**SPECIAL ISSUE**


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GAZETTE NOTICE No. 4047

THE INDUSTRIAL COURT

*(Second Division)*

CAUSE No. 13 OF 1965

*Parties*:

The Transport and Allied Workers' Union—(Claimants)

and

International Aeradio (East Africa) Limited—(Respondents)

*Issues in Dispute*:

Claims by the Union in respect of alteration of existing terms of service affecting:—

(i) Working week.
(ii) Shift working.
(iii) Overtime.
(iv) Night duty allowance for Watchkeepers.
(v) Public holidays.
(vi) Sick leave and Medical benefits.
(vii) Annual leave.
(viii) Annual leave travelling allowance.
(ix) Wage rates.
(x) Housing allowances.

1. The issues in dispute were referred to the Industrial Court for settlement in accordance with the provisions of the Trade Disputes Act, 1965.

The Parties were heard in Nairobi on 5th and 6th August, and 7th September 1965. The Union called two witnesses and the Employers three witnesses.

2. The Transport and Allied Workers' Union (hereinafter referred to as the Claimants), have been recognized by International Aeradio (East Africa) Limited (hereinafter referred to as the Respondents) as the sole negotiating body representing all their workers, with the exception of supervisory staff, as defined in the current K.F.L./F.K.E. Agreement, on terms and conditions of service matters, since May 1962. The Respondents have two distinct departments of operation. 1—Communications, which operates on a round-the-clock basis in accordance with international practice and 2—Printing, where work is carried out in competition with other Printing Companies in Kenya. Disagreement arose over the issue of Wages included in the Claimants' memorandum of proposals on new terms and conditions of service to the Respondents, as a result of which the Claimants refused to negotiate on other issues. Both sides agreed to refer all the above issues to the Industrial Court for settlement.

MAIN SUBMISSIONS BY THE CLAIMANTS

3. (i) The Claimants submitted that the present system of having two actual working weeks of 39½ hours and 42 hours for the Printing Department and the Communications Department respectively, within one Company, was confusing. Workers in the Printing Department worked a five-day week of 39½ hours, whereas in the Communications Department work was carried out on a rotation of four shifts which added up to 42 hours in a full seven-day week. Previous to signing their Recognition Agreement, the Respondents had had a standard 42-hour week for all departments. The current standard 45-hour week which bore no relation to the actual working week was a devise of the Respondents to deprive workers of overtime. It was claimed that East African Airways had a standard 42-hour week. The Claimants demanded a uniform week related to the actual working weeks of both Departments and submitted that this should be of not more than 39½ hours. The Court was requested to award accordingly.

(ii) The Claimants stated that they were fully aware of the important work done by the Respondents and that work had to be done throughout the whole 24 hours in the Communications Department. In the Printing Department normal hours were worked, but there was a good deal of shift working. To be eligible for the 20 per cent premium of basic salary to compensate workers who were called upon to temporary shift arrangements, workers, at present, had to complete a four consecutive weeks' cycle. The Claimants agreed to the 20 per cent premium payment but asked the Court to award that this should be payable to a shift worker whether or not he had completed a four consecutive weeks' cycle.

(iii) and (v) Any employee who worked over and above the 39½ hours normal working week (claimed above in item (i)) the Claimants demanded should be entitled to overtime at one and one half times the basic hourly rate applicable to the particular employee concerned. And any employee required to work on Sundays and Public Holidays should be entitled to double time worked. Current rates of one and one quarter and one and one half respectively were not in keeping with normal practice in industry and the Court was requested to award in accordance with their demands.

(iv) A night duty allowance of Sh. 6 was no longer adequate to meet the cost of refreshments required by workers on night duty, the Claimants submitted. Meal snacks cost about Sh. 5, and coffee at least Sh. 1 a cup. Night shift workers required two meals during the night duty. The Claimants pointed out that East African Airways provided their staff with free meals. The Court was requested to award a night duty allowance of Sh. 10.

(vi) The Claimants demanded that employees who had completed their probationary period of service should be entitled to three months' sick leave on full pay and a further three months' sick leave on half pay in any completed 12 consecutive months, subject to the production of a medical certificate from a Government Hospital or a Registered Medical Practitioner. Further, that the same employees and their families should be refunded all fees charged by Registered Medical Practitioners, Council Dispensaries, Government Hospitals, etc., for consultations and treatment in respect of all illness and accidents.

(vii) On annual leave the Claimants asked for 24 working days with full pay for all employees who had completed 12 consecutive months' service. And in the case of employees with four years' service and over, 30 working days with full pay. Also, that an employee should be entitled to accumulate the leave earned in any two years. Where an employee's services were terminated for any reason other than gross misconduct before he had completed 12 months' service, he should be entitled to two days' leave for each month of completed service. It was stated that the East African Airways already granted 24 working days annually to their staff and negotiations were going on to have this increased, and that the Kenya Co-operative Creameries gave increased leave after an employee had completed three years' service. Such leave was found necessary to ensure that employees had had a proper rest. The Court was requested to award as stated.

(viii) It was claimed that non-Union, non-African staff were granted 30 working days' leave annually, and free air passages for themselves and family. Those Asians who were Union members were denied all such privileges. In addition, it was claimed that all 33 Europeans enjoyed a £25 bonus. Union members of the Printing Department were bluffed with refreshments and soda and beer at the end of each year, whilst employees of the Communications Department got nothing but were forced to work during holidays whether they liked it or not. The Claimants asked the Court to award a Sh. 120 travelling allowance to all employees proceeding on leave in addition to the 90 per cent concession on air passages now available to employees, and that this concession should include the employees family.

(ix) The Claimants submitted that the Respondents: (1) underpaid their workers; (2) discriminated and had racial wages scales; and (3) had stopped salaries review contrary to staff notice No. 3/63. The minimum wage paid to general labourers was Sh. 200 per month consolidated, which was not sufficient to provide for the employee and his family. The Government paid their subordinate staff in Nairobi a minimum wage of Sh. 200 per month plus a housing allowance or a free house.

Non-Africans, it was stated, received a Sh. 60 per annum, or 5 per cent of salary, increase annually. A locally trained European was paid more than Sh. 1,700 per month whereas his African counterpart received only Sh. 500 per month. New wages proposals for both Departments were placed before the Court.

The Communications Department was said to be the most important Department, and it was from the work carried out by this Department that it received the word "International". Here was where the skill of the African workers could be seen, in their handling and operations of complicated machines. In fact, Africans were doing similar work to non-Africans in this Department, but were not drawing equal pay. The Respondents' wages schedules were stated to be discriminatory. Instances were quoted where the Respondents were alleged to have taken over communications work from certain international airlines and were now paying their own employees a fraction of what the same international airlines had paid to their operators. To help them get their wages facts straight the Claimants had suggested that the Respondents should consider the wages as paid by other companies; study the Pratt Report and compare relevant points, and change from a consolidated wage to a wage plus a housing allowance. Europeans, it was stated, had a separate house allowance. The Court was asked to award wage rates as contained in the memorandum submitted to the Court.

(x) The Claimants demanded a 25 per cent of basic salary housing allowance to all employees. They claimed that European members of staff, whether locally engaged or expatriates, received a housing allowance varying to more than Sh. 800 per month, and that those who did not wish to draw housing allowance were provided with Company flats or houses fully furnished. No such facilities were offered to the African or Asian members of staff. The Court was requested to award as above.

In conclusion of their case the Claimants pointed out that the appointment of an African Personnel Officer with the full background and understanding of the African workers would go a long way in furthering good labour relations between the Respondents and their employees.

Also as no real Africanization programme had been started, the Claimants demanded that the Respondents should arrange training projects to enable Africans to take over jobs now done by non-Africans.

Replying to the Respondents' arguments on a document in the Respondents' memorandum marked section 5 (*d*) and (*e*), the Claimants submitted that it was unfortunate that the Respondents had based so much of their case on the authenticity of these sections as they had no knowledge that such sections were supposed to be embodied in any of their Agreements.

The Court was asked to award that the effective date of the new agreement be with effect from 1st February 1965 as negotiations on new terms and conditions of service had commenced in February.

MAIN SUBMISSIONS BY THE RESPONDENTS

4. (i) On behalf of the Respondents it was stated that the present position in the Printing and Engineering Department was that it had a basic working week of 39½ hours with an arrangement that any time worked in excess of 39½ hours up to 45 hours per week should be paid for at plain time rates and that thereafter overtime rates would apply. In the Communications Department, owing to the operation of a shift system which must work in close association with East African Airways, the average working week was 42 hours, and here also plain time rates was paid in addition for any hours worked between 42 hours and 45 hours, and overtime rates commenced after 45 hours in each week. The Respondents submitted that a 45-hour working week was a fair and reasonable working week and corresponded to the average throughout Kenya, and that the employees were fortunate in having a lower working week in order to correspond with the peculiarities of their operations, and that they were always paid plain rates for any hours worked in excess of their normal week up to the basic week of 45 hours. It was respectively submitted that the Court should continue the present practice.

(ii) Shift working was a necessity, the Respondents pointed out, in order to enable them to correspond to the activities of the international airlines using Nairobi Airport, and it was submitted that the present arrangement made full provisions for compensation to the workers for working in shifts. The Claimants had endeavoured to substitute 35 hours per week for a maximum of 45 hours per week, and the Court was requested to maintain the present maximum working week of 45 hours. The Claimants, it was stated, had excluded the words in the existing agreement—"it does not apply to staff on watch-keeping duties"—and the Respondents emphasized that the question of watch-keeping was an international practice and any variation in Kenya would also affect their operations throughout the world. The present shift system allowed for an average of not more than 42 hours per week and the rate of wages paid to such people fully compensated them for the unusual hours. The Claimants had also ignored the present arrangement which provided for a minimum of one normal shift working day for a minimum of four consecutive weeks, and the Respondents submitted that they must retain the term minimum of four consecutive weeks.

(iii) and (v) The Respondents submitted that their present arrangement of one and one quarter times the basic hourly rate fully compensated the workers for overtime worked on days other than Sundays and gazetted holidays. In respect of Sundays and gazetted holidays it was submitted that the Court must consider the special case of the Respondents who must have a number of employees working every Sunday and gazetted holiday in order to cope with the international air traffic, and that therefore, this type of working was associated with the terms of employment of the workers concerned, and that they were thus fully compensated when they were paid at the rate of one and one half times the basic rate for work carried out on these particulars days.

Should the Court vary the overtime rates it was submitted that overtime should then be paid on the official working week and not on the actual working week as at present.

(iv) On the night duty allowance the Respondents submitted that the worker was fully compensated by the payment of Sh. 6 for each night as he must be on continuous duty and was unable to have time off to obtain a meal during the night. The Sh. 6 allowance fully compensated him for providing sandwiches or other light refreshments which he required. It was their submission that the Claimants had not established grounds for any increase.

(vi) The present agreement on sick leave allowed for 30 days' sick leave on full pay and a further 15 days on half pay and the Respondents submitted that this agreement was generous and higher than the average amount of sick leave granted by Industrial Companies in Kenya. They rejected the Claimants' demand for increasing the half pay period to 30 days.

(vii) It was stated that the Respondents were already granting a higher amount of annual leave than most companies in Kenya. Statistics proved that 40 per cent of industrial companies were providing 15 days' annual leave, or less, and of the remainder, the majority were still not higher than 18 working days. It was submitted that the present arrangement of 21 consecutive days should continue. On accumulation of the holiday entitlement the Respondents submitted that it would be difficult to carry out their operations if all workers were allowed to accumulate their holidays and take several months leave at one time. In the Printing Department leave may be accumulated to a maximum of two years' entitlement. It was submitted that the present arrangement should continue whereby the Respondents had agreed to give sympathetic consideration to any individual requests for accumulation. The Claimants had failed to prove, in their submission, that the Respondents had not reasonably operated this practice in the past. The Claimants had also requested that employees with six completed months' service, or more, should be entitled when discharged, to leave of two days for each month of service. This, it was stated, was not normal practice and it was submitted that the present arrangement of 1½ days' paid leave in such circumstances was more than generous.

(viii) The Respondents submitted that through their connexion with the airlines they had been able to obtain a valuable concession for all their employees as a result of which they received a 90 per cent reduction on all travel by air. They contended that the privilege of travelling at only ten per cent of the normal fares made it unnecessary to increase the present Sh. 20 leave travelling allowance.

(ix) and (x) The Respondents submitted that they had no intention of making proposals on the question of a House Allowance. Clause 2 of the current agreement showed that the negotiations in 1964 were in respect of a consolidated wage and they intended to pursue this policy. This practice was in line with Government thinking as it was known that the new proposed statutory minimum wages for Kenya would be on a basis of consolidation. It was also held to be improper for the Claimants to agree to a particular policy and then to abrogate that policy at will merely for the purpose of obtaining an advantage in bargaining.

On the question of wages it was irrelevant, the Respondents stated, that the demands of the Claimants were at a completely unrealistic level. And, had they been prepared to negotiate, the figures submitted by the Claimants offered no starting point. However, the Respondents stated, they were not disposed to argue on this aspect. The real point was that the Claimants, in submitting demands, were themselves in breach of a signed agreement in respect of the maintenance of wage level. They quoted section 5 (*d*), which they maintained was part of that agreement, as follows:—

> "The Union further undertakes that any negotiations in respect of matters shown in clause shall at all times, be based on the relative conditions existing in the appropriate industries in the area (that is communications and printing)."

In the Printing Department the guide was deemed to be the agreement signed by the Master Printers Association of East Africa whose wage agreement was signed on 1st October 1963 with an effective life of two years plus their entitlement under the Tripartite Agreement. For them to negotiate wages in excess of these current levels must amount to economic disaster, as their Printing Department was purely commercial.

