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The Gazette of the Democratic Socialist Republic of Sri Lanka
EXTRAORDINARY

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No. 1840/13 - MONDAY, DECEMBER 09, 2013

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PART I : SECTION (I) — GENERAL

Government Notifications

My No. : CI/728/2004.

Ref. No. : CI/728/2004.

THE INDUSTRIAL DISPUTES ACT (CHAPTER 131)

In the matter of Industrial Dispute

THE award transmitted to me by the Arbitrator to whom the Industrial Dispute which has arisen between Ceylon Mercantile Industrial and General Workers Union, No. 03, 22nd Lane, Colombo 03 of the one part and Whittal Boustead Ltd., 148, Vauxhall Street, Colombo 02 / Mortlake Press, Whittal Boustead Ltd., Peliyagoda / Mr. B. S. N. Mendis, Proprietor, S & N Enterprises, Dhammarathne Avenue, Rawathawatte, Moratuwa of the other part was referred by order dated 23.07.2004 made under section 4(1) of the Industrial Disputed Act, Chapter 131, (as amended) and published in the *Gazette* of the Democratic Socialist Republic of Sri Lanka Extraordinary No. 135 2/28 dated 06.08.2004 for settlement by Arbitration is hereby published in terms of Section 18(1) of the said Act.

BETWEEN

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

of the One part

and

1. Whittal Boustead Ltd,
148, Vauxhall Street,
Colombo 02.

2. Mortlake Press,
Whittal Boustead Ltd,
Peliyagoda.

Case No. A - 3051

V. B. P. K. WEERASINGHE,
Commissioner of Labour.

Department of Labour,
Labour Secretariat,
Colombo 05,
26th November, 2013.



1 A - G 18700 — 165 (2013/12)

This Gazette Extraordinary can be downloaded from www.documents.gov.lk.

3. Mr. B. S. N. Mendis
Proprietor, S & N Enterprises,
Dhammarathne Avenue,
Rawathawatte,
Moratuwa.

of the Other Part

THE AWARD

1. The Honourable Minister of Labour and foreign employment Relations & Manpower by virtue of the powers vested in him under 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 the Arbitrator by his order dated 23rd July 2004 and referred the dispute between the aforesaid parties for settlement by arbitration.

2. The matter in dispute between the aforesaid parties are :-

- (1) "Whether the termination of the services of the fifty eight (58) employees whose names are referred to in the attached schedule and who were employed in the permanent service of the Mortlake Press which is affiliated to the Whittal Boustead Ltd., is justified. If not justified, to what relief each of the said employees is entitled and
- (2) Whether the termination of the services of the thirty eight (38) employees whose names are referred to in the attached schedule and who were employed on contract basis in the Mortlake Press which is affiliated to the Whittal Boustead Ltd., is justified. If not justified, to what relief each of the employees is entitled."

Schedule of Permanent Employees

H. J. Fernando - Enpdd Perera - W. M. Sumanadasa - K. A. A. Kuruppu - N. S. Kekulawala - H. S. Wimalasiri, K. G. Sumith - G. M. Ranaweera - P. H. P. Laxman - K. P. L. U. Bandarage - W. A. S. Prashanna - K. G. S. Kumara - D. Y. L. Perera - A. A. Jayasena - W. P. S. R. Dayan - K. H. C. Ranatunga - S. G. D. C. K. Wijeratne - J. M. C. Kumara - S. M. N. Kumara - B. M. S. S. Basnayake - P. Wijendran - S. C. K. Ranasinghe - P. W. A. A. Priyantha - M. D. M. Senanayake - S. R. P. Jayasekara - H. M. P. S. Kumara - K. W. S. K. Jayasundara - A. A. S. S. Perera - I. P. S. Liyanage - B. M. A. R. Kumara - Ajith Kalahe - K. P. Perera - G. Samarapala - D. H. Wimaladasa - P. W. Perera - H. N. Peiris - D. D. Pushpakumara - W. P. A. Prasanna - S. P. A. Jayatileke - G. S. Weerasinghe - P. A. C. Pannala - S. G. Fonseka - I. I. K. W.

Mendis - N. P. Edirisinghe - L. Dayapala - W. W. J. C. F. Fernando - Y. P. Amarasekara, D. B. P. Perera - R. M. R. Bandara - M. A. W. Wijegunawardene - A. A. A. Gunatunga - W. A. S. Jayasinghe, G. W. L. Premakumara - D. L. A. S. Kumara - W. A. S. Kumara - K. P. D. Kumararatne - S. S. Jayatileke - P. S. M. Anurudda.

