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EXTRAORDINARY

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PART I : SECTION (I) — GENERAL

Government Notifications

Ref. No. : T 23/CO/135/2003.

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mrs. T. K. Nugegoda, No. 10, Nugegoda, Katugastota and Mrs. G. P. Wijayatilake, No. 188, Nawayalatenna, Katugastota of the one part and Mahaweli Authority of Sri Lanka, No. 500, T. B. Jayah Mawatha, Colombo 10 of the other part was referred by order dated 12.08.2004 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. 1354/7, of 17.08.2004 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,
24th September, 2006.

Ref. No. T23/Co/135/2003.

Case No.: A 3054. *In the matter of an Industrial Dispute between*

1. Mrs. T. K. Nugegoda,
No. 10, Nugegoda,
Katugastota.

and

2. Mrs. G. P. Wijayathilaka,
No. 188, Nawayalatenna,
Katugastota.

Of the one part and Mahaweli
Authority of Sri Lanka.
No. 500, T. B. Jayah Mawatha,
Colombo 10.
Of the other part

The Award

The Honourable Minister of Labour, 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 and 39 of 1968, read with Industrial Disputes (Special Provisions) Act, No. 37 of 1968, appointed me as Arbitrator by his order dated 12th August, 2004 and referred the following dispute to me for settlement by arbitration.

The matters in dispute between the aforesaid parties are :-

Whether Mrs. T. K. Nugegoda and G. P. Wijayathilaka who were in the service of the Mahaweli Authority of Sri Lanka had been deprived of the opportunity in obtaining the promotions in the respective service and the right for receiving a higher amount of compensation as a result of retaining them in service on temporary basis up to 29.02.2000 despite of their consent to leave the service of the Authority voluntarily with effect from 30.04.1998 is justified if not to what relief each of them is entitled.

Appearance : Miss Nethrarani Kulasekara and Mr. Waruna Mallawaarachchi, Attorney-at-Law appeared for the Applicants G. A. Samarasekera, Attorney-at-Law appeared for the Mahaweli Authority.

Both parties have filed the statements under Regulations 21(1) and 21(2) of the Industrial Disputes Regulations of 1958 as amended. Since the grievances of both applicants are similar it was agreed to consider one witness to lead evidence on behalf of both. On behalf of the applicants Mrs. G. P. Wijetilleke lead the evidence and marked documents Z1 to Z12.

The Respondent, Mahaweli Authority led evidence of Mr. Ananda Lunuwela, Administration Officer and marked documents R1 to R8 at the end of the inquiry both parties have filed written submissions.

I have read the evidence led before me and also the written submission of both parties and I wish to deal with the matter in dispute referred to me for arbitration as follows :

The applicants Mrs. T. K. Nugegoda and G. P. Wijetilleka in their statements filed took up the position they joined the Respondent Mahaweli Authority in the Year 1983 and 1984 respectively and after duly promoted to the Planning Officer Grade I. The applicants further stated that on 07.11.1996 and 19.11.1997 they had fulfilled the requirements to be promoted to the Special Grade / Planning Officer but they were denied their promotions due to mismanagement prevailed in the Respondent Mahaweli Authority at that time.

As per the circular dated 28th November 1997, the applicants submitted their resignation. Even though the respondent accepted their resignation they continued to work as their services was needed by the Respondent Authority. They further stated in the above circumstances their service was uninterrupted and on 16.08.1998 applications were called for promotion to the post of planning officer (special grade). Even though the applicants submitted their applications they were not called for the interview, which resulted them a financial loss at the retirement.

The applicant further stated that 2 officers (who were junior to them) namely D. D. Kumburegedara and A. D. L. Wijenaike, who applied for the retirement under circular dated 28.11.1997, the Respondent having stated that there was no excess staff and subsequently they were duly promoted to the Planning Officer (special) grade. The aforesaid officers were sent on resignation under circular dated 28.11.1997 stating that they were categorized as excess staff facilitating them to obtain a higher retirement benefits.

In the above circumstances, the applicants state that they had been victimized denying higher retirement benefits. Whereas at the same time the Respondent Mahaweli Authority had paved way to obtain higher retirement benefits to the aforesaid employees who were junior to them.