In the Communications Department the Respondents conceded that the wage levels showed a less favourable picture when examined in the light of comparable organizations, but they claimed to be entitled to that difference because there was no insistence on the academic qualifications which were necessary to obtain the wage levels in the comparable organizations.

The Respondents further submitted that wages had not stood still since the agreement of May 1964. The Court was asked to note that the wage agreement of May 1964 made provisions for a minimum wage of Sh. 180. Wage improvement was not confined to the lowest level and attention was drawn to the "Continuation of Schedule 'A'" which showed clearly that an increase had been granted at all levels on the anniversary date —December 1964.

It was untrue of the Claimants to say that the Respondents' wage structure was racial. Any existing anomaly, the Respondents argued, was a relic of the past. Expatriates who were subject to transfer to any part of the world were, however, on different terms of service. In Kenya, it was stated, out of a total labour force of 317—239 were Africans, 36 Asians and 42 Europeans.

On the question of effective date, the Respondents submitted that they had always made it clear that wages were not negotiable, in that under the provisions of the Tripartite Agreement, they were entitled to a wage standstill for a period of 14 months after the conclusion of the present agreement. Therefore, it was stated, as the present agreement allowed for a minimum period of 12 months from 1st December 1964, no increase in wages could apply until the 1st of February 1966. The Court was asked to note, however, that they were prepared to discuss the question of wages late in 1965 so that any increases negotiated could apply without delay as from 1st February 1966.

Referring again to section 5 (*d*) which the Claimants refuted as being part of any agreement, the Respondents submitted that they had been called upon to produce a greater burden of proof than ever before in the Industrial Court. When the Claimants said that they had no knowledge of section 5 (*d*) submitted, in the first instance, in a written supplementary memorandum, the Respondents submitted that they should have taken action to refute its existence then, or at the least when they first presented their case. This they had not done and the Court would note that it was not until they, the Respondents had pointed out how important section 5 (*d*) was to the whole case. The Respondents submitted that they had called witnesses to prove the authenticity of the signatures and it was their further submission that this section had no relevance to any other agreement but the Recognition Agreement between them and the Claimants. The Court was requested to take all these facts into consideration when making its award.

AWARD

5. The Court, having given careful consideration to all the submissions and evidence put before it, makes the following Award:—

As the Court is not satisfied that the section referred to as section 5 (*d*) is part of the Recognition Agreement between the Parties, no cognizance has been taken of its provisions.

(i) *Working week.*—Nil award.

(ii) *Shift working.*—There shall be a new definition of "shift worker" as follows:—

"A shift worker shall be an employee who is regularly called upon to work, wholly or partly, hours outside the normal working hours laid down by the Company."

*Note.*—The purpose of this new definition is to ensure that all shift workers receive the 20 per cent shift premium for actual shifts worked and that the 20 per cent shift premium shall no longer be subject to a maximum of 45 hours per week.

(iii) *Overtime.*—Overtime shall be paid at the rate of one and one half times the basic hourly rate applicable to the particular employee concerned excepting work on Sundays and gazetted public holidays, which shall be paid at the rate of two times the basic hourly rate applicable to the particular employee concerned.

(iv) *Night duty allowance for Watchkeepers.*—Employees engaged on watchkeeping duties shall be paid a night duty allowance of Sh. 7/50 per night watch worked.

(v) *Public Holidays.*—As per the Award in (iii) above.

(vi) *Sick leave and Medical benefits.*—Nil award.

(vii) *Annual leave.*—After the completion of 12 months' consecutive service all employees shall be entitled to 21 working days' leave with pay.

This increase shall be reflected in the paid leave entitlement of any employee who is discharged by the Respondents through no fault of the employee.

The accumulation of annual leave shall remain as in the existing terms of service.

(viii) *Annual leave travelling allowance.*—After completion of 12 months' consecutive service all employees shall be entitled to a leave allowance of Sh. 60 once per annum, payable when employees proceed on annual leave.

(ix) *Wage rates.*—All employees shall be entitled to a wage increase as follows:—

| | *Monthly Increase* Sh. |
|---|---|
| Employees earning Sh. 220 per month and up to Sh. 600 per month .. .. .. .. | 25 |
| Employees earning Sh. 601 per month and above | 15 |

Employees earning less than Sh. 220 per month shall have their basic wages increased to a minimum of Sh. 245 per month consolidated.

(x) *Housing allowances.*—Nil award.

6. Effect shall be given to this Award as from 1st June 1965.

Given in Nairobi this 28th day of October 1965.

A. A. OCHWADA, M.P.,
*Vice-President.*

MOHAMED JAHAZI, M.P.,
J. T. WILSON,
*Members.*

GAZETTE NOTICE NO. 4048

THE INDUSTRIAL COURT

CAUSE NO. 21 OF 1965

*Parties*:

The Common Services African Civil Servants' Union

and

The East African Common Services Organization (General Fund Services)

*Issues in Dispute*:

(i) Minimum wage.
(ii) Housing.
(iii) Wages seniority for subordinate staff.
(iv) Alignment of technical and clerical staff.
(v) Abolition of casual labour.
(vi) Negotiating machinery.
(vii) Terms and conditions of service of E.A.C.S.O. workers.
(viii) Victimization of Mr. J. K. Lihanda.
(ix) Items discussed between the Secretary-General and the Union on 26th February and 2nd March 1965.

1. The issues were referred to the Industrial Court for settlement in accordance with the provisions of the Trade Disputes Act, 1965.

The Parties were heard in Nairobi on 29th and 30th July, 3rd, 4th, 5th, 6th, 11th, 12th, 13th, 16th, 17th, 18th, 19th, 20th, 23rd, 24th, 25th, 26th, 27th August, 6th, 7th, 9th, 10th and 15th September 1965. Seventeen witnesses were called by the Common Services African Civil Servants' Union (Kenya) and three by the East African Common Services Organization (General Fund Services).

2. At the beginning of the hearing a Ruling was given on a number of preliminary issues which has been put to the Court on behalf of the East African Common Services Organization (General Fund Services) (hereinafter referred to as the Respondents). The effect of this Ruling was that—

(*a*) four issues—Africanization; Termination of services of Messrs. Opiche and Kasasu; Training Schemes; Union's 8th Annual Presidential Address—were struck out from the issues in dispute;

(*b*) the remaining issues were properly before the Industrial Court; and

(*c*) the Respondents' submission that section 9 (6) of the Trade Disputes Act, 1965, has not been complied with, was rejected.

Also, at the conclusion of the hearing E.A.C.S.O.'s Legal Secretary was granted permission to make a submission that the Respondents were not the proper Respondents in this dispute, etc. Full submissions and the Court's Ruling are embodied in the Award—para. 6.

GENERAL BACKGROUND

3. The General Fund Services (Respondents) is one of the three Administrations which make up the East African Common Services Organization, which came into being on 9th December 1964. On 11th August 1964 an Interim Agreement was signed by the E.A.C.S.O. and the Common Services African Civil Servants' Union (Kenya) (hereinafter referred to as the Claimants) which recognized the Claimants as the representatives of all unionizable staff employed in the General Fund Services (Respondents) of the East African Common Services Organization excluding the Custom Workers in Kenya in all matters appertaining to wages, salaries, terms and conditions of service, Africanization in accordance with the Claimants' constitution and provided for in the negotiating machinery set up from time to time.

On 13th November 1964 the Claimants notified the Minister for Labour and Social Services of the existence of a trade dispute between them and the Respondents and subsequently, as a result of its acceptance by the Minister, a Conciliator was appointed. Conciliation was unsuccessful and both Parties agreed to refer the issues in dispute to the Industrial Court for settlement.

MAIN SUBMISSIONS BY THE CLAIMANTS

4. (i) The Claimants emphasized that of all the issues which were before the Court, Minimum Wage was by far the most important, they would, therefore, be making their explanations and submissions on this issue in great detail. The Court was referred to the meeting of Labour Ministers in Kampala on 20th September 1962 and to their statement on Wages Policy which was as follows:—

"The Ministers noted that in the past East Africa Wages Policy had been based on a low-wage economy. This had been due to the absence of strong Trade Unions and to the weak bargaining position of workers. It had for a long time been believed that a low-wage economy was in keeping with the undeveloped status of East Africa. In some cases no effort had been made to move away from this low-wage economy, but rather to consolidate it and make it the basis for the future. There had been arguments that increases in wages might lead to contraction in investment and even greater unemployment.

Having reviewed all the economic arguments and possible implications the Ministers agreed that the future policy must be based on a high-wage economy and that each East African Government should review its wage structure arriving at a minimum wage that would provide a worker and his family with a reasonable standard of life.

Although Governments would have to give a strong lead in this matter and especially where workers are not yet effectively organized the Ministers agreed in principle that the matter of determining wages should be achieved through free collective bargaining between employers and trade unions. Governments would still, however, continue to have overall responsibility to ensure that the wages negotiated moved along the lines of Government policy, i.e. towards a high-wage economy."

It was the Claimants' argument that the present minimum wage, as paid by the Respondents, was based on a low-wage economy which was contraditory to the high-wage economy policy agreed by the Labour Ministers. And furthermore, that up to the present time, no effort had been made by the Respondents to formulate, never mind, implement a wage structure based on a high-wage economy. The East African Common Services Organization, as the co-ordinating body for all three East African Governments, should set an example to the member Governments by paying reasonable wages which would ensure to their lowest-paid employees a decent standard of living.

The present minimum wages as paid by the Respondents to their subordinate staff, the Claimants maintained, was based on the Kenya Government scales, but there was a very big difference between the subordinate staff of the Kenya Government and the Respondents. There was no law which said that the Respondents must pay their subordinate staff in line with what the Kenya Government paid theirs. Even if there was such a law would it really be fair and reasonable? Subordinate staff employed by the Kenya Government were paid for their services to the Kenya Government, that is one Government, whilst the Respondents' subordinate staff rendered their services to all three East African Governments. Subordinate staff of the Respondents, it was pointed out, were subject to transfer to any of the East African Territories. It was, therefore, unreasonable that the salary of an employee subject to serve three Governments should be equated with that of an employee serving only one Government. It was for these reasons that a much higher minimum wage was demanded for the Respondents' subordinate staff than that paid to any of the member Governments' subordinate staff.

It may be argued that there was no money to pay reasonable wages as the Respondents were not a profit-making concern, but only to provide services to the public; this argument, the Claimants stated, they could never accept as it was only right and proper that the public should pay for all the services provided by the Respondents.

In further support of their claim for higher wages the Claimants submitted that the cost of feeding a prisoner in Nairobi in December of 1960 amounted to Sh. 168/75. This figure, it was stated, was based on a standard which did not include sugar, milk, bread, recreation and entertainment, household operation, furniture and furnishing and other miscellaneous services normal to an ordinary worker. Since then, the country had become independent.

The achievement of political independence has produced social and physiological changes as well as political ones. It was, therefore, very true that the need of the workers and their aspirations had also grown. There was also increased interest in following political and current affairs and this meant the additional cost of newspapers, radios, etc. A worker was also required to pay his tax and educate his children. All these were normal expenses to a worker in addition to the purchase of food. But, the Court was reminded, five years had elapsed since the cost of a prisoner's food amounted to Sh. 168/75 a month, and although no figures were available for 1965, it was reasonable to assume that that figure must have increased by more than 50 per cent to something like Sh. 252 per month. Much more then, it was submitted, must the cost of a worker's expenses have increased during the same five years, what with the cost of education, tax and other commitments brought about by the "wind of change". A reasonable additional figure was considered by them to be Sh. 280 per month. When the equivalent cost of a prisoner's food estimated at Sh. 252, and the cost of a worker's other necessities, were added together, it gave a more realistic cost figure of a worker's minimum requirements today.

There was also the problem of malnutrition which was the direct consequence of insufficient and proper food, the Court was told, and an extract from the Child Welfare Survey of Kenya Report was quoted as follows:—

"The Child Welfare Survey of Kenya, under the Chairmanship of the Hon. Humphrey Slade, M.L.C., and comprised of an expert committee including a professional Sociologist, has proved conclusively that the most serious health and welfare problem in Kenya is malnutrition and protein deficiency. Protein in Kenya consists of milk and meat, poultry and eggs. How it is possible for the average worker to feed his children on these protein foods, required particularly at weaning when as we will show his income does not enable him to keep his dependents at a standard received by prisoners in H.M.P.? Milk and meat are both surplus products in Kenya and yet the mass of the working Africans are unable to purchase these foods for their children. An indirect result of malnutrition and protein deficiency is the high incidence of malaria, intestinal parasites and intestinal disorders. Between these three factors, the child infant mortality rate among Africans today is nearly 40 per cent of all children born before they reach the age of two years. Africans are aware of the need to supply proper foods for their children. A pint of milk a day in other parts of the world is considered absolutely essential for growing children. A pint of milk a day would cost approximately Sh. 20 per month. The average African worker has two children in this age group. How is it possible, on the minimum wage, or the wage at present paid by Government for an African to spend Sh. 40 per month on milk, or even Sh. 20 per month for that matter? The surplus of meat and milk products in Kenya on the one hand, and the high infant mortality rate, the incidence of malnutrition and kwashiakor on the other, is an indictment, stark, realistic and final of the Kenya Government's wage policy. There is much evidence to support the above statement. It is sufficient to mention that the Minister for Health, Mr. J. N. Muumi, in his speech on opening the Caltex Children's Home at Ruringu, emphasized the high degree of malnutrition and the pressing need for the children in Kenya to have milk one of its staple products and yet an item of diet denied to the families of African Government servants, because of a wage which does not provide for the basic necessities of life."

The Court was asked to note that one of the reasons why workers fought for independence was because of social and economic injustices that existed in the Colonial days. There could, therefore, be no justification of the workers' struggle for independence without radically progressive social and economic changes. The workers were the people who were building the country and this could not be done on an empty stomach.

