~~P.C.~~
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Judgment 33, 1964

IN THE PRIVY COUNCIL

No.15 of 1963

ON APPEAL

FROM THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE MATTER of an Arbitration between the Shipping Association of Jamaica on the one hand and the Bustamante Industrial Trade Union, the United Port Workers and Seamen Union and the Trade Union Congress of Jamaica on the other hand, and

IN THE MATTER of the Arbitration Law, Chapter 19 of the Laws of Jamaica (Revised Edition) 1953.

BETWEEN

THE SHIPPING ASSOCIATION OF JAMAICA
(Applicants) Appellants

- and -

THE BUSTAMANTE INDUSTRIAL TRADE UNION
THE UNITED PORT WORKERS AND SEAMEN UNION
and THE TRADE UNION CONGRESS OF JAMAICA
(Respondents) Respondents

RECORD OF PROCEEDINGS

CLIFFORD TURNER & CO.,
11, Old Jewry,
London, E.C.2.
Solicitors for the Appellants.

ALBAN GOULD BAKER & CO.,
17, Northampton Square,
London, E.C.1.
Solicitors for the Respondents.

IN THE PRIVY COUNCIL No.15 of 1963

ON APPEAL

FROM THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE MATTER of an Arbitration between the Shipping Association of Jamaica on the one hand and the Bustamante Industrial Trade Union, the United Port Workers and Seamen Union and the Trade Union Congress of Jamaica on the other hand, and

IN THE MATTER of the Arbitration Law, Chapter 19 of the Laws of Jamaica (Revised Edition) 1953.

BETWEEN

THE SHIPPING ASSOCIATION OF JAMAICA (Applicants) — Appellants

- and -

THE BUSTAMANTE INDUSTRIAL TRADE UNION
THE UNITED PORT WORKERS AND SEAMEN UNION
and THE TRADE UNION CONGRESS OF JAMAICA (Respondents) — Respondents

RECORD OF PROCEEDINGS

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PART I

PART II

EXHIBITS

IN THE PRIVY COUNCIL No.15 of 1963

ON APPEAL

FROM THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE MATTER of an Arbitration between the Shipping Association of Jamaica on the one hand and the Bustamante Industrial Trade Union, the United Port Workers and Seamen Union and the Trade Union Congress of Jamaica on the other hand, and

IN THE MATTER of the Arbitration Law, Chapter 19 of the Laws of Jamaica (Revised Edition) 1953.

BETWEEN

THE SHIPPING ASSOCIATION OF JAMAICA (Applicants) — Appellants

- and -

THE BUSTAMANTE INDUSTRIAL TRADE UNION THE UNITED PORT WORKERS AND SEAMEN UNION and THE TRADE UNION CONGRESS OF JAMAICA (Respondents) — Respondents

RECORD OF PROCEEDINGS

NO.1 - NOTICE OF MOTION

In the High Court of Justice

No.1

Notice of Motion 30th June 1961

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE HIGH COURT OF JUSTICE

IN THE MATTER of an Arbitration between the Shipping Association of Jamaica on the one hand and the Bustamante Industrial Trade Union, The United Port Workers and Seamen's Union and The Trades Union Congress of Jamaica on the other hand, and

IN THE MATTER of the Arbitration Law, Chapter 19 of the Laws of Jamaica (Revised Edition) 1953.

TAKE NOTICE that this Honourable Court will be moved on Monday the 25th day of

In the High Court of Justice

No. 1

Notice of Motion 30th June 1961 continued

September, 1961, at 10 o'clock in the forenoon, or so soon thereafter as counsel can be heard, by counsel on behalf of the above mentioned Shipping Association of Jamaica, for an order that any amendments of or additions to the award of the Public Utility Undertakings and Public Services Arbitration Tribunal dated the 19th day of April 1961, and made upon the reference to that Tribunal of a dispute between the abovementioned Shipping Association of Jamaica on the one hand and the Bustamante Industrial Trade Union, The United Port Workers and Seamen's Union and the Trades Union Congress of Jamaica on the other hand, which purport to have been made after the said award was issued may be set aside upon the following grounds :

(i) that each and every such amendment or addition was beyond the jurisdiction of the said Tribunal in that the said Tribunal was functus officio after it had issued its said award.

(ii) that neither such amendments nor additions nor any of them constituted the correction in the said award of any clerical mistake or error arising from any accidental slip or omission within section 8 (c) of the abovementioned Arbitration Law.

(iii) that the said Tribunal had not made any clerical mistake or error arising from any accidental slip or omission and accordingly had no power to make any correction to the said award under the said section 8 (c) or otherwise.

(iv) that all such amendments and additions to the said award were ultra vires the Tribunal and had and ought to be set aside.

AND TAKE FURTHER NOTICE that it is intended to read in support of this motion an Affidavit of John Cecil Wilman sworn and filed this day a copy of which Affidavit is served herewith.

DATED this 30th day of June 1961.

(Sgd) JUDAH & RANDALL
SOLICITORS FOR THE SAID
SHIPPING ASSOCIATION OF JAMAICA.

To:
the Bustamante Industrial Trade Union

the United Port Workers and Seamen Union

the Trades Union Congress of Jamaica.

In the High Court of Justice

No. 1

FILED by Judah & Randall of No.11 Duke Street, Kingston, Solicitors for and on behalf of the Shipping Association of Jamaica whose address for service is that of its said Solicitors.

Notice of Motion 30th June 1961 continued

NO.2 - AFFIDAVIT OF JOHN CECIL WILMAN IN SUPPORT OF MOTION

No. 2

Affidavit of John Cecil Wilman in Support of Motion 30th June 1961

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE HIGH COURT OF JUSTICE

IN THE MATTER of an Arbitration between the Shipping Association of Jamaica on the one hand and the Bustamante Industrial Trade Union, the United Port Workers and Seamen Union and the Trades Union Congress of Jamaica on the other hand, and

IN THE MATTER of the Arbitration Law, Chapter 19 of the Laws of Jamaica (Revised Edition) 1953.

I, JOHN CECIL WIMAN make oath and say :-

1. My true place of abode and postal address are the Cottage, Jack's Hill Road, Jack's Hill Postal Agency in the Parish of Saint Andrew and I am a Solicitor of the Supreme Court.

2. I am employed as a Solicitor by Messrs. Judah & Randall of 11 Duke Street, in the Parish of Kingston, the Solicitors for the above-mentioned Shipping Association of Jamaica (hereinafter referred to as "the Association").

3. My letters dated March 11 and 14, 1961 the Governor in Council in accordance with the provisions of the Public Utility Undertakings and

In the High Court of Justice

No. 2

Affidavit of John Cecil Wilman in Support of Motion 30th June 1961 continued

Public Services Arbitration Law Chapter 329 of the Laws of Jamaica (Revised Edition) 1953 referred to the Public Utility Undertakings and Public Services Arbitration Tribunal (hereinafter referred to as "the Tribunal") for settlement the dispute between the Association on the one hand and the Bustamante Industrial Trade Union, the United Port Workers and Seamen Union and the Trades Union Congress of Jamaica (hereinafter referred to as "the Unions" on the other hand.

4. The terms of reference of the Tribunal were as follows:-

> "to determine and settle the dispute which now exists between the Bustamante Industrial Trade Union, the United Port Workers and Seamen Union and the Trades Union Congress of Jamaica, jointly representing portworkers on the one hand and the Shipping Association of Jamaica on the other, over the Unions' claims for increased wages for portworkers".

5. The Tribunal consisted of Mr. N.P. Silvera, who was Chairman, Mr. Paul Geddes, who was appointed from the panel of Employers' Representatives and Mr. Roy Johnstone who was appointed from the panel of Workers' representatives.

6. The Tribunal sat at the Ministry of Labour and meetings were held on April 4 and 7, 1961. I was personally present throughout the proceedings before the Tribunal instructing Mr. Daniel Lett of Counsel who appeared on behalf of the Association.

7. There is now produced and shown to me marked "JCW 1" a transcript of the said proceedings which has been furnished to me by the Ministry of Labour which I verily believe to be accurate subject to the corrections set out in the letter referred to in the next following paragraph hereof.

8. There is now produced and shown to me marked "JCW 2" a copy of a letter dated April 17, 1961 written by me on behalf of Messrs. Judah & Randall to the Ministry of Labour for the attention of Mr. Goodin, the Secretary of the

Tribunal, setting out certain clerical errors which in the opinion of Mr. Lett and myself were contained in the said transcript of the said proceedings.