The applicants also cited the direction made by the Deputy Solicitor General viz, if the respondent wished to retain any member of the staff he may do so on a justifiable criteria, which is supported by evidence. This may include persons with specific qualifications or experience or training in particular field.

The applicants stated that the Respondent failed to disclose up to date whether the applicants services were retained by the Respondent on their seniority or due to specialized training.

The applicants cited a letter dated 05.06.1998 sent by the Director General of Mahaweli Authority stating that the Respondent has decided to retrain services of Mrs. Nugegoda. In that letter nothing has been mentioned that Mrs. Nugegoda worked on temporary basis.

Further applicants observed as per the circular VESG/01/1997 dated 28.11.1997 right to take a final decision in this respect lies on the Director General of Mahaweli Authority.

The applicants further stated, that the Respondent Mahaweli Authority has acted according to the above circular and granted the applicants all the benefits of the permanent employees viz, monthly salaries, statutory allowances and holidays. Accordingly applicants had uninterrupted service till they relinquish their services on 29th February, 2000.

The position of the Respondent Mahaweli Authority was as follows :

1. the Respondent on 30.04.1998 accepted the request made by the applicants to go on voluntary retirement with effect from 30.04.1998, after obtaining compensation as per the circular VESP/01/1997 dated 28.11.1997,
2. the Respondent submitted the direction made by the Attorney General that compensation should be paid to the employees as per the salary drawn on 30.04.1998 which should be affected as the date for voluntary retirement.
3. the Respondent further stated no employee were granted any promotions or increments when their resignation was accepted on the above basis.

4. the Respondent further stated that ever though the applicants were to retire on 30.04.1998, there services were temporally retained till 29.02.2000 due to practical reasons.

Mrs. G. P. Wijayatilleka in her evidence stated as follows :

- (i) She was appointed as a planning officer Grade III on 07.11.1983 her letter of appointment dated 26.02.1984 is marked Z/01.
- (ii) She was promoted to class II segment (a) with effect from 25.03.1988 the said letter is marked Z/01 (අ).
- (iii) On 30.11.1990 she was promoted to class II segment C the said letter is marked as Z/01 (b).
- (iv) On 24.08.1995 category of her designation has been changed from “grade” to “class”, the said letter is marked Z/01 (c).
- (v) The applicant further marked, the 1st applicant T. K. Nugegoda’s change of designation letter as Z/02, her letter of appointment as Z/02A, her letter of appointment to Technical Officer’s service Grade II (අ) as Z/02 (B), her appointment letter to Grade II (අ) as Z/02 (C), change of her designation as Z/02(D).
- (vi) The applicant marked the circular for voluntary retirement as Z3 and in the circular the portion stating “right to take a final decision belongs to the Director General of Mahaweli Authority” is marked as Z/03(A).
- (vii) The applicant made an application for voluntary retirement, thereafter she received a letter from the Director General, Mahaweli Authority marked Z4 stating she will be placed in the same post and in the same office on temporary basis. The said letter is marked as Z/04.
- (viii) The applicant further stated that she informed the Director General of Mahaweli Authority her reluctance to work on temporary basis as she has worked for 15 years as a permanent employee. Upon receiving her letter, the Director General of Mahaweli Authority wrote to her extending her service till compensation being paid. The applicant marked said letter as Z5 stating that it has removed the temporary nature of her employment.
- (ix) The applicant marked circular issued to all section heads of the Mahaweli Authority in respect of the promotions as Z6, and also marked para 2 of the said circular as Z6 (a).

(x) The applicant further stated that she submitted an application as per the above circular to be promoted as Special Grade (I). The said application is marked as Z (07).

(xi) The applicant stated since she was not promoted to Special Grade (I), she made a complaint to the Labour Department, the Labour Commissioners recommendation is marked as Z8 and Z8 (a) respectively. According to Z8 the assistant Commissioner of Labour ordered Mahaweli Authority to pay Compensation to Mrs. T. K. Nugegoda and Mrs. G. P. Wijeyatilleke as follows :

1. Salary increments with held for the period 07.11.1996 to 29.02.2000.

2. The arrears in compenstion to be calculated according to salary scale of the Special Grade.

(xii) The applicant marked the letters of calculation of compensation as Z11 and Z12 respectively. The applicant further stated that the Respondent overlooked them and promoted a junior employee.