Schedule of Contract Basis Employees

K. K. G. Samarasinghe - E. H. C. K. Manju - K. Saman Kumara - K. P. P. Kumara Perera - M. J. B. V. Sandaruwan - S. D. S. Nandana - J. R. M. J. Anurudda - K. Premanath - A. K. G. Bandara - A. N. Sameera Gamag - Y. M. D. Dhanushka Navarathna - H. Somarathne Pathma Kumara - S. Chaminda Sellahe - D. D. K. Sampath Sanjeeva - A. C. Chaminda Kumara - U. A. N. Priyadhashana Uggalla - J. A. M. S. P. Sampath - D. Lalith Weerasinghe - I. P. R. Sanath Kumara - D. A. Uditha Samaradivakara - S. Sanjeeva Hennayake - R. P. A. A. Roshan Dilruk - R. M. Pradeep Amarawansa - R. A. Priyanka Kularathne - M. P. D. K. Cyril Kumara - R. M. Namal Ratnayake - Jai Prasanna - D. M. Wasantha - Gunasiri - D. Thevin de Silva - K. P. S. S. Kumara Premanath - M. A. Wasantha Kumara - H. K. D. Nishantha Mendis - S. A. D. Sumith Priyalal - R. A. Buddhika Sampath - K. Wilson - A. R. H. M. N. Anuradda Bandara - K. A. P. B. Mahesh Premasiri.

3. Mr. Bala Tampoe, General Secretary, Ceylon Mercantile, Industrial and General Workers Union, (hereinafter referred as CMU) assisted by Mr. E. V. N. Cabral, appeared for the Applicant Union.

Mr. Gomin Dayasiri - Attorney -at-Law assisted by Mrs. Manoli Jinadasa, Attorney-at-Law appeared for the 1st and 2nd Respondents, while late Mr. W. Karunajeewa, Attorney-at-Law appeared for the 3rd respondent, subsequently Mr. Sagara Kariyawasam, Attorney-at-Law succeeded him.

The 2nd Respondent, Mortlake Press is a pseudo name and, as such is neither a legal nor a natural person.

Applicant Union marked documents A-1 to A-12, while 1 and 2 respondents' marked documents R-1 to R-32.

4. K. Priyantha Perera, a machine operator, on behalf of the applicant Union stated that -

- (a) He joined the firm in 1991 as a casual hand, worked as a binder and shifted to machines thereafter, was made permanent in November 1992. He joined the Industrial and Commercial Workers Union in 1992, but at the time of termination of employment, was a member of CMU, to which he joined in 2000 ;

- (b) As the Assistant Secretary of Industrial and Commercial Workers Union, participated in discussions with the management. During this time, the firm Whittal Boustead Ltd. was taken over by John Keels. The Press worked in two shifts - Day shift from 7.45 a.m. to 7.30 p.m. and Night shift from 7.30 p.m. to 4.14 a.m. ;

Check off facility was available to the Industrial and Commercial Workers Union, and when the workers joined the CMU, that facility was extended.

- (c) A Collective Agreement was in operation, between Industrial and Commercial Workers Union and the Management. Afterwards workers joined the CMU, There were no changes in the terms and conditions provided in the Collective Agreement ;

Sanjeewa Fernando of the Management at a discussion requested us not to join the CMU. The Collective Agreement was in operation from 1992, is to expire in 2002.

- (d) Once the CMU came to the scene, the casual employees issue was discussed and on Head quarters instructions, the casual employees were enrolled to the Union, and membership money was collected ;

When Dinesh Mendis a casual hand was terminated, Branch Union officials met Taraka Silva, Human Resources Manager, who requested them to discuss with Shiran Mendis.

Then Shiran Mendis worked at the Packing Section, and he was a Sub-contractor. There were several Sub-Contractors from time to time. He knew of one Mack, Boteju, Gratien, Lanka and Shiran Mendis. He was not aware that a firm by the name of S & N Enterprises was in existence and that its proprietor was Shiran Mendis. Some employees were aware of the existence of S and N. Enterprises owned by Shiran Mendis, and some of them had some connections.

- (e) The check off facilities were granted in terms of the various Collective Agreements that existed even from 1992. Having shown the Sinhala version of the relevant Collective Agreement, which operates with effect from 01st September, 1999, a party to the Agreement is required to give written notice of 6 months to abrogate the agreement. If no, notice was tendered the agreement continue to be in force. CMU had failed to notice the other party ;

He had no knowledge of the laws governing then and those enshrined in the Collective Agreement.

He acted purely on the instructions of Jeganathan and Bala Tampoe, Secretary and General Secretary respectively.

- (f) Membership fees collected from non - permanent employees were not in conformity with the check off facility stipulated under the Collective Agreement. Rs. 490/- represents fees in respect of 38 employees, but later changed to 23. The receipt for Rs. 490/- issued by the Head quarters, had been altered. Even the carbon copy had alterations ;

Branch Officials enrolled 23 casuals out of 38. But regarding casuals CMU had not informed, either to Taraka Silva or S & N Enterprises about joining the Union.