9. The Tribunal made its Award on the 19th day of April, 1961 and the copy of the said Award forwarded to me by the Ministry of Labour is now produced and shown to me marked "JCW 3" which copy I verily believe to be a true copy of the said award.

10. To the best of my knowledge information and belief the said award was forwarded to the parties by the Ministry of Labour on the 28th day of April 1961.

11. On the 2nd day of May 1961 at approximately 9:30 a.m. I received a telephone call from Mr. Goodin, the Secretary of the Tribunal when he advised me that Mr. Silvera, the Chairman of the Tribunal wished to know whether the Association would consent to the Tribunal dealing with a letter which had been sent to the Tribunal by Hon. Hugh Shearer of the Bustamante Industrial Trade Union requesting an interpretation of the Award without a hearing for the purpose of Section 13 of the Public Utility Undertakings and Public Services Arbitration Law. I informed Mr. Goodin that the Association did not consent to the matter being dealt with in its absence.

12. On the same day, namely May 2, 1961, I wrote to the Secretary of the Tribunal confirming the telephone conversation described in the preceding paragraph hereof and a copy of my letter is now produced and shown to me marked "JCW 4".

13. On or about May 2, 1961, I received from the Secretary of the Tribunal a copy of a letter dated May 2, 1961, addressed by him to the Secretary of the Association which is now produced and shown to me marked "JCW 5".

14. As a result of the letter referred to in the preceding paragraph further meetings of the Tribunal were held at the Ministry of Labour on May 9 and 10, 1961. I was personally present throughout these further proceedings before the Tribunal instructing Mr. Daniel Lett of Counsel.

In the High Court of Justice

No. 2

Affidavit of John Cecil Wilman in Support of Motion 30th June 1961 continued

15. There is now produced and shown to me marked "JCW 6" a transcript of the said proceedings which has been furnished to me by the Ministry of Labour which I verily believe to be accurate subject to the correction set out in the letter referred to in the next following paragraph hereof.

16. There is now produced and shown to me marked "JCW 7" a copy of a letter dated May 18, 1961 written by me to the Secretary of the Tribunal setting out a correction which in the opinion of Mr. Lett and myself should be made in the notes of the proceedings on May 9, 1961.

17. There is now produced and shown to me marked "JCW 8" a copy of a letter dated May 24, 1961 written by the Acting Permanent Secretary to the Ministry of Labour to the Chairman of the Association which copy was sent to me by the said Acting Permanent Secretary, which letter states that the Tribunal had informed the Ministry of Labour on May 17, 1961, that its Award dated April 19, 1961, did not entirely reflect the decision of the Tribunal and that the Tribunal had requested that the Award be corrected in the manner set out in the letter namely by the addition of an item (v) in the said Award.

18. After discussions between representatives of the Association Mr. Lett and the Association's Solicitors, Messrs. Judah & Randall were instructed to obtain the opinion of Sir Edward Milner Holland, Q.C. as to the validity of the purported amendment of or addition to the said Award dated April 19, 1961.

19. I have obtained the joint opinion of Sir Edward Milner Holland, Q.C. and Mr. Michael Essayan, Barrister-at-Law and it is in reliance upon the said Opinion that an order is sought from this Honourable Court setting aside the purported amendment of or addition to the said Award on the grounds specified in the Notice

of Motion.

In the High Court of Justice

SWORN by the said JOHN CECIL WILMAN at Kingston in the Parish of Kingston this 30th day of June 1961 before me :-

(Sgd) John C.Wilman

(Sgd) A.H.B. Aguilar
Justice of the Peace
St. Andrew

No. 2

Affidavit of John Cecil Wilman in Support of Motion 30th June 1961 continued

NOTE: This Affidavit is filed by Judah & Randall of 11 Duke Street, Kingston, Solicitors for and on behalf of the Shipping Association of Jamaica.

NO.3 - FURTHER AFFIDAVIT OF JOHN CECIL WILMAN IN SUPPORT OF MOTION

No. 3

Further Affidavit of John Cecil Wilman in support of Motion 19th September 1961

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE HIGH COURT OF JUSTICE

IN THE MATTER of an arbitration between the Shipping Association of Jamaica on the one hand and the Bustamante Industrial Trade Union, the United Port Workers and Seamen Union and the Trades Union Congress of Jamaica on the other hand, and

IN THE MATTER of the Arbitration Law Chapter 19 of the Laws of Jamaica (Revised Edition) 1953.

I, JOHN CECIL WILMAN make oath and say:-

1. My true place of abode and Postal address are the Cottage, Jack's Hill Road, Jack's Hill Postal Agency in the Parish of Saint Andrew and I am a Solicitor of the Supreme Court.

In the High Court of Justice

No. 3

Further Affidavit of John Cecil Wilman in support of Motion 19th September 1961 continued

2. I crave leave to refer to the Affidavit sworn by me on the 30th day of June 1961 in support of the Motion to Set Aside a purported amendment of or addition to the Arbitration Award referred to therein and in particular I refer to paragraph 17 thereof and to the copy letter marked "JCW 8" attached as an exhibit thereto.

3. On the 22nd day of June 1961 I wrote to the Ministry of Labour requesting a copy of the letter dated 17th May 1961 from the Arbitration Tribunal to the Ministry of Labour which is referred to in the said copy letter marked "JCW 8" and there is now produced and shown to me marked "JCW 9" a copy of my said letter of the 22nd June 1961.

4. There is now produced and shown to me marked "JCW 10" a letter dated 4th July 1961 written by the Ministry of Labour to Messrs. Judah & Randall in reply to my letter of the 22nd June 1961.

5. I respectfully draw to the attention of this Honourable Court that the said letter marked "JCW 10" had not been received by me at the time my affidavit of the 30th June 1961 was sworn and for that reason could not be exhibited thereto.

SWORN by the said JOHN CECIL WILMAN at Kingston in the Parish of Kingston this 19th day of Sep.1961 before me :-

(SGD) JOHN C.WILMAN

(SGD.) A.H.B.AGUILAR
Justice of the Peace
St. Andrew.

NOTE:- This Affidavit is filed by Judah & Randall of 11 Duke Street, Kingston, Solicitors for and on behalf of the Shipping Association of Jamaica.

In the High Court of Justice

No. 4

Respondent's Notice of intention to use Affidavits of Noel P. Silvera and Roy Johnstone 25th September 1961

NO.4 - RESPONDENT'S NOTICE OF INTENTION TO USE AFFIDAVITS OF NOEL P. SILVERA AND ROY JOHNSTONE.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN THE HIGH COURT OF JUSTICE

IN THE MATTER of an Arbitration between the Shipping Association of Jamaica on the one hand and the Bustamante Trade Union the United Port Workers and Seamen Union and the Trades Union Congress of Jamaica on the other hand and

IN THE MATTER of the Arbitration Law Chapter 19 of the Laws of Jamaica (Revised Edition) 1953.

TAKE NOTICE that the Bustamante Industrial Trade Union, the United Port Workers and Seamen Union and the Trades Union Congress of Jamaica intend at the hearing of a Notice of Motion to set aside purported amendment of or addition to Arbitration Award to use the Affidavits of Noel P. Silvera and Roy Johnstone sworn to on the 25th day of September 1961 and filed herein, and to appear by Counsel.

DATED the 25th day of September 1961.

(SGD.) D.C. Tavares

SOLICITOR FOR THE BUSTAMANTE INDUSTRIAL TRADE UNION THE UNITED PORT WORKERS and SEAMEN UNION AND THE TRADES UNION CONGRESS OF JAMAICA.

TO: The Shipping Association of Jamaica
c/o Their Solicitors,
Messrs. Judah & Randall
11 Duke Street,
Kingston

In the High Court of Justice

No. 4

Respondent's Notice of intention to use Affidavits of Noel P. Silvera and Roy Johnstone 25th September 1961 continued

AND TO: The Registrar,
Supreme Court, Kingston.

THIS NOTICE IS filed by D.C.TAVARES of No.64 East Street, Kingston, Solicitor for and on behalf of The Bustamante Industrial Trade Union, the United Port Workers and Seamen Union and the Trades Union Congress of Jamaica.

No.5

Affidavit of Noel P.Silvera 25th September 1961

NO.5 - AFFIDAVIT OF NOEL P. SILVERA

M 19 of 1961

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE HIGH COURT OF JUSTICE

IN THE MATTER of an Arbitration between the Shipping Association of Jamaica on the one hand and the Bustamante Industrial Trade Union, the United Port Workers and Seamen Union and the Trades Union Congress of Jamaica on the other hand, and

IN THE MATTER of the Arbitration Law, Chapter 19 of the Laws of Jamaica (Revised Edition) 1953.

