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EXTRAORDINARY

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(Published by Authority)

PART I : SECTION (I) — GENERAL

Government Notifications

My No. : IR/22/21/2005.

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE Award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Mr. W. Wijeratne, Ambanwala, Welambada *via* Gampola and Mr. M. K. Lal Fernando, Proprietor of Royal Builders, "Royal" Kurunegala Road, Puttalam was referred by Order dated 23.08.2007 made under Section 4(1) of the Industrial Disputes Act, Chapter 131, as amended for settlement by arbitration is hereby published in terms of Section 18(1) of the said Act.

D. S. EDIRISINGHE,
Commissioner General
of Labour.

Department of Labour,
Labour Secretariat,
Colombo 05.
28th January, 2008.

Ref. No. IR/22/21/2005.

In the Matter of an Industrial Dispute
Between

Mr. W. Wijeratne,
Ambanwala,
Welambada,
Via Gampola.

AND

Mr. M. K. Lal Fernando,
Proprietor of Royal Builders,
"Royal",
Kurunegala Road,
Puttalam.

Case No.: A 3229

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 of the Legislative Enactments of Ceylon (1956 revised edition) as amended by Acts, No. 14 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 23.08.2007 and referred the dispute between the aforesaid parties to me for settlement by arbitration.

The matters in dispute between the aforesaid parties are :-

1. Whether there was an employer - employee relationship between the Royal Builders and Mr. W. Wijeratne who was said to have employed as a Civil Engineer of Royal Builders by its Proprietor Mr. M. K. Lal Fernando ; and

2. If there was an employer - employee relationship as referred to above, whether Mr. W. Wijeratne is entitled to receive statutory dues and any other relief from the Proprietor of Royal Builders.

Appearances :

Mr. Mihindukulasuriya Kingsly Lal Fernando, Proprietor of Royal Builders, - Employer, conducted his case alone.

Mr. Maitree Pitawala, Attorney-at-Law appeared for the workman once. Thereafter the workman did not appear and unrepresented.

From the inception, it is evident that the workman has shown an indifferent attitude towards his case. Court requested to file his first statement on or before 13.08.2007 but he failed to do so and a further date was given for inquiry on 05.10.2007. On the said date the workman was absent and unrepresented that day's proceeding indicated thus : Workman is absent and unrepresented and it appears he is not interested in the case as of today, and to notify the workman under Registered Post to be present in person on 26.10.2007 at 2.30 p.m.

Meantime a laconic statement was filed of record by the workman on 11.10.2007 and was present with his Attorney-at-Law on 26.10.2007 and requested a further statement in the form of Replication which was to be due on 05.11.2007. Whereas the workman failed to comply with such request and never presented himself thereafter and not involved in further inquiry.

In the above circumstances he was notified by registered post, that an Exparte Inquiry will be proceeded against him on 07.12.2007 at 2.30 p.m. and the said Letter never returned undelivered. Even then the workman did not show up and therefore I make no Award.

T. Edmund Santharajan,
Arbitrator.

20th December, 2007.

02-781

My No. : Ci/113/2000.

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE Award transmitted to me by the President Labour Tribunal - 1 to whom the Industrial Dispute which has arisen between Ceylon Mercnatile Industrial and General Workers Union, No. 03, 22nd Lane, Colombo 03 and Ceylon Cold stores Ltd., P.O.Box. 220, Colombo 02, was referred by Order dated 10.10.2001 under Section 4(1) of the Industrial Disputes Act, Chapter 131, as amended for settlement by arbitration is hereby published in terms of Section 18(1) of the said Act.

D. S. EDIRISINGHE,
Commissioner General
of Labour.

Department of Labour,
Labour Secretariat,
Colombo 05.
29th January, 2008.

Before Mr. Sridaran

IN THE LABOUR TRIBUNAL No. 13 ARBITRATOR

Ceylon Mercnatile Industrial and
General Workers Union,
No. 03, 22nd Lane, Colombo 3,

AND

Ceylon Cold Stores Ltd.,
P.O.Box. 220, Colombo 02.

