is not nullified by the intervention of A3 except that the calculation of the incentive payment on bought leaf has been reduced from 10% to 5% of the net profit and states that non of the other conditions of A5 are affected by A3.

AWARD

It is correct that by conditions laid down by A5 the basis of computing the green leaf tea to made tea ratio of a minimum of 22.22% has not been disturbed by the introduction of A3. What A3 has done is to change the basis of calculating the bought leaf incentive payment from 10% to 5% and by A3A the "calculation" refers to the calculation of the bought leaf incentive in respect of the payments to the Manager, Assistant Manager, Factory and Office staff and not to the actual computation of the bought leaf incentive. From that point of view Circular A5 is operative alongside A3.

However, the questions at issue are concerned with the under-payment or the non-payment of bought leaf incentive payments to the applicant.

In the premises, I conclude that A3 and A3A do not disturb the rest of the contents of A5 but is operative insofar as the calculation of bought leaf incentive payments are concerned.

Therefore I hold that there is no justification for the workman to be under-paid in respect of the bought leaf incentive payment due to him in terms of Circular A3 for the months of February, May and July 1977 and not paid the full and the due payment of the bought leaf incentive payments in terms of Circular A3 for the months of August, September, October and November, 1977 and for the months of February and May, 1988.

I therefore hold that the under-payment and or non-payment of bought leaf incentive payments to the Applicant is unjustified and that he is entitled to the relief of payments as prayed for in his application.

In the premises I award the above payments to the Applicant and order that the Respondent Employer should deposit these monies in favour of the Applicant within one calendar month of the publication of this Award in the *Sri Lanka Gazette of the Government of the Democratic Socialist Republic of Sri Lanka* with the Assistant Commissioner of Labour Colombo North.

Dr. V. IRWIN JAYASURIYA,  
Attorney-at-Law,  
Arbitrator.

26th of June, 2006.

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