- (g) Union had not given 6 months notice, in terms of the Collective Agreement to rescind it. He was unaware of the provisions concerning strikes, in the Collective Agreement. (page 9 of notes of / 28.3.2006). Also, General Secretary authorized the Branch to go ahead with the strike, but never explained the provisions in the Collective Agreement (Page 10 of notes of / 28.3.2006). The matter in dispute had not been taken before Labour Department prior to the strike (Page 12 notes of 28.03.2006) ;

- (h) Concerning the termination of Dinesh Mendis, Taraka Silva requested him to contact Shiran Mendis, who said that he will look into it, when enquired. On 2nd night, Dinesh was stopped, on 3rd discussed with Shiran Mendis, on 4th not report, on 5th did not work, since casual employees were stopped, and on 6th gave notice of strike at 10 a.m. ;

- (i) In view of the closure of S and N Enterprises, the employer of 38th employees, the permanent employees were incapable of working, without their help. As such requested the management to intervene (document A-05) - page 14 - of notes 03.05.2006. In terms of A-5, the Union had taken up the case of casual employees. Most of the machines required the help of 4 employees of which one happens to be a casual. In some machines, 2 casuals were deployed. There were occasions when only permanent employees worked in machines ;

On the 5th casual employees had told him that the services have been stopped. He had not asked whether these employees received any letters to that effect. In spite of that, the workers decided to launch a strike, even without discussing with Shiran Mendis or S and N. Enterprises.

- (j) Most of the printed matter were in relation to export food items and others were local saleable matter. Various orders were given priority subject to evaluation, wherein the dates of completion becomes vital. The printed documents indicate the dates of product manufacture and the dates of expiry, which explains the importance of printing on a specific time frame.

5. Chandana Pannala, Letter Press Employee, on behalf of the applicant Union stated that -

- (a) He joined in 1992 on casual basis, and now works in the Letter Press, is now permanent, and holds the position of Branch President of the Union. Was a member of the former Union, Industrial and General Workers Union and in 2000 joined the present Union ;
- (b) In January, 2004 had discussions with the General Secretary, CMU concerning casual employees, who advised then to enroll the casuals to the union and 23 were enrolled. On 2nd February, 2004, Dinesh Mendis had been stopped from work and on the following day the matter was brought to the notice of Taraka Silva, the Human Resources Manager, who has no knowledge of that, was asked to talk to Shiran Mendis ;

Taraka Silva was told that 23 casual employees had joined the Union, and he asked for a list. He was shown a receipt by Priyantha. Thereafter met Shiran Mendis who said that he will look into it. But nothing happened.

- (c) On 3rd, went for the night shift, which starts at 7.30 p.m. and the casual employees gathered at the gate who said that they were put out and to do something. He went inside the factory and discussed with the committee members, who proposed that the matter needs to be discussed with management. Then talked to Gamini Wijewardana and Lalith Jayawardana, who in turn said that they cannot say anything about it but, asked them to work. Branch Union officials told them that without the casuals help they were not in a position or mood to work, and since there was no response, they applied sick leave on-massc, 4th was the National Day and 5th was the Poya day. On the 6th morning went for work although rostered for the night shift, in order to discuss the issue with the management.

Having discussed with committee members, around 10.00 a.m., followed up with a discussion with management, but had no response. At about 11.00

a.m. Priyantha gave a letter indicating the inabilities to perform the work. They were summoned to the Board room, all the Committee Members were there. Priyantha himself participated, and there was no relief. Management was informed that with the concurrence of the CMU, will launch strike action and on the 10th, employees received letters terminating employment.

- (d) He had two permanent employees to assist in the machines and no casuals. Casual employees did the work of permanent employees, even if the permanent employees do not come for work. They worked in machines as well. Permanent employees worked on holidays, but was not compulsory. Later, said that one's name needed to be in the rostered list, to work on such days. He was aware that most of the printed materials are for export items which have to be completed within a stipulated time frame. As such there was a system in shift arrangement. In view of the situation that emerged, he came on 6th morning although rostered for the night shift. Instead of working, applied sick leave as they were mentally disturbed, which decision was taken by the Branch Union without consulting the parent union. He had no casuals to assist, only permanent employees. Although could have worked, as Union President, of the branch had to follow the views of the colleagues. He said that on 6th he along with Priyantha and Committee Members (In all about 10) discussed with the management, but management requested to discuss with Shiran Mendis. When discussed with Taraka Silva, he said he cannot assist. After the discussion with the management in the Board Room, came out of it, and then talked to Mr. Rohitha Kumaraswamy, but he was adamant. As such contacted the parent Union, and thereafter decided to proceed with strike action. On 6th around 11.00 a.m. Union decision was conveyed to the Management and they refused on the same day (document R - 18) ;
- (e) All the permanent employees were written to asking them to report for work on 09th (document R-19) and on 10th management sent out letters of termination, since even on 09th they continued the strike. (Document A-03) had been signed by him as President of the Union concerning the Collective Agreement asking, members to suggest proposals for a new Collective Agreement. Further said that he was of the opinion as he had discussions with CMU,

the Collective Agreement had lapsed. He admitted that they changed from the previous Union prior to 2000 and (Document A-3) had been in 2002, but had not reply to what happened from 2000 to 2002 ;