L. T. No.
13/262/2001.
(Arbitration)

AWARD

The Minister of Labour by virtue of the powers vested by Section (iv) of the Industrial Disputes Act referred this dispute to this Tribunal for settlement by arbitration. The matters in dispute between the aforesaid parties are :

(i) Whether the termination of the services of the following eight employees who were in the service of the Ranala Ice Cream Factory of Ceylon Cold Stores Ltd., by the said company with effect from 26.12.2000 is justified and to what relief each of them is entitled.

The names of the employees are as follows :

(i) W. D. Upali
(ii) W. M. P. Perera
(iii) P. A. L. Premaratne
(iv) R. S. Kanaththawatte
(v) P. R. Liyanage
(vi) S. A. Rupasinghe
(vii) D. P. Meemanage
(viii) D. L. P. L. Dayaratne

After the Tribunal received order from the Hon. Minister the parties to the dispute that is hereinafter described as CMU and Ceylon Cold Stores Ltd., were notified and required them to file their statement of claims. Accordingly both parties submitted their statement of claims with certain annexures. Thereafter I made every endeavor to settle the matter amicably but, un fortunately I was not successful in arriving at a settlement amicably. Thereafter the matter had been fixed for inquiry. Accordingly, Ceylon Cold Stores Ltd., led evidence of Thushara Nalin Gunaratne, Nishantha Jayasuriya and Nihal Joseph de Mel. The said Nihal Joseph de Mel commenced his evidence on 03.12.2004 and his evidence in chief was recorded and concluded on that date. Thereafter the matter was fixed for cross-examination but the said witness was not present in the Tribunal for cross-examination. On behalf of the union R. K. S. Kanaththawatte gave evidence. Thereafter both parties concluded their cases and submitted written submissions along with documents.

The disputes between the parties are in brief, the Company Ceylon Cold Stores Ltd., has a factory at Ranala. The main production of the said factory is Ice Cream. The normal working hours of the said factory was 8 a.m. to 5 p.m. The company decided to introduce a shift work system and the company had discussion with other unions such as Nidahas Sevaka Sangamaya and Ceylon Workers Congress who represented manual labour categories. CMU represented the Supervisory and Clerical staffs. The Company and the other two unions that are Nidhas Sevaka Sangamaya and CWC signed the memorandum of understanding to implement the shift work system and the said decision was informed to all employees at Ranala Factory and they were requested to follow shift work system from 18.12.2000. On the said date the members of the CMU that is clerical and supervisory category staff didn't report for work at 7 .a.m. as requested by the Company. Thereafter the eight employees who were Party to this action reported at 8 o'clock which was the previous system. At that time they were not allowed to assume work by the Production Manager. The company alleged that the said workers informed to the management their unwillingness to accept the shift system and further stated that the union advised them to follow the old system and not to accept the shift work system. The Company's position was at that stage they informed to the workmen that they will communicate to them about their decision after the consultation with Employers Federation of Ceylon. The company further took up the position that the said workers were informed that they could work according to the normal working hours which was followed by the company previously. The position took up by the union was after the said workers were refused to work on 18.12.2000 at 8 a.m. the said workers were not informed or communicated in any manner to the effect that these workers could continue to work according to the old system. It is also admitted that the said employees remained within the premises of the company up to 26.12.2000. The union took up the position that the CMU is not party to the memorandum of understanding and thereby the company cannot violate the collective agreement which was already inforce and the said collective agreement stipulate the working hours of the employees. The company alleged that the said workers remained within the premises of the factory without reporting for work at the normal working hours. Thereafter the company issued show cause letters to the said workmen and called for explanation. Thereafter the company framed charges against the workmen. The reply to the charges marked as R2, R3, R4, R5, R6and R7. Thereafter the company conducted a domestic inquiry and terminated the services of the said workmen. The workmen denied the said charges. This instant dispute is arising out of the said incident. The union pursued its claims of this dispute through the Commissioner of Labour. Consequently the said dispute was referred for arbitration to this Tribunal.

The disputes between the parties are :-

(i) Whether the company could introduce new working hours ?

(ii) What is the status of the collective agreement ?

(iii) Whether the provision of collective agreement was violated ?

(iv) If so by whom ?