The Attorney-at-Law for the applicant, requested that the evidence led by G. P. Wijeyatilleke also to be applied for T. K. Nugegoda, since there was no objection court allowed the request made.

In cross examination the 1st applicant G. P. Wijayatilleke as follows :

(i) When questioned about the document Z5, the applicant stated even though she told in her evidence in chief Z5 was the letter which removed the temporary basis of her employment there is no such thing mentioned in the said Z5.

(ii) the applicant admitted when she sent her application for promotion to Grade I on or about 16th August 1999, she had been already selected to voluntary retirement scheme with compensation.

(iii) The applicant further stated that she is not accepting the 3rd para of the letter Z4 where it was stated, she would be remained in her position on temporary basis. She reiterated that all the payments were made as per the permanent employment.

(iv) When the Respondent disputed about the Z9, the Attorney General’s recommendation to Mahaweli Authority in respect of compensation the applicant affirmed that those recommendation are applicable to her as well.

In re examination the applicant stated as follows :-

- (i) The applicant stated that according to Z5, her services were retained till the compensation being paid. She further stated during that period she got all the benefits as a permanent employee.
- (ii) The applicant stated though she had completed 15 years of service and had all the qualifications, her application for the promotion to Special Grade was not entertained by the Respondent.
- (iii) The applicant further stated according to Attorney General's recommendation (Z9) it has clearly indicated that the persons with special training should be retained in service.

Ananda Lunuwila, the Administration officer of the Respondent Mahaweli Authority in his evidence stated as follows :

- (i) The compensation was paid to more than 4,000 employees of the Respondent Mahaweli Authority according to availability of funds which were provided by the world Bank the payment of compensation to the applicants were delayed as they wanted to remain in the employment without obtaining the compensation.
- (ii) The witness stated that by on 30th April 1998, the officers D. D. Kumburagedara and K. A. D. L. Wijenaik were not qualified to receive compensation. They also made an appeal to the Appeal Boards of the Respondent authority. The witness further stated that at the time of compensation was paid to the aforesaid officers, they held higher posts than what they were holding at the time they applied for the compensation the witness further stated in the circumstances those two officers received higher compensation.
- (iii) The witness filed the documents R1, R2 in which the applicants agreed to continue their service without obtaining the compensation.
- (iv) The witness further filed the documents (R4) in which the Respondent Mahaweli Authority got the approval from the secretary of Mahaweli Development Ministry to continue the services of 16 employees including the applicants who were willing to resume in service without obtaining the compensation.
- (v) The witness produced the documents R5 and R6 in which the Respondent Mahaweli Authority requested the applicants to sign a document containing conditions in order to retain their services without obtaining the compensation.

- (vi) The witness further filed the documents R7 and R8 in which the applicants have stated that they are not agreeable to the conditions stated in the aforesaid letter and therefore requested compensation to be paid to them.

In cross examination the witness stated as follows :-

- (i) The compensation was calculated according to the grade held by the applicants at the time of such calculation.
- (ii) The compensation paid to the applicants were limited to Rs. 350,000 each as the applicants were not holding staff Grade appointment at the calculation of compensation.
- (iii) The witness further stated the compensation was calculated on 30.04.1998. Whereas the applicants submitted their applications for the planning officer Special grade on 16.09.1999, after 1 year of calculation of compensation.
- (iv) The witness reiterated position that the applicant were not given the promotion at the time they submitted their applications as their permanent service has been already terminated. The witness further stated if the applicants were not selected for the compensation they would have got the promotion, as they had been in the permanent service.

In re examination the witness stated as follows :-

- (i) The Director General of Mahaweli Authority has approved the applicants request to re instating of service. The witness further stated said approval did not invalidate the conditions stipulated in the circular VESP marked Z4 in respect of the voluntary retirement.

On an overall analysis of evidence before me I have come to the following conclusions :

- (i) The applicants were selected to voluntary retirement scheme is per the circular VESP/20/1269 marked Z4, the compensation was calculated as at 30.04.1998.
- (ii) The applicants failed to prove that their services were retained on permanent basis. Even though the applicants have cited the letter dated 05.06.1998 marked Z5 by which the temporary nature of their extension of service being removed, there was no such mention in Z5.