It was the Claimants' submission that, to be fair and reasonable, the Respondents' subordinate staff should be paid more than twice the salary paid by the Kenya Government to their subordinate staff and, secondly, that they must receive a salary which was much more than the cost of feeding a prisoner. A reasonable minimum wage for the subordinate staff, exclusive of the Customs workers, was Sh. 350 plus a housing allowance. The Court was requested to award accordingly.

(ii) Housing, before the introduction of the Pratt Report, was the responsibility of the Respondents and that this had been so, the Claimants maintained, was due to the fact that the salaries paid by the Respondents to their staff were too low to meet the expenses of renting housing as well as providing for themselves and their families. After the Pratt Report the Respondents, for reasons best known to themselves, instituted a system whereby their employees paid part of the cost of the houses they occupied and this cost would be increased annually until a time would come when their employees would have to bear the full rental cost of the houses they occupied. It was wrong that the employees should have to bear this additional burden. The Secretary-General had informed them that he was aware of the difficulties which officers would experience when the housing privilege would be completely withdrawn. It was the Claimants' submission that, since the Respondents were aware of the difficulties which their employees would face over the complete withdrawal of the housing privilege, they should continue to accept full responsibility for housing as previously. To do otherwise would be unwise and unreasonable and not in the best interests of the Respondents.

(iii) The Claimants submitted that the present system, as practised by the Respondents, of paying senior and junior subordinate staff the same salary, was unjustifiable. An employee by virtue of his long service knew more about the job than junior employees. This system did not recognize the experience of senior staff and naturally they felt that they were being exploited. Something should be done to remove this injustice. The services being rendered by the subordinate staff were just as important as any of the other services of the Respondents. It was submitted that there should be wage seniority in the subordinate service and that the only fair and reasonable way of doing this was by means of yearly increments. It was further submitted that, as a sign of appreciation and confidence in the senior subordinate staff, increment arrears should be paid as from the date of engagement. The Secretary-General was aware of the problem according to a letter which he had sent to the Claimants. It was the Claimants' view that the Court should find little difficulty in making a favourable award.

(iv) The issue in dispute appearing under the heading "Alignment of Technical and Clerical Staff" was unfortunate on the part of the Respondents, the Claimants submitted. They felt that they should not condemn the Respondents but rather pity them. The problem was that the Technical and Clerical Staff were all grouped under one scale; this they considered to be just too unfair. It was completely unimaginable that the Technical and Clerical professions should be grouped together in one way or another for the simple reason that one could do a clerical job without training, but one could not do a technical job without training. Such an arrangement was unfair to the technical staff who had spent a great deal of time in

learning their trade. The technical staff, in addition, it was pointed out, worked strenuous shift hours involving night shifts and working on Public Holidays. Their work was exacting and required much thought. Despite all this, technical staff were not even paid abnormal hours allowance nor shift duty allowance. The Claimants submitted that the technical staff should be given a higher grading scale than that of the clerical staff—a half salary more than the clerical staff. Shift allowance or abnormal hours allowance should also be paid in addition to normal rates.

(v) It was time that the employment of workers on a casual basis was abolished, the Claimants submitted. The Claimants quoted a statement which was made by the three Labour Ministers on 20th August and which was as follows:—

"The Ministers discussed certain aspects of ticket and daily contracts which tended to show wastage in labour resources in that some workers and employers took advantage of the system, and absenteeism was particularly noted where this system was in practice. As new countries urgently striving for economic growth, East Africa cannot afford such a luxury. The aim must be maximum utilization of all the labour resources available and to ensure maximum production at all times. All the Governments are to study fully this question and take appropriate action."

The Claimants contended that the Ministers' statement was on behalf of not only the East African Governments but also all non-Government bodies and firms operating in East Africa. The employment of labour on a ticket or daily basis was not only a luxury unsuited for East Africa as had been seen by the Ministers, but had been used during the Colonial days for exploiting labour for Colonial ends. All East African people, and more especially the workers, championed the cause of the anti-Colonial struggle until independence had been won for all of the East African countries. The workers and the present leaders of the East Africa Nationalist Governments all fought together, vigorously, against the evils of colonialism. Under such a system an employer could dismiss a worker without any reason and without notice even if a worker refused to clean his shoes or wash his car. Now, all the East African countries were free and the Governments were all theirs. All people worked together for the prosperity of the Nations and happiness and welfare of all the citizens and workers. The question of exploiting one another must be ruled out once and for all. What was needed, they submitted, was consolidation of the country's political and economical achievements.

Furthermore, the Claimants maintained, workers employed on a casual basis were in no position to contribute effectively to Nation building because of the very insecurity of their contracts. They could see no reason, they stated, why employers continued to employ workers on a casual basis and especially the Respondents who were the co-ordinating body for the employment of Civil Servants for all the East African Governments. It was their submission that if any body should set an example in ending such a luxury, and any Colonial system, the Respondents must be the number one.

Another matter which the Court must decide was whether what the E.A.C.S.O. called casual labourers were in fact casual labourers. The law described a casual labourer to mean "any person the terms of whose engagement provide for his payment at the end of each day and who is not engaged for a longer period than twenty-four hours at a time". Witnesses had been called to prove that there were no such employees on these terms. The Claimants submitted that—

(*a*) E.A.C.S.O. should be prosecuted for under paying the labourer on pretence that they were employed as casual labourers;

(*b*) all those employees whom the E.A.C.S.O. alleged to be casual labourers be paid as the Subordinate Staff with effect from the date of their engagement; and

(*c*) all those employees who were dismissed on the E.A.C.S.O.'s pretence that they were casual labourers be reinstated and also compensated.

In any case, the system of casual labour or so called casual labour should be abolished, as there was no room for it in East Africa and especially within the E.A.C.S.O., and all workers who had been, and those who still were, on so called casual labour terms converted into the subordinate service. Even the Secretary-General himself, it was stated, had expressed his appreciation for the need for such a conversion. The Court was asked to award accordingly.

(vi) A very important aspect of the Respondents' efficiency, as far as industrial relations was concerned, the Claimants submitted, was the establishment of satisfactory negotiating machinery. They claimed to be unlike most other trade unions in East Africa. They considered themselves to be one of the most responsible trade unions in East Africa.

The present Interim Agreement made provisions for negotiations at Departmental level to be under the Chairmanship of the Respondents' departmental directors, and at National level to be under the Secretary-General. The problem was that under such an arrangement the Claimants always negotiated at a disadvantage. Both parties should negotiate as equals, it was submitted, as this was the only way in which workers' cases could be effectively represented. As the Departmental Director was the person responsible for recommending promotions and dismissals of staff under him, the Union's representatives, who also worked under the same directors, found it impossible to effectively represent their Union in Departmental Staff Committees for fear of being dismissed, or not being recommended for promotion. The Claimants demanded the establishment of modern and standardized negotiating machinery which would provide for the election of a Chairman, for the particular negoitating body, from among its members of Management and workers' representatives. Such negotiating machinery would ensure equality of representation.

The Claimants placed before the Court a model constitution headed "the Negotiating Council between the E.A.C.S.O. and the Common Services African Civil Servants' Union (Kenya)", which they had prepared and which set out negotiating machinery and procedure of the kind they had in mind.

(vii) It was submitted by the Claimants that service regulations which were drawn up during imperialist days still applied to the East African Common Services Organization of the three self-governing territories. Even the name East African High Commission was merely being blotted out by a stamp marked East African Common Services Organization. This proved, the Claimants argued, that the old Colonial mentality and allotments, of whatever form (e.g. allowance), were still the backbone of the functions of the Respondents.

Whilst the out-moded Service Regulations applied, in general, several changes in service regulations had taken place which had not been included in the old Regulations. One, in particular, was the setting up of a Directorate of Recruitment and Training. Amendments may have been made, they conceded, but they had done little to remove the Colonial ideology dictated by the Service Regulations. Much time had elapsed since the East African Common Services Organization had come into being and a new manual on service regulations was much overdue. Reference was also made to some circulars which, it was stated, tended to revert the existence of the Directorate of Recruitment and Training. They stated that they found it very difficult to deal with the implementation of directions contained in circulars.

Referring to article 78 of the Service Regulations—Hospitality Allowance—they submitted that the rates stated therein were determined for the lowest paid members of staff—probably on Colonial determination to exploit officers, who were receiving such salaries, mainly Africans. And in any case, they maintained, the cost of living had gone up steeply since 1957. Other outdated allowances requiring immediate revision were subsistence and travelling allowances. The Public Holidays in each of the member countries were different, it was pointed out, Kenya had Kenyatta Day and Independence Day which were unique to it alone. The Respondents served the three countries, therefore it was right and proper that they should pay respect to historical days of all three countries. Servants of the Respondents were subject to transfer to any of the three countries, but the cost of living was not the same in each country. Personal taxes also varied.

All such variations made life very difficult for the employees of the Respondents and it was because of such that they called for the setting up of an African Commission to look into all matters on terms and conditions of service.

It was their further submission that the E.A.C.S.O. employees were not unlike the employees of the United Nations who served many countries, but on a smaller scale. They should, however, be considered in that way. Minimum salaries, in any case, should be not less than half as much again as salaries paid in any of the member countries which they served. The Court was asked to award accordingly.

(viii) It was the Claimants' submission that Mr. J. K. Lihanda was victimized by the Respondents because of his Union association. Mr. Lihanda, they stated, was an Overseas Cambridge School Certificate holder and had seven years' experience with the Respondents. He had trained more than 15 new entrants as well as given refresher knowledge to serving officers. On 26th November 1962, Mr. Lihanda met with an accident and suffered a severe foot injury. Despite a doctor's certificate, it was claimed, he was ordered to do shift duties. The Chairman of the Meteorological Branch of the Union had made a complaint on Mr. Lihanda's behalf to the Director and that, the Claimants submitted, was the beginning of a chain of forcible efforts to evict Mr. Lihanda from Nairobi.

As a result of confusion and embarrassment, it was stated, Mr. Lihanda lost all claims and compensation arising out of his accident, nor did the Respondents compensate him in any way. When the question of his promotion was settled then came another shattering blow—transfer to Narok. Further difficulties were again encountered by Mr. Lihanda over a straight-forward request by him for transfer to the Income Tax Department. More difficulties again when he inquired about his future prospects and a request for promotion to Scale C6—4. A large number of documents were placed before the Court by the Claimants which they claimed proved conclusively that Mr. Lihanda had been victimized.

The Claimants demanded that (*a*) there should be an end to either direct or indirect cases of embarrassment to Mr. Lihanda now or in future; (*b*) there should be an end to either direct or indirect causes of victimization to Mr. Lihanda now or in the future; (*c*) Mr. Lihanda should be promoted to the C6—4 Scale and back-dated to the time the exchange of correspondence on the subject began, i.e. 31st July 1964; (*d*) Mr. Lihanda should be transferred from Meteorological Department to the Income Tax Department as he had found difficulty in commencing studies for an internally recognized career while he still served in the Meteorological Department and (*e*) there should be compensation paid to Mr. Lihanda for the injury suffered in an accident whilst travelling on duty.

(ix) (*a*) Messrs. Muho and Kamau were Union members employed in the Respondents' Meteorological Department and both were declared to have failed their examination. As there had been strong feeling over this issue the Claimants wrote to the Secretary-General asking for an explanation, but no reply had been received, they stated. The Court was asked to reverse the decision of the Respondents on the examination issue.

(*b*) The Claimants stated that they had informed the Secretary-General that there were officers stagnating in the services in the E5 and E3 grades as a result of being unable to pass a departmental examination although they were fully experienced and were doing their work efficiently. The Secretary-General, it was stated, had said that he appreciated this and that he would review the cases of these officers and endeavour to find ways and means of allowing them to advance. It was evident, the Claimants maintained, that nothing had been done about these hard working and loyal servants.

The claimants demanded that officers on the E5 and E3 Scales with experience be allowed to advance.

(*c*) Although the Secretary-General had assured them that a scheme of higher advancement of the technical staff would be effected nothing, in fact, had been done, the Claimants stated. The bad relations which existed in the Meteorological Department between the Director and other staff was entirely the fault of the Director whose approach and attitude to the staff could no longer be tolerated. It was submitted that the Secretary-General appreciated the need for the existence of good relations between the Respondents and the Claimants and that they had been assured by the Secretary-General that he would take steps to see that the Director was replaced. No action had been taken and the situation had worsened. A serious situation would arise which could well involve the whole of the Respondents' employees the Claimants stated, if the Director of the Meteorological Department was not replaced immediately.

(*d*) At a meeting between the Respondents and the Claimants in December 1964, under the Chairmanship of the Kenya Government's Chief Industrial Relations Officer it was agreed, the Claimants submitted, that the Respondents would issue a comprehensive circular which would reflect the provisions of the items agreed upon at that meeting. It was stated that the Respondents had dishonoured this Agreement. The Claimants demanded that the circular in question be issued without any further delay.

(*e*) It was brought to the attention of the Secretary-General that there were personnel available to Africanize the post of Executive Officer in the Meteorological Department. The Claimants stated that they had been assured, subject to the availability of personnel, that Mr. Mwamisi would be appointed to the post of Executive Officer and that another African would be appointed to understudy Mr. Shad.

It was understood that these posts were to be Africanized immediately. No action whatever had been taken. The Claimants demanded that the post of Executive Officer of the Meteorological Department should be Africanized and another African appointed to understudy Mr. Shad, both appointments to be with immediate effect.

(*f*) The Claimants had discussed with the Secretary-General the need for applying the Nairobi wage scales to Muguga as the workers at Muguga bought most of their necessities in Nairobi. It was stated that the Secretary-General appreciated the need for schedulling Muguga with Nairobi. The Court was asked to make a favourable award.

(*g*) The Claimants submitted that female workers at Muguga were now being paid wages equal to that of men. What they now claimed was that women should be paid arrears with effect from the date of their engagement.