I, NOEL P. SILVERA being duly sworn make oath and say as follows:-

1. That my true place of abode is No.36 Norbrook Road, in the parish of Saint Andrew, my postal address is No.57 East Queen Street, Kingston and I am a Solicitor of the Supreme Court of Judicature of Jamaica.

2. That I was the Chairman of a Tribunal appointed by the Governor in Council by letters dated the 11th and 14th of March 1961, and

having the following Terms of Reference:-

> "To determine and settle the dispute which now exists between the Bustamante Industrial Trade Union, the United Port Workers and Seamen Union and the Trades Union Congress of Jamaica, jointly representing portworkers on the one hand and the Shipping Association of Jamaica on the other, over the Unions' claims for increased wages for port workers."

3. That the Tribunal consisted of myself as Chairman, Mr. Paul Geddes as Employers' Representative and Mr. Roy Johnstone as Workers' Representative.

4. That on a date subsequent to the 7th of April 1961 and prior to the 19th of April 1961 the Tribunal met at the Ministry of Labour, Kingston, and gave considerations to the submissions of the parties.

5. That it was unanimously decided by myself and the other members of the Tribunal that the increases should be made as stated in our Award dated the 19th April 1961 and also that these increases should be retroactive as of the 15th of May 1960.

6. That after our decision as stated above, I personally on the said date of the Award, informed Mr. E.G. Goodin and Secretary of the Tribunal of the Terms of the Award.

SWORN TO at Kingston In the Parish of Kingston this 25 day of September 1961, before me:-) (sgd.) Noel P. Silvera

(SGD.) J. J. MILLS
JUSTICE OF THE PEACE

THIS AFFIDAVIT is filed by D. C. TAVARES of No.64 East Street, Kingston, Solicitor for and on behalf of the abovementioned Unions.

In the High Court of Justice

No.6

Affidavit of Roy Johnstone 25th September 1961

NO.6 - AFFIDAVIT OF ROY JOHNSTONE

M 19 of 1961

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE HIGH COURT OF JUSTICE

IN THE MATTER of an Arbitration between the Shipping Association of Jamaica on the one hand and the Bustamante Industrial Trade Union, the United Port Workers and Seamen Union and the Trades Union Congress of Jamaica on the other hand, and

IN THE MATTER of the Arbitration Law, Chapter 19 of the Laws of Jamaica (Revised Edition) 1953.

I, ROY JOHNSTONE being duly sworn make oath and say as follows :-

1. That my true place of abode is No.8 Moresham Avenue in the parish of Saint Andrew, and, my postal address is Half Way Tree Post Office, and I am a School Master at Kingston College, 2, North Street, in the Parish of Kingston.

2. That I was the Workers' Representative of a Tribunal appointed by the Governor in Council by letters dated 11th and 14th of March, 1961, and having the following Terms of Reference :-

> "To determine and settle the dispute which now exists between the Bustamante Industrial Trade Union, the United Port Workers and Seamen Union and the Trades Union Congress of Jamaica, jointly representing the Portworkers on the one hand and the Shipping Association of Jamaica on the other, over the Unions' claims for increased wages for port workers."

3. That the Tribunal consisted of Mr. Noel P. Silvera as Chairman, Mr. Paul Geddes as the Employers' Representative and myself.

4. The Tribunal met on the 4th and 7th of April 1961 and heard the submissions of the respective parties.

5. That on the date between the 11th and 19th of April 1961 the Tribunal met at the Ministry of Labour, Kingston and gave considerations to the submissions of the parties.

6. It was unanimously decided by the Chairman of the Tribunal, Mr. Paul Geddes the Employers' Representative and myself that the increases should be made as stated in the Award dated the 19th of April 1961 and also that these increases should be retroactive as of the 15th of May, 1960.

SWORN TO at Kingston in the parish of Kingston this 25th day of September 1961, before me :-

Sgd. Roy E.Johnstone

Sgd. M. A. Hector
JUSTICE OF THE PEACE.

THIS AFFIDAVIT is filed by D.C. TAVARES of No.64 East Street, Kingston, Solicitor for and on behalf of the abovementioned Unions.

NO.7 - JUDGMENT OF MACGREGOR C.J.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE HIGH COURT OF JUSTICE

IN THE MATTER of an arbitration between the Shipping Association of Jamaica on the one hand and the Bustamante Industrial Trade Union, the United Port Workers and Seamen Union and the Trades Union Congress of Jamaica on the other hand, and

IN THE MATTER of the Arbitration Law, Chapter 19 of the Laws of Jamaica (Revised Edition) 1953.

Viscount Bledisloe, Q.C. and Lett for the applicants
Parkinson for the Bustamante Industrial Trade Union
Coore, Q.C. for the United Port Workers and Seamen Union.

J U D G M E N T

This Motion is to set aside "any amendment of

In the High Court of Justice

No.7

Judgment of MacGregor C.J. 6th October 1961 continued

or additions to" the award of an Arbitration Tribunal appointed under the Public Services Arbitration Law, Cap. 329, dated the 19th April, 1961.

On the 14th of April, 1960, a claim was made for an increase of wages by the Respondents to this Motion, three Trade Unions, hereafter referred to as the Unions, on the Shipping Association of Jamaica, hereafter referred to as the Association. By letters dated the 11th and 14th March, 1961 the Governor in Council, in accordance with the provisions of the Law mentioned in the previous paragraph, referred to a Tribunal constituted under that Law the dispute between the Association and the Unions. The terms of reference of the Tribunal were -

> "to determine and settle the dispute which now exists between the Bustamante Industrial Trade Union, the United Port Workers and Seamen Union, the Trade Union Congress of Jamaica, jointly representing the port workers on the one hand and the Shipping Association of Jamaica on the other hand, over the Unions' claims for increased wages for port workers."

The Tribunal sat on the 4th and 7th April, 1961, when documents were tendered in evidence and submissions were made by the representatives of the parties.

Throughout the hearing, reference was made to the claim by the Unions that any increase of wages that might be awarded by the Tribunal be made retroactive.

This claim was first presented by the Hon.Hugh Shearer, the representative of the Bustamante Industrial Trade Union when he stated:

> "That claim submitted on the 14th April, 1960, has not yet been settled. The Unions propose to satisfy you and your colleagues, Sir, that you should award increases as set out, and that the award should be effective as from the 14th April, 1960, which was the date of the claim. "

That claim was subsequently supported by the Hon. T. A. Kelly, the representative of the United Port Workers and Seamen Union, but he sought to make the increases retroactive to the 3rd or 4th April, 1960.

Counsel for the Shippers opposed not only the increase, but also, if one was granted, that it be made retroactive. The grounds of the opposition are of no interest. It is sufficient to say that a great deal of time was spent by the Tribunal discussing this matter.

On the 19th of April, 1961, the Tribunal submitted its award. It is necessary to set out the decision in detail:

" The Award is -

(i) 8d per hour increase for dock men now getting 3/8d; to establish a rate of 4/4 per hour;

(ii) 8d per hour increase for holders now getting 3/9 (workers working in shipping holds) to establish a rate of 4/5 per hour;

(iii) 8/- per day for foremen now getting 38/5 per day and 46/5 per day, respectively;

(iv) 10d per hour for winchmen and gangway men now getting 4/- per hour, to establish a rate of 4/10 per hour. "

In an earlier paragraph, the Tribunal stated, under the heading 'History':

" Apparently sometime in April, 1960 'the Unions' in a letter dated 14th April, 1960, intimated to the Association that it was seeking increases in the hourly rates of pay for various categories of Port Workers on the Kingston Waterfront retroactive from the 4th April, 1960. "

On the 28th April, 1961, the award was forwarded to the parties by the Ministry of Labour. On that same day the Hon. T.A.Kelly

In the High Court of Justice

No.7

Judgment of MacGregor C.J. 6th October 1961 continued

wrote to the Acting Permanent Secretary at the Ministry of Labour,

" I must invite your attention to the fact that the Award handed down does not contain an operative date, notwithstanding the fact that the Unions sought to have it given retrospective effect to the 3rd April, 1960. In the circumstances may I request that you ascertain from the Tribunal the effective date of the Award as well as its approval for this clarification, based on my request. "

On the 1st of May, the Hon. H.L. Shearer wrote the Secretary of the Tribunal,

" The dispute involved the claim for wage increases and a claim that the wage increases should be retroactive as from 4th April, 1960. Submissions were made by both parties to the dispute to the Tribunal on this portion of the claims also. The Award has omitted reference to this portion of the dispute.

