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The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

අංක 2134/55 – 2019 අගෝස්තු මස 02 වැනි සිකුරාදා – 2019.08.02

No. 2134/55 – FRIDAY, AUGUST 02, 2019

(Published by Authority)

PART I: SECTION (I) – GENERAL

Government Notifications

My No.: IR/COM/03/P/2015/173.

THE INDUSTRIAL DISPUTES ACT, CHAPTER 131

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between N. Dharmakeerthi, 88/5, Kaldemulla Road, Moratuwa of the one part and Lanka Electricity Company (Pvt) Ltd, No. 411, Galle Road, Colombo 03 of the other part was referred by order dated 06.10.2016 made under Section 4(1) of the Industrial Dispute Act, Chapter 131, (as amended) and published in the *Gazette* of the Democratic Socialist Republic of Sri Lanka Extraordinary No. 1988/14 dated 11.10.2016 for Settlement by Arbitration is hereby published in terms of Section 18(1) of the said Act.

A. WIMALAWEERA,
Commissioner General of Labour.

Department of Labour,
Labour Secretariat,
Colombo 05.
29th July, 2019.

My No.: IR/COM/03/P/2015/173.

**THE INDUSTRIAL DISPUTES ACT, CHAPTER 131 OF THE LEGISLATIVE ENACTMENTS OF CEYLON
(1956 REVISED EDITION)**

Order under Section 4(1)

IN the matter of an Industrial Dispute between,

N. Dharmakeerthi, 88/5, Kaldemulla Road, Moratuwa.

of One Part

Case No. A/10/2017

and

Lanka Electricity Company (Pvt) Ltd, No. 411, Galle Road, Colombo 03.

Of other Part



The Award

The Honourable Minister of Labour and Trade Union Relations by virtue of the powers vested in him by Section 4(1) of the Industrial Disputes Act Chapter 131 of the Legislative Enactments of Ceylon (1956 revised edition) as amended by Acts Nos. 14 of 1957, 4 of 1962 and 39 of 1968 (read with Industrial Disputes - Special Provisions) Act, No. 37 of 1968 appointed me as Arbitrator by his order dated 6th June 2012 and referred the following disputes to me for settlement by arbitration.

The matter in dispute between the aforesaid parties are:-

Whether the claim made by Mr. N. Dharmakeerthi who had worked at Lanka Electricity Company (Pvt) Ltd as an Investigation Officer out of the fines recovered by the Company through raids on detection on illegal electricity connections in accordance with Circular No. OPR/PLN/82 dated 20.07.1991 and Board of Directors Decision No.: 92/7/2 in addition to the approval of the Chairman given on the recommendation of the General Manager considering letter No. SIU/IM/04 dated 02.01.2012 of the Investigations Manager is justified, and if so, to what reliefs he is entitled.

Appearance

Mr. Susantha Gunasekara, Attorney at Law appeared

for the Party of the First Part

Miss. Thavisha Jayasinghe Attorney -at- Law appeared for the Respondent.

for the Party of the Second Part

Parties filed their 1st statements and 2nd Statements.

The Preliminary Objection raised by the 1st Respondent was rejected and the matter was fixed for the inquiry.

The Applicant in his evidence stated as follows:

1. He joined Lanka Electricity Company Private Limited on 01.08.2008 as an investigation officer. (A2) Earlier he was employed in the same capacity in Ceylon Electricity Board.
2. He was employed on contract basis Initially contract was for 1 year and later extended for 5 years depending on performance.
3. He stated that his contract was terminated on 30/07/2013. (A4)
4. The applicant marked documents A5, A6, A7 in respect of incentive payable on detections.
5. The Applicant marked document A13 being Gross Recoveries and incentive payable on detections. He is requesting 4% of the income (13e) generated from the detections be paid to him.

