

ශ්‍රී ලංකා ප්‍රජාතාන්ත්‍රික සමාජවාදී ජනරජයේ ගැසට් පත්‍රය

අති විශේෂ

The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

අංක 1523/24 - 2007 නොවැම්බර් 15 වැනි බ්‍රහස්පතින්දා - 2007.11.15

No. 1523/24 - THURSDAY NOVEMBER 15, 2007

(Published by Authority)

PART I : SECTION (I) — GENERAL

Government Notifications

My No.: T 7/08/2003.

T 7/08/2003.

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Inter Company Employees Union, No. 470, Kandy Road, Kelaniya, and Confifi Beach Hotels (Pvt.) Ltd, No. 33, St. Michaels Road, Colombo 03 was referred by order dated 12.01.2005 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. 1378/8 dated 31.01.2005 for settlement by Arbitration is hereby published in terms of Section 18(1) of the said Act.

In the matter of the Industrial Dispute Between

Inter Company Employees' Union,
470, Kandy Road,
Kelaniya

.....Applicant

Case No.:

A 3093

Vs

Confifi Beach Hotels (Pvt.) Ltd.,
No. 33, St. Michaels Road,
Colombo 03.

.....Respondent

D. S. EDIRISINGHE,
Commissioner General of Labour.

On this 27th day of September, 2007.

Department of Labour,
Labour Secretariat,
Colombo 05,

06th November, 2007.

Whereas the Hon. Minister of Labour Relations and Foreign Employment 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, 4 of 1962, 39 of 1968 read with the Industrial Disputes (Special Provisions) Act, No. 37 of 1968, has appointed me to be the Arbitrator and referred the following dispute for settlement by arbitration :

“Whether the recovery of service charges after the lapse of several years that was paid to the employees of Confifi

Beach Hotel, Beruwala, which is managed under the Confifi Beach Hotels (Pvt.) Ltd., is justified, and if not, to what relief the said employees are entitled”.

The Applicant Party of the First Party in its initial written submissions dated 21st April, 2005 statated that the Respondent Party of the Second Part had after several years deducted a service charge which had been paid to the employees of the Applicant and that these deductions were done in several installments on two occasions ;

2. That the Respondent had stated that the service charges already paid to workers are deducted as a practice of the trade when Tour groups did not pay the charges due to the Hotel for providing food and accommodation and other facilities, and the Respondent as a Hotelier in these circumstances, was not bound to a pay a service charge to its employees ;

3. That the statement of the Respondent that the deduction of service charges at a later date is a practice of the trade is not true ;

4. That service charges are payable to workers in the hotel trade as an accepted tradition and practice.

The Respondent party of the Second Party stated in reply that the service charges are levied from the Hotel guests on all services enjoyed by them and upon their departure 10% of the bills incurred by the guests are computed and charged as a service charge ;

2. That the service charge is proportioned and paid to all employees ;

3. The service charge is paid monthly irrespective of whether the guests or the Tour Operators had paid the bills or not ;

4. That two Travel Agents, Taurus and Lotus, had defaulted in their payments to the Respondent Hotel, and despite several attempts made by the Respondent to recover these monies at great cost, the Respondent had not been successful, and this resulted in the Respondent having to recover the service charges paid to the Applicants in proportionate installments ;

5. That the Respondent only recovered that proportion of the service charge not paid to the Respondent by the Tour groups, and over a period of 6 to 8 months.

The inquiry was concluded after several hearings and where both parties led oral evidence and marked documents to prove their respective cases, and written submissions were tendered by both Parties.

In this case, the Respondent argued that the service chargers that were paid were recovered subsequently by the Respondent because the Respondent Hotel could not recover the full amount of monies due to the Respondent from the Tour Operators, Taurus and Lotus, who had apparently declared bankruptcy. The question that arises for determination in considering whether the recovery of service charges already paid to the Applicant workmen, is whether the Respondent considered the service charges paid to the Applicant as part of its gross sales income ?

Usually a percentage (%) is added to the sale value of goods and services given to the client and that percentage (%) is distributed among the employees at the end of every month based on a points system calculated by the management, and according to this system every employee, irrespective of grade or status becomes entitled to the service charge. In fact, in Sri Lanka it is an accepted practice of the Hotel Trade.

In a case in the United States of America in *State Vs. International Trade Club*, (1977 - 351 SC. 2D. 895) an Alabama Court held that the 15% service charges was not a part of the gross earnings of the Respondent and such earnings cannot be included in the sales revenue.

In another US Case, *Big Fort Country Club Vs The Wisconsin Department of Revenue* (1975 - 235 NW. 2d. 696) Court held that the mandatory addition of the service charge was merely the codification of the social custom of tipping and was voluntary by nature.

In the instant case the respondent had deducted the service charge already paid to the employees after the lapse of several years without any warning that such deductions would be made in the event the guests did not pay, and therefore, such deductions at a later stage unexpectedly, can seriously affect the cost of living of these employees. Besides, the Respondent failed to show examples of any other Hotels of its grade or status which had adopted this method of deducting service charge already paid to employees because either there had been a poor turnout of tourists or where Tour Operators had declared their inability to pay the dues to the hotel or for any other reasons.