In keeping with the provisions of section 13 of Cap. 329, on behalf of the three Unions, we hereby request an interpretation from the Tribunal of the Award on the question of the date on which the new rates should become operative, as this was part of the issue put to them. "

On the 2nd of May the Secretary to the Tribunal telephoned Messrs. Judah & Randall, the Solicitors for the Association. Following the telephone conversation, Messrs.Judah & Randall wrote the Secretary:

" I am writing to confirm my telephone conversation with Mr. Goodin this morning, when he informed me that Mr. Silvera, the Chairman of the Arbitration Tribunal, wished to know whether the Shipping Association would consent to the Tribunal dealing with the letter which had been sent to the Tribunal by Hon. Hugh Shearer of the B.I.T.U. requesting an interpretation of the Award, without a hearing for

the purpose of section 13 of the Public Utility Undertakings and Public Services Arbitration Law (Cap.329).

2. I informed Mr. Goodin that the Shipping Association did not consent to the matter being deal with in its absence. "

On the same day the Secretary to the Tribunal wrote the Association :-

" The Arbitration Tribunal which heard the above issue has received letters from the Bustamante Industrial Trade Union and the United Port Workers & Seamen Union, copied to you, requesting a clarification of its award with respect to the date on which the increased wage rates should become effective. The Tribunal is prepared to clarify the point in issue and in accordance with Section 13, Cap.329 - Public Utility Undertakings and Public Services Arbitration Law (Revised Edition) 1953, has decided to invite you to make submissions on this matter which will be heard at 2.15 p.m. on Tuesday, May 9th, 1961. ..... "

On that date the Tribunal sat again. Counsel for the Association objected to the jurisdiction of the Tribunal; he submitted that the Tribunal, having made its Award, was functus officio, and, except in so far as it was saved by the provisions of section 13 of Cap.329, had no power to deal further with the dispute. He submitted that as the Tribunal was now meeting to effect a clarification of the Award, and as there was nothing in section 13 dealing with clarification, there was no power to make any amendment to the Award by an addition thereto.

On behalf of the Unions, attention was directed to sections 24 and 8 (c) of the Arbitration Law, Cap.19, and it was submitted that the Tribunal had power under the latter section to correct any clerical mistake, or, error arising from any accidental slip or omission.

The Tribunal adjourned to the following day, when the Chairman announced as follows :-

" The Tribunal at this stage would like to

In the High Court of Justice

No.7

Judgment of MacGregor C.J. 6th October 1961 continued

state that there is in the Award an error arising from an accidental omission. The Tribunal is of the view that this error once corrected will answer the question of the Hon. Hugh Shearer and the Hon. Thossie Kelly. In the light of the foregoing the Tribunal has not addressed its mind to the submissions of yesterday, but having regard to Section 24 and section 8 (c) of the Arbitration Law, Cap. 19, it will endeavour to correct this error. The correction will be forwarded to the proper authority in due course and the interested parties will, we are sure, be informed of the nature and import of this correction. "

By letter dated 24th May, 1961, the Acting Permanent Secretary to the Ministry of Labour, who incidentally was the Secretary to the Tribunal, wrote the Association -

" In a letter dated 17th May, 1961, the Tribunal appointed under the Public Utility Undertakings and Public Services Arbitration Law, Cap. 329, to determine the dispute referred to above, informed the Ministry of Labour that the Award of 19th April, 1961, did not entirely reflect the decision of the Tribunal as the operative date of the Award was omitted, and that this constituted an error arising out of an accidental omission.

2. The Tribunal in the aforesaid letter requested that the Award be corrected to read — "

The letter then proceeded to quote the Award as set out above and added,

" (v) that these wage rates should be retroactive to 15th May, 1960. "

An application has been made by Messrs. Judah & Randall, the Solicitors for the Association, to the Secretary of the Tribunal, for a copy of the letter dated 17th May, 1961, by which the Tribunal announced the correction of

its error. The Ministry of Labour has refused to give the parties a copy of that letter.

This Motion was filed on the 30th June to set aside the amendment or addition to the Award, upon the grounds :-

(i) that each and every such amendment or addition was beyond the jurisdiction of the said Tribunal in that the said Tribunal was functus officio after it had issued its said award;

(ii) that neither such amendments nor additions nor any of them constituted the correction in the said award of any clerical mistake or error arising from any accidental slip or omission within section 8 (c) of the abovementioned Arbitration Law;

(iii) that the said Tribunal had not made any clerical mistake or error arising from any accidental slip or omission and accordingly had no power to make any correction to the said award under the said section 8 (c) or otherwise;

(iv) that all such amendments and additions to the said award were ultra vires the Tribunal and had and ought to be set aside.

It is unquestioned law that an arbitrator having made his award is functus officio. Section 10 (5) of the Public Services Arbitration Law, so far as material, provides :-

"Any...award made by virtue of the foregoing provisions of this section shall be binding on the employers and workers to whom the award relates and, as from the date of such .....award or as from such date as may be specified therein not being earlier than the date on which the dispute to which the..... award relates first arose, it shall be an implied term of the contract between the employers and workers to whom the .....award relates that the rate of wages to be paid and the conditions of employment to be

In the High Court of Justice

No. 7

Judgment of MacGregor C.J. 6th October 1961 continued

observed under the contract shall be in accordance with such.....award until varied by a subsequent ..... award. "

It is clear, therefore, that the award signed by the arbitrators on 19th April, 1961, spoke as from its date and that the arbitrators having signed it, became functus officio except in so far as their powers may have been saved by the provisions of any Law, and for the purpose mentioned in such Law. There are two sections under which their powers may have been saved.

The first is section 13 of the Public Services Arbitration Law which provides :-

" If any question arises as to the interpretation of any award of the Tribunal the Governor in Council or any party to the award may apply to the Tribunal for a decision on such question and the Tribunal shall decide the matter after hearing the parties, or without such hearing provided the consent of the parties has first been obtained. The decision of the Tribunal shall be notified to the parties and shall be binding in the same manner as the decision in an original award. "

The other is section 8 of the Arbitration Law, Cap. 19, which, in so far as it is material, reads -

" The arbitrators or umpire acting under a submission shall, unless the submission expresses a contrary intention, have power -

.....

(c) to correct in an award any clerical mistake or error arising from any accidental slip or omission. "

The Arbitration Law by section 24 is made to apply to every arbitration including arbitrations under the Public Services Arbitration Law.

The requests by Messrs. Kelly and Shearer contained in their respective letters of April 28th and May 1st, were in relation to the powers

given to the Tribunal under section 13 and was as to the 'interpretation' or 'clarification' of the award.

The telephone request to the Association's Solicitors was to seek their consent to the Tribunal acting under section 13 without hearing the parties. This was refused, so the Secretary informed the parties that the Tribunal would meet on May 9th, for the purpose, as stated in the Secretary's letter of May 2nd, of hearing submissions on "a clarification of its Award with respect to the date on which the increased wage rates should become effective. "

It seems clear, and in fact the contrary has not been submitted to me at any time, that the Tribunal could not act under section 13. Mr. Lett for the Association submitted to the Tribunal that it had no jurisdiction, and the Chairman on May 10th stated that the Tribunal had not addressed its mind to Mr. Lett's submission.

But the circumstances under which the Tribunal came to the conclusion that there was in the award "an error arising from an accidental omission" are unusual and must now be referred to.

After Mr. Lett had made his submission that section 13 did not apply, Mr. Shearer, whilst not abandoning the request in his letter of May 1st for an interpretation of the award under that section, said that he proposed to make an additional point. He then referred to sections 24 and 8 (c) of the Arbitration Law and said,

> " We propose to submit that if in respect of interpretation there is any suggestion that it does not apply that the point that the Unions are making is that the Tribunal omitted to make reference and hand down a decision on the subject of retroactivity, the Law, Arbitration Law 8 which is part of Chap. 19 Law refers to that subject in 24. Under section 8 we propose, Mr. Chairman to submit that under the Arbitration Law, section 8 (c), you have the authority to also act. "

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This submission is not very intelligently reported, but is quite clear.

Mr. Lett was asked by the Chairman what were his views on section 8 (c), and he made the point that the Tribunal was meeting to consider its powers of interpreting the award, under section 13, which was tantamount to admitting that there was no error in the award, and that therefore no question of an error could arise under section 8 (c).

It appears from the notes that the Tribunal then adjourned and upon resumption the Chairman stated that it had given due consideration to the submission and would give its ruling next day. Next day the Chairman announced the decision in the words that I have already quoted.