(*h*) The Claimants submitted that, with regard to the conversion of all muster roll employees to the subordinate service and dealt with earlier in their main submission, they wished to record their disappointment that no action had been taken by the Respondents on this issue, up to date.

(*i*) Failure by the Respondents to Africanize the post of Executive Officer in the Income Tax Department was taken by the Claimants to constitute a blatant disregard of the policy of Africanization. One of the items discussed at their meetings of 26th February and 2nd March was the question of the implementation of the Mr. Wand Hatley's Report within the Meteorological Department. The Claimants submitted that the Respondents agreed to implement the Report with effect from 1st December 1964. The Claimants noted with great dissatisfaction the distortion in which posts were distributed with particular reference to the Kenya Forecast Office. It was stated that according to Mr. Wand Tatley's recommendations three posts were to have been created within the Kenya Forecast Office and that there were qualified assistants ready to fill the posts. Unfortunately, the Department deemed it fit to transfer one of the most senior Africans within the Department, after ten months' experience in the Kenya Forecast Office Section, to another section so that he could not get his promotions and transferred someone from a different section to the Kenya Forecast Office section to be trained in order to cover up this discriminatory practice.

The Claimants demanded the promotion of Mr. Apiyo with effect from 1st January 1965 to Scale C6—4 as a means of applying some justice.

(*j*) It was also claimed that since the promotion of 12 officers to the C Grade, 12 more officers were to be promoted to the E2—1 Scale with effect from 1st January 1965. As this had not been done the Claimants demanded that the officers should be promoted right away and that their date of promotion be effective as from 1st January 1965.

MAIN SUBMISSIONS BY THE RESPONDENTS

5. On behalf of the Respondents it was submitted that during one of the meetings between them and the Claimants, it had been indicated that the Claimants would press for a Sh. 350 per month minimum wage, and that it had been repeated in the reply to the Presidential Address to the Claimants' Annual General Meeting. On both occasions, the Secretary-General had pointed out, that the claim would require a decision by the Authority which had determined the present level of minimum wages, and that if the Claimants would care to make out a case for such a phenomenal increase, he (Secretary-General) would readily submit it to the Authority through the Finance Ministerial Committee. The Claimants, it was stated, had agreed to submit a suitable memorandum for submission to the Authority in support of their claim but, it was regretted, no attempt had been made in this direction and the Claimants' memorandum, now before the Court, contained the only argument the Respondents had ever seen. The Court was asked if it was fair that public money, and the valuable time of the Industrial Court, should be wasted on an issue on which the Authority had been given no opportunity to decide one way or the other.

The Claimants' demand regarding a minimum wage was not clearly expressed and it was difficult to discover what was meant by "implementation of the E.A.C.S.O. policy of the high-wage economy", as no such policy decision had been taken and could scarcely be taken independently of the three East African Governments. At best, they submitted, they could make common cause with the Governments in the matter by associating themselves with their decisions. The Claimants, it was submitted, seemed to raise the question of the National Minimum Wage, and, in considering that matter, the Court would pay attention to recent developments in the field of fiscal policy in the three East African Territories. These were the countries that financed the running of the E.A.C.S.O. and each had its own fiscal policy and possibly would develop different national wage policies. It would not be wise at such a time to aggravate what was already a difficult situation by the Claimants asking for higher wage standards than for elsewhere in East Africa. The best they could do was to follow the national wage policy in each state and, it was stated, the Respondents were, in most cases, paying higher wages in each of the three countries than the territorial Governments themselves were doing in regard to their own staff of equal standing. The comparison between the statutory minimum wages in the three countries and the E.A.C.S.O. were given as follows:—

| Kenya | Uganda | Tanzania | E.A.C.S.O. |
|---|---|---|---|
| *Sh.* 120/– | No figure available yet, but would not exceed 120/– paid in the main city Kampala. | *Sh.* 100/– | *Sh.* 125/– |

*Scheduled Areas in Kenya* (*Amount in Sh.*)

| | E.A.C.S.O. | Kenya |
|---|---|---|
| Nairobi .. .. | 200 | 200 |
| Mombasa .. | 200 | 200 |
| Eldoret .. .. | 191 | 191 |
| Kitale .. .. | 190 | 190 |
| Kisumu .. .. | 190 | 190 |
| Thika .. .. | 187 | 187 |
| Nakuru .. .. | 186 | 186 |
| Nanyuki .. .. | 185 | 185 |
| Nyeri .. .. | 185 | 185 |
| Kericho .. .. | 180 | 180 |
| Machakos .. | 172 | 172 |
| Naivasha .. .. | 170 | 170 |
| Thomson's Falls .. | 166 | 166 |

*Scheduled Areas in Tanzania (Amount in Sh.)*

| | E.A.C.S.O./GFS | Tanzania |
|---|---|---|
| Dar-es-Salaam .. | 200 | 150 |
| Tanga .. .. | 200 | 150 |
| Mwanza .. .. | 191 | 125 |
| Arusha .. .. | 191 | 125 |
| Moshi .. .. | 191 | 125 |
| Tabora .. .. | 187 | 125 |
| Dodoma .. .. | 185 | 125 |
| Mbeya .. .. | 180 | 125 |
| Morogoro .. | 172 | 125 |
| Lindi .. .. | 170 | 125 |
| Bukoba .. .. | 170 | 125 |
| Mtwara .. .. | 166 | 125 |

*Townships in Uganda*

| | E.A.C.S.O./GFS | Uganda |
|---|---|---|
| Kampala and environments .. | 200 | 120 |
| Jinja .. .. | 191 | 110 |
| Njeru .. .. | 191 | 110 |
| Tororo .. .. | 187 | 104 |
| Masaka .. .. | 187 | 104 |
| Soroti .. .. | 186 | 84/59 |
| Mbara .. .. | 166 | 84/50 |

It was stated that Uganda had new wage proposals in the offing but that even if these were implemented they would still fall short of what the Respondents paid; these were:—

*Townships in Uganda*

| | E.A.C.S.O. | (Uganda—prepared but not operative) |
|---|---|---|
| Kampala .. | 200 | 152 |
| Jinja, Njeru .. .. | 191 | 145 |
| Tororo, Masaku .. | 187 | 135 |
| Other towns .. | E.A.C.S.O. wage range from 186/– in Soroti to a maximumof166/– in Mbarara. | 135 |

It was their further submission that since their minimum emoluments paid in East Africa were those in force in Kenya Government (which paid the highest minimum emoluments) then it must be presumed that the Kenya Government, which was party to the Kampala Agreement, had adopted it and had implemented it. If that was so, then, because they had adopted the payment of emoluments which matched up to Kenya's, they could not be accused of deviating from the policy of "high-wage economy" as interpreted by the Claimants.

On the question of their staff rendering services for the three Governments, and being subject to transfer to any of the member countries, the Respondents stated that subordinate staff were not subject to transfer to any of the three countries. Mr. Mwaluko, who was mentioned by the Claimants, was transferred at his own request. Subordinate staff of research departments may be posted to Uganda or Tanzania to collect specified species for experimental purposes, but these were usually of a very temporary nature. It was true that subordinate staff served the three Governments, but that this in itself was an insignificant factor in determining their wage. It could not be said that they worked harder than subordinate staff of member countries.

There were certain difficulties which transferred officers could encounter as a result of differing national legislations, but these could always be settled administratively by some understanding between the Respondents and the member Government. There were also the inconveniences and discomforts of a transfer, but the mere raising of the minimum wage could not ameliorate these. Indeed, the Claimants had not attempted to say what percentage raise could be adequate compensation. In any case, such argument did not assist in the question of the raising of the minimum wages as the recipients were unaffected, i.e. they were not subject to transfer.

It was absurd for the Claimants to state that it was unfair of the public to expect free services, as there was nothing like free services rendered by the Respondents' subordinate staff. Their subordinate staff were remunerated at the best level in East Africa.

The Respondents submitted that the Claimants had not indicated from what source their figure on the feeding of a prisoner had been obtained. They stated that their information was that the cost of feeding a prisoner in 1960/61 was £13.82 per annum, £14.56 p.a. in 1961/62, £15.85 p.a. in 1962/63, £14.35 p.a. in 1963/64 and £15 in 1964/65. These were Kenya averages. In any case, the Claimants' argument was pure assumption not based on facts and was of no assistance to the Court in considering the Claimants' demand.

Malnutrition was not always the result of low wages—very often it was the result of ignorance on the part of the parents as to what food to give their babies, e.g. Kwashiakor. These problems were being tackled by Community Development, U.N.I.C.E.F., and currently there was the Freedom-from-Hunger Campaign. The Claimants had assumed that the emoluments currently paid to the subordinate staff could not buy the essential foodstuffs to enable workers to avoid malnutrition among the families of employees. This argument on malnutrition by the Claimants was considered as irrelevant.

The Respondents submitted that they had not denied the fact that Sh. 200 per month was at the moment a relatively low wage. Indeed, they did not consider that it could afford the worker a decent standard of living, but that this was a problem which could not be looked at in isolation and must be looked at in the context of the general standard of economy of the whole country. They referred to page 275 of the I.L.O. publication "African Labour Survey" 1958, wherein it is reported:—

> "In Kenya, statutory minimum wages are properly based on the human needs of workers. The Government's aim is progressively to increase the urban minimum wages currently in force up to a stage where they are sufficient to support a decent standard of life not only for the worker himself but also for his family in the urban environment."

This policy was obviously confirmed by the Kampala Statement of 1962 and they had no reason to believe that this was not the present Government's intention and aim.

How did one go about increasing the minimum wage, which in effect, meant the raising of the standard of living of the worker, the Respondents asked? It was not by spending surplus funds on increased urban wages. Urban wages must be tied up with the overall economic position of the country which supported it. Reference was made to page 291 of the I.L.O. publication quoted above, wherein the following is said about the problem:—

> "Looking at Africa as a whole and accepting the fact that its inhabitants are for the most part engaged in agriculture, it is obvious that there must always be, in the last analysis, a link between the real incomes of wage earners and those of agricultural producers, and that in particular areas the emphasis will vary as between the real incomes derived from subsistence farming and those from production of cash crops. Where there has been considerable development of the latter, with resultant increases in the real incomes of the agricultural section of population, rates of wages in urban areas have been inevitably favourably affected."

The East African Royal Commission of 1953 was also quoted as saying, among other things:—

> "What now emerges is the conclusion that the solution of the . . . agricultural problems is important not merely as a means of achieving better land usage and raising the incomes of the cultivators, but also as a means of contributing to the solution of the problem of the urban wage earner." (Page 148.)

The conventional way of measuring the general standard of living and hence the wealth of a country, upon which the minimum wage must depend, was the *per capita* income. This was, in 1963, £29.4 in Kenya; £23.6 in Tanzania and £24.5 in Uganda. However, they stated, all are aware that many people's earnings are above those figures and many are below it. Their minimum wage earners received £120 per annum (in Nairobi), which was four times as high as the *per capita* income of a large number of the population. The lowest any wage-earner could receive was £73 per annum in the non-scheduled area, which was still over 2½ times the Kenya *per capita* income. The average wage-earner was therefore relatively better off than the other 1.7 million labour force in the country. This was why vacancies were always taken up without hesitation.

They maintained that the solution to problems of urban wages was economic development. A wage which was not supported by the economy of the country was not worth much and invariably resulted in inflation. This was why all the three East African countries had laid so much stress on economic development.

The Respondents pointed out that they had been accused of following a low-wage economy. This was untrue. The ridiculous aspect of it was that they had no economy as such and that they did not pay low wages in comparison with any Public Service in East Africa. The Wages Councils in Kenya, which from time to time set the minimum wage applicable to various industries in the country, made Orders in 1963/64 in respect of specified industries (quoted below). The wages quoted were those which related to unskilled categories of staff in Nairobi and Mombasa as their subordinate staff were unskilled labour.

| Industry | Category of Staff | (Sh. p.m. (excluding housing) | L.N. No. |
|---|---|---|---|
| Wholesale and Retail Distributive Trades. | Labourer, sweeper, cleaner, shopman. | 140/- | 22/64 |
| | Messenger .. .. | 145/- | |
| | Heavy duty labourer | 150/- | |
| | Day and Night Security staff. | 160/- | |
| Footwear .. .. | Unskilled labourer | 128/- | 194/64 |
| Road Transport .. | Driver's mate or loader. | 125/- | 253/63 |
| | Conductor .. .. | 168/- | |
| | Office Messenger .. | 125/- | |
| | Night Watchman or Yard Guard. | 140/- | |
| | Maintenance hand (Greaser, etc.). | 147/- | |
| Motor Engineering .. | Uskilled labour (including cleaner, general labourer, menial office worker). | 140/- | 595/63 |
| Building and Construction. | Outdoor, staff, labourer. | 140/- | 201/63 |
| | Night Watchmen .. | 160/- | |
| | Gardener, Groundsman and Head Shamba. | 160/- | |

Other Orders, they claimed, which they had been able to get hold of, indicated that Government emoluments for subordinate staff were, in fact, just as good as, or better than, those in certain sections of the Private Sector. They did not see, therefore, on what basis they could be accused of not attempting to keep abreast with changes.

It was the Respondents' final submission that the Claimants had failed to establish their claim for a minimum wage of Sh. 350 and asked the Court to award accordingly.

(ii) The recent Pratt Salary Commission recommended certain terms of service for locally recruited staff, and the most important item in the report, the Respondents submitted, was that the Organization must divest itself of the responsibility for housing local staff at the earliest possible date. The Authority, after considering the representations by the Claimants and the Respondents, had accepted the Pratt recommendations, but had decided that the housing benefit should be withdrawn over a five-year period. The Court would be aware that only about a year ago the Claimants' bone of contention with them was that they were accused of delaying the implementation of the Pratt Report. Now, it appeared that the Claimants did not want the most important clause of Pratt, i.e. the Respondents divesting themselves of the responsibility for housing, implemented.