(f) On reading the para 2 of the Collective Agreement it require 6 months notice if the Collective Agreement is to be changed and at no stage the Union had given such notice. In terms of the Collective Agreement for the Union to take trade Union action, 7 days notice is required-clause 29 of the Collective Agreement. He admits that with introduction of 1999 Collective Agreement their service conditions changed. There was no change of such conditions, even though the Union changed. He was reluctant to admit and by letter (document R-19) the action of the union seems illegal. In reply deny the suggestion of management that the Union action was illegal ;

(g) About the previous contractor and what they did-Boteju, Gratien, Shiran etc., the witness was aware that 2 lists were available to arbitrator-one concerning permanent employees and the other for contract employees. None of the contract employees were present as at 26.08.2009. He was unaware of the employment status of the contract employees, and their discipline administration. He was not aware that Shiran Mendis employed them, paid them including discipline administration concerning contract employees and not a single contract employee appeared in courts to state their case. Shiran Mendis had informed then that due to economic reasons, he cannot keep them in employment.

6. Dona Ramyalatha Sendanayake, Book-keeper of CMU, on behalf of the applicant Union stated that -

(a) She joined the establishment in 1985, as a Book - Keeper and presently in charge of the Accounts Division, from 2003 ;

(b) The procedure in joining the Union is :

Firstly, General Secretary accepted joining ; secondly, filled in applications are handed over with membership fees, thirdly, counts the number of applications and issue receipt for the fees received, fourthly, the applications are entered in the register, fifthly, the applications are presented to the executive committee, which meets on every Wednesday. And sixthly, the Executive Committee approves and returns the related documents.

(c) The applications of members, register and receipt books, including the receipt in respect of 23 employees, which works out to Rs. 490/- were shown. The Executive Committee had approved applications on 28.01.2004

(d) She admitted that there were mistakes in documents, the receipt in respect on Rs. 490/- had been interpolated in several places and such interpolations/alterations have not been initialed ;

(e) Since the Treasurer, is not at Union Office, his Rubber Seal is used in receipts issued by the Union.

7. Wasantha Kumara Peiris Malwaththage, Accountant , on behalf of the 1st and 2nd Respondents stated that -

(a) The Mortlake Press was one department of Whittall Boustead Ltd. Mainly the firm worked as an Agency house for the management of estates planted with tea, rubber and coconut owned by foreign companies. With the introduction of the Land Acquisition Act, ownership of land was limited to 50 acres. In consequence, the Estate Agency work diminished and printing press emerged as the major activity, exclusively packaging materials of food products ;

(b) Making of tea bags for Tea exporting companies of repute, date of expiry of products enclosed, with date of manufacture are marked, for this purpose to be a reality, printing matter has to be planned on a given time frame. The job ticket indicate the date on which the printed matter has to be completed by the workers ;

(c) Packed items and released to the local market as well, wherein the food products, contain the dated of manufacture and expiry, exhibited, meant for sale ;

(d) Tea cartons with brands names such as Impra Tea (Leaf Tea, Raspberry Tea, Stuart Lanka Tea, Christen Tea, Dilmah Tea, Darling Tea Smer Tea etc.) Milk Powder brands such as Nestomalt, Anchor, Anlene, Amma, Raththi Nido etc. Biscuit packages brands Crest Fingers, Chicken Fingers, Delight, Fruit Cake, Jambu Chicken Bite, Williams Tea time Biscuits, First Fingers, Cake Boxes for Little Lion Company, Checo Sponge Cake, Rajapaksha Cake, Bamboo Garden, Coconut Milk varietics, various items of Elephant House products etc. Most of the food products are of shorter durability and packages need to be printed