AWARD

In view of the evidence led and on a balance of probabilities, I, hold that the recovery of service charges already paid to employees by the Respondent after a lapse of time, is unfair and unjustified, and I order relief to the

Applicant employees on the basis that the Respondent hotel pays back the total amount of the service charge that had been recovered from the employees so affected, and that this payment be completed by the Respondent within two (02) months from the Publication of this Award in the Sri Lanka Gazette.

My No. : IR/20/32/2007.

**THE INDUSTRIAL DISPUTES ACT, CHAPTER 131
OF THE LEGISLATIVE ENACTMENTS OF CEYLON
(1956 REVISED EDITION)**

Dr. V. IRWIN JAYASURIYA, Attorney-at-Law,
Arbitrator.
11-1044

Sri Lanka Nidahas Sewaka Sangamaya,
No. 301, T. B. Jayah Mawatha,
Colombo 10
and

My No. : IR/20/32/2007.

The Swadeshi Industrial Works Ltd.,
No. 57, Colombo Road,
Kandana.

**THE INDUSTRIAL DISPUTES ACT, CHAPTER 131
OF THE LEGISLATIVE ENACTMENTS OF CEYLON
(1956 REVISED EDITION)**

Statement of matter in dispute

Order Under Section 4(1)

The matter in dispute between the aforesaid parties are :

WHEREAS an industrial dispute in respect of the matter specified in the statement of the Commissioner of Labour which accompanies this order exists between,

- (1) Whether the termination of the services of the fifty six (56) employees whose names are referred to in the attached schedule by the The Swadeshi Industrial Works Limited with effect from 21.07.2007 is justified and if not justified, to what relief each of them is entitled.

Sri Lanka Nidahas Sewaka Sangamaya,
No. 301, T. B. Jayah Mawatha,
Colombo 10

Dated at the Office of the Commissioner of Labour,
Colombo, this 24th day of October, 2007.

and

The Swadeshi Industrial Works Ltd.,
No. 57, Colombo Road,
Kandana.

D. S. EDIRISINGHE,
Commissioner of Labour.

Now therefore, I, Athauda Seneviratne, Minister of Labour Relations and Manpower do by virtue of the powers vested in me 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, 4 of 1962 and 39 of 1968 read with Industrial Disputes (Special Provisions) Act, No. 37 of 1968, hereby appoint Mr. P. Danansuriya, No. 114C, Moratuwatta, Pattalagedara, Veyangoda, to be the Arbitrator and refer the aforesaid dispute to him for settlement by arbitration.

SCHEDULE

ATHAUDA SENEVIRATNE,
Minister of Labour Relations
and Manpower.

01. Sunil Peiris
02. K. M. T. Kamalawarna
03. K. J. Anthony Perera
04. K. D. G. Rohitha
05. S. Sumithra
06. D. L. M. C. Alwis
07. W. A. D. Mark Arnold
08. H. A. Christy Silva
09. D. D. Wickramaratne
10. W. R. D. Weerasinghe
11. H. D. T. Anthony Perera
12. W. R. Hugo Fernando
13. P. A. Siriwardane
14. K. K. R. Dharmadasa

Colombo 05.

SCHEDULE (Contd.,)

- | | |
|------------------------------|-------------------------------------|
| 15. H. D. Sunil Shantha | 36. K. L. Prasanna |
| 16. K. Anthony Fernando | 37. R. A. S. Rajapaksha |
| 17. W. A. F. Cisil Fernando | 38. R. M. T. Pushpa Kumara |
| 18. K. Anil Nishantha | 39. W. D. R. P. Fernando |
| 19. Sumith Edirisinghe | 40. W. R. S. Alwis |
| 20. P. A. Gamini Priyantha | 41. A. P. Kurudu Patabendige |
| 21. T. V. Nihal | 42. J. A. Wimal Ranaweera Jayakody |
| 22. K. R. K. Ranasinghe | 43. W. M. Sarath Kumara Wijesundare |
| 23. K. S. Silva | 44. R. P. D. Janaka Pushpa Kumara |
| 24. A. A. P. Amarasinghe | 45. J. M. N. Pushpa Kumara |
| 25. K. S. D. Perera | 46. H. M. Ilankoon Bandara Herath |
| 26. P. M. R. Bandara | 47. P. R. S. R. Ramanayake |
| 27. K. D. K. Perera | 48. H. M. S. Bandara |
| 28. D. M. G. L. S. L. Kumara | 49. I. A. D. Niranjana |
| 29. G. R. Weerasuriya | 50. W. D. S. Rupasinghe |
| 30. W. A. P. Pusha Kumara | 51. W. A. Samantha Wijayalath |
| 31. M. R. Pathmasiri Silva | 52. M. P. Sunil Nissanka |
| 32. E. M. A. K. de Saram | 53. J. K. Munasinghe |
| 33. L. S. N. Fernando | 54. Ajith Premasiri |
| 34. R. P. Jayatissa | 55. Joseph Niel Rohan |
| 35. K. W. S. Perera | 56. K. H. Siridasa |

11-1045