The Secretary-General had already indicated to the Claimants that he was aware of the difficulties which officers could experience when the housing privilege was withdrawn and that he was looking into the possibility of ameliorating the situation. It should be realized, however, that such far-reaching policy decisions taken at the highest level required a great deal of consultation before recommending their review and, it was stated, the Secretary-General was in the process of doing so. It was not correct to state, as the Claimants had done, that the Respondents were responsible for the cost of housing their staff before the Pratt terms of service came into operation. It was true that staff had received a small allowance for that purpose and, in some cases, official quarters at subsidized rents, but that they had paid rent for it all the same.

It was, as its name suggested, an allowance, but, since the salaries had been adjusted upwards at the lower and middle levels, that was no longer considered necessary in the face of other competing claims for the limited funds available. It must be borne in mind, the Respondents argued, that the Pratt terms of service were operating in the Kenya Government and the East African Posts and Telecommunications Administration, and that any changes that the Respondents wished to consider must take into account the likely repercussions throughout East Africa. The Court, it was submitted, should find against the Claimants' demands.

(iii) The wage structure of E.A.C.S.O.'s subordinate staff, as recommended by Pratt, came out in the form of an Establishment Circular No. 44 of 1964. It was not clear what the Claimants had in mind when they claimed "wages seniority of subordinate staff", as it was quite evident that there was a definite progression along the subordinate staff scale and there was no question of stagnating at the entry point. The position was, however, different when one looked at the wage in the Scheduled Areas. There was a possibility that the Claimants were dissatisfied with the revised scale for the subordinate staff in the Scheduled Areas where an Area Allowance, in each of the specified areas, was added to the basic minimum wage to equate the total wage paid to the amount agreed as reasonable for that area. In Nairobi, for example, such a total wage was Sh. 200 per month. Where an officer was engaged fresh in that group he would get, at present, his basic gratuitable salary of Sh. 125 per month and Sh. 75 per month would be his Area Allowance which would bring his total monthly pay to Sh. 200. When such an employee became eligible for the next increment, his Area Allowance would be reduced by the amount so increased and his wage would remain at Sh. 200.

The Respondents realized that the Claimants may not have appreciated that in such areas the subordinate staff were in fact receiving gratuitable increments on their salary scales, but that at the same time their Area Allowances were being progressively reduced. Indeed, it was submitted, such an arrangement had hardly any appeal to the staff affected, because it did not result in any immediate tangible increment at the end of the year which most employees looked forward to. It must, however, be borne in mind that the officers did not stagnate as the Claimants had alleged and that they, in fact, had as fair a scheme as obtained in any other Administration. To expand on the latter contention, they submitted that if a member of the subordinate staff left Nairobi on transfer, say to Nakuru, his basic wage was not affected but his Area Allowance would possibly be reduced and that would look as if he had been demoted; that, of course, was not the case, in fact he was only receiving what was considered to be a reasonable wage for the area to which he had been transferred. However, they appreciated the necessity for indentifying seniority in terms of salary and had already agreed to review the position with a view to adopting a different and perhaps more satisfactory system. That, it was pointed out, would take time as it was necessary for them to consult the three Governments.

The Respondents further submitted that it appeared that the Claimants' case was based on the assumption that subordinate staff acquired experience year by year and should be remunerated for it. The Claimants also assumed that all subordinate staff were now being paid the same basic salary irrespective of length of service. On the question of experience and possible increase in efficiency of the subordinate staff Pratt said: "It was felt by many associations that the Subordinate Scales should be related more to a rate for the job of wage payments than to a long scale. This would avoid the present anomalies." This was one of the reasons why Pratt recommended a nine-point scale for subordinate workers. The Claimants, it should be noted, pressed for the implementation of the Pratt Report without delay and this was the subject of the agreement signed before the Chief Industrial Relations Officer in December 1964. The Respondents considered it curious that the Claimants were now pressing for the return to the old scale.

(iv) There was a Grading Committee which had been established under the Pratt Report, to look into the grading problems that were expected to arise from time to time. The Committee's Report was, in fact, already out and the Claimants' statement, that they had aligned the technical and clerical grades, had been made before that Report had been received. There was no convincing reason in the Claimants' submissions that the technical staff worked harder or had more responsibility than clerical and executive staff. The fact that one category was bench-bound while the other was generally mobile did not in itself prove that one was working harder than the other. The claim, therefore, that the technical staff should get salaries at the rate of half as much again as the clerical staff was, in the Respondents' view, a figure picked out of the blue and they did not intend to conduct their policies in that way. The same applied to the "shift allowance" demand. If the Claimants had looked more carefully into the matter, it was submitted, they would have found that whether the officer worked on shift or not, they worked the same number of hours per week, etc.

The question of non-alignment of technical and clerical work was represented to the Grading Committee and it would be noted at paragraph 11 of their Report that the Committee indicated that there was relatively less promotion prospects for technical officers in comparison with clerical officers, and therefore the technical service should be graded distinctively different. It was hoped that this would be the case when the Report had been studied and implemented in the near future.

Another point that usually determined differences in salary was that of supply and demand of any particular category of staff. In their experience they had had no difficulty at all in recruiting junior technical staff and these officers were not, in any case, more educated than officers recruited at the same level for clerical work. They, therefore, could see no need for special inducement for recruitment purposes. The Claimants had also alleged that their clerical staff members had agreed to be paid less than their technical colleagues. The Respondents submitted that they did not know in what way they would like to be paid. There were only two ways—the first was to increase the salary of technical staff by half, as suggested by the Claimants, and the second was by the reduction of salaries of clerical staff by half. There was no question of increasing the junior Technical Assistants' salaries, as that would involve them in increased costs, which was exactly what they were trying to avoid at this time. The Claimants has not provided a list of signatories and the Court might also like to note that the Claimants were speaking for their members in Kenya only who formed a very small proportion of the staff in the General Fund Services. There were staff in Tanzania and Uganda whose Unions had not

indicated their agreement to the Claimants' proposals. There was also the Customs Workers' Union whose members included a large clerical cadre and who would be very surprised to hear of this proposal. The Respondents stated that they did not think that any clerks worth their salt would seriously accept the Claimants' proposal.

The real problem of technical staff, it was stated, was that of relatively less opportunity for advancement in view of the specific academic qualifications required for each grade, e.g. School Certificate for Technical Assistant and, for a Technical Assistant to be promoted to Technical Officer, a Higher School Certificate or equivalent was required. Efforts were, however, being made to enable technical staff to acquire the necessary academic and technical knowledge both locally and overseas, to enable them to advance to the other grades.

Finally, the Respondents submitted that they could not accept the Claimants' request in view of its possible effect on their administrative section. As the Court would appreciate, both sound administration and technical efficiency were required in an organization such as the E.A.C.S.O.

(v) The Respondents submitted that they did not wish to take up the issue as to whether or not the colonial powers had used casual labour for the sole purpose of exploiting the workers. For their own purposes they used casual labour only where the seasonal volume of work justified additional people to work within a specified time. It was normal practice, for example, to engage casual labour when there was a building programme; or on a farm when there was weeding or harvesting to be done.

Similarly, if extensive damage had been done to, say, the telephone or electric power lines, extra workers would be needed to restore the system, if the services done by such systems were not to be hampered. It was found necessary, the Respondents pointed out, to recruit casual labour in most of their establishments where farming and estate operations required extra workers during particular seasons. Day-to-day employees were also required in their property management division when, say, extensive building undertakings were approved, or when repairs to existing property were required. The Claimants, it was submitted, must surely be aware of the fact that in a place like Muguga, varying requirements of farming and general estate work at different times of the year such as pasture weeding, grass planting, hay-making, etc., occurred, and that it would be a waste of public money to keep people in the permanent establishment who would only have work to do during a small portion of the year.

Where it had been found that persons recruited on casual labour basis had performed duties of a continuous nature for a continuous period of not less than one year, then, it was submitted, such persons had been converted to subordinate staff and had become part of the permanent establishment. (This, it was stated, was in keeping with Pratt recommendations at para. 104.) The allegations occasionally made by the Claimants that some people had been employed as casual workers for periods of more than one year were without foundation, although it was possible for a person to have actually accumulated more than 365 days of work with the Respondents over a period of years by simply adding up the number of days he had worked with them during the peak periods. What was not realized by the Claimaints was that, in such cases, service could not be regarded as continuous. In addition to a year's service, work done must also be adjudged as required, because it was theoretically possible to be engaged in building construction for a period of about one year, at the end of which time all building requirements may have ceased and a lull in building industry may intervene before new projects came up.

There was also the question of the previous service of casual workers taken on to the subordinate service. There had been a suggestion that they should receive increments for each year of service. The Respondents submitted that they did not consider that this was possible, since, after all, they had gained by being converted to the subordinate service. In any case, if they were to receive increments for each year of service it would presuppose their service being back-dated to the date they were first employed. This would bring about anomalies, as there might be officers who had joined as subordinate staff finding themselves junior to those who had hitherto been casual workers.

They stated that they were prepared to look into the possibility of counting half of the casual labourers' service towards any retiring benefits that might be due after they had served for the required period in the subordinate service. This was a normal practice in the civil service and it was most likely that when the problem had been looked into closely these officers would be allowed this kind of benefit, but that there would be no question of "back-dating" their service.

On the question of abolishing casual labour as such, the Respondents maintained that this was impossible since there were always peak periods when they wished to employ a large number of labourers to do specific work. The Claimants' request in this respect could be extremely damaging both to the Respondents and to the employed labour force, who might occasionally benefit from having casual employment. From the establishment point of view, this request would necessitate the establishment of too many posts which would be filled by people who could only be effectively utilized for a short period in each year. The system they follow now was that followed by the Kenya Government.

The Respondents submitted that it was difficult to understand the Claimants' attitude in that, because they had kept casual labourers for relatively long periods and treated them too well (such as assisting them in paying their Union dues through the "check-off" system, giving them housing when there were extra houses available and even, in one case, giving a full month's notice), they consider that this treatment was so good that these people should not be called casual labourers. They had only adopted a humanitarian attitude in the matter and, rather than tell a man at the end of the day that he was no longer required, they had decided to tell him a month in advance to enable him to look for alternative employment. Where there had been houses vacant and casual workers had felt like staying in the station, they had been given the houses free of charge. They did not see that this meant that these labourers were now no longer casual labourers. If the Claimants' request, that the law should be interpreted as it stands, were to be adopted, then they were sure that the Claimants would come back and say that they were being too hard.

On the subject of paying casual labourers monthly, they stated that they had evidence that none of the casual labourers wanted to be paid daily, and they assured the Claimants that if any of their members would like to be paid daily, then they could approach them and they would be paid daily. The Claimants' insistence in this matter, they considered, could be damaging to the Claimants' members' interests, but if the Court felt that they should stick to the letter of the law in this respect, they would have no objection.

On the Ministers' statement the Respondents maintained that they had not departed at all from the Ministers' wishes in this respect, they certainly had not taken "advantage" of daily and ticket contracts and the Claimants had not indicated in what respect they had taken advantage of it. The question of studying the matter was for the Governments and where they had taken appropriate action they had followed. So far as they knew, none of the three Governments had, in fact, abolished casual labour as such. Indeed, there was still provision for the employment of casual labour in the laws of Kenya.

The Respondents denied that they were a civil service "co-ordinating body" for all East African Governments, they only co-ordinated in areas where the member Governments had given them powers.

(vi) On the issue of negotiating machinery, the Respondents submitted that they had already signed an Agreement setting up a negotiating machinery with the Claimants and that they had actually been using it since August last year. There was, perhaps, a need to re-examine the machinery now that the Trade Disputes Act had been passed by the Central Legislative Assembly, but that this Act had just been passed. The Claimants had already been requested to draw up proposals for such machinery within the terms of the Act, but it was pointed out that the Claimants' proposals had never been sent to the Organization even before their Conciliation Meeting broke down. The issue of negotiating machinery could hardly be said to have constituted a dispute, as no discussions on the subject had ever been held.

It was further submitted that the signatories to the Interim Agreement were both the Secretary-General for (E.A.C.S.O.) and the Union's General Secretary (for the Union). It was the first time that the Claimants had submitted a draft of what they considered would be an all-embracing negotiation machinery, but that this would require thorough discussions and comparison with the existing Agreement in relation to the Trade Disputes Act before it could seriously be considered as a basis to work on.

It was also pointed out that the Respondents, unlike the Railways and Harbours and the Posts and Telecommunications Administration, had two Unions in Kenya; the Common Services African Civil Servants' Union and the Kenya African Customs Workers' Union, so that any territorial council formed as a result of negotiation for new machinery must be agreed between these two Unions as long as they were still separate. Indeed, they claimed that that was why the present machinery was known as interim.

The Claimants' problem in regard to the existing arrangement, it was stated, may have arisen because the Chairman in both the main E.A.C.S.O. body and in the Departmental Staff Committees was drawn from the Respondents' side. The Respondents claimed that in their records there had never been a case of the Chairman having had partisan views and it may, therefore, be assumed that the fears and anxieties of the Claimants were more imagined than real. There was a clear proviso in the Constitution which established Departmental Staff Committees, that failure to reach amicable settlement on any issue may be referred to the Secretary-General. The Respondents submitted that they did not see what further safeguards could be written in a Constitution which the Claimants had already accepted and which was working well.

The Claimants, it was submitted, had tried to stress the fact that industrial relations were poor because of faulty negotiating machinery, but industrial relations were not necessarily worse than they were in any other Organization in Kenya. Indeed, good industrial relations depended on both the Management and the Union. It was their experience, and especially since the present General Secretary took over, that the Claimants were not prepared to follow the agreed machinery and to negotiate quietly. One clear example was that they need not have come to this Court if the Claimants had not threatened to strike before exhausting the provisions of the negotiating machinery. Another example was the way the Claimants had suddenly adopted the use of "workers language". Announcements calling African officers "black-listed, unprincipled" were also provocative. Industrial relations must be a two-way traffic and if the Claimants insisted on using such expressions as "rubber stamp", etc., in referring to officers it was unlikely that even the African workers could have any respect for African officers. The position was worsened when staff were made to believe that they could take over the posts which were now held by their superior officers and perform the duties just as efficiently.