The comment has been made, and very strongly made, that the Chairman did not then state what was the error, or, how it came to be made. It was not until May 24th that the parties received the letter of that date from the Permanent Secretary to the Ministry of Labour. At no time have they received anything from the Tribunal or from its Secretary showing that the Tribunal has amended the Award of 19th April, by any document under the signatures of the members. Presumably this has been done, but it is certainly only right that the parties to the dispute should have seen the document, or a copy of it, by which the Tribunal amended, or purported to amend, its award. The applicants asked for a copy and were refused it by the Ministry of Labour. I am unable to appreciate why the Ministry should seek to prevent one of the parties to an arbitration seeing the decision of the Tribunal. Surely no questions of policy or secrecy could be involved. I consider the refusal by the Ministry to be improper. I was informed that this is the usual practice of the Ministry. If it is, such a practice may well result in a denial of justice to one party or the other. It is to be hoped that this practice, if it is a practice, will cease, and that the Ministry will in future take such steps as may be necessary to ensure that all parties to disputes are afforded the fullest possible opportunity to inspect the awards of Tribunals

enquiring into disputes to which they are parties.

The fact remains in the instant case that the parties have not seen the amendment to the award and have to be satisfied with the statement that the Tribunal requested that the award be corrected. In Russell on Arbitration, 16th Edition, at p. 220 the learned author states:-

" It is usual for the arbitrator to sign a written award at the foot and for the signature to be attested by a witness. "

And

" In the case of an award by more than one arbitrator all the arbitrators making the award should execute it at the same time and in the presence of each other. "

I refer to In the Matter of the Arbitration between Edward Beck and Francis Jackson 1 C.B. (N.S.) 695; 140 E.R. 286, and in particular to the judgment of Cresswell, J. at pp. 700 and 288.

The question first arises: Upon whom lies the onus of proving the occurrence of a clerical mistake, or, an error arising from any accidental slip or omission? Is it for the Association to prove that the amendment was not, or is it for the Union to prove that the amendment was, due to such mistake or error? It is not an easy decision but in my judgment the onus to establish that an amendment was properly made must rest upon those seeking to enforce it. The award speaks from the date of its signature and thereafter the arbitrators became functus officio. An amendment can be made thereafter only in one of two cases, i.e. where the provisions of section 13 or of section 8 (c) apply. It seems to me, therefore, that upon proof of the issue of the award, and of the amendment, the onus shifts to those who seek to establish that the amendment fell within one or other of those sections.

But in any event, even if the onus in this case was upon the Association, it is my judgment that in the circumstances enough was proved to shift the onus to the Unions. The following

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facts were established :-

(i) The reference in paragraph 2 of the Award under the heading 'History' to the claim to retroactive pay, shows that the question was present in the minds of the arbitrators;

(ii) On 28th April Mr. Kelly called attention to the fact that there was no operative date in the award for the new rate of wages to come into force and he asked for a clarification;

(iii) On 1st May Mr. Shearer called attention to the same matter and asked for an interpretation under the provisions of section 13;

(iv) On 2nd May the Secretary telephoned Messrs. Judah and Randall on the instructions of the Chairman of the Tribunal asking the applicants to consent to the Tribunal exercising its power of interpretation under section 13 without the necessity for a hearing in the presence of the parties;

(v) On the same 2nd of May the Secretary wrote the applicants stating that the Tribunal proposed to sit on May 9th to clarify the point in issue under section 13.

(vi) On 9th May it had to be brought to the attention of the Tribunal that there may have been a "clerical mistake, or, an error arising from an accidental slip or omission";

(vii) The Tribunal had to adjourn to consider the question whether there may have been the "clerical mistake, or, error arising from an accidental slip or omission";

(viii) Even after the adjournment that

afternoon the Tribunal was still unable to make up its mind and required a further adjournment until next day;

(ix) At that adjourned hearing on 10th May the Tribunal failed to state what was the error arising from an accidental omission;

(x) It was not until May 17th, that is seven days later, that the Tribunal was able to convey the decision to the Ministry of Labour;

(xi) Neither on 10th May nor, presumably, in its letter of May 17th did the Tribunal state how the error arose.

In my judgment, if there was any onus on the applicants, that onus was overwhelmingly discharged, and shifted to the Unions to establish the mistake or error.

This motion was issued on the 30th June, 1961, and was returnable on 25th September, 1961. On that day it came on for hearing before me. After referring to the material dates Lord Bledisloe for the Association, called attention to the fact that there was no evidence before the Court other than what was contained in the affidavits filed by the Association in support of the motion. Thereupon Mr. Parkinson, Counsel for the Bustamante Industrial Trade Union, stated that the Union would be filing affidavits later that day and that the delay was due to the fact that the Solicitor instructing him had been out of town for a few days. The Court had to adjourn at noon when Lord Bledisloe had completed opening to the facts, and it was not until nearly 2.00 p.m. that two affidavits were filed, one by the Chairman and the other by Mr. Johnstone, one of the other members of the Tribunal. I desire once again to call attention to the fact that this motion was filed from 30th June, and that it was not until the morning of 25th September that any attempt was made by the Unions to put any further facts before the Court. Quite apart from any question of the possible failure of the Solicitor in his duty to his clients, if

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he had previously been retained, certainly the Court was treated with the greatest amount of discourtesy and lack of respect. No explanation was offered as to why the question of filing affidavits was not considered months or weeks before 25th September, or why it was necessary for the Solicitor to be out of town for a few days prior to the 25th September instead of being in office. It is not surprising that the affidavits which were filed were thoroughly unsatisfactory. I now propose to deal with them.

In paragraph 4 of his affidavit, the Chairman stated that on a date "subsequent to the 7th of April, 1961", which is the date upon which the Tribunal concluded the hearing, "and prior to the 19th of April, 1961" that is the date of the award, "the Tribunal met at the Ministry of Labour, Kingston, and gave considerations to the submissions of the parties." Mr. Johnstone's affidavit was slightly different, he stating that the meeting was on "the date between the 11th and 19th April". I do not appreciate the significance of the words "the date", but it is to be noted that neither of these gentlemen could give the date of the meeting with certainty.

Each gentleman then states in succeeding paragraphs, that it was unanimously decided by all three members that the increases should be made as was stated in the award dated 19th April and also that the increases should be retroactive to the 15th May, 1960.

Lastly comes a paragraph in the Chairman's affidavit.

I quote it.

> " That after our decision as stated above, I personally on the said date of the Award, informed Mr.E.G. Goodin, the Secretary of the Tribunal of the terms of the Award."

Numerous comments must be made about these affidavits.

(1) It is not stated in either affidavit

that the decision as to the award was made upon the occasion of the meeting at the Ministry of Labour, which took place between the 7th or 11th April, and the 19th April.

(2) That decision may have been arrived at on the occasion then referred to, but it may have been arrived at on a subsequent occasion between the date of that meeting 19th April, the date of the award, because it was on that latter date that the Chairman informed the Secretary of "the terms of the Award."

(3) It was submitted by Counsel for the Unions that the date upon which the Chairman informed the Secretary of the terms of the Award was wrongly stated in the affidavit as the date of the Award, and that it was intended to state it as the date of the meeting at the Ministry of Labour. It may be that that was the intention but the affidavit clearly states that the communication was made on the "said date of the Award", which was the 19th April, and which date was mentioned in the previous paragraph. I am not prepared to assume that a mistake has taken place in the affidavit.

(4) But assuming that the date of the decision was the date of the meeting, there is nothing in the affidavits to show that that decision was not subsequently altered. In fact, the inference to be drawn from the last paragraph of the Chairman's affidavit is that a change of opinion did take place. The terms of the Award, he said, were communicated to the Secretary upon the date of the Award. We know what were the terms of the Award, viz. increases in wages in respect of four classes of workers. It is clear therefore that what was communicated to Mr. Goodin was the amount of the increases, and nothing about its retroactivity. I cannot see that there is any other inference available. This inference is strengthened by Mr. Goodin's conduct to which I shall later refer, after receipt of

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the Award, and upon receipt of the letters of 28th April and 1st May already referred to.

(5) It has been submitted that the decision as to the retroactive date may not have been arrived at until after 19th April. This submission is based upon the failure of the deponents to state that their decision was arrived at on the date that the members met at the Ministry of Labour, and the communication to the Secretary of the terms of the Award on the date of the Award, and the fact that the Award made reference only to the increases of pay. I am of opinion that this submission is correct for reasons which I shall develop later.