(iii) The applicants failed to establish that by paying higher compensation to the officers D. D. Kumburegedara and K. A. D. L. Wijenaike they had been discriminated 268A. The applicants failed to challenge the evidence lead by Ananda Lunuwila Administration Manager of the Respondent Mahaweli Authority stating That D. D. Kumburegedara and K. A. D. L. Wijenaike were not qualified to receive compensation as at 30.04.1998 at the time compensation was paid they were holding higher posts and compensation were calculated accordingly.

In the circumstances taking into consideration the totality of evidence led before me I make award that Mrs. T. K. Nugegoda and Mrs. G. P. Wijayatilleke are not entitled to any relief.

I consider this award just and equitable.

KAPILA M. SARATHCHANDRA,
Arbitrator.

Dated at Colombo this
12th September, 2006.

11-572/1

Ref. No. : T 23/CO/219/2001.

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Miss. A. A. S. Livera, Mrs. P. C. K. Pathiratne and Mrs. R. A. D. L. Ranasinghe, who are employed at Sri Jayawardhanapura General Hospital as Electro Cardiograph Recordists on contract basis of the one part and Sri Jayawardhanapura General Hospital Board. Sri Jayawardhanapura General Hospital, Talapathpitiya, Nugegoda of the part was referred by order dated 18.03.2002 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. 1230/11, of 02.04.2002 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,
24th September, 2006.

11-572/2

My No.: CI/1661/2000.

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Commercial and Industrial Workers Union No. 17, Barracks Lane, Colombo 02, of the one part and Swedish Trading Co., Ltd, Viking House, No. 191, Galle Road, Ratmalana, of the other part was referred by order dated 27.10.2003 made under Section 4(1) of the Industrial Dispute Act, Chapter 131 (as amended) and published in the *Gazette of the Democratic Socialist Republic of Sri Lanka Extraordinary* No. 1314/7 - 12.11.2003 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,
24th September, 2006.

In the matter of Industrial Dispute

Between

Commercial and Industrial Workers Union,
No. 17, Barracks Lane,
Colombo 02,

of the one part

Case No.: A - 3009

And

Swedish Trading Co., Ltd,
Viking House,
No. 191, Galle Road,
Ratmalana,

of the other part

The Award

01. The Honourable Minister of Employment and Labour, 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, 62 of 1957, 4 of 1962 and 39 of 1968, read with Industrial Disputes (Special Provisions) Act, No. 37 of 1968 appointed me as the arbitrator by his order dated 27th October, 2003 and referred the dispute between the aforesaid parties to me for settlement by arbitration.

02. The matters in dispute between the aforesaid parties are : —

- (1) whether the non-granting of the salary increments for the year 2002, by the Swedish Trading company Limited to the Seventeen (17) employees whose names are referred to in the attached schedule and who are employed in it's factory at Kandawela Road, Ratmalana is justified and if not, to what relief each of them is entitled ;
- (2) whether the deprivation of the bonus for the year 2002 by Swedish Trading Company Limited to the Seventeen (17) employees whose names are referred to in the attached schedule is justified and if not, to what relief each of them is entitled ;

and

- (3) whether the non-granting of the festival advance for the year 2002 by the above - named Company to the Seventeen (17) employees whose names are referred to in the attached schedule is justified and if not, to what relief each of them is entitled.

03. 17 Employees referred to in the schedule :—

- (01) M. Deesan Perera
- (02) L. Dimuthu Sanjeewa
- (03) Rukshan Opatha
- (04) K. Ranil Wasantha Perera
- (05) Ruwan Kumarasiri
- (06) Thuwan Saheer Puthra
- (07) J. M. D. Asanga
- (08) A. M. Nimal Sumanasiri
- (09) P. D. C. J. Gunawardena
- (10) Thilak Perera
- (11) S. C. Amaranath
- (12) M. M. Deepal Indrajith
- (13) K. A. Keerthi
- (14) D. Navaratne
- (15) Sunil Premaratne
- (16) Lalith Priyadharshan
- (17) R. P. Nanayakkara

04. Mr. D. Jayasinghe appeared for the applicant Commercial and Industrial Workers Union while Mr. Maitrie Pitawela, Attorney-at-Law appeared for the respondent, Swedish Trading Company Limited.