The appointment of an Industrial Relations Officer had been under consideration for some time and it was hoped to finalize the matter as soon as possible.

(vii) Anyone considering the terms of service of their workers must, it was submitted by the Respondents, to a large extent, take note of the service conditions of the Civil Servants in the three countries which contributed to their funds. One thing, however, was certain and that was that any suggestion to make their service terms "distinctively" better than those obtaining in the East African countries would be strongly resisted by the Governments, as it would obviously result in demands from the services of all the administrations which, if granted, would result in even higher expenditure by the Governments. It was submitted that this was a step that they were trying to avoid if the limited resources available for development were not to be unduly strained.

Service Regulations in operation at the moment were printed in 1957, during Colonial days. But the Claimants' argument that they were "colonial type of Regulations" was not supported by any facts. One example given was that of classification of housing. This, the Respondents admitted, was a matter which was unfortunate in that it was still in the Regulations, but they had indicated that its non-deletion did not necessarily imply that houses were allocated on a racial basis. There was no reason why a non-European officer should not occupy an "A" type house which was described in the Regulations as "European type". Action was in hand to revise the Service Regulations and to re-classify housing without racial connotation. Houses would be classified in accordance with their sizes. Houses were allocated on a non-racial basis and the Committees allocating them, which were previously designated "European", "Asian" and "African", were now designated "Senior", "Intermediate" and "Junior" Housing Committees. The Claimants, it was stated, were well aware of this and their accusation that houses were still allocated on racial basis was completely untrue.

The Respondents stated that it was untrue to say that allowances were based on those prevailing during Colonial days, with a view to exploiting labour. The Claimants knew that they could always approach the Secretary-General's office with a case indicating whether or not an allowance was adequate. In such an event the matter would be investigated and rectified as necessary. So far, no representation had been made by the Claimants.

Service Regulations must not depart, to a wide extent, from those of the territorial Governments. It was untrue, however, to say that they followed strictly the policies of the territorial Governments. In this particular case the Claimants had not said in what way they should have better terms than member Governments' and unless this was done, it was impossible to give any specific reply. The only point they had said should differ from the Government was that of salaries.

The suggestion that an African Commission should be appointed to draft Service Regulations was a suggestion which certainly could not be accepted. As the Court would appreciate, Regulations were an internal matter in any Administration, and they were made to afford the smoothest possible administration of day-to-day affairs. If at any time the Claimants felt that any particular regulation was disadvantageous to their members, then they were always ready to find ways and means of rectifying the position. It would be a waste of public funds to appoint a Commission to look into matters of such a nature. Indeed, they could not think of any one case where a Commission had been appointed to revise Service Regulations applicable to any Administration. They had, therefore, no hesitation in rejecting this demand. However, as had been repeated before, they did not close the doors of negotiation, provided the Claimants were able to come forward with specific amendments.

A lot of argument had taken place, they submitted, on the Claimants' submission that their Administration could be compared to that of a miniature United Nations; this was not so. They stated that they were a civil service established to run the services common to the three East African countries. In many cases, Civil Servants were nationals of the country in which they resided. For instance, in Nairobi, where the headquarters was situated, there was a large number of Kenya citizens working for them. Similarly, in Uganda and Tanzania, citizens of those territories would be found working for them in those countries. It would be completely improper to treat those citizens differently, just because they happened to be running services which were common to the three countries. This would, in effect, be creating a special class of Civil Servants within the countries themselves and this would not be well-received by the Civil Servants working for the territorial Governments.

Civil Servants sometimes had to be transferred outside their own territory but when an individual was transferred interterritorially, it could not be said that he was inconvenienced any more than if he were transferred from one place to another within his own country.

They submitted that they could not understand what led the Claimants to assume that workers should be paid half as much again as the workers in the territorial Governments. Their workers did not necessarily work half as much again as workers in the territorial Governments and that this was therefore an arbitrary figure which was unsupported by facts and upon which the Court could not work. In any case, if one were to apply this request to basic subordinate staff salaries at the moment, it would not raise them beyond the present level of total emoluments, e.g. an employee in a non-scheduled area who earned Sh. 125 basic would only have his basic salary raised to Sh. 200, which was far below that asked for by the Claimants. This indicated the rather confused nature of the Claimants' case. There had been talk of relative responsibility. The facts of the matter, however, were that the Respondents' Civil Servants were not more responsible than member Governments' servants. Indeed, some of the officers in the territorial Governments had much heavier responsibilities to shoulder than the Respondents' Civil Servants could ever have, e.g. the maintenance of law and order, foreign relations, policy, etc.

Their submission in this matter, therefore, was that they, as an interterritorial service, must have terms of service which reflected its interterritorial nature. The terms of service need not necessarily be reflected by higher wages than those paid by the territorial Governments. They were already reflected by the fact that officers could be transferred to any of the three countries. In any case, they did not feel that it would be wise to introduce terms of service which were superior to those of the territorial Governments.

The Pratt Report which dealt with the terms and conditions of service of E.A.C.S.O. in addition to the Kenya Government, it was pointed out, was hardly a year old since its implementation. The Claimants had, in fact, accepted the new conditions as reasonable, except for the housing provisions which had already been covered in item (ii) above.

(viii) The Respondents stated that there was absolutely no truth in the Claimants' allegations that they had been carrying on an embarrassment campaign against the Claimants' President, Mr. Lihanda or against any other member of the Claimants. They submitted that their policy was to see responsible trade unions thrive in their society and that they did not doubt that the workers knew best what problems they had which could be brought to the Management for discussion. What they required of trade unions and, indeed, all their employees, was the realization that they were now working for independent African Governments and that there should then be no assumption that an inherent conflict existed between the Claimants and the Management, a feeling that might well have served a purpose before Independence. Unions must not only exist to negotiate for increased wages and salaries, but also to organize for better and increased production. They could at best, they submitted, hope to sort out the complaints Mr. Lihanda had had against them from the lengthy quotations in all of the correspondence between their office, the Meteorological Department and Mr. Lihanda. The complaints, they submitted, appeared to be as follows:—

(*a*) that his promotion to T.A.1 was delayed;

(*b*) that he was told to do "heavy" duties when he had ankle injury;

(*c*) that his proposed transfer to Narok was devised to victimize him because of his Union activities.

On the Claimants' statement that their President's promotion had been delayed unduly, the Respondents submitted that the Claimants had not indicated how fast they considered he should have been promoted. There were 34 officers who were senior to Mr. Lihanda, 32 of whom were Africans, and who were still T.A.'s Grade I. Two officers held Cambridge School Certificate and three had been in the service since 1939. One officer had been promoted to T.A.1 on the same date as Mr. Lihanda. It was, therefore, odd and interesting to note that the Claimants should have selected Mr. Lihanda as an officer who had not been promoted as rapidly as they thought fit. It would be interesting to know why the Claimants had left out all the other officers who may just have been as deserving of promotion as Mr. Lihanda. One of the points which Mr. Lihanda had raised in his letter requesting promotion was that his promotion to T.A.1 was overdue. They submitted that there were many other officers who were promoted to Grade I relatively later than Mr. Lihanda. Indeed, the fact that he was promoted so quickly in relation to a number of officers could be a reflection of the fact that he satisfied the requirements of promotion sooner than the other officers. Mr. Lihanda's complaint as to why he was not promoted to Grade I earlier was replied to in a letter from the Department dated 25th November 1963. The old rules of promotion were well known in this instance and Mr. Lihanda's complaint that para. 1 (2) of Establishment Circular 24 of 1961 did not apply to him was nonsensical. They repeated that there was no indication of victimization in the principles of promotion followed in this case and it would be seen that when Mr. Lihanda satisfied the requirements of the Circular governing the conditions of promotion, he was promoted with effect from 1st May 1964.

As a result of a motor-cycle accident Mr. Lihanda had hurt his foot and was recommended for "light duties" but it appeared that Mr. Lihanda had his own interpretation of "light duties". His interpretation was that "shift duties which involved the full use of all senses at abnormal working times, together with the risks that could arise during travelling" were heavy duties. The Respondents submitted that it was difficult to understand when a Plotter in the Meteorological Department did not use all his senses. With regard to the reference to "risks", they submitted that travelling risks were equal whether the individual concerned had been assigned light or normal duties.

It was not abnormal that the Executive Officer of the Meteorological Department decided to seek clarification of the doctor's recommendation regarding shift duty. This they submitted was right and proper in view of the fact that the Meteorological Department operated 24 hours a day in three shifts, and the doctor had not indicated which shift Mr. Lihanda should not work, i.e. morning, afternoon or night. This could not be interpreted as meaning that the doctor's authority was being questioned.

Mr. Lihanda's first transfer was to Embakasi Airport because his services were urgently required there. There was no sign of victimization in this and the Respondents submitted that this was a normal transfer. In any case no protest of victimization had been received from Mr. Lihanda. Next was the question of Mr. Lihanda's transfer to Lodwar. It was important for a Technical Assistant to work at an outstation as this was a factor taken into consideration when selecting an officer for promotion to a higher grade. Mr. Lihanda had requested a six months' postponement and this had been granted. How Mr. Ramsey could have been accused of victimizing Mr. Lihanda, they stated, was not quite clear as Mr. Lihanda's transfers had taken place before Mr. Ramsey had been transferred to Embakasi? In July 1964, there was another attempt to transfer Mr. Lihanda to Narok and Mr. Ramsey was accused of deciding the transfer because of a disagreement between them.

The Respondents submitted that they had not tried to prove or to investigate whether this disagreement did occur. A supervisor must have the right to question the officers who worked under him when he considered that they were not performing their duties in a proper manner. In any case, Mr. Lihanda was the only officer, or one of the very few officers, who were Technical Assistants Grade I and who had not served at an outstation at that time. Since there was a shortage of Technical Assistants Grade I, it was not unexpected that he should be chosen for transfer. This latter transfer was postponed at the request of the Secretary-General who took into consideration that Mr. Lihanda was President of the Union, but it should be noted that the Secretary-General indicated that the Union should arrange an alternative when their President had to be posted at a later date. The impression that the Claimants gave that these transfers were postponed or cancelled as a result of their pressure was untrue.

It was also pointed out that there had been Presidents or Chairmen and Assistant General Secretaries before Mr. Lihanda and now, but no case had been brought up regarding their victimization.

Mr. Lihanda's Annual Confidential Report had been marked "indifferent" in so far as his "conduct" was concerned. He had earned his mark in the same way that any other officer might have done for similar reasons. His office in the Union had no bearing on the matter. It was his attitude towards his official duties when called upon to perform the duties of his Union office that earned him this assessment.

The Respondents said that they did not take the Claimants' request for compensation to Mr. Lihanda seriously and saw no need to reply to it. If the Claimants were serious, it would show how ignorant they were on the rules which governed Workmen's Compensation.

(ix) The Respondents submitted that the impression which the Court had been given in this matter was that they arbitrarily went back on any agreement reached between them and the Claimants. This had not been proved by any fact. The only point that the Claimants had tried to show was that there had been delay in implementing certain matters agreed to. This did not constitute a breach of the agreement. As had already been shown, definite steps had been taken to ensure that matters agreed to were implemented without undue delay but administrative difficulties had to be sorted out before implementation could take place, and they were always willing to inform the Claimants why anything was delayed. It was not considered that a dispute arose at all, because they had not said that they were not going to abide by the agreement reached. The Court was invited to read through Circular 48 of 1964 and see whether or not that Circular was meant to implement most of the matters agreed during the negotiations of December 1964.

A point which had caused confusion in the minds of the Claimants, it was stated, was their interpretation of the word "interim". The Claimants considered that issuing an interim Circular did not put into effect the points already agreed. The Respondents argued that the Claimants had not understood the word "interim". A last point was that the Circular unfortunately gave the impression that all the arrangements therein would be inapplicable to staff who opted for Pratt. This was an unfortunate interpretation which had not been used by the Departments implementing the Circular. The intention was that those officers who opted for Pratt would lose the personal advancement rights contained in the Circular but that the conditions for promotion would otherwise remain as shown in the Circular.

Taking the items raised by the Claimants under this issue in order, the Respondents submitted that:—

(*a*) If the Claimants meant that Messrs. Muho and Kamau had failed to pass an official examination when they were declared "failed", then the position must be accepted as such, because a person either passed or failed an examination and his trade union activities did not influence the examiners.

(*b*) The subject of stagnation had been fully covered by Establishment Circular No. 44 of 1964.

(*c*) Allegations which the Claimants had made against the Director of Meteorological Department were vague and generalized, and unless such allegations were specified they would be unable to take any action.

There was no proof at all that the Director was anti-African. If he was, some the Africans who had now reached positions of responsibility would not have done so. Similarly, regarding the accusation of favouritism for promotion, this had not been proved. It was true that the Claimants had indicated cases where they considered that their members should have been promoted first, but favouritism could only be proved if the motive for it was shown. In this case the Claimants had completely failed to show why any other particular officer, who had been promoted before another, had been favoured. The Respondents confirmed that they had full confidence in the Director of the Meteorological Department and in any other heads of departments who were working to ensure that essential services were run efficiently. It did not assist the East African countries when such officers were made the subject of destructive public criticism. The Claimants had suggested that another expatriate officer be appointed to the post of Director of the E.A. Meteorological Department, but, while they had every right to air their opinion on whom should head a department, the matter of who became the head of what department was the prerogative of the Secretary-General. On the Claimants' suggestion that the Court should dismiss the present Director and declare his *persona non grata* the Respondents stated that, first of all, the Court could not dismiss an officer of the E.A.C.S.O.—that was a matter for the Public Service Commission, and secondly, the Court had no power to declare anyone *persona non grata*—that was a matter for the Minister for Internal Security and Defence.