According to the evidence placed before the Arbitrator it was not in dispute that the CMU was not the party to the MOU. It is also not disputed there was a collective agreement was inforce at the relevant time. The said collective agreement was marked as A16. The said collective agreement contains the hours of work at para 7. It states "the normal working hours shall be those working hours which are customarily worked at an office, stores, factory, mill or job in the establishment of the employer bound by this agreement. Therefore as regard to the working hours it is very clear that the normal working hours is applicable to this factory. The normal working hours is in the day time from 8 a.m. to 5 p.m. The same pattern of working hours were followed by this company for long period prior to 18.12.2000 and it was elicited from the evidence that the company wish to introduce new working hours in order to increase the production. It is to be noted that the company wish to increase the production

without increasing the labour charges. The company wishes to introduce the new system with the existing carder of the staff. Further it was elicited that the company entered into MOU only with two unions and the CMU was left out. The collective agreement is binding law between the parties. One party cannot unilaterally or arbitrarily change the provision of the collective agreement. Therefore it is a mandatory requirement for the company to follow the provision of the collective agreement. In this instant dispute it is obvious that on 18.12.2000 when these employees reported for wok they were refused work by the Production Manager. On that incident the company violated the provision of the collective agreement. By which the employee's right to work was denied by the company. Thereafter the company's position was in the afternoon that the employees were informed that they could commence employment according to the normal working hours. But, the employees denied this position and stated that they were not informed anything about the working hours by the management. It is also elicited that the company didn't inform its decision in writing to the union or to the employees. The company's position was that the workers were orally informed. This cannot be accepted because an important issue as regard to the terms and conditions of employment cannot be implemented orally. If the company wishes the employees to commence work according to the normal working hours it could have simply intimated to the workers in writing. Then union initially intimated to the company to the effect that their members are not willing to accept the new working hours. The said document was marked as A12 dated 18.12.2000 and the position of the union was informed to the Commissioner General of Labour too. Therefore the position taken up by the company as regard to the intimation to the workers is unacceptable. Therefore the company constructively terminated the services of the workman on the18.12.2000 itself by not allowing the workers to commence work according to the normal working hours. After the refusal in the morning by the Production Manager the employees were not informed about decision of the management. Consequent to this incident the employees remained at the premises of the company. The reason given by the employees were that they had fear to leave the factory because there would be locked out for these employees. Thereafter the company issued charge sheet individually and their services were terminated on the basis that :

(i) Failure to attend normal duties.

(ii) Remaining an unlawful occupation of the company factory premises.

(iii) Causing disruption to the company operations and loss to the company.

(iv) Conduct of violation of your terms of employment and all these acts were described as misconduct by the employer.

As I mentioned earlier I am of the view that the workman were not allowed to do their normal duties on 18.12.2000. It is accepted that they were in occupation of the company factory premises from 18.12.2000 to 26.12.2000. But they were not involved in any legal activities during the period of occupation in the company factory. As regard to the loss to the company the incident happened due to the fact that the company didn't consult the CMU as regard to the new arrangements. As regard to the violation of terms and conditions the workmen never violated any terms and they were prepared to work according to the collective agreement at the normal working hours. Therefore, subsequent charge sheets and the inquiry were an eye wash and the services of the workmen were terminated unlawfully and unjustifiably. Therefore, the workmen are entitled for relief."

The union prayed for reinstatement in its statement of claims. Initially 8 employees were party t this arbitration. Later two of them W. D. Upali and W. M. P. Perera resorted remedy by seeking relief from the Labour Tribunal. Therefore, union prayed to grant relief to the rest of the workmen (6). Therefore I order the company to reinstate the workmen

(i) P. A. L. Premaratne
(ii) R. S. Kanaththawatte
(iii) P. R. Liyanage
(iv) S. A. Rupasinghe
(v) D. P. Meemanage
(vi) D. L. P. L. Dayaratne

with effect from 28.02.2008. The union further prayed for back wages for the period of non employment. I am not inclined to award full back wages for the period of non employment. Considering the entire circumstances and the long delay of this award the company alone is not responsible. The services of the workmen were terminated in the Month of December 2000. I award 4 years salary as back wages for each of the workmen. The salary of the workmen according to the statement of employer was —