05. The applicant union tendered productions marked A1 to A23, while respondent Company tendered productions marked R1 to R9. One workman gave evidence on behalf of the applicant Union, while one witness gave evidence on behalf of the Respondent Company.

06. Keerthi Kodikara, witness for the applicant union, in his evidence stated that consequent to the intransigent attitude of the management towards its' employees the workshop staff organized and joined a Trade Union.

Thereafter Management started all sorts of intimidations, some were coerced to withdraw from the Union, one was assaulted by an unknown gang whilst returning home after work, some were issued with charge sheets on flimsy issues etc., When such intimidations were on the rise, Parent Union took up such issues with the Commissioner of Labour, where Management had agreed to look into suitably. But nothing was done.

07. On October 2002, union informed the Managing Director, reminding the discussion had with the Commissioner General of Labour, and that if positive action was not taken, Union would resort to Trade Union action. Since there was no response, in protest, workers went on one day strike. Thereafter recalling the various incidents, the Parent Union informed the management that in view of the growing unrest workers would resort to a strike for 2 days. The Parent Union authorized the Branch Union to be on strike with effect from 23rd October, 2002.

The decision had been informed to the management and Commissioner General of Labour previously, but the day of strike had been informed only on the day of strike. Strike was extended by a further one day.

08. Management took it up as a disciplinary issue, Charge Sheeted and a disciplinary inquiry held. Union requested permission to field a defending officer, but was not allowed. At the disciplinary inquiry, employees en-masse gave the same explanation in reply, but management found them guilty and imposed the following punishments:—

- (a) Denial of wages for the three months (28.10.2002 - 27.01.2003);
- (b) Denial of bonus for the year 2002 ;
- (c) Denial of increments for one year.

When they returned to work after the strike, were not paid the salaries on the normal pay day. Besides some activist have been transferred to another work site, which had little or no space to move about, unhygienic and without facilities. These matters had been discussed with the Labour Department subsequently but had no fruitful results.

My Observations are as follows :-

09. The three days strike was a turning point. Management had taken severe action and imposed several penalties:—

- (a) Denial of wages for three months, covering the entire period of interdiction, *i.e.* - from 28.10.2002 to 27.01.2003 ;
- (b) Denial of bonus for the year 2002 ;
- (c) Denial of increments for one year ; and
- (d) Some were transferred to another work site, where the working conditions were sub-standard.

Management seems to have been indifferent and lackadaisical towards the worker issues throughout. For being on strike for 3 days, management states that it suffered a loss of Rs. 300,000. If that is so, just after 2 days the very same fleet were interdicted and recalled for work after 90 days. Does that mean, the company suffered a loss of Rs. 9,000,000 (Rs. 9 Mn).

10. Its' quite normal and natural, when an organization expands, say beyond 150 the management loses the "personal" touch with the seniors in the lower strata, who worked tirelessly to bring up the image and stature of the organization. This also happens with the aging of an organization where most workers down below, with their social and family responsibilities expect recognition, improved working conditions to better quality of life. Besides new comers to the middle management may not understand, the ordinary workers' problems and feelings. Astute managements are intelligent enough to understand these situations and are capable of developing suitable structures to ensure fair Labour- management relations, thus improving quality of work standards and productivity. *Inter alia*, some arrangements are —

- (a) *Open door policy.*— for employees to meet and discuss and resolve the day to day problems confronting them. Such issues may be those arising between workers and workers, or between worker and supervisor.
- (b) *Counseling.*— to understand the employees better meet and discuss their problems pertaining to families or work.
- (c) *A grievance procedure.*— to lay down a procedure for the prompt redressal of grievances essential for sustaining good labour - management relations, and promoting efficiency at the plant level.
- (d) A disciplinary procedure - to guarantee speedy and full investigation concerning issues of misconduct. These include,
 - conduct of a domestic inquiry ;
 - right to be represented by an observer ;
 - fix time limits for conclusion of inquiry ;
 - punishments dependent upon the nature of misconduct ; and
 - appeals to the management.

There is no evidence whatsoever to show that workers were given a fair hearing or a system devised to alleviate their grievances.