(*d*) This item was covered in Circular No. 48 of 1964.

(*e*) Steps were underway to Africanize the post held by Mr. Gurcharan Singh and that as Mr. Mwamisi was already posted to understudy him, there could be no further complaint on this issue.

(*f*) The question of the inclusion of Muguga into Nairobi, for the purpose of Area Allowance, had been considered but that it had been found that there were no grounds for doing so.

(*g*) Equal pay for men and women at Muguga was now granted, but that the question of paying arrears of wages to the women could not be considered.

(*h*) The Respondents submitted that (i) there was already an African Accountant-General (Designate), (ii) an advertisement had been published for his assistant, and (iii) they could not discuss matters such as the transfer of Mr. Ochieng of the Accountant-General's Office, because such matters were entirely at their descretion. Mr. Ochieng, however, they maintained, had not been removed to the Meteorological Department to keep the senior posts for the expatriates as the appointments at (i) and (ii) clearly showed.

(*i*) The posts left vacant by the 12-odd employees who were promoted from E2.1 to C Grades had not yet been filled but that the matter was with the Public Service Commission.

AWARD

6. Before the award can be dealt with the Legal Secretary's submission has to be looked into.

The Legal Secretary made his submission towards the end of the hearing to the effect that the East African Common Services Organization was not capable of suing or being sued as section 3 (1) of the East African Common Services Organization Act No. 4 of 1961 vested the powers of litigation in the East African Common Services Authority. In the present dispute he submitted that the Organization, and not the Authority, were the Respondents. He submitted that this was a fatal defect and that the proceedings should be struck out. The Claimants should start negotiating with the proper body, that is the Authority, all over again. Furthermore, any award against the Organization would not be capable of being given effect. Without prejudice to this submission, he maintained that any award of the Court in the present dispute should be of a declaratory nature as no money could be found or spent without the necessary Appropriation Act, or a Supplementary Appropriation Act, being passed by the Central Legislative Assembly. The Court's award, therefore, should be subject to this proviso. In this connexion he also referred to Articles 34 and 35 of the Constitution of the East African Common Services Organization. The Legal Secretary conceded that the Industrial Court had jurisdiction to adjudicate on this dispute provided that the proper party was before it.

Mr. Ooko, the General Secretary of the Union, submitted that the East African Common Services Organization was the proper party to be brought as the Respondents, as a Recognition Agreement existed between them and the Organization. The Organization and the Authority were one and the same and at the most there was a mis-description of the Respondents which could be rectified at any stage of the proceedings as it would not cause any hardship. Mr. Ooko pointed out that the Legal Secretary at no earlier stage had questioned the propriety of the Respondents. The Legal Secretary was present when the form of notification was signed by the Secretary-General who was the Chief Executive Officer of both the Organization and the Authority. Objections of this nature should have been raised at an earlier stage of the proceedings. In the end Mr. Ooko applied to the Court for an amendment to rectify the mis-description of the Respondents, if necessary, as it was a mere formality to regularize the proceedings. He also pointed out that the Industrial Court cases were not regular law suits but were disputes arising out of differences between the employers and the employees. It did not matter whether the party before the Court was capable of suing or being sued. On the question of Supplementary Appropriation Act, Mr. Ooko submitted that this was an internal procedural matter of the Organization with which they were not concerned.

The Court has considered the above submissions very carefully and rules that the Legal Secretary's submissions cannot be upheld. When the parties sign the notification form a duty rests on them to see that they declare their proper and legal identities to avoid any subsequent arguments as to whether or not they legally exist. Parties come to the Industrial Court voluntarily, and jointly sign the declaration quoted hereinbelow:—

> "and in accordance with the procedure laid down in our Agreement on recognition and negotiating procedure we have discussed these issues and have failed to reach a settlement.
>
> We, therefore, notify the Court that, in accordance with the provisions of section 9 (6) and paragraphs (*a*) and (*b*) thereof, this matter is not subject to any other section of the Trade Disputes Act, 1965, and request the Court to take cognizance of the existence of a trade dispute."

In these circumstances the Court must accept that the parties, when they sign the form of notification to the Court, whereby they submit themselves voluntarily to its jurisdiction, do so in good faith and are the proper parties that should be appearing and be represented in any dispute.

The Recognition Agreement is drawn between the Secretary-General of the East African Common Services Organization and the Common Services African Civil Servants' Union (Kenya). In this "the Organization" means the Secretary-General of the East African Common Services Organization or any officer or officers of the General Fund Services authorized by the Secretary-General in that behalf. Clause 3 of this Agreement reads:—

> "3. (1) In all matters appertaining to wages, salaries, terms and conditions of service, Africanization, the Organization accords full recognition to the Union as the representative of such part of the staff as this Union represents in accordance with its constitution and provided for in the negotiating machinery set up from time to time.
>
> (2) The Organization will not enter into any negotiations or consultations with the Union otherwise than through one of its authorized officials or representatives."

The Court is satisfied that the Organization are the proper Respondents for the purposes of this dispute.

The Court is also prepared to grant Mr. Ooko's application for amendment as there is no doubt that the representations made on behalf of the Organization were, in fact, on behalf of the Authority, as the Secretary-General, through his officers, appeared in these proceedings. This amendment would not in any way prejudice the Authority and is accordingly granted.

The Legal Secretary's submission to make the award subject to the approval of the Authority and the Central Legislative Assembly is also rejected as this is, purely, a procedural difficulty. The question of Supplementary Appropriation Acts is an internal matter of the Organization and should not be allowed to prejudice the position of the Parties under the award.

ISSUE I

*Minimum Wage*

The Court has given a great deal of thought to this issue. It cannot overlook the far-reaching implications of any award under this head. Some of the arguments put forward by the Claimants were considered by the Pratt Commission. The three Ministers' statement on Wages Policy made at Kampala on 20th September 1962, also mentioned in the Pratt Report, was taken into consideration. (*See* para. 4 (1).)

The basic requirement which the Court considers essential on the question of a minimum wage is that the wage should ensure of a decent standard of living for the subordinate staff, most of whom have suffered severely in the past, from low wages. But in pursuing this aim account has to be taken of hard economic facts. For instance, the danger that higher wages will increase unemployment and raise costs of commodities and services, unless the country's economy as a whole is expanding rapidly at the same time. The Court has also to keep in view the serious difficulties in the attainment of the primary objective of providing an adequate standard of living for every worker. Some of these being (*a*) the conflict between increasing the number employed and raising the wages of those already in employment; and (*b*) the shortage of money to promote the big economic expansion that is so desperately needed in order to overcome the problems of poverty and population increase. The Court appreciates that the wage structure within the East African Common Services has to be related to the wages being paid in the three member countries. At present the E.A.C.S.O. wages for subordinate staff are based on the Kenya wages which are the best of the three countries. It was only on 28th December 1964, that the E.A.C.S.O. minimum wage was brought in line with Kenya although with effect from 1st April 1964. Workers have had a basic wage of Sh. 125 plus an Area Allowance, which varies from area to area.

The Court considers that an increase of Sh. 10 on basic rates for subordinate staff with effect from 1st June 1965, would be fair in the circumstances and so awards. Area allowances to continue at the same rate, that is they are not to be reduced.

ISSUE II

*Housing*

The Court notes that with the gradual withdrawal of housing benefits over a period of four years the E.A.C.S.O. would, by 1969, divest itself of the housing responsibilities of its employees. This recommendation is the backbone to the Pratt Commission Report and cannot be tampered with lightly. The E.A.C.S.O. has conceded that it is concerned over this problem and the Administration is looking into this matter with a view to ameliorating the difficultes which staff might face when the privilege is completely withdrawn in 1969. The Court is greatly influenced by the fact that this problem is being tackled by the Secretary-General and is one involving a major policy decision. The Court is aware of the findings of the Staff Tribunal in the East African Posts and Telecommunications dispute with the Postal Union and the difficulties that are being met in the implementation of its determinations. Also, that the Administration is in consultation with the Posts and Telecommunications in this matter and certain decisions have already been reached. Therefore, in spite of the fact that the Claimants appear to have some substance in their argument that the salaries and wage scales provided by Pratt and accepted by the Administration in the middle and lower grades are not adequate to enable the employees on these grades to provide, *inter alia*, their own housing, no award is made. But the Parties are advised to get together at an early date to seek a satisfactory solution.

ISSUE III

*Wages Seniority for Subordinate Staff*

The Court upholds the view that the subordinate scales should be related more to a rate for the job conception of wage payments than to a long scale. The Claimants' submission, if accepted, would be tantamount to the pre-Pratt long subordinate scales. This would reduce the gratuitable basic wage of a large number of workers. But wages seniority for subordinate staff is desirable. The Court, having considered all the aspects of this issue, finds that it is not in a position to make an award, but directs the Parties to embark on negotiations to find out ways and means of reflecting the seniority in service for subordinate staff within the existing wage structure.

ISSUE IV

*Alignment of Technical and Clerical Staff*

The Claimants have put before the Court various strong arguments in support of their demand that the terms and conditions of service for the technical staff should be different and superior to that of the clerical staff. A Grading Committee, in accordance with the recommendation contained in the Pratt Report, was established (Establishment Circular No. 46 of 1964). It was a two-men Committee consisting of Messrs. N. W. Okulo (Chairman) and A. M. Shitakha (Member). On 3rd April 1965, Dr. H. W. Sanson wrote to the Secretary-General on behalf of the Director, E.A. Meteorological Department. In this letter he drew the Secretary-General's attention to Recommendation No. 9/10 (Working Conditions of Aeronautical Meteorological Personnel) of the I.C.A.O.'s MET/OPS Meeting held simultaneously with the Third Session of the W.M.O. Commission for Aeronautical Meteorology in Paris last year. The Recommendation reads as follows:—

"That ICAO and WMO invite contracting States/Members to give full recognition to the high qualifications required and special working conditions of aeronautical forecasters and their assistants and to initiate measures, as required, to—

(*a*) make the work of aeronautical meteorological personnel at international aerodromes more attractive;

(*b*) revise any trend for losses of experienced personnel.

The special working conditions at international aerodromes, including shift work, long journeys to and from the office and work during weekends and recognized holidays, tend to make careers in aeronautical meteorology unattractive. Experience has shown that as a result it has proved difficult, in many countries, to recruit personnel, and even more important, there has been a continuous loss of experienced personnel to other occupations which are found more rewarding and less burdensome. These difficulties were recognized ten years ago by MET IV/CAeM-I, which recommended action to improve the situation (Recommendation No. 65). In view of continuing difficulties, MET V/CAeM-II (1959) agreed that this recommendation should remain in force. The MET/OPSCAeM-III Meeting recognized that, in view of increasing requirements of national and international aviation, there was still a need for action by States/Members to initiate measures, as required, to make the work of aeronautical meteorological forecasters and assistants more attractive. It was accordingly agreed to bring the substance of this recommendation up to date and to restate it in the form presented below."

The Grading Committee was requested to note this recommendation and to consider the possibility of initiating appropriate measure as required.

The Claimants' case under this issue is built on this recommendation. The Grading Committee appears to have visited all the departments concerned and received representations from the various branches of the Claimants although the National Headquarters of the Claimants were not consulted. The Grading Committee's Report is now with the Secretary-General and a copy has been sent to the Claimants during these proceedings for their views. The Court is in no position, in the absence of having undertaken a full-scale exercise to view and examine the circumstances of each job being performed by the technical staff, to make any award under this heading. The Court directs that the Secretary-General should discuss the Grading Committee's Report with the Claimants at an early date. The said Report should form the basis of discussion and the Claimants should be allowed to discuss and negotiate on the proposals contained in the Report before any action is taken on it by the Secretary-General.

ISSUE V

*Abolition of Casual Labour*

Evidence was given by some witnesses, called by the Claimants, to the effect that these witnesses had been working for the E.A.C.S.O. at Muguga for a period of over three years and were still considered casual employees. Some of them appeared to be enjoying most of the privileges accorded to the subordinate staff. Some were even housed by the E.A.C.S.O. The Court appreciates that in a place like Muguga, varying requirements of farming and general estate work at different times of the year, such as pasture weeding, grass planting, haymaking, etc., occurred, and that it would be a waste of public money to keep people in the permanent establishment of the E.A.C.S.O. who would only have work to do during a small portion of the year. The Court also appreciates the humanitarian attitude adopted by the Administration in giving casual labourers a month's notice before dispensing with their service, and housing them when quarters are available. The Court has also given due consideration to the three Labour Ministers' statement on "ticket and daily contracts" made at Kampala. (*See* para. 4 (v)).

The Court is, however, not satisfied that all of the so-called casual employees are called upon to work seasonally. Some of them are at least able to find work all the year round and, in fact, have been working for varying periods between one to four years. The Court accepts the fact that casual workers will continue to find employment for sometime to come and that this system cannot, as yet, be abolished. But, from the evidence produced at the hearing, the Court is satisfied that a great many of the so-called casual labourers should be on the subordinate staff. There is no reason to keep them on the basis of casual employees. Accordingly the Court awards:—

(i) that any casual employee who has found continuous employment with the E.A.C.S.O. General Fund Services for a period of six months, or more, and is still so employed, should be absorbed into the subordinate service;

(ii) such casual employees' previous service, with the exception of the first six months, shall be taken into account for gratuitable benefits only;

(iii) such casual employees shall be deemed to have been converted into subordinate staff, for the purpose of wage and allied adjustments, as from the 1st day of September 1965, or thereafter on completion of six months;

(iv) all those casual employees who have already been converted into the subordinate service, in accordance with Circular No. E290/316, shall have adjustments carried out in accordance with the above provisions so that all casual employees are taken on the subordinate service on equal terms.

