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EXTRAORDINARY

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## PART I : SECTION (I) — GENERAL

### Government Notifications

My No. : CI/1401/98.

THE AWARD

#### THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE Award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between The Ceylon Mercantile Industrial & General Workers Union (CMU), No. 03, 22nd Lane, Colombo 03 and M/s. John Keels Limited, No. 130, Glennie Street, Colombo 02 of the other part was referred by order dated 03.02.1999 made under Section 3 (1) D of the Industrial Dispute Act, for settlement by Arbitration is hereby published in terms of Section 18 (1) of the said Act.

MAHINDA MADIHAHEWA,  
Commissioner General of Labour.

Department of Labour,  
Labour Secretariat,  
Colombo 05,  
19th November, 2004.

#### IN THE MATTER OF AN INDUSTRIAL DISPUTE

between

The Ceylon Mercantile Industrial & General  
Workers Union (CMU),  
No. 03, 22nd Lane,  
Colombo 03.

Case No. : A/2722.

AND

M/s. John Keels Limited,  
No. 130, Glennie Street,  
Colombo 02

The Hon. Commissioner of Labour by virtue of the powers vested in him by Section 3 (1) (d) of the Industrial Disputes Act, Chapter 131, as amended by the Industrial Disputes (Amendment) Acts, Nos. 14 and 62 of 1957, 4 of 1962 and 39 of 1968 (read with Industrial Disputes (Special Provisions) Act, No. 37 of 1968 appointed me as Arbitrator by his order dated 03.02.1999 and referred the aforesaid dispute to me for settlement by arbitration.

The matter in dispute in this case is whether the termination of employment of Mr. K. P. S. de Silva of The Ceylon Mercantile Industrial & General Workers Union by John Keels Limited, is justified and if not, what relief the said workman is entitled.

At this inquiry, Mr. W. M. K. L. Weerasinghe, Attorney-at-Law, of the Employers' Federation of Ceylon appeared on behalf of John Keels Limited, whilst Mr. E. V. N. Cabraal appeared on behalf of the union. Learned Counsel appearing for the Company led oral evidence of 04 witnesses and filed written submissions together with the marked documents R. - R10, whilst Mr. Cabraal led the evidence of the accused workman and filed written submissions together with the marked document A, on behalf of the Union.

In their statement filed of record, the Respondent Company has pleaded that the workman concerned had been suspended

and required to show cause for acts of misconduct as shown in R4 and having been found guilty at a disciplinary inquiry of charges C, D and E in R4, had been terminated by R5. However, this Union has taken up the position in their statement that this termination is unjustified and had prayed for an award for re-instatement and back wages.

evidence reveal that during the relevant period there was picketing and tension due to the demand by the Union over bonus payments and this tension seems to have heightened due to the resignation of some workers from the Union. The virtual complainant is one of the members who resigned from the Union and the Union members appear to have resented this. It is therefore the position of the Respondent Company that the accused workman who was yet a member of the Union threw an egg at the virtual complainant who had resigned from the membership, on the 2nd of September 1997 at and around 4.45 p.m. at the Colombo Fort bus halt in front of the Regal Theatre.

This court is only concerned with charges C, D and E in the charge sheet R4 as the accused employee has been found guilty only of these charges at the disciplinary inquiry. Even though the virtual complainant's statement to the management marked R1 and that to the Police marked R2, state that the accused workman threw the egg at her. When she was standing at the bus halt, R4, the charge sheet states that the egg was thrown at her whilst she was crossing the road to go to the bus halt. It is strange that the management has prepared a charge sheet, not in accordance to the statement of the complainant. Be that as it may, This is not a criminal case inquired under the provisions of the Penal Code where the guilt of the accused has to be proved beyond a reasonable doubt, but a civil matter between two individuals and as such if is sufficient to have proof on a balance of probabilities to arrive at a finding in this case.

Analysing the evidence of both witnesses, Sanjeevani Jammita and Samanthika Jayasinghe, it is clear that the accused workman Shantha de Silva had thrown an egg at Sanjeevani at or near the Colombo Fort bus halt in front of the Regal Theatre around 4.45 p.m. on the 2nd of September 1997, even though the representative appearing for the accused workman had cross examined these two witnesses in an attempt to create a doubt in my mind as to the credibility of their evidence.

It is true that the complainant Sanjeevani could have gone to the Police Station at Slave Island and made a complaint immediately and produced her soiled dress but instead she had gone home in her friend's van and not by bus as planned, thus showing her state of mind at that time. However she had on the following morning made the statement R1 to the

management and statement R2 to the police, which statements corroborates her evidence in this court.

This incident is said to have happened in Colombo Fort between these two employees of the Respondent Company, outside the workplace and outside working hours. However, it is in evidence that it is a result of the trade union tension within the Company between the members and the non-members. Therefore, it is my view that this conduct of the workman, though it occurred outside the workplace and out of working hours many nevertheless amount to misconduct.

The position of the accused workman has been a complete denial and that he was nowhere at the place at the relevant time. However, considering carefully all the evidence led before me and on a balance of probabilities, I reject the evidence of the accused workman and accept the position that this accused workman threw an egg at the virtual complainant on or near the bus halt in front of the Regal theater at Colombo Fort on 2nd September 1997. Therefore I hold that the termination of employment of K. P. S. de Silva by John Keels Limited, is justified and as such he is not entitled to any relief.

