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The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

අංක 1454/13 - 2006 ජූලි 18 වැනි අඟහරුවාදා - 2006.07.18

No. 1454/13 - TUESDAY JULY 18, 2006

(Published by Authority)

PART I : SECTION (I) — GENERAL

Government Notifications

My No. : T 7/05/2002.

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute arisen between Sri lankan Airlines Aircraft Technicians Association, No. 14, Mahawela Place, Kirulapone, Colombo 06 of the one part and Sri Lankan Airlines Ltd., Level 19—22 East Tower, world Trade Centre, Echelon Square, Colombo 01 of the other part was referred by order dated 30.01.2003 made under Section 4(1) of the Industrial Dispute Act, Chapter 131 as amended and published in the *Gazette* of Democratic Socialist Republic of Sri Lanka Extraordinary No. 1275/5 of dated 30.01.2003 for settlement by arbitration is hereby published in terms of Section 18 (1) of the said Act.

D. SOMAWEERA EDIRISINGHE,
Commissioner General of Labour.

Department of Labour,
Labour Secretariat,
Colombo 05.
29th June, 2006.

Ref. No. : T 7/05/2002.

In the matter of an Industrial Dispute

between

Sri lanka Airlines Aircraft Technicians
Association, No. 14, Mahawela Place,
Kirulapone,
Colombo 06,

and

Sri Lankan Airlines Ltd.,
Level 19—22, East Tower,
World Trade Centre,
Echelon Square,
Colombo 01.

Case No.:
A-2968.

THE AWARD

(1) The Honourable Mahinda Samarasinghe, 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, (read with Industrial Disputes (Special Provisions) Act, No. 37 of 1968) appointed me to be the arbitrator and referred the aforesaid dispute for settlement by Arbitration.

(2) The matter in dispute between the aforesaid parties is :

“Whether the non-payment of 13th month incentive bonus for the year 2001 to the employees of Sri Lankan Air Lines Ltd., who are members of the Sri Lankan Air Lines Aircraft Technicians Association, is justified and if not to what relief they are entitled.

(3) At the inquiry, at the beginning Mr. S. Siriwardena appeared for the applicant Union but after Mr. Siriwardena kept away on account of his illness, Mr. S. J. Gunasekara Attorney-at-Law appeared until the conclusion of the proceedings, Mr. Deepal Wijayaratne, Attorney-at-Law appeared throughout for the Respondent Company.

(4) The events relating to this dispute according to the applicant are stated below :-

- (i) Sri Lankan Airlines Ltd., took over the business run by Air Lanka Ltd., in 1997 owned by the Government of Sri Lanka and undertook to continue in employment all employees employed by Air Lanka Ltd., under the same terms and conditions of employment enjoyed by them before the business was taken over by the Respondent Company.
- (ii) Thereafter a collective agreement was signed between the applicant and the Respondent in January 1999 containing the terms and conditions of the employees employed as technicians under the Respondent Company.
- (iii) A clause in that Agreement signed between the parties referred to above gave the applicant the right of enjoying “**the 13th Month Incentive Bonus**” to be paid in December every year.
- (iv) The right of enjoying the 13th month incentive Bonus was enjoyed by the applicant for several years without a break.
- (v) The Respondent Company refused to pay the 13th months incentive Bonus for the year 2001.
- (vi) Thereupon the applicant made a complaint to the Commissioner of Labour who tried to bring a settlement, but as the Respondent Company refused bring about a settlement the Commissioner of Labour referred the matter to the arbitrator.

(5) With the change of name to Sri Lankan Airlines Ltd., in 1997 the chief Executive Officer by his letter dated 29.07.1999 marked A1(a) informed the employees in very clear terms as follows :-

“With the name change to Sri Lankan Airlines, Ltd., I, understand that some members of staff are concerned that this will result in their employment contracts previously signed with Air Lanka becoming invalid. Let me once and **for all reassure you that the terms and conditions of employment that you previously enjoyed with Air Lanka, including** the recently negotiated collective Bargaining Agreement remain unaltered by the change of name to Sri Lankan Airlines.

(6) Mr. M. M. Ali Kamil, Manager Human Resources giving evidence before me on 20.02.2004 on page 7 stated *inter alia* that the 13th month incentive bonus was paid to the employees from 1979, i.e. for a period of over 20 years.

(7) Evidence of Mr. M. M. Ali Kamil confirms the assurance given to the employees by Mr. Peter Hill, the chief Executive officer in this message- A1(a).

(8) More over Nirosh Chandimal Perera an aircraft Technician in his evidence at page 3 on 31.03.2006 states that this 13th month incentive bonus was paid as a customary payment.