P. A. L. Premaratne	Rs. 7763.00	Rs. 7763.00x48	=	Rs. 372,624/-
R. S. Kanaththawatte	Rs. 6753.50	Rs. 6753.00x48	=	Rs. 324,168/-
P. H. Liyanage	Rs. 7942.50	Rs. 7942.50x48	=	Rs. 381,240/-
S. A. Rupasinghe	Rs. 6564.50	Rs. 6564.50x48	=	Rs. 315,096/-
D. P. Meemanage	Rs. 7051.00	Rs. 7051.00x48	=	Rs. 338,448/-
D. L. P. L. Dayaratne	Rs.6564.50	Rs. 6564.50x48	=	Rs. 315,096/-

Further I award that the workmen should be reinstated at their original positions according to the present salary scale. This award would be come into force with effect from 28.02.2008.

Arbitrator.

M. SRIDARAN.
President of Labour Tribunal No. 13.

Dated at Colombo,
On this 04th day of January, 2008.

02-782

My No.: T23/P/146/2004.

THE INDUSTRIAL DISPUTES ACT CHAPTER 131

THE award transmitted to me by the arbitrator to whom the industrial dispute which has arisen between Mr. W. K. Dissanayake, No. 170/50, Templers Road, Mount Lavinia and Sri Lankan Airlines Limited (formerly Air Lanka Ltd.), Colombo International Airport , Katunayaka was referred by order dated 17.12.2004 under Section 4 (1) of the Industrial Disputes Act Chapter 131, as amended and published in the *Gazette* of Democratic Socialist Republic of Sri Lanka Extraordinary No. 1,374/13 dated 05.01.2005 for settlement by arbitration is hereby published in terms of Section 18 (1) of the said Act.

D. S. EDIRISINGHE,
Commissioner General of Labour.

Department of Labour,
Labour Secretariat,
Colombo 5,
28.01.2008.

T23/P/146/2004.

01. W. K. Dissanayake,
No. 170/50, Templers Road,
Mount Lavinia

And

02. Sri Lankan Airlines Limited,
(formerly Air Lanka Ltd.),
Colombo International Airport,
Katunayaka.

Case No. A/3090

The Award

A dispute between the aforesaid parties had arisen and Hon. Minister of Labour Relations and Foreign Employment by his letter dated 29 December, 2004 referred the said dispute that had arisen between the parties mentioned above for settlement by Arbitration by virtue of the powers vested in him by Section 4 (i) of the Industrial Disputes Act, Chapter 131 of the Legislative Enactments of Ceylon (1956 Revised Edition) as amended by Acts, No. 14 of 1957, 4 of 1962 and 39 of 1968 (read with Industrial Disputes (Special Provisions) Act No. 37 of 1968.

Further the Hon. Minister by the same letter appointed me as the Arbitrator for the said purpose.

The Commissioner of Labour by his letter dated 17th of December 2004 has set out the matters in dispute between the aforesaid parties as follows. According to the said letter the matters in dispute between the aforesaid parties were :

(1) "Whether Mr. W. K. Dissanayake who served as the Line Maintenance Manager of Sri Lankan Airlines Ltd. (formerly Air Lanka Ltd.) is entitled to receive a sum of Rupees Thirty-two Thousand (Rs. 32,000) per month as Engineer's Approval Allowance for the period of 01.01.1998 to 31.12.1998 if not, what relief he should be granted.

and

(2) Whether Mr. W. K. Dissanayake is entitled to receive a sum of Rupees Forty-eight Thousand (Rs. 48,000) per month for the period of 01.01.1999 to 15.09.1999 in terms of the Scheduled Collective Agreement between the Association of Licensed Air Craft Engineers of Air Lanka and Air Lanka Ltd. If not, what relief he should be granted."

Both parties stated above have submitted a detailed statement that has lead to the dispute in terms of the Regulation 29 (i) under Industrial Disputes Act.