11. In the grant of annual increments, management had devised defective measurement criteria in their marking scheme. In view of the shortcomings, there had been misunderstandings as to the quantum paid by way of increments. This may have happened either due to personal animosities the supervisors may have had with some workers, incompetency of the supervisor in making a proper performance appraisal, lack of guide lines in the marking system or indifference. To highlight this point R2, R3 and R4 would be self explanatory.

Allocations of marks are as follows :-

(1) Discharge of Responsibility	15
(2) Efficiency/Productivity	15
(3) Knowledge of work	15
(4) Attitude to work	12
(5) Motivation	10
(6) Qualifications	10
(7) Experience	8
(8) Honesty	5
(9) Punctuality	5
(10) Attendance	-
Total	<u>100</u>

(1) to (5) above totals to 67, which items need assessment very scientifically. It is unclear as to how the assessments were done, when those supervisors were neither armed with instructions nor are they work study practitioners. Besides with regard to items (6) and (7) titled "Qualifications" and "experience" maximum marks obtainable would be 10 and 8 respectively. Per R3 and R4 marks allotted to the two workers have been as follows:-

	<i>Qualifications</i>	<i>Experience</i>
Nawarathna -G.C.E.O/L	No previous experience	6 6
Keerthi -G.C.E. A/L	8 years experience	6 6

12. Under the existing law, the expression "trade union" includes both employers and worker organizations. The problems which unions in this country have been facing are many and varied. Some of them are of their own making ; others are the products of an inadequate policy pursued by Government in the matter of trade union organization. The law which permitted unions to be formed did not go beyond conferring on them certain minimum rights after registrations. The more important right, the right of recognition had to be earned through a long and painful process.

Sri Lanka adopted the ILO Conventions No. 87, concerning the Freedom of Association and the Protection of Rights to Organize and No. 98, concerning the Right to Organize and Collective Bargaining. Also introduced a new Section to the Industrial Disputes act, enumerating the Unfair Labour Practices, wherein the question or recognition of trade unions is given a prominent place. *vide* - Sec. 32A.

Management's contention is that of the total work force of approximately 200, only about 30 have joined the union and as such fell short of 40% for recognition. This 200 comprise of management, mid management, white collar and blue collar personnel. Besides I find some of the staff belongs to pharmaceutical trade and the like whereas the unionized workers were blue collar workers in the motor garage. It is not understood the basis on which management expects the union to be formed, that is, whether it is on unit basis or industry basis. Whichever way, it is not going to be free from difficulties. If the management expects an industrial union for recognition it is quite possible that the union may not command the majority membership in the organization. Similarly a unit type union will not be conducive, to either industrial peace, or to the progress of the industry itself. Dependent upon the negotiating effectiveness of the union it will result in unstandardized working conditions and wage costs which could in turn affect the competitive capacity between unit and unit.

In the plantation sector unions are recognized irrespective of membership strength. For the purpose of collective bargaining the strength of the union is a vital factor.

13. Wages for the period of interdiction (28.10.2002 - 27.01.2003). Although the question of non-payment of wages for the 90 days was raised during the course of inquiry both parties made no effective submissions on that behalf other than by way of observations in their final written submissions.

14. Denial of festival advance for the year 2002 is a lapsed issue in that even the reference of this issue dates back to October, 2003.

15. With regard to fresh submissions made by parties in their final written submissions, no weightage was given as it contradicts the concept of natural justice.

16. In overall analyses, my award concerning the 3 issues is as follows :-

- (a) The non-grant of increments is not justified. However since the management pays salaries and increments above the statutory minima, no relief would be entitled. Even quantum could not be assessed, but a realistic formulate would be essential ;
- (b) The non grant of bonus for the year 2002 is not justified. All employees whose names are listed in the schedule to the reference shall be paid full bonus in respect of the year 2002. This amount shall be deposited with the Commissioner-General of Labour within 45 days of publication of this award in the Government *Gazette* ;
- (c) The non-grant of festival advance for the year 2002 is a lapsed issue and makes no award in that regard.

This is a just and a fair award.

P. NAVARATNE,
Arbitrator.

Dated at Colombo,
on the day of 27th September, 2006.

11-573.