- on time, else their usefulness will be lost. The consumer protection Laws guarantee safety of the user, as such there attaches responsibility to deliver the packing material well before the scheduled times;
- (e) This company was in operation for over 100 years and was a leading Institution compared with other competitors in the industry, such as, JF and i Printing, Aitken Spence, Uniwalker Packaging, Middleway Printing, Universal Packaging etc. The reputation the company carried was to print and deliver on time ;
- (f) With regard to the Collective Agreement, stated that several benefits were provided to the workers, thereby prevented any breakdown in the performance of activities, expedieiously throughout ;
- (g) To modernize the work in the press, management ordered an automatic machine costing US\$ 45,000, in 2003 October/November, which would speed up the printing work. The machine came in February, 2004 ;
- (h) Also explained the difficulties faced if printed matter is sent after the due date. The dates shown in the printed matter vary, which leads to suspicion, especially in relation to food products, it may be considered unsuitable for consumption. Furthermore if delayed in the matter of shipment, the entire process, will be a breakdown, There were negligible complaints and as far as the company is concerned 99% to 98% compliance on time was observed prior to the strike ;
- (i) Furthermore to overcome the possibilities of raw material shortage, the company always had a stock of material for 3 months, which ensures even shipping delays ;
- (j) A third party supplied manpower to assist in various facilities, and their workers were paid by them. Even disciplinary administration concerning them were by the Third Party. The main functions were delivery of paper required to the machines and once printing was over, to remove the printed matter. The Labour supplier, did supply labour numbers when required. The company had a contract with the Labour supplier, who was paid in terms of the Contract, for his workers, EPF/ETF or bonus was not paid by the company and no check off facility afforded to his workers. From the time he joined the organization, there were several contractors who supplied unskilled labour ;
- (k) Apart from the shift system, company paid incentives on production, employees earned Rs. 13,000/- to Rs. 20,000/- monthly ;
- (l) In terms of the contract with the Labour supplier he is required to give notice of termination of contract - vide Para 12 ;
- (m) For the purpose of automation, company aimed at investing Rs. 100 million and 2 machines were ordered, in addition to raw materials. Most of these items reached the company after the strike. These items would not have been ordered if the company is to face a grave situation of this nature ;
- (n) All permanent employees were covered by the Collective Agreement, and enjoyed the check off whereas the Labour supplier's workers were not ;
- (o) Shiran Mendis has requested to stop workers entering the press. When one of his workers, tried to enter, he was stopped at the gate. When the other employees enquired from the Human Resources Manager, he denied knowledge of this development and wanted them to ask Shiran Mendis ;
- On the next day workers refrained from working having applied sick leave en-masse ;
- (p) Labour contractor's workers had not informed the management that they joined the Union, until to 03rd February, either verbally or written ;
- (q) It was on the 06th morning that the management was informed of the strike action, Employees applied for sick leave on 03rd, on 04th, on 05th they were present but dit not work. As a result of the strike, the process get destabilized in that, the delivery of the printed matter gets changed ; as a result packing to the containers gets delayed ; Since date of manufacture, expiry date have been printed, the packed items could be exhibited for a shorter period ; if export items are to be exported by air or sea, if the delay is a possibility and in consequence the prices vary considerably ;
- (r) The company had received several awards, as a results of supplying the printed matter within the times agreed upon. If and when a sudden stoppage occurs, only a limited number could be given over to another press to expedite the outstanding order Besides, certain tax concessions were given to this firm and if given over to another printer, special approval need to be obtained from customs.

- (s) With the commencement of strike, the customers were disturbed since their orders were getting delayed. Some of them were abusive. After a while some of them came to know of the strike and demanded the art work and positives. With the withdrawal of orders customers faced losses, as well as the company ;
- (t) Although management had plans to expand the business activities, with the strike on, all customers, withdrew transactions with the firm and as a result had to close down the press, the value of the new machine was Rs. 33 million, that was sold for Rs. 16.2 million, thereby the loss was Rs. 17 million ;
- (u) Explained the various processes in the press. The operation of Off-Set Printing Machines, Guillotine Machines, Code Machine, Pasting Machines, etc. were highlighted, which were totally manned by the Company employees, whereas, the workers of S & N Enterprises, were involved in moving the paper and boards from one machine to another ;
- (v) S & E Enterprises was owned by Shiran Mendis and had an agreement with the Company to Supply Labour. It reveals that he had an agreement commencing 01st May, 2002 and another covering 01st May, 2003 for one year each ;
- (w) When an order for printing is received, office prepares the job ticket, which states the details of the matters to be printed. Such a job ticket is sent to Foreman through the art room. In the case of tea packages it's 3 years from the manufactured date to expiry date ;
- (x) The company employees, when they report for work they are required to swipe the respective cards. The machine minder attached to the machine enter the names of those who worked on the respective machines ;
- (y) Witness said that he was unaware of any situation, where a stoppage of work had occurred sometime ago, with regard to a transfer ;
- (z) In terms of para 12 of the agreement entered by Shiran Mendis with the company, either party may give one week's notice if the Agreement is to be revoked within the first month and 3 months notice to revoke thereafter. However in the subsequent agreement, effective on 01st May, 2003, which is for one year, states that one week notice, if revoked within 3 months and thereafter one month's notice. Also Agreement stipulates certain conditions re-allocation of work for his team by the management, It is termed service order, prepared by the Production Division.
- (aa) On 2nd January, 2004, Shiran Mendis sent in a letter addressed to the General Manager of the Company, stating his displeasure as the amount paid was inadequate to pay the workers ;

(ab) According to the agreement between Labour supplier and the company a worker to be paid Rs. 185.25 and GST plus Government Taxes, which forms the wage for 8 hours per day. The Labour supplier had given notice of one month, in terms of the Agreement. The notice is dated 02nd January, 2004 and it ends on 02nd February, 2004. The witness has no recollection, as to whether, these workers worked on 3rd February, 2004 ;

(ac) Concerning the Collective Agreement negotiated by Industrial and General Workers Union with the Company, CMU had initiated the formation of their Union, and thereafter, the check off facility had been extended to CMU members. Paragraph 29 of the Collective Agreement, states that 07 days notice of strike need to be given by the union, and if there are no other Collective Agreements the provisions of this Collective Agreement prevail until a new Collective Agreement comes in to operation ;