(6) No mention has been made in the affidavits as to how the draft of the Award was prepared or by whom. Presumably, a draft must have been prepared and checked, at least, by the Chairman. Nor has it been stated by whom the Award was typed. It is not known whether the original draft, if there was one, contained any reference to the retroactive date. There is no evidence as to the circumstances under which the Award was signed. Did all the members meet at one place as they should have done and there sign it? And if this is so, who produced the Award as typed? Was it produced by the Secretary, having been typed in the office of the Ministry of Labour? Or was it produced by one or other of the members who had arranged for it to be typed? But whatever the circumstances of the signing, what explanation has been offered, if it was then intended that it should contain the clause about retroactivity, why none of the members saw that that clause had been omitted? If the communication to the Secretary of the terms of the Award included the clause as to retroactivity why did he not notice the omission?

(7) The Award of the Tribunal having been received by the Secretary on the 19th April, must have been copied in his office for the parties. If Mr. Goodin had been informed that the arbitrators had agreed to make their award retroactive, how is it that when he checked the copies for the parties, he did not then notice the omission, and bring it to the attention of

the Chairman? Why when he received the letters of Messrs.Kelly and Shearer dated 28th April and 1st May, respectively, did he not say to the Chairman "But this is an accidental omission. You told me that it should be retroactive to the 15th May, 1960, why is it that it has been omitted from the Award? How is it that I did not notice it when I had the Award copies for the parties?"

(8) The Court has not had the benefit of any explanations from Mr.Geddes, the other member of the Tribunal, nor from Mr. Goodin, the Secretary. I was informed that both gentlemen have left Jamaica, Mr. Geddes on 20th September, and Mr. Goodin on 12th September. That is no explanation for their not having filed affidavits, especially when it is remembered that the motion was issued on June 30th.

On the evidence that has been tendered and on the inferences to be drawn from that evidence, I have to arrive at a conclusion as to whether there has been an error arising from an accidental slip or omission. I accept Mr. Parkinson's submission that the Court must decide the question: Was there (a) a clerical mistake, or (b) an error arising from an accidental slip or omission? I must say that I was somewhat taken aback that although the Tribunal have twice said that it made an error erising from an accidental omission, Mr. Parkinson has submitted that the Tribunal may have made a clerical mistake, or may have made an error arising from an accidental slip. I shall dismiss at once any question of there having been a clerical mistake. Clearly there was none.

The only facts in support that I can see are two statements, one of the Chairman on 10th May, and the other presumably in the letter of the Tribunal of 17th May. I repeat them. The one is "there is in the Award an error arising from an accidental omission". The other is taken from the letter of 24th May in reference to the letter of the 17th May from the Tribunal, and is "the Award ..... did not

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entirely reflect the decision ..... as the operative date ..... was omitted, and that constituted an error arising out of an accidental omission."

In passing, I express my insatiable curiosity as to whether that letter was signed by the Chairman alone or by all the members of the Tribunal.

In my judgment that is not sufficient evidence upon which I can act. It appears to me that the duty is on me to decide whether there has been an error arising from an accidental omission, irrespective of what may be the views of the Tribunal. I can only arrive at a decision on facts presented to the Court, showing the circumstances under which the alleged omission took place, and no such facts have been presented. Paragraph 5 of the Chairman's and paragraph 6 of Mr. Johnstone's affidavits are in my opinion ambiguous. They purport to allege that the decision as to retroactivity, and that as to the increase of wage rates took place on the date when the members met, a date between 7th or 11th April and 19th April, and that both decisions took place on that same date. But both paragraphs merely record these facts -

(a) On some occasion it was decided that the increases should be made as was stated in the Award;

(b) on some occasion, which may have been the same occasion as is referred to in (a) supra, it was decided to make the rates of increase retroactive to 15th May, 1960;

(c) the occasion at which the decision or decisions were arrived at, are not stated to be the occasion when all the members met at the Labour Office as referred to in the previous paragraphs;

Paragraph 6 of the Chairman's affidavit must now be looked at -

(d) "After our decision as stated above" suggests a reference to the two

decisions arrived at as stated in paragraph 5.

(e) "on the said date of the Award" and "I.....informed Mr. Goodin ..... of the terms of the Award" certainly states that all Mr. Goodin was informed as being the Award was what was in the Award, i.e. the increases of pay;

(f) and that gave rise to the inference that the terms of the "decision as stated above" which was communicated to Mr. Goodin, being only the decision as to the increases of pay, the decision as to retroactivity had not yet been made. But in any event the comment is very forcibly made, and will be supported by other facts to which I shall refer, that it was not made until between May 10th and 17th.

I refer now to the other facts that arise for my consideration.

(1) There is nothing to show how the omission took place, if in fact it had been decided on.

(a) Having arrived at their decision, was a draft prepared?

(b) Was that draft checked?

(c) Was that draft faired, and by whom?

(d) Was that fair copy checked, and by whom?

(e) Who presented it to the members when they met to sign it?

(f) Was it read through by someone aloud, or by each member separately?

(g) How was it that all three members, and Mr. Goodin, if he knew of it, failed to notice the omission, especially when paragraph 2 called to mind that the date from which the increases

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should take place was a matter in dispute between the parties.

(2) The actions of the Chairman and members of the Tribunal after receipt of the letters from Messrs. Kelly and Shearer, strongly support the submission that up to that time nothing had yet been decided as to the date from which the increases should be made.

(a) The Chairman directed the Secretary to telephone the Association to suggest that the provisions of section 13 be made use of.

(b) The Secretary, presumably on the direction of the Chairman, called a meeting to consider action under section 13.

(3) The actions of the Secretary suggest that he knew nothing about the increase of pay being made retroactive in that it appears that he did not take any action after reading the Award, or upon receipt of the letters already referred to, to call to the attention of the Chairman and of the members that he had been informed of the proposals concerning retroactivity and that it, no doubt, had been omitted in error.

(4) It was not until Mr. Shearer called attention to section 8 (c) that for the first time it appears to have been realised that a slip had been, or might have been made.

(5) The Tribunal could not on the 9th May make the announcement of the error, but had to adjourn until later that day, and, again, until next day for consideration.

(6) On the 10th May when the Chairman made his announcement he was unable to state what was the error, or, how it came to be made.

(7) It was not until 17th May that the

Tribunal was able to announce the terms of the amendment, that it should be retroactive to 15th May,1960 yet even then they failed to state how the error arose or the reason for fixing the date, 15th May, 1960.

(8) There is nothing to show that after 10th May the members met together, came to a decision, and then all three signed the amendment to the Award. I merely make this comment in passing.

On the evidence before me and upon the inferences which I draw, I am satisfied that whilst consideration may, I repeat may, have been given to a retroactive order, it was not decided upon until after 9th May when Mr.Shearer took the point. I am satisfied that the award as signed on 19th April, exactly expressed the decision of the arbitrators at which they had then arrived; cf. Sutherland & Co. v. Hannevig, Brothers Ltd. (1921) 1 K.B. 336.

In view of the facts that I have found, in my judgment there was no accidental omission to come within the remedy given by section 8 (c), as the award correctly stated what had been decided.

It has been submitted that I should remit the matter to the arbitrators to consider the question of retroactivity as in fact they have considered the question and are only technically wrong. I was referred to Odlum and Ors. v. City of Vancouver and Ors. (1916) 85 L.J. (P.C.) 95. Lord Dunedin there stated at p.98:

> " There remains the question of whether it should be set aside or remitted for reconsideration. This seems to their Lordships a question of discretion for the Judges in the whole circumstances of the case ....."

There is no motion before the Court to remit the matter, O. 64, r. 14 requires an application to be made within six weeks of the award, and by O. 59, r. 39 this must be done by motion. This therefore appears to be the end of the application. But in any event it would be

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wrong to refer the matter back. I respectfully adopt the words of Sir John Romilly, M.R., in Re Tidswell, 33 Beavan 213, 55 E.R. 349, at 217 and 350 :-

> " But the former objection is, in my opinion, one which would make it expedient to do so; because, notwithstanding the perfect honesty and bona fides of an arbitrator, it is impossible, where an award has been set aside and sent back upon such grounds, that there should not be, in spite of himself, some disposition to favour one side, and a disposition to make it appear that the objections to the award were useless, and that the sending it back was productive of no good. "

The arbitrators in the instant case have already expressed their views and I doubt if the Association could obtain an impartial hearing.

The Association is therefore entitled to succeed and to obtain an order from this Court in terms of the Notice of Motion that any amendments of or additions to the award dated the 19th day of April, 1961, which purport to have been made after that date, be set aside. The Association is entitled to the usual order for costs against all three Unions who are respondents to the motion including the Trades Union Congress of Jamaica which did not appear but was served.

