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PART I : SECTION (I) – GENERAL

Government Notifications

My No. : T7/43 / 2002.

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 and General Workers Union, No. 03, 22nd Lane, Colombo 03 of the one part and Ceylon Paper Sacks Ltd, No. 47, Maligawa Road, Ethul Kotte of the other part was referred by order dated 24.09.2004 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. 1255/13 – 24.09.2002 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.
29th October, 2004.

Ref. No. : T07/43 / 2002.

IN THE MATTER OF AN INDUSTRIAL DISPUTE

between

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

Case No. : A / 2944

AND

Ceylon Paper Sacks Ltd., 47, Maligawa Road, Ethul Kotte.

THE AWARD

The Hon. 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 as Arbitrator by his order dated 14.09.2002 and referred the aforesaid dispute to me for settlement by arbitration.

The matter in dispute between the aforesaid parties in whether the order of the transfer of sixty nine (69) employees of the Seeduwa Factory of Ceylon Paper Sacks Limited (whose names are referred to in the schedule) to the Ethul Kotte Factory by the said company changing the terms and conditions of employment enjoyed by them at the Seeduwa Factory is reasonable and if not, to what relief each of them is entitled.

At the inquiry Mr. Bala Tampoe, General Secretary of the Ceylon Mercantile Industrial and General Workers' Union with Mr. E. V. N. Cabraal appeared for the Applicant Union and Messrs. Eliathamby P. C. with Mohideen Attorney-at-Law instructed by Mahinda Ekanayake Attorney-at-Law appeared for the Respondent Company.

According to the statement of the Union under Regulation 21(1), the Company by a Notice dated 01.07.2002 informed the workers attached to the Tea Bag Section at Seeduwa that they were transferred with effect from 15.07.2002 to the Factory at Ethul Kotte.

By Notice dated 10.07.2002, the General Manager informed the workers that transport to Ethul Kotte could be given for them commencing at certain stated times. However the workmen did not agree to be transferred to Ethul Kotte.

When the workers reported for work at the Seeduwa Factory on 25.07.2002 they were not permitted to work and were locked out. At a discussion on 25.07.2002 followed up with in letter dated 26.07.2002 the Union demanded a minimum payment of Rs. 1000/- to each member in addition to his / her normal monthly remuneration, which has been refused by the Management.

The Union's final request of the deferment of the transfer till the end of 31st July, 2002 was refused by the Respondent by its letter dated 25.07.2002 produced at the inquiry marked R10 insisted that the workers should report for at the Ethul Kotte Factory from 24.07.2002.

Mr. Anthony Clement Perera, General Manager of the Respondent Company giving evidence stated that he had been in service of the Company for a letter over one year and had given detailed description of the manufacturing process at Ethul Kotte Factory. He stated that the Management requested him to explore ways and means of cutting costs to minimise losses. He also stated that the number of workers came down from 140 to 80 the reason being the Company was running with difficulty and many workers left to find alternative employment else where.

The Management expected the new General Manager to reduce the cost of making bags. He stated, at page a on 11.12.2002 as follows:-

“ 2001 නොවැම්බර් මාසයේදී මම ඒ ආයතනයට බැඳුන අවස්ථාවේදී කළමනාකාර අධ්‍යක්ෂ මහතා මගෙන් බලාපොරොත්තු වන වැඩ කොටස් කීපයක් කිව්වා. එකක් තමයි මේ ආයතනය හරියට ගෙන යන්න නම් මේ බැග් හඳුන්න යන වියදම අඩු කිරීම, මෙම මළ නිෂ්පාදනය කිරීමේ වියදම් අඩු කිරීම සඳහා මේ ආයතනය සිදුවේ සිට කෝට්ටේට ගෙන යන්න තීරණය කළා. ඒ බව සියළු දෙනාටම දැනුම් දුන්නා. (සාක්ෂි සටහන් 31 පිටුව)

The management has the right to transfer workers from one factory to another under is management, but this should not adversely change the terms and conditions of sources enjoyed by them earlier. The 69 employees where were instructed to report for work at the Ethul Kotte Factory. Under terms and conditions that were substantially adverse to them having regard to the terms at which they were required to report for work and the number of hours of work they were required to work per day and their terms of remuneration therefor. It was established by evidence that their normal hours of work on week days were from 7.30 a.m. to 5.30 p.m. The workers normally worked overtime on all five days from 5.00 p.m. to 7.30 p.m. It is interesting to note that more than 50 employees out of the 69 who were transferred to Ethul Kotte were female workers some of whom were married who faced many domestic and social problems.

The employer at a later stage agreed to provide transport to the workers in an attempt to persuade them to travel to Ethul Kotte. The transport arrangement was far the workers to get into the bus from certain points to travel to Ethul Kotte and to return to their homes from certain assembly points from which they had to return home by public transport. This process took 4 to 5 hours daily to their detriment. The union pointed out that most of these workers resided some miles away from Seeduwa and a few of them even at Kochchikade and Negombo. I am of the view that even with the provision of some transport facilities the conditions of service of most of the workers adversely affected their terms of employment.