(ad) Witness accepted the fact that there were 38 persons out sourced. And there had been more sometimes. He also accepted the fact that management received notice of termination of contract and that his workers will not come thereafter, Also management had discussions with other Labour suppliers ;

Witness said that contract workers were engaged in unskilled work. Company had cleaning services security, binding etc. were provided by outside contractors. Besides each of the machines were operated by permanent employees skilled in operation of machines. The catalogue stipulated the numbers required. Apart from that, company obtained the outside labour to do simple unskilled workers, such as carrying paper and printed matter from one machine to another, the witness was unable to produce any record with regard to allocation of work of contract workers, as they were unimportant after the audit of Accounts.

(ae) With the closure of the press the building was taken over by the owners, who requested the company to vacate the premises urgently as he wanted to put up a building. Most of the documents which the union requested are not available to produce in courts, since Union

had not requested at the outset. There was nobody to take change of any documents or records after the closure. After the Audit, what was considered essential were preserved ;

(af) Witness said that registered letters received are marked in a register. There were no formalities as placing a date stamp. Some letters that are sent to the Managers may not have initials of the recipient ;

(ag) The strike was so sudden and management by then was in the process of finding alternatives. Previously the permanent employees did some functions done by the contract workers. In two to three days management could have found another supplier ;

(ah) Management informs the Labour Supplier, the number of persons required and are not requested by name. Management do not expect such workers to operate machines. Such workers interact on terms and conditions of employment with B. S. N. Mendis. He said that those workers never discussed their employment matters with the company. However B. S. N. Mendis had requested increased pay for his workers, but management had declined. In consequence B. S. N. Mendis terminated his contract with the company ;

(ai) Importing countries have conditions attached to their imports. Specially dates of manufacture and dates of expiry are essential ingredients ;

(aj) Witness said that with the shifting from Industrial and General Workers Union to CMU, the terms and facilities agreed per the Collective Agreement, were fully extended to the members of the CMU as well, including check off.

8. Romesh Mecheal David, Director, on behalf of the 1st and 2nd Respondents stated that -

(a) In every order there is a maximum delivery date, which forms an inviolate term of the contract, since every exporter makes a commitment to his buyers, which is expressed in the buyers order and the letter of credit, that Tea will be processed and shipped by a specified date ;

Exporter thereupon, in most cases, book space in a vessel to ship the goods out. So the time line is

critical. Cargo need to reach port, at least 48 hours before, the particular vessel arrives the harbour.

(b) In the Collective Agreement, dispute procedure is explained in clause 27 and Trade Union action in clause 29. In view of the sudden strike, the company faced a crisis situation, in getting the products out, as no printer would undertake to do such enormous workload overnight and within 24 hours lost 75% of orders ;

(c) The press was situated at Vauxhall Street premises and moved to Peliyagoda, a very spacious spot, land out on an organized fashion. Also started upgrading the press with new machines, and infused additional sales staff with knowledge of sales techniques ;

(d) In consequence of the strike, big orders of Ahmed Tea, Unilevers, George Stuarts Ltd. moved their work to other printing companies. Art work and positives belonged to the customers. They removed, in order to print them at other presses, who were our competitors ;

(e) Operatives and the Associate Staff were on strike other than the Administrative Staff. Since there were no work without operational work, other staff had to be discontinued and pay them compensation. As a result the company lost over Rs. 50 Million within the first 2 years (a direct loss) ;

(f) As a result of the strike, the company faced huge loss of confidence among the customers, whom the company could not retain, as such the management took the decision to terminate striking employees, lost all customers in the primary lines of business ;

(g) Prior to termination there were discussions continuously, including the parent union, as well as Employers Federation of Ceylon Strikers were asked to work on the 09th in view of the crisis situation company face with, in failing to keep up to the key deadlines the customers expected ;

Per document R/9, workers were written to -

“You are requested to return to work by 09th February 2004. Should you fail to do, we have decided to terminate your work on account of your participation in an illegal strike.”

On 10th February, per document R-20, terminated the services.

- (h) For commercial reason, contract workers were engaged in unskilled work. For doing different type of job, wages varied. Janitoas and security staff were also engaged on the same basis ;

Labour supplier Shiran Mendis, send document R-25 to General Manager, a notice of termination of his contract with the company. It was while Management was negotiating with the Contractor, even during the notice period. His request was to increase the amounts paid, as it was not viable.

- (i) He was not aware of contract workers joining the union, but said that he was not concerned since contract workers were not company employees.