The party of the 2nd part namely Sri Lankan Airlines Ltd., while admitting the employment of the 1st part namely W. K. Dissanayake inter alia took up the position that the workman was sent on compulsory leave with effect from 28.01.1998 and the workman was also sent a show cause letter after which a Domestic Inquiry was held and the workman's services were terminated on or about 15th September 1999. The said statement further has stated that the allowances claimed in both Matters in Dispute (1) and (2) is the approval which is paid to employees who hold a licence and who are therefore qualified to grant approval for certain type of Air Crafts and who were performing the functions of granting approval in the respondent Company. The respondent further stated that the said approval allowance is not a part of the salary and is payable only if the employee concerned is called upon to grant the required approvals and the policy of the respondent Company is not to make payment of the said approval allowance to employees who are not performing the function of giving approvals. It further stated that an employee is required to work and earn the approval allowance. If further said that the workman was on compulsory leave during the period 28.01.1998 to 31.12.1998 and did not carry out the said function of granting approvals and therefore the workman is not entitled to this approval allowance for the said periods referred to in the terms of reference. In the said 1st Statement of the party of the 2nd part namely Sri Lankan Airlines Ltd. raised a preliminary objection pointing out that as an identical/similar matter in dispute is before the Labour Tribunal and therefore the arbitration cannot be maintained in law urging the matter before the arbitration should be dismissed.

However, on going through the application made to the Labour Tribunal 1 rejected this preliminary objection since the workman had gone before Labour Tribunal in regard to the alleged unjust termination of his services – also holding that the question of granting approval allowance was not before the Labour Tribunal also holding that such matters cannot be dealt with by Labour Tribunals.

With the result I went ahead with the hearing of the case. The workman Dissanayake gave evidence and the Learned Counsel for respondent for the employer cross-examined the workman emphasizing on qualifications of the workman which gave the workman the mandate involved in granting approval allowance. During this exhaustive cross-examination the workman produced the necessary documents such as Air Craft Maintenance Engineers' License and the Duty Charge and there was no conflict about the workman's ability to grant approval allowance.

The emphatic point asserted by the respondent was that the workman during the periods set out in the terms of reference was that when an Engineer is on compulsory leave such Engineer was not entitled to approval allowance.

The Learned Counsel for the respondent marked and produced the letter dated 28th January, 1998, the Charge Sheet served on the workman containing nine charges and placing the workman on compulsory leave with immediate effect. He emphasized the point contained in the said charge sheet that the workman was strictly prohibited from entering any of the Airlanka premises. Per (A19)

The only witness for the respondent Company was the Manager, Human Resources (Legal), Mrs. Rohini Srimali Ethal De Silva who very vehemently asserted that when an Engineer is sent on compulsory leave such Engineer was not granted any approval allowance at any time. She cited the case of D. A. R. K. Gunawardana whose approval allowance had been stopped for the period of compulsory leave. She gave reasons as to why approval allowance was not allowed for engineers who are on compulsory leave.

This strong stand taken by the respondent's Human Resources, Manager who is an Attorney-at-Law with a long service for about 18 years was not challenged or cross-examined on this all important aspect, namely ; those who were on compulsory leave was not granted approval allowance any time of the respondent Company. At least for

the workman she should have been questioned or asked to give reasons whether D. A. R. K. Gunawardana had special grounds to be sent on compulsory leave, distinguishing the grounds from the situation of the workman in this case.

I am of the view that the implications of compulsory leave and annual leave should have been separately dealt with. The fact that approval allowance was given to those who were on annual leave does not fall to the category of those who were sent on compulsory leave. In the case of annual leave there is no prohibition of such workman to enter the employer's work place as in the case of an employee sent on compulsory leave.

I am inclined to disagree with the conclusion of the Deputy Commissioner of Labour (Special Investigation) because I think the Learned Deputy Commissioner of Labour has not gone deeply into the implications of annual leave and compulsory leave. In the case of compulsory leave a workman is completely shut out from entering the work place. This prohibition of entering the premises was imposed on a workman in view of a disciplinary inquiry was afoot. Granting approval allowance cannot be merely gratuitous.

In the circumstances I hold that the workman Mr. W. K. Dissanayake is not entitled to the Engineer's approval allowance during the period of his compulsory leave. In view of such findings, Mr. Dissanayake is also not entitled to his claim No. 2 of the terms of reference.

K. A. D. B. KARUNARATNE,
Arbitrator.

at Colombo,
Dated 19th of December, 2007.

02-784

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