That the employers determination to effect the transfer was reflected from the evidence of the General Manager, Mr. Anthony Clament Perera who under cross-examination remarked that he has come to court not to speak of reasonableness, but to show that it is the management which decides where they should work - *vide* page 15 of proceedings dated 20.08.2003 which reads -

“ මම මෙතනට ඇවිත් තියෙන්නේ සාධාරණකම ගැන කථා කරන්න නොවෙයි. ඒ අය කොතැනක වැඩ කරන්න ඕන කියලා තීරණය කරන්නේ පාලනාධිකාරිය විසින්මයි ”

After transfer to the Ethul Kotte factory, the overtime on week days was stopped as the workers (specially the females) had to return home before night fall. As an alternative they were permitted to work overtime on Saturdays and Sundays, amounting to 32 hours per week. The pattern of working overtime at Ethul Kotte is substantially different from that at Seeduwa. At Ethul Kotte the workers are forced to work overtime to supplement their monthly wages.

It was contended on behalf of the union that the transfer of the workers from Seeduwa to Ethul Kotte involves a consideration of the conflicting interests of the employer and the workers. It is clear that the Respondent Company and the union were fighting a prestige battle. When the employer refused to comply with the Labour Commissioner's request contained in A/3 the workers having lost hope of early redress began to report for work. According to the employer only 18 workers failed to report for work (I am inclined to accept this as correct, as the employer is having all statistics).

It was contended on behalf of the company that the employees have to comply with the transfer orders in terms of their letters of appointment. I am of the view that a transfer other than a disciplinary one, normally should not alter the terms and conditions of employment.

The letter of appointment of P. Lalani Silva dated 04.01.1995 was produced by the Respondent, marked R 13. Similarly R3 issued to Peter Perera R4 issued to Harriet Rodrigo and R5 issued to M. Somawathi were also produced. Clause 8 of these letters of appointment enable the employer to transfer an employee at this discretion.

P. Lalani Silva referring to the signature appearing in 13(a) of R13 (A4) stated in evidence that she is unable accept that signature as her signature in R13 (a) is not clear (*vide* proceedings of page 4 on 24.02.2004). The only other witness, Peter Perera said that he signed R3 without reading. I hold that documents R3, R4, R5, and R13 have not been proved according to judicial standards.

According to the statement of the the company dated 01.11.2002, the reasons for the transfer of the workers from the Seeduwa Factory to Ethul Kotte are –

- i the *Transport of the partly* manufactured bags from Maligawa Road, Ethul Kotte, to Seeduwa for a comparatively lessor operation was badly *affecting the time schedules for supply of such sacks to customers.*
- ii manufacture of paper sacks is *highly competitive* and the cost of manufacture has *caused deep concern* and was a *factor affecting the profits.*
- iii the finished tea sacks also tend to get affected when transported to great distances and in considering the time taken for drying and tenderness of the material used for manufacture.

He who asserts must prove. The Respondent did not lead evidence to prove the three conditions referred to above. These are matters within the knowledge of the Respondent Company which caused the transfer of the 69 workers from Seeduwa to Ethul Kotte.

The Respondent should have led some evidence to prove that the manufacture of paper sacks is highly competitive, affecting profits and the finished sacks at the Seeduwa Factory get affected when transported to "great distances."

The General Manager who on his own admission accepted that he was not competent to speak on matters relating to accounting and finance in his evidence on 29.04.2003. He further said that financial matters of the company were handled by the Director of Finance, and his name was Ravindran. (*vide* page 8 of proceedings on 29.04.2003), but this officer did not give evidence, and I hold that the three reasons adduced by the company to effect the transfer of the workers from Seeduwa to Ethul Kotte have not been substantiated.

Taking all matters into consideration it seems to me that the transfer of the 69 workers from Seeduwa to Ethul Kotte could have been avoided if the management paid some attention to the inconvenience, mental agency and reduction of overtime payments to the workers most of whom are females as a result of their transfer to Ethul Kotte. It is rather unfortunate that the management paid more attention to the quality of the bages, reduction of costs rent values of the increasing of profit ignoring the values of the human factor.

I therefore hold that the Order of transfer of sixty nine (69) employees from the Seeduwa factory of Ceylon Paper Sacks Limited (whose names are referred to in the schedule) to the Ethul Kotte factory by the management, changing the terms and conditions of employment enjoyed by them at the Seeduwa factory is UNREASONABLE.

Redress

The transfers referred to above have been made with effect from 24.07.2002 upto the date of making this award, i.e. 24.09.2004, the period covered is 02 years 02 months. I consider it as impracticable and unreasonable to order the re-transfer of these workmen back to the Seeduwa factory. Accordingly I do not make an order to retransfer these workmen back to Seeduwa from Ethul Kotte.

