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# The Gazette of the Democratic Socialist Republic of Sri Lanka EXTRAORDINARY

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No. 1879/34 - FRIDAY, SEPTEMBER 12, 2014

(Published by Authority)

## PART I : SECTION (I) — GENERAL Government Notifications

My No. : IR/22/13/2011. Case No. A 3478 and

### THE INDUSTRIAL DISPUTES ACT (CHAPTER 131)

THE award transmitted to me by the Arbitrator to whom the Industrial Disputes which has arisen between K. S. Munasinghe, No. 86/F, Kaluwarippuwa-West, Katana of one part and Sri Lanka Transport Board, No. 200, Kirula Road, Colombo 05, of the other part was referred by order dated 06.09.2012 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. 1775/21 dated 14.09.2012 for settlement by arbitration is hereby published in terms of Section 18(1) of the said Act.

W. J. L. U. WIJAYAWEERA,  
Acting Commissioner of Labour.

Department of Labour,  
Labour Secretariat,  
Colombo 05,  
15th September, 2014.

Ref No. : IR/22/13/2011.

### In the matter of an Industrial Dispute

Between

K. S. Munasinghe,  
No. 86, F, Kaluwarippuwa-West,  
Katana.

Sri Lanka Transport Board,  
Head Office,  
No. 200, Kirula Road,  
Colombo 05.

### AWARD

1. The Hon. Minister of Labour and Labour Relations by virtue of the powers vested in him by Sec. 4(i) of the Industrial Disputes Act, No. 43 of 1950 as amended appointed me as Arbitrator by his order dated 06.09.2012 and referred the dispute between the aforesaid parties to me for settlement by arbitration.

The matter is dispute between the aforesaid parties is as follows :—

“Whether the deduction of a portion of the salary of K. S. Munasinghe who was working at the Sri Lanka Transport Board as a result of an incident that he had to face on 11.10.2009 without the conduct of a proper internal disciplinary inquiry is just and if not to what relief is he entitled”



## 2. Appearances :

Mrs. Tashya Gajanayaka Attorney-at-Law from Attorney General's Department

Mrs. P. M. A. A. Muhandaram Executive Officer of the board was present.

Mr. Janake Adhikari Attorney-at-Law appeared for the workman who was present.

## 3. Background Facts :

There was an incident on 11.10.2009 whereat K. S. Munasinghe conductor of Negombo Depot on duty in route No. 240 from Negombo to Colombo was assaulted and the money was taken away. The amount of money is not stated in the statement of dispute referred to me. It states "A portion of the salary" was deducted from him. It transpired during the course of the Arbitration proceedings that a sum of Rs. 8,349 was recovered from his salary. It was suggested by me that the amount being small it would be prudent to settle the dispute. The respondent board kept on saying that there was a possibility of settlement and finally said it was not prepared to settle it. The evidence in chief of M. N. L. Fernando Chief Security Inspector Negombo Depot was given by way of an affidavit by the board. He was cross examined by the learned council for the workman and thereafter re-examined. The workman K. S. Munasinghe gave evidence and he was cross examined by the learned council for the board and thereafter he was re-examined. Both parties have tendered written submissions.

## 4. Issues to be determined :

- Was a proper internal disciplinary inquiry conducted by the respondent board ?
- Has the workman been negligent in his duty on 11.10.2009 as claimed by the respondent board ?
- Has the workman caused the loss of Rs. 8,349 to the board ?
- Is the deduction of Rs. 8,349 from the salary of the workman by the board justified or not ?
- Is the workman entitled to any relief and if so what ?

## 5. Analysis of evidence :

In order to answer the issues to be determined I am doing an analysis of the evidence available before me. M. N. L. Fernando the witness of the respondent board has under cross examination stated that the workman was assaulted by a passenger who had robbed the money from the workman - page 51 of the proceedings of 14.10.2013. He has also stated under cross examination as follows :

- The passenger had stolen from the workman Rs. 8,349.
- The workman had complained to the police immediately and he was admitted to Negombo government hospital where he found the workman.
- The workman was not given the facilities to keep the money which he had collected from the passengers - page 52.
- It is the duty of the conductor to keep the money in his pocket which is safe than inside the ticket book - page 53
- The questions posed to him by me -

Q. : Is there any guideline in writing issued to conductor as to where the money should be kept and how it should be kept safe ?

A. : I don't know but they are given training how to keep the money safe - page 53 of the proceedings.

Q. : Do you know who has stolen the money ?

A. : No.

Q. : Are you suspecting the workman to have stolen the money ?

A. : No. - Page 62 of the proceedings.

It is to be noted that this witness who stated that the passenger had stolen the money has at the tail end of cross examination said that he did not know who has stolen the money.

- The workman has in his evidence under the cross examination on 08.05.2014 stated that keeping the money in the pocket is not safe as there has been pick pocketing in the crowded bus - page 71 of the proceedings. He has stated further that ticket book cannot be kept inside the pocket as there is a tray and that during the training he was not told specifically as to where money should be kept. To the questions posed by me he has given the answers as follows :

Q. : Have you given anything in writing as to how and where the money should be kept safe ?

A. : No - page 72 of the proceedings.

Q. : During the training were you told in specific terms as to where and how the money should be kept safe ?

A. : No specific place - page 73 of the proceedings.

Based on the foregoing evidence of the witness of the respondent and the workman my determination on the issues are as follows :

- i. There was no evidence in relation to internal disciplinary inquiry if any conducted by the board. The workman also has not given evidence in this regard and he was not cross examined on this point. I am therefore not in a position to make a determination on this issue.
- ii. The workman was not negligent as the situation was such that he could not have done anything. In short he was helpless.
- iii. He had not caused the loss of Rs. 8,349 to the board.
- iv. The deduction of Rs. 8,349 from the workman's salary was not justified as it has not been proved that he was negligent.
- v. In view of my determination in relation to the issues (ii), (iii) and (iv) above he is entitled to relief.

6. Relief

I now switch on to the question of relief. The workman has prayed for the refund of the sum of Rs. 8,349. Taking into consideration the totality of the evidence led before me with particular reference to the fact that.

- i. The board has not laid down and guide lines as to how and where the money should be kept safe.

- ii. The board has failed to provide facilities for the workman to keep the money safe as admitted by the witness of the board and also stated by the workman in his evidence.
- iii. The workman according to the evidence is credited with 16 years service and there is no evidence led by the respondent in relation to an incident of this nature.

I make award that :

- i. The workman is refunded the sum of Rs. 8,349 by the board.
- ii. The board is directed to deposit the sum of Rs. 8,349 with the Assistant Commissioner of Labour Colombo East 5th Floor, Labour Secretariat. Colombo 05 within 30 days of the date of publication of this award in the government *gazette*.
- iii. The workman is free to withdraw the money once the deposit is made by the board.

I declare that this Award is just and equitable.

V. VIMALARAJAH,  
Arbitrator.

13th August, 2014.

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