(9) In section 13.3 of a Collective Agreement R1 the 13th month incentive bonus is defined as “a combination of **monthly basis salary** as defined in Section 9..... plus any applicable monthly special premium as defined in Section 12, but does not refer to it as a **bonus**.”

(10) Another witness for the applicant Bentarage Nandalochana de Silva in his evidence on 26.05.2006 vide pages 132 to 135 has explained in detail the calculation of this peculiar payment as follows:-

(Vide page 132)

“අපි වැඩ කරන්නේ වැඩමුර ක්‍රමයකට, මෙම රෝස්ටර් ක්‍රමය අනුව දිවා කාලයේ දින 92 ට වැඩ කරන පැය ගණන පැය 958 ක් වනාහි 19 ක්. රාත්‍රී සේවා මුර සේවා මුර දින 91 ක් වන නිසා වසරකට වැඩ කළ පැය ගණන 2088 විනාඩි 13ක් වෙනවා. නමුත් ආයතනය සහ සංගමය බැඳී සිටින ගිවිසුමේ ප්‍රකාර ආයතනයට වැඩ කළයුතු දින ගණන වන්නේ 160x12, වසරකට පැය 1920. නමුත් අපි වැඩ කර තියෙනවා පැය 2088 විනාඩි 13 ක්. මේ 2088.13 න් පැය 1920 ක් අඩු කළ විට අතිරේක පැය ගණන වශයෙන් පැය 168.13 ක් වැඩ කර තියෙනවා. මෙය ජනවාරි මාසයේ සිට සේවකයින් වැඩ කර තියෙන අතිරේක පැය ගණන.....”

(11) In view of the above explanation there is merit in the contention that the payment referred to as the “13th month incentive Bonus” in truth and in fact is a payment made to these workers in consideration of their having to work 13 roster cycles in the course of any one year.

(12) The letter R2 addressed by Mr. Peter Hill to the employees seeks to give some reasons for the non-payment of the 13th month Bonus for the year 2001 - In R2 Mr. Peter Hill states:-

“Despite our efforts, the prevailing financial pressures the down term in the Tourism Industry itself has made it impossible for the Group to declare its usual 13th month Incentive Bonus to its staff.....”

(13) In the course of evidence of Mr. Ali Kamil and the document R2 the employer seeking to give reasons for non payment reference was made to the attack by terrorists on the Katunayaka Airport in July 2001 and the World Trade Center in the United States of America in September. However, neither of these events could possibly have any relevance and these attacks had taken place out side the financial year 2000/2001 (The relevant financial year being the period from 01.04.2000 to 31.03.2001. According to R3 (a) and R3(1) produced by the Respondent the company had been making profits for the financial year under references.

(14) In consideration of the evidence placed before me, it is not proper to treat this payment as a pure bonus. The continuous payment of this as a salary or as an incentive bonus for a period of over 20 years has entrenched this payment as a legitimate one and the management had to include this in the New Collective Agreement R1 under Section 13(1) with an addition that the payment was at the sole description of the management of the company. However I am inclined to think that the inclusion of this term “at the sole discretion” in section 13 of the Collective Agreement cannot take away a right or a facility enjoyed by the employers for a period of over 20 years prior to the signing of the R1 collective agreement. Absolute clauses or terms of this nature have to vov down to equity and reasonableness recognized in our labour laws.

(15) My attention has been drawn by the learned counsel for the applicant to the recent judgement of the Supreme Court in State Bank of India vs Edirisinghe and others - 1991 (1) SLR page 397 which held *inter alia* that “an Industrial arbitrator is not tied down and fettered by the terms of a contract of employment between the employer and the

workman (P. 415) and proceeded to observe that (as provided for in section 19 of the Industrial Dispute Act) the award of an arbitrator would itself become implied terms in a contract of employments. This would apply to collective Agreements as well.

(16) Section 17(1) of the Industrial Disputes Act given me sufficient authority to make all such inquiries into the dispute as I consider necessary, hear such evidence tendered by the parties to the dispute and thereafter make such award as may appear to me to be just and equitable.

(17) Before making this award I have studied the evidence tendered by witnesses for both parties in addition to the written submission and documents tendered.

(18) I therefore make order that the non-payment of 13th month incentive bonus (the term used in the reference) for the year 2001 to the employees of Sri Lanka Airlines Ltd., who are members of the Sri Lankan Airlines Aircraft Technicians Association is NOT JUSTIFIED and that they should be paid that payment for the year 2001, within Two months of the publication of this award in the *Gazette* of the Democratic Socialist Republic of Sri Lanka.

I consider this award just and equitable.

T. PIYASOMA,
Arbitrator.

19th June, 2006.

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