The Respondent Company has accepted that out of the 69 employees referred to in the schedule only 18 have failed to report for work. Their names, addresses and other particulars have not been furnished even in the written submissions tendered to me. The applicant union has also failed to furnish any information regarding them. None of them have come before me requesting redress. They seem to have lost interest in these proceedings. I therefore **make no award** in respect of the 18 employees who have not reported for work at the Ethul Kotte factory on or after 24.07.2002.

51 workmen who are in employment at the Ethul Kotte Factory

I order that the Respondent Company should pay the said 51 workmen -

1. the wages that were payable to them with effect from 24.07.2002 up to such dates as they individually reported for work at the Ethul Kotte Factory up to the date of this order (i.e. 24.09.2004).

2. payment of Rs. 1000/- (one thousand Rupees) per month to the said 51 workmen with effect from 24.07.2002 irrespective of their dates on which they reported for work at the Ethul Kotte so long as they work at the Ethul Kotte Factory.

I also order the Respondent to take necessary steps to make payment to the workmen referred to above within Three(03) months of the publication of this award in the Gazette of the Democratic Socialist Republic of Sri Lanka.

I consider this award just and equijtable.

T.PRIYASOMA,
Arbitrator.

Dated at Colombo this 24th day of September 2004.

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My No. : T7 / 34 / 2000.

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

The award trasmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Estates and General Services Union, 283/A, New Passara Road, Badulla of the one part and Plan International (Sri Lanka) Badulla, 37/2, Bandaranayake Mawatha, Badulla of the other part was referred by order dated 26th October, 2004, 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. 1198/8, 20th August, 2001, 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.
05th November, 2004.

Ref. No. : T7 / 34 / 2000.

IN THE MATTER OF INDUSTRIAL DISPUTE

between

Case No.: A / 2865

Estates and General Services Union, 283/A, New Passara Road, Badulla
AND
Plan International (Sri Lanka), Badulla, 37/2, Bandaranayake Mawatha,
Badulla

THE AWARD

The Hon. Minister of 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) referred the aforesaid dispute to me for settlement by arbitration.

The matter in dispute between the aforesaid parties in whether the underpayment of Cost of Living Allowance to the employees of the Plan International (Sri Lanka), Badulla, for the period of January, 1990, to September, 1997, in contrary to the conditions of their employment by the said organisation is justified and to what relief they are entitled.

This matter was taken up for inquiry on 27th September, 2004.

On 31st August, 2004, Applicant-workmen were absent and the Applicant Union was not represented.

Mr. U. Pilapitiya was present on behalf of the Respondent and Mr. H. Perera, AAL, appeared for the Respondent.

On this date I found that the applicant workmen and the Applicant Union were absent on 06th August, 2004.

Mr. U. Pilapitiya, was presented and Mr. H. Perera, AAL, had moved for a date on personal grounds.

On 06th August, 2004, I decided to fix this case for further inquiry on 09th September, 2004, and I directed the Registrar, Industrial Court to inform the Applicant of the hearing fixed 09th September, 2004. Subsequently I cancelled the hearing fixed for 09th September, 2004, and fixed the matter to be called on 31st August, 2004, to fix a date for further inquiry.

Both parties were informed under registered cover that the matter would be taken up for hearing on 31st August, 2004.

Applicant Union as well as the workmen were absent on 31st August, 2004.

Mr. U. Pilapitiya was present on behalf of the Respondent and Mr. H. Perera, AAL appeared for the Respondent.

Applicant Union or the workmen did not give any valid reasons for their absence on 31st August, 2004.

Notice to the Applicant Union sent under registered cover was not returned undelivered. Therefore, I presume that the Union had received the said notice. But they have not submitted any valid reasons for their non-appearance on 31st August, 2004.

On 31st August, 2004, I decided to fix this matter for further inquiry on 27th September, 2004.

On 31st August, 2004, Mr. Harshana Perera, AAL for the Respondent moved for costs if the applicant Union or the workmen are absent on the next date 27th September, 2004.

I directed the Registrar, Industrial Court to send a final notice under registered cover requesting the Union to show cause for their non-appearance on 31st August, 2004 and to appear before Court on 27th September, 2004 and if the Applicant Union or the workmen are absent without any valid reasons on 27th September, 2004, decide to dismiss the Application.

I find that the registrar has sent the notice under registered cover informing the Applicant Union to appear before Court on 27th September, 2004.

Workmen and the Applicant Union are absent. No valid reasons have been submitted by them, for their non appearance.

At this stage Mr. H. Perera, AAL for the Respondent stated that he is not making an application for costs but he is moving that the application be dismissed.

I have considered the facts in this case and I find that the Applicant Union and the workmen have defaulted in their appearance and no valid reasons have been submitted for their non-appearance.

As such, I make award dismissal the Application.

K. R. M. N. LAWRENTZ,
Arbitrator.

26th October, 2004.

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