During cross examination, the Applicant stated as follows:

1. The Applicant agreed that prior to the Special Investigation Unit was established, Duty Technical Officers (DTO) were paid incentive on the detections as per circular marked A6 (R3).
2. The Applicant agreed that according to Circular R02, A special Investigation Unit was established and the Applicant and Teeman Perera were appointed as investigation officers. (R4)
3. The Applicant did not agree that since he was appointed as an Investigation Officer do a specific job he is not entitled receive an incentive on detections and fines as per circular A6 and subsequent circulars issued by the Chairman and the General Manager of the Respondent Company.
4. The Applicant agreed that Circular R3 (A6) was issued on 20.07.1991 where as Circular R5 (A7) was issued on 02.01.2012.
5. The Applicant agreed that A 07 (R05) has not received a board approval. The Applicant further agreed when he was employed as an Investigation Officer attached to Ceylon Electricity Board no such incentives were paid upon detections.
6. The Applicant stated that according to A 14 irrespective of no of detections made by a Police Officer get Rs. 1000/- per day as an incentive.

Mr. Hettiarachchige Nimal Siri Gunasekara, General Manager, Ceylon Electricity Company (Private) Limited in his evidence stated as follows:

1. The witness stated earlier investigation was conducted by the Depot Technical Officers who were in charge of branch offices. They were paid incentives for detections according to the Circular marked as R3. Whereas in 2008 investigation unit was established and Investigation officers were appointed for the purpose of detection of illegal tapping of Electricity. Since they are doing only investigation there was no need for them to pay incentives. He marked Depot Technical Officer's duty list as R6. The witness further stated Depot Technical Officer's were paid incentives for detections as they performed those duties outside to the normal duties assigned to them. The Witness further stated R5 (A7) was an internal communication addressed by Manager Investigation to the Chairman through the General Manager, the witness further stated he will not accept the said document.
2. The witness further stated presently there are 4 Investigation officers in the Respondent Company and non of them were paid incentives. During Cross Examination The witness stated as follows.
3. The witness stated that A5 is a Board Paper in that non executive staff are mentioned as parties eligible to receive incentives. In A7 investigation team including the officers less than DTO are mentioned as parties eligible to receive incentives.
4. The witness further stated in R6 – in the duty list of DTO, rounding up illegal tapping of electricity has not been mentioned as one of their duties.
5. The witness further stated though it has been mentioned in A7, there is so no board approval granted to pay incentives other than payment of salaries to the investigation officers.

Madura D. Gamage, Manager, Ceylon Electricity Company Private Limited stated in his evidence as follows:

1. To pay incentives to the Investigation officers, there has to be an approval from the Public Utility Commission, but no such approval has been granted.
2. Circular marked as A5 issued in 1992 was applicable to the officers who were assigned to do other duties other than investigation. In 2007 Investigation Unit has been established and no incentives were paid to the Investigation officer.

In overall analysis of evidence I have come to following conclusions.

1. The Applicant joined Lanka Electricity Company Private Limited on 01.08.2008 as an Investigation Officer on Contract basis. The contract was extended yearly for a period of 5 years. Earlier he was employed as an Investigation officer of Ceylon Electricity Board and no incentive was paid to him on detection.
2. According to the Document R1, in the Applicant's letter of appointment, nothing mentioned about payment of Incentives.
3. The Depot Technical Officer's were paid incentives for detections as they performed those duties outside to the normal duties assigned to them.
4. The Circular marked as A5, Board Paper issued in 1992 was applicable to the officers who were assigned to do duties other than investigation. They performed investigation duties other than their normal duties.
5. A7, which is a recommendation by the Investigation Manager to the Chariman to pay incentives to the Investigation officers, which was not approved by the Board.
6. To pay the incentive to the Applicant, the Respondent Company has to obtain prior approval of the Public Utilities Commission.

For the reasons aforesaid it is my finding that the Applicant is not entitled to any relief In the circumstances taking into consideration the totality of evidence led before me I dismiss the application.

Kapila M. Sarathchandra,
Arbitrator.

I consider this award is just and equitable.

1st July 2019.

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