A formal order must be prepared.

Dated this 6th day of October, 1961.

(sgd.) C.M.MacGregor
Chief Justice.

In the Court of Appeal

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Notice and Grounds of Appeal of the Bustamante Industrial Trade Union 26th October 1961

NO.8 - NOTICE AND GROUNDS OF APPEAL OF THE BUSTAMANTE INDUSTRIAL TRADE UNION.

IN THE FEDERAL SUPREME COURT
APPELLATE JURISDICTION

JAMAICA

CIVIL APPEAL NO.16 of 1961

AN APPEAL FROM THE SUPREME COURT OF J A M A I C A

SUB-REGISTRY - KINGSTON

NO. M 19 of 1961.

BETWEEN THE BUSTAMANTE INDUSTRIAL TRADE UNION THE UNITED PORT WORKERS AND SEAMEN UNION THE TRADE UNION CONGRESS OF JAMAICA

APPELLANTS

A N D THE SHIPPING ASSOCIATION OF JAMAICA

RESPONDENTS

TAKE NOTICE that the Appellant - The Bustamante Industrial Trade Union - being dissatisfied with the whole decision more particularly stated in paragraph 2 hereof of the Supreme Court contained in the Judgment of the Chief Justice dated the 6th day of October 1961 doth hereby appeal to the Federal Supreme Court upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

And the Appellant further states that the names and addresses including his own of the persons directly affected by the appeal are those set out in paragraph 5.

2. The decision of the learned Chief Justice that the Respondent is entitled to succeed and to obtain an order in terms of the Notice of Motion that any amendments of or additions to the Award dated the 19th day of April 1961 be

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set aside, and that the Respondent is entitled to costs against the Appellant.

3. GROUNDS OF APPEAL :

(1) The case for the Shipping Association of Jamaica, hereinafter referred to as the Association, was that the Tribunal had not made any clerical mistake or error arising from any accidental slip or omission in its Award dated the 19th day of April 1961.

The record itself showed that the Tribunal had made an error arising from an accidental slip or omission as regards the operative date of the Award. This evidence in the record itself is reinforced by the affidavits of the Chairman of the Tribunal Mr. Noel Silvera and Mr. Roy Johnstone another of the Arbitrators.

No evidence negativing this fact was supplied by the Association. It is plain on the evidence, therefore, that there was an error arising from an accidental slip or omission.

(2) If the Association desired to challenge the correctness of the statement in the Record that there had been an error arising from an accidental slip, it ought to have supplied the necessary evidence to establish this by Affidavits or otherwise. If such were not the position, Affidavits could easily have been obtained from Mr. P.H. Geddes, the Employers' Representative on the Tribunal, and Mr. E.G. Goodin, the Secretary of the Tribunal.

(3) If the Association were alleging fraud on the part of the Tribunal when the latter stated that there had been an error arising from any accidental slip or omission, the onus was on the Association to prove this. The Association had not attempted to do so.

(4) At the request of the learned Counsel for the Association, Counsel for the Bustamante Industrial Trade Union and Counsel for the United Port Workers and Seamen's Union made Messrs. Silvera and Johnstone available for cross-examination

on two days of the hearing of the Motion, so as to clarify any possible ambiguity in their Affidavits, or supply any required fact, but neither gentlemen was cross-examined, nor asked any question by the learned Chief Justice. Criticisms of the contents of the said Affidavits by the Learned Chief Justice in his Judgment are, under the circumstances, unreasonable.

(5) The Tribunal, having made an error arising from an accidental slip or omission as to the operative date of the Award, was entitled to correct this error by virtue of Chapter 19, Section 8 (c) of the Revised Laws of Jamaica.

There is no prescribed manner or procedure in which this correction may be made. The Tribunal properly made the necessary correction, and this was published to the parties through the proper channel.

The moment this correction was published to the parties, it became incorporated into, and formed part of, the Award dated the 19th April 1961, which had already been signed by the three members of the Tribunal. There was no need for the members of the Tribunal to make or sign a supplementary Award.

(6) During the hearing of the Motion, the learned Chief Justice categorically stated that he was prepared to accept the statement of the Chairman of the Tribunal that the Tribunal had, when considering its Award, decided to make the date of the Award retroactive to the 15th day of May 1960, whereupon Counsel for the Bustamante Industrial Trade Union stated that that being so, it was beyond question that there had been an error arising from an accidental slip or omission in the Award.

(7) In reaching his conclusions, the learned Chief Justice has drawn erroneous inferences, made unwarranted assumptions and speculations, concerned himself with irrelevant considerations, and ignored his own asseveration of his acceptance of the Chairman's statement, as shown in ground 6, supra.

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26th October 1961
continued

In this regard, the following should be noted:

(a) Although it clearly appears from a reading of Mr. Silvera's Affidavit that the Tribunal's decision on the five terms of its Award was made prior to the 19th day of April 1961, and these five terms were communicated to the Secretary of the Tribunal, the learned Chief Justice has found that this decision and its communication were made on the 19th April 1961. It is easy to see that the decision of the Tribunal and the communication to the Secretary having been made prior to the 19th April 1961, the members of the Tribunal did not observe the omission of the fifth term of the Award when they signed the Award on the 19th April, 1961.

(b) There is not the slightest bit of evidence, or even a suggestion, that the members of the Tribunal changed their decision which they had arrived at prior to the 19th April 1961, yet the learned Chief Justice has drawn this inference.

(c) The learned Chief Justice states in his judgment:

"It has been submitted that the decision as to the retro-active date may not have been arrived at until the 19th April. This submission is based upon the failure of the deponents to state that their decision was arrived at on the date that the members met at the Ministry of Labour, and the communication to the Secretary of the terms of the award on the date of the Award, and the fact that the Award made reference only to the increases of pay. I am of the opinion that this submission is correct."

This is a wholly unwarranted and unreasonable assumption based on nothing whatever.

(d) The learned Chief Justice wrongly concerned himself with speculations as to the manner in which the Award was prepared and signed, although no evidence

has been supplied by the Association of the slightest irregularity in this respect.

(e) The learned Chief Justice has wrongly concerned himself with what the Secretary might or might not have done on the 28th April 1961 and the 1st May 1961, when he received letters from Messrs.Kelly and Shearer, respectively.

(8) It is clear that the learned Chief Justice misdirected himself on the facts and in the Law.

(9) The Appellant will seek leave at the hearing of the Appeal to adduce fresh evidence to show that the Tribunal in fact decided on the 17th day of April 1961 that the wage rates which were the subject of the arbitration should be retro-active to the 15th day of May 1960.

(10) In any event, if there is any technical error in the manner of correcting the Award dated the 19th day of April, 1961, this is a proper case for remission to the Tribunal so that such technical error may be regularised.

4. The Appellant prays that the Judgment of the learned Chief Justice be set aside, that the costs of the hearing of the Motion and the costs of this Appeal be awarded to the Appellant, and that any other relief be granted to the Appellant as to this Honourable Court may see just.

5. Persons directly affected by the appeal are :

(1) The Bustamante Industrial Trade Union, 98 Duke Street, Kingston.

(2) The United Port Workers and Seaman's Union, 20 West Street, Kingston.

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(3) The Trade Union Congress of Jamaica, 3 South Camp Road, Kingston.

(4) The Shipping Association of Jamaica, 2 Port Royal Street, Kingston.

DATED this 26th day of October 1961.

(SGD.) D.C.TAVARES

D.C.TAVARES

Solicitor for and on behalf of the Appellant - The Bustamante Industrial Trade Union.

THIS NOTICE AND GROUNDS OF APPEAL are filed by D.C.TAVARES on No.64 East Street, Kingston, Solicitor for and on behalf of the abovenamed Appellant - The Bustamante Industrial Trade Union.

No.9

Notice and Grounds of Appeal of the United Port Workers and Seamen Union 26th October 1961

NO.9 - NOTICE AND GROUNDS OF APPEAL OF THE UNITED PORT WORKERS AND SEAMEN UNION

IN THE FEDERAL SUPREME COURT
APPELLATE JURISDICTION

TERRITORY: JAMAICA
CIVIL APPEAL NO:17 of 1961

BETWEEN
THE BUSTAMANTE INDUSTRIAL TRADE UNION
THE UNITED PORT WORKERS AND SEAMEN UNION
THE TRADE UNION CONGRESS OF JAMAICA
APPELLANTS

AND

THE SHIPPING ASSOCIATION OF JAMAICA
RESPONDENTS

TAKE NOTICE that the Appellants - The United Port Workers and Seamen's Union - being dissatisfied with the whole decision more particularly stated in paragraph 2 hereof of the Supreme Court contained in the

judgment of the Chief Justice dated the 6th day of October 1961 doth hereby appeal to the Federal Supreme Court upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 7.