ISSUE VI

*Negotiating Machinery*

It was not long before the Court found out that Industrial Relations, generally, in the E.A.C.S.O. were extremely poor. This state of affairs stems directly from the very unsatisfactory Recognition Agreement between the Parties which, in any case, is an Interim one. This document is lacking in most of the essentials to be found in such agreements. If this had not been so most of the issues in dispute would not have been before this Court.

The Claimants' complaint is that, at present, they negotiate under a great disadvantage in that, at departmental level, meetings are under the Chairmanship of the Head of the Department, and at National level, under the Chairmanship of the Secretary-General. The Respondents concede that there is, perhaps, a need to re-examine the machinery now that the Trade Disputes Act has been passed by the Central Legislative Assembly. The Claimants were given an opportunity to forward proposals on new negotiating machinery in accordance with the Trade Disputes Act but had not done so prior to submitting their Memorandum in this dispute. The Respondents are prepared to sit with the Claimants to discuss this matter fully. The Court finds that the Parties ought to realize that good industrial relations are a two-way traffic and the Claimants and the Respondents should have mutual respect for each other. Calling newly-promoted African officers "blacklisted" and "unprincipled" does not help matters. Neither does it improve the situation when the Management consider the Claimants to be a nuisance. The Court rules that the Parties should get together and work out proper negotiating machinery under the Chairmanship of the Chief Industrial Relations Officer, Ministry of Labour and Social Services (Kenya). This should be finalized within a month from the date of this Award. The Court notes that the question of appointing an Industrial Relations Officer is under consideration by the Respondents; the Court recommends that such a post be created and filled as soon as possible.

ISSUE VII

*Terms and Conditions of Service of E.A.C.S.O. Workers*

The Claimants' main demands under this heading are:—

(*a*) Revision of Service Regulation by an African Commission of Inquiry, and

(*b*) that the terms and conditions of service for the E.A.C.S.O. workers should be unified, distinct and superior to the Civil Servants of the three countries.

The Court has given very careful consideration to the evidence and arguments tendered on this issue by the Claimants and the Respondents but cannot accept the contention that the Service Regulations of the E.A.C.S.O. General Fund should be the subject matter of a Commission of Inquiry. These Regulations were originally drawn by the predecessors of the Respondents, in the Colonial days, but the Claimants' arguments that they are "Colonial type of Regulations" is not supported by facts generally.

In the case of payment of car allowances, there is a difference in the three countries, and racial terminology appears in the section relating to housing to determine the type of house, i.e. European type, Asian type and African type. This does not imply that the E.A.C.S.O. houses are allocated on a racial basis. The Court understands that the Administration is in the process of revising the Regulations and suggests that this operation be completed as soon as possible. Before the final revision of each section, the unions concerned should be fully consulted on each matter that is negotiable.

The Court is satisfied that different terms and conditions for the E.A.C.S.O. employees do exist. The few minor difficulties which the Claimants pointed out like different taxes in different countries, is already being looked into by the Administration and an answer will no doubt be found very shortly, whereby no E.A.C.S.O. employee in any territory will be worse off than his colleagues in the others. The Court is not convinced by the Claimants' argument that the E.A.C.S.O. is a type of United Nations. There is no comparison between the two. The E.A.C.S.O. is an interterritorial service and must have terms of service which reflect its interterritorial nature and which are within the means of the East African economy. The Claimants' demand for the E.A.C.S.O. employees' salary to be half as much again as the workers in the territorial Governments is rejected.

### Issue VIII

*Victimization and Embarrassment of Mr. J. K. Lihanda (Union President).*

The Claimants seek relief under this heading as follows:—

(*a*) There should be an end either to direct or indirect causes of embarrassment to Mr. Lihanda now or in future;

(*b*) there should be an end either to direct or indirect causes of victimization to Mr. Lihanda now or in future;

(*c*) Mr. Lihanda should be promoted to C6.4 scale and backdated to the time the exchange of correspondence on the subject began, i.e. 31st July 1964;

(*d*) Mr. Lihanda should be transferred from the Meteorological, to the Income Tax Department as he had found difficulty in commencing studies for an internally recognized career while he still served in the Meteorological Department; and

(*e*) there should be compensation paid to Mr. Lihanda for the injury suffered in an accident whilst travelling on duty.

Mr. Lihanda has been in the service for nearly seven years and had taken part in Union activities for some years prior to becoming the President of the Union some time in 1963. The Court has gone into the various incidents which are alleged to constitute victimization against Mr. Lihanda but finds that, except for one incident of transfer to Narok and marking of "indifferent" in his Annual Confidential Report, there is not much substance in these allegations. All these incidents, with the exceptions mentioned hereinabove, could have occurred in the normal course of any employee's service, and therefore, much importance cannot be attached to them. On the question of slow promotion of Mr. Lihanda and his request for transfer to the Income Tax Department. it would not be appropriate for the Court to make any award. They are entirely outside the province of the Court. We are informed that there are about 30 African officers who are senior to Mr. Lihanda. If he wants a transfer to another service of the E.A.C.S.O. he must follow the prescribed procedure. The Court cannot order a departure from it. However, the Court finds it disturbing that an official of the Union, more so when he happens to be the President, earns the marking of "indifferent" on his Annual Confidential Report for Union activities. A letter written by Mr. N. W. Okulo on behalf of the Secretary-General to Mr. Lihanda dated 12th May 1965, is set out below:—

"Dear Sir,

*Annual Confidential Report*

Further to my letter C 306/4037/14 dated 23rd April 1965, I have investigated your allegation of victimization as a result of your Union duties and am to inform you that there is no basis for that allegation. It appears that you earned the "indifferent" mark in your Annual Confidential Report due to the apparent habit you have formed of not informing your senior officer in good time when you are required for Union work. I am informed that this has created serious inconvenience and difficulty in arranging for your relief.

2. As you know, Union officers can only carry out their Union duties during office hours when they can be spared, and it is up to you to ensure that permission for these activities is received well beforehand, and, when there is an emergency meeting, that your senior officer is fully appraised of the position.

Yours faithfully,
N. W. OKULO,
*for Secretary-General.*'

The Court takes a serious view of this incident as it appears that one individual is being penalized for participating in Union activities. This should not be so. Once a Union is recognized, then, due respect should be accorded to the elected Union officials. In this case, however, the Court accepts Mr. Okulo's assurance that this particular remark will not jeopardize Mr. Lihanda's chances of promotion. In view of this no recommendation is made.

The transfer order to Narok for Mr. Lihanda emanated three days after he had had an argument with Mr. Ramsey, his Senior Officer. The Court does not accept that it was a mere coincidence. On the Claimants' intervention this transfer was revoked. If it had not been cancelled Mr. Lihanda would have had a very good cause for complaint. But, as it is, it was nothing more than an attempt to embarrass Mr. Lihanda. The Court, after a very careful consideration of the incidents, quoted by Mr. Lihanda, is not prepared to find that he has, in fact, been victimized. It is obvious that the difficulties in which Mr. Lihanda has run are due to the poor Industrial Relations Machinery in the E.A.C.S.O. and as it is going to be overhauled the Court hopes that such incidents in which Mr. Lihanda had been involved will disappear.

### Issue IX

*Items discussed between the E.A.C.S.O. Secretary-General and the Union on 26th February and 2nd March* 1965.

On the above two dates, meetings were held between the Secretary-General and his Assistants and the representatives of the Claimants, when there was agreement on the 14 points given below:—

"1. The Organization would investigate and inform the Union why Messrs. Muho and Kamau had been declared "failed" by the Director, Meteorological Department.

2. The Organization would review the cases of officers stagnating in the service at E.5 or E.3 as a result of being unable to pass a departmental examination, and endeavour to find ways and means of allowing them advancement.

3. The Scheme of service under preparation would include a scheme of advancement of technical staff.

4. The Union will be informed of the Organization's action regarding the Director, Meteorological Department.

5. The Organization will inform the Union of progress made in implementing the agreement reached at the Conciliation Meeting in December 1964, without delay.

6. The Organization will communicate to the Union its action on the Africanization of the post of Executive Officer held by Mr. Gurcharan Singh when a review on apparent irregularities in the promotion of an African Executive Officer is completed.

(*N.B.*—Mr. Mwamisi will Africanize Mr. G. Singh and another African will be appointed to understudy Mr. Shad.)

7. The Organization will keep the Union informed of the Authority's action on housing privileges; and house to office mileage allowance in general.

Circular No. 12 of 1965

8. The Union will submit its views to the Grading Committee on the alignment of technical and clerical grades for consideration; in spite of the facts that the Adv. had appreciated those presented to it at the sitting.

9. The Organization will review the non-scheduled areas, with special reference to Muguga, with a view to examining the feasibility of ranking those areas with some of those already scheduled.

10. The difference in payment of female and male muster roll employees at Muguga will be stopped forthwith.

11. The Union will submit a memorandum on their demand for a minimum wage of Sh. 350 per month in E.A.C.S.O. which will be given favourable consideration.

12. Terms of service for muster roll employees will be reviewed by the Organization with respect to the conversion of muster roll employees into the subordinate service.

13. The Union would submit its views on the conversion of subordinate staff in the scheduled areas, with special reference to differential treatment on grounds of length of service.

14. Consideration will be given in respect of those officers in the Meteorological Department who are unable to use the free bus service due to shift working hours, to be granted transport allowance in respect of officers who work at Embakasi Airport, with action being taken thereto."

Most of the above items have appeared in this dispute as separate issues and have already been dealt with by the Court. On the remaining ones the Court, after carefully going through the evidence, makes the following comments and observations.

On the issue of Messrs. Muho and Kamau the Court cannot inquire into, or order any departmental head to divulge, the reasons for the failure of certain employees in their departmental examination. But since the Respondents undertook to do so then they must honour their undertaking.

At a meeting which appears to have taken place on, or about, 15th December 1964, under the Chairmanship of the Chief Industrial Relations Officer, agreement was reached on various points. This meeting took place, after the Claimants' members had gone on strike, on 4th December 1964, but had resumed work later that day. Most of the above 14 items had been discussed at that meeting and the Secretary-General undertook to withdraw Circular Nos. 41 of 1964, 26 of 1964 and 24 of 1961 and to introduce a new circular under which consideration regarding promotion would be given to:—

(*a*) any member of the staff who has passed the promotion examination and who has not received such promotion and the Union notified of the decision;

(*b*) any member of the staff who has passed the departmental paper and failed English and Mathematics and the Union notified of the decision; and

(*c*) any member of the staff who has completed six or more years' service and has failed all relevant examinations and the Union notified of the decision.

The Court has seen Circular No. 48 of 1964 which was issued on 24th December 1964 and this appears to satisfy the undertakings given by the Secretary-General. The last but one paragraph of this Circular has given the Claimants much cause for complaint. It is unfortunate that the word "interim" was used. Why it was used is not clear to the Court but it certainly was not agreed between the Parties that the new Circular would be "interim". The other point is that this Circular, unfortunately, gives the impression that all the arrangements therein will be inapplicable to staff who opt for Pratt. Mr. Okulo has assured the Court that this interpretation has not been used by the Departments implementing the Circular. Mr. Okulo has further made it clear that those officers who opted for Pratt would lose the personal advancement rights contained in the Circular but that the conditions for promotion would otherwise remain as shown therein. The Court is satisfied that consideration for promotion as mentioned in (*a*), (*b*) and (*c*) was given, although the Claimants were not informed of the detailed implementation of Circular No. 48 of 1964. This Mr. Okulo admits.

The Secretary-General further undertook to immediately establish a lower grades Promotion Advisory Committee. This has not been done although the matter is under consideration. The Court is disturbed at the delay and even allowing concession for the fact that the machinery moves slowly this delay is unreasonable.

The Secretary-General also undertook to implement Mr. Wand Tetley's Report within the Meteorological Department and appears to have done so, except that the posts left vacant by the 12-odd employees who were promoted from E2.1 scale to C have not yet been filled. The matter is with the Public Service Commission. Again there has been a delay.

Regarding the post of Planning Officer, it was agreed that the Administration would inform the Union during the week commencing 13th December 1964, of the progress so far made and the likely date the matters would be completed. Up till now, nothing appears to have been done in this respect.

On the Claimants' objection to certain aspects of the Pratt Report, it is quite obvious that the Secretary-General had considered them and had proceeded to implement Pratt without any variation. The Claimants' objections were, therefore, obviously overruled.

Then there was the matter of staff relations in the Meteorological Department. The Claimants claimed to have lost confidence in the Director of the Department alleging—

(*a*) that he was anti-African;

(*b*) that he lowers standards for non-Africans and raises them for Africans;

(*c*) that promotions are made on the basis of favouritism;

(*d*) that he discouraged Dr. Stranz from returning to work in Meteorological Department;

(*e*) that he refused to allow Mr. Lifiga to attend a course in Australia.

The Court finds that the Claimants' allegations are based on mere suspicions and assumptions. Even if the aforesaid charges were proved against the Director, which they were not, this is not an issue on which the Court can rightly make an award.

The Claimants have also raised certain matters regarding Africanization under this issue but the Court cannot inquire into or make an award thereon.

The question of the inclusion of Muguga into Nairobi was also to be looked into by the Secretary-General. He has done so and finds no grounds for including Muguga into Nairobi for the purpose of Area Allowance. The Court agrees with this.

The Court has considered all the matters that were highlighted during the proceedings under this issue, and has made certain findings thereon. It is hoped that both Parties will get together, at an early date, and finalize each item on the basis of the Court's findings.

Given in Nairobi this 21st day of October 1965.

SAEED R. COCKAR,
*President.*

A. A. OCHWADA, M.P.,
M. W. MULIMA,
C. H. PROCTOR,
*Members.*

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