- (j) He was one of the directors, amongst others. Whittal Boustead Ltd. is an associate company of John Keells Holdings by virtue of acquiring majority of share holdings Mr. Gihan Dedigama was the General Manager ;

- (k) The manufactured cartons had a mark on each carton, JK Packaging and Mortlake Press for the purposes of temporary Import for Export, a separate firm was formed to import packing material, so that such items would be free from customs duty and also for Board of Investment Bond, Once cartons are exported, in terms of the arrangement no levy apply for the specific purpose, the material had been used. If materials imported under the said stock were not used, then the items carry the name of Mortlak Press. J. K. Packaging, which included expenditure concerning wages of some employees ;

- (l) The Press functioned as one unit for the Accounting purposes, some of the work came under Whittal Boustead while some of the work was done by J. K. Packaging, it was one unified management, a single unit, a single set of executives, a single profit centre manager, but two legal entities ;

- (m) It had been the practice in existence always to engage contract workers, and noted that he was not aware whether contract worked side by side with permanent workers, he also denied Shiran Mendis, working as a binder in the press ;

- (n) Over the years, the press was running at a profit, except in 2004, consequent to the strike, the loss was substantial. An extract of the audited profit and loss accounts as at 31st March, 2004 indicated a loss of Rs. 34 million, as there was no revenue during February and March as there was no work done.

- (o) A collective decision was taken by the board on the 10th to shut down the press, where other members of the management, along with Deputy General Manager, the Production Manager, the Human Resources Manager were present. Considering the circumstances, the board decided not to proceed with the previously sarctioned investment of Rs. 150 million.

- (p) The company and the contractor had been unable to reach an agreement on the issue of an increase in rate by the end of January or February or the date. This happened and that was obviously the reason why the contractor stopped the workers ;

- (q) The closure of Mortlake Press was a painful decision, as the institution had a thriving business that created livelihood for a large number of people, satisfied a great deal of customers and through the irresponsible actions and ill thought of actions, hasty actions of a few people forced the majority of the others into acting like that, ultimately destroyed the business for the whole group ;

9. 3rd Respondent, B. S. N. Mendis, made only written submission which stated that :-

- (a) Was the proprietor of S & N Enterprises engaged in the business of providing unskilled manpower to various organizations and that during the relevant period, supplied workers to Mortlake Press for its' manpower needs under a contract entered with the firm ;

- (b) He submits that the 38 workers, referred to in the schedule worked on contract basis at all times and their salaries and other statutoy payments were paid by him ;

- (c) These workers were engaged on fixed term contracts, since all of them were aware that he was only in a position to provide employment to his workers depends on the duration of the contracts he receives, from relevant organizations, and fixed term contracts were extended if these contracting parties extends further ;

- (d) Payment for manpower supplied were received by him and those payments included the administrative costs, profits as well as salaries and other payments of his employees ;

- (e) Due to escalation of costs, he found it not commercially viable to provide manpower at the existing rate at that time and thus negotiated with the company during latter part of 2003, but all such negotiations failed, which prompted him to end the contract and inform the employees, that under the circumstances, the contracts with them will not be extended ;

10. My findings and observations :-

- (a) The applicant union's two worker witnesses, Priyantha Perera and Pannala, joined the firm as casual employees, but were made permanent later on. There is no evidence of any other casual employees working in the establishment.

- (b) The 3rd respondent Shiran Mendis, from the outset states that he had a contract with Whittal Boustead Ltd. for the supply of labour dependent upon the numbers required from time to time. He had one year contract in 2002 and on expiry negotiated another one year contract, commencing 1st May 2003. In terms of the contract, the unskilled were to be paid Rs. 185. 25 plus GST plus Government Taxes. Either party could give one month's notice to rescind the contract. Further he submitted that.

- The contract employees were his employees, under fixed term contracts, dependent upon the duration of the contract with the other party.
- He received payment for manpower supplied, and those payments included his administrative costs profits, salaries & other payments concerning the employees.
- His employees were well informed of the situation and they had no objection to the decision of terminating the contract, as he found out that it was not viable to continue supplying manpower due to rising costs.
- He negotiated with the company requesting an increase in payment but negotiations resulted in a failure, thus give notice to termination of the contract with the management.

Section 45A read with Section 59(1) of the Wages Boards Ordinance regarding sub-contracting provide that -

Section 45 A - liability of contractor or in regard to wages due to a worker employed by the sub-contractor.

Where a person (hereinafter in this section referred to as the contractor) who has undertaken to execute any work enters in to a contract with any other person (hereinafter in this section referred to as the sub-contractor) for the execution by the sub-contractor of the whole or any part of that work, then, if the sub-contractor fails to pay wages in accordance with Section 21 to any worker employed by him in the performance of the contract, the contractor shall be liable to pay the wages due to that worker in accordance with that section.

Section 59(1) Liability of employer's agent.

Where an offence for which an employer is liable under this Ordinance has in fact been committed by some agent of the employer or other person, that agent or other person shall be liable to be proceeded against for the offence in the same manner as if he were the employer, and either together with, or before or after the conviction of the employer, and shall be liable on conviction to the same punishment as that to which the employer is liable.

Shiran Mendis, had duly notified the management on 2nd January 2004 that he is terminating the manpower supply contract. Management had enough time and space to consider alternatives. Instead had acted most irresponsibly and negligently.