M. B. JAYASEKERA,  
Arbitrator.

Dated at Colombo  
this 07th day of October, 2004.

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My No. : CI/1659/2002.

#### THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE Award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between United Commercial and Mercantile Union, 261, 1/1, Kirula Road, Colombo 05 and M/s. Sri Lanka Design Centre Head Office, 3rd Floor, Welikada Plaza, Welikada, Rajagiriya was referred by order dated 24.02.2003 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 *Extra Ordinary* 1278/20, 07.03.2003 settlement by arbitration is hereby published in terms of section 18 (1) of the said Act.

MAHINDA MADIHAHEWA,  
Commissioner General of Labour.

Department of Labour,  
Colombo 05,  
19th November, 2004.

Ref.No.CI/1659/2002.

United Commercial and Mercantile Union,  
261, 1/1, Kirula Road,  
Colombo 05.

Case No. A 2972.

AND

Sri Lanka National Design Centre,  
Head Office, 3rd Floor,  
Welikada Plaza,  
Welikada,  
Rajagiriya.

### The Award

The Hon. Minister of Employment and Labour by virtue of the powers vested in him by section 4 (1) of the Industrial Disputes Act, Chapter 131, as amended Acts, Nos. 14 and 62 of 1957, 4 of 1962 and 39 of 1968 appointed me as arbitrator by his order dated 24.02.2003 and referred the aforesaid dispute to me for settlement by arbitration.

By the letter dated 19.06.2003 the respondent Design Centre notified this Court that its present address is No. 124, Park Road, Colombo 05 and accordingly the address has to be amended. There upon it was so amended.

The matter is dispute between the aforesaid parties is whether Mrs. N. T. Fernando, Senior Designer of the Sri Lanka National Design Centre was placed on the correct salary step in the revision of salary made by the said center in terms of the Public Administration Circular No. 387 as effective from 01.01.1988 is justified and if not, to what relief she is entitled.

The Employer the Design Centre was represented by Mr. K. A. Wickremaratne, its Deputy Director at the initial stages and later on Mr. Suren de Silva, Attorney-at-Law appeared for the said respondent namely ; Sri Lanka National Design Centre while Mr. Percy Wickremasekera, Attorney-at-Law appeared for the applicant union. The applicant union conducted the case on behalf of one of its members namely Mrs. Ninel Fernando. The respondent employer filed its statement with regard to the said dispute on 27.03.2003.

The applicant union filed its statement on 30th March, 2003 through its Lawyer Mr. Percy Wickremasekera who is also the General Secretary of the said union. Thereafter the National Design Centre filed its replication-dated 22.04.2003. Further the applicant union responded to the statement of the respondent dated 27.03.2003 by its reply dated 09th June, 2003.

On 13.06.2003 when this matter was taken up Mr. K. A. Wickremaratne, produced a letter of authority to act for and on behalf of the respondent in the proceedings as was directed by me on the previous date.

On 24.11.2003 the hearing of the case was commenced. In the first instance Mr.K. A. Wickremaratne, Deputy Director of the Design Centre gave evidence on behalf of the respondent center. He had commenced his employment under the respondent on 01.04.1991. He stated that the applicant employee Mrs. Fernando had made this application with regard to a salary revision that took place in 1987. He further said that although the salary revision was issued for the year 1987 it became effective on 01.01.1988. Mrs. Fernando on her appointment on 01.07.1987 was placed on the salary point of Rs. 27,240 of the salary scale Rs. 19,200, Rs. 33,720 contained in the Public Administration Circular No. 327/86. According to the final letter of appointment she was placed on Rs. 27,240 per annum. Her letter of appointment is marked as A01.

On perusal of the said letter of appointment marked A01 I observe that said post carries an annual Salary scale of 19,200 – 3 x 600 – 21,000 – 22,200 – 6 x 600 – 25,500 – 27,240 – 9 x 720 – 33,720 – 27,240 as indicated at paragraph 5 of the said letter of appointment. She was placed on the annual salary of Rs. 27,240. In addition she was entitled to approved cost of living allowance.

Later she was placed on the salary point of Rs. 27,240 of the salary scale namely 30 – 4 : 2 of the salary scale contained in the Public Administration Circular No. 327/87 effective from 24.08.1987. The salary point 27,240 is given as the salary step 11 of the salary scale under 30 – 4 : 2. He said that Mrs. Fernando was getting a monthly salary of Rs. 1,465 including the allowances in June 1987 when she was employed in the Department of Small Industries, according to R1 the letter dated 21.07.1987 issued by the Deputy Director of Small Industries Department. He said that she had been drawing a lesser salary than the initial step of the salary scale she was entitled according to her post at the item of joining the Sri Lanka National Design Centre. That being so, she should have been placed on the initial salary step of the salary scale relevant to the Post of Designer Grade IV in terms of the provision of Chapter VII of the Establishment Code. That is on the salary step of the annual salary of Rs. 19,200. In that context on joining the Sri Lanka National Design Centre she had been placed on an additional salary scale which she would not get according to the provision of the Establishment Code.

He further stated that the revised salary scales proposed by the Public Administration Circular No. 387/87 and the subsequent Circular No. 387/87 (iv) were issued applicable to