- (c) All permanent employees, who were under the collective agreement changed their union to CMU in 2000. With the shift to the new union, the CMU from 2000 to 2004, there had been no changes in the collective agreement, or changes in terms and conditions of employment. Enrolment of contract workers, to the union was initiated only in the beginning of January 2004, until then branch and the union were in deep slumber. Even the manner in which, contract workers joined the union seems unclear, in that, the use of a rubber stamp on the receipt for Rs. 490/- and treasurer failing to give evidence, to testify. The witness accepted the fact that there were interpolations and alterations as such its not authentic. It's of no evidential value. Besides, most importantly, the applicant union, did not field a contract employee to give evidence.

- (d) The collective agreement, entered into between Whittal Bousteads Ltd. and Industrial and General

Workers Union, which was published in Government Gazette (Extra Ordinary) No. 1172/16 of 20 February 2001, effective from 01 September 1999 stipulate amount other things the following matters of importance to this dispute. They are -

“Clause 1 - parties covered and bound -

This agreement shall cover and bind Whittall Bousteads Ltd., the Industrial and General Workers Union and the members of the Union Employed by the employer in the printing trade, in the classes of employees enumerated in the first schedule hereto and who are employed on monthly contracts of employment by the employer.”

Note : The first schedule, stipulate salary scales relating to four categories only. They are classes A, B, C and D. Classes E, F and Trade learners and apprentices have been excluded.

“Clause 2 - Date of Operation and duration -

This agreement shall be effective as from the first day of September One Thousand Nine Hundred and Ninety Nine and shall thereafter continue in force, unless it is determined by either party, giving six months notice in writing to the other, subject to the following provisions.

(a)

(b)

Note : The requirement of giving six months notice, for alternation, modification or for entry into a fresh agreement, had not been followed. It was possible for the union to abrogate the agreement giving sufficient notice.

“Clause 29 - Trade Union Action -

The Union and its members and the employees covered and bound by this Agreement jointly and severally agree with the Federation, the Employer that during the continuance in force of this Agreement they shall not engage in any strike or other form of trade union action against the Employer in respect of any dispute between the Employer on the one hand and the Union and / or any one or more of its members and or any employee or employees covered and bound by

this Agreement on the other hand whether or not such dispute is related to this Agreement, except where such dispute has been caused by an act of the Employer which in the opinion of the controlling body (by whatsoever name called) of the Union is *mala fide* or vindictive or calculated to threaten or undermine the existence of the legitimate activities of the Union and or its members or is grossly unfair or seriously detrimental to the interests of the Union and or its members. Provided, however, that at least seven days notice in writing shall be given by the union to the employer, the EFC and the Commissioner of Labour before the of commencement of any intended strike or other form of trade union action consequent on an act of the Employer which in the opinion of the controlling body (by what so ever name called) of the Union is *mala fide* or vindictive or calculated to threaten or undermine the existence of the legitimate activities of the Union and/or its members is grossly unfair or seriously detrimental to the interests of the Union and/or its members.

Note : The Union had failed to give 7 days notice of strike or other of trade union action, to the relevant authorities and the employer.

“Clause 30 - Variation of terms and conditions of employment - benefits

The Union and its members and the employees covered and bound by this Agreement jointly and severally agree with the Employer that during the continuance in force of this Agreement they will not seek to vary alter or add to all or any of the terms and conditions of employment presently applicable to any of the employees covered and bound by this Agreement as amended or altered in terms of this Agreement, other than by mutual agreement.

Note : Although, CMU was not a party to the agreement, the employees covered are required to comply with the terms during the continuance of the agreement. The employees have breached the provision of the agreement.

Collective Agreements are “Gentlemen’s Agreements”, they are not created by any statute. If the employer had followed the agreement fully and in good faith, there is a moral

obligation on the part of CMU as well as the employees to give advance notice of strike, which they have not done. This is a serious misconduct on the part of employees.

Award - In the final analysis, having examined the evidence comprehensively I am convinced that several irresponsible acts have been committed by both parties. In the circumstances, I award that the 1st Respondent Whittal Boustead Ltd., shall pay all permanent employees, numbering 58, the following amounts by way of *ex-gratia* payment.

- (a) Persons over 50 years of age - Rs. 275,000/-
- (b) Person below 50 years and over 40 years of age - Rs. 225,000/-
- (c) Persons below 40 years of age - Rs. 175,000/-

The above amounts shall accordingly be paid within 45 days of the publication of the award in the Government Gazette of the Democratic Socialist Republic of Sri Lanka.

Since none of the 38 contract basis employees of B. S. N. Mendis the 3rd Respondent (who had a legally permissible contract) with the 1st and 2nd Respondent made no claims or testified in the Arbitration proceedings, those employees are not entitle to any relief.

I consider this award just and equitable.

P. NAVARATNE,
Arbitrator.

31st October 2013.

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