And the Appellant further states that the names and addresses including his own of the persons directly affected by the appeal are those set out in paragraph 8.

2. The decision of the Learned Chief Justice that the Respondent is entitled to succeed and to obtain an order in terms of the Notice of Motion that any amendments of or additions to the Award dated the 19th day of April 1961 be set aside, and that the Respondent is entitled to costs against the Appellant.

3. GROUNDS OF APPEAL :

(1) The Learned Chief Justice was wrong in Law in finding that the onus of proving all or any of the facts relevant to the issue before him lay upon the Appellants.

(a) He stated "the onus to establish that an amendment was properly made must rest upon those seeking to enforce it." The Learned Chief Justice misconceived the nature of the proceedings before him. This was not an action by the Unions to enforce the award. It was a motion brought by the Shipping Association to establish that a portion of the Arbitrator's award was invalid on the grounds set out in the said motion. The onus of establishing the facts necessary to support any of the said grounds must therefore rest upon the party seeking to move the Court.

(b) He further stated "The award speaks from the date of its signature and thereafter the Arbitrators became functus officio." This statement of the Common Law position of an arbitration oversights the fact that after they had made their award these Arbitrators had the following further statutory powers

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and/or duties:-

(a) To interpret the award on application made.

(b) To correct clerical mistakes.

(c) To correct errors arising from accidental slips.

(d) To correct errors arising from accidental omissions.

The Arbitrators purported to exercise their powers under (d) above. The onus of establishing facts to show that such exercise was wrong must be initially and must remain throughout on the party contending for the said proposition.

(2) The Learned Chief Justice further misdirected himself in stating - "Even if the onus in this case was upon the Association, it is my Judgment that in the circumstances enough was proved to shift the onus to the Unions."

There is no question of onus shifting in proceedings of this nature. In order to sustain the grounds set out in their motion the Shipping Association had either:-

(a) To establish as a fact that the omission of an operative date in the award, as originally promulgated, was not accidental but deliberate.

or (b) To establish as a fact that the Tribunal had omitted to make any decision as to the operative date of the award prior to their signing the award in its original form, and that consequently as a matter of Law this was not an "omission" of the type that could be cured by an amendment.

The best evidence on these questions of fact was the evidence of the Arbitrators themselves. On the face of the record -

in particular the letter of the 24th May referring to the Tribunal's letter of the 17th May and the record of the proceedings on the 10th May - it is quite clearly stated by the Arbitrators that their decision as to retro-activity was not reflected in the award in its original form, and that this omission was accidental. The Affidavits of two of the Arbitrators confirm that the decision as to retro-activity was made prior to the coming into being of the written award in its original form. There was no other relevant evidence before the Court - as distinct from unwarranted assumption and far-fetched speculation - touching these questions.

(3) The Learned Chief Justice made the following finding of fact :-

"I am satisfied that whilst consideration may, I repeat may, have been given to a retroactive order, it was not decided upon until after the 9th May when Mr. Shearer took the point. I am satisfied that the award as signed on 19th April, exactly expressed the decision of the Arbitrators at which they had arrived."

This finding is unreasonable, unsupported by the evidence and was not a finding which was open to the Court in these proceedings for, inter alia, the following reasons:

(a) The Affidavits of two of the Arbitrators expressly stated that the decision as to retroactivity had been unanimously arrived at prior to the date of the written award. Although opportunity was given to the applicants to cross-examine the deponents and an adjournment was granted to enable them to decide whether they wished to do so, they expressly declined such opportunity after the said adjournment. The applicants must be therefore deemed to have accepted the statement in the said affidavits.

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(b) The Learned Chief Justice says in his Judgment "The following facts were established" and then proceeded to set out eleven items thereunder. Of these items : - No.(i) - if it shows anything at all - supports the contention that the Tribunal had addressed its mind to retroactivity and made some decision thereon.

No's: (ii), (iii), (iv) and (v) are colourless because once an application for interpretation is made to the Tribunal then the Tribunal is obliged by the provisions of the statute (cap.329 S.13) to deal with the application.

No's: (vi), (vii) and (viii) are not established facts but unwarranted and question begging assumptions. There is nothing in the record to show that "it had to be brought" to the attention of the Tribunal that there may have been an accidental omission. Neither does the record show that the tribunal had to adjourn to consider whether there may have been an accidental omission. The record shows that submissions were made as to the statutory powers of the Tribunal to alter its written award and it was in fact submitted that Sec.8(c) of the Arbitration Law did not apply to arbitrators under Cap.329. It was perfectly proper for this Tribunal - two of whose members were laymen - to adjourn so as to consider the legal validity of these submissions.

No: (ix) is correct but the Tribunal were entitled to make the correction in whatever manner seemed best to them.

No: (x) is another unwarranted assumption. There is nothing to show that the Tribunal was not "able to convey" the correction before the 17th May. They did not in fact convey it earlier but this may have been simply due to

the pressure of other work on the members of the tribunal and no sinister inference can fairly or reasonably be drawn.

No: (xi) contains a presumption about the contents of a letter which the Court did not see and is pure speculation.

The Learned Chief Justice in stating that these alleged "established facts" discharged the onus on the applicants has therefore clearly misdirected himself.

(4) The Learned Chief Justice has misdirected himself as to the meaning and purport of the Affidavits filed by the Chairman and by Mr. Johnstone in that :-

(a) These Affidavits clearly state that the Tribunal met once to consider the various submissions made and came to a unanimous decision as to the rate to be awarded, and the date from which those rates should be effective. Paragraph 6 of the Chairman's affidavit which begins "after our decision as stated above" clearly establishes that this decision was arrived at prior to the date of the written award.

(b) The Learned Chief Justice in his fourth comment on the Affidavits states "There is nothing in the Affidavits to show that the decision was not subsequently altered. In fact, the inference to be drawn from the last paragraph of the Chairman's Affidavit is that a change of opinion did take place. The terms of the Award, he said were communicated to the Secretary upon the date of the Award. We know what were the terms of the award, viz increases in wages in respect of four classes of workers. It is clear therefore that what was communicated to Mr. Goodin was the amount of the increases, and nothing about its retroactivity". This is a wholly unjustified reading of the affidavit. At the

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time when the affidavit was made there was only one "Award" in existence, that is to say an Award which contained a section about retroactivity. It is obvious that this is what the Chairman is referring to and there can be no possible justification for reading the word "award" in paragraph 6 to mean "The award in its incorrect and no longer existing form".

(c) The Learned Chief Justice in his seventh comment says: "If Mr. Goodin had been informed that the Arbitrators had agreed to make their award retroactive, how is it that when he checked the copies for the parties, he did not then notice the omission." There is no evidence that Mr. Goodin himself checked the copies for the parties and nothing on the record to justify any assumption that he did. He further states in this paragraph - why when he received the letters of Messrs. Kelly and Shearer dated 28th April and 1st May, respectively, did he not say to the Chairman - But this is an accidental omission you told me that it should be retroactive to the 15th May 1960 ..." There is no evidence that Mr. Goodin did not say exactly that and nothing on the record to justify the assumption that he did not.

(5) In any event the Learned Chief Justice misdirected himself as to the nature of the issue he had to decide when he stated ..... "It appears to me that the duty is on me to decide whether there has been an error arising from an accidental omission, irrespective of what may be the view of the Tribunal. I can only arrive at a decision on facts presented to the Court, showing the circumstances under which the alleged omission took place, and no such facts have been presented."

The Tribunal stated that there had been an omission in the written award and that such omission was accidental. In the

absence of any allegation of fraud on the part of the Arbitrators and having regard to the terms of the motion, it was not competent for the Court to go behind the record in an effort to show that the Arbitrators were not speaking the truth.

The only questions for the Court were:-

(a) Did the Arbitrators have power to correct accidental omissions in their written award

and (b) If they did, was the accidental omission in this case one that could be corrected within the limits of such power.

On the Law and the evidence on the record both questions could only be answered in the affirmative.

(6) In any event this was clearly a case in which justice could only be done by remitting the matter to the Arbitrators for them to determine the date from which the award was to commence.

The Learned Chief Justice has exercised his discretion in this regard on wrong principles and under a misapprehension as to the legal position.

(7) Relief claimed:

The Appellant prays that the judgment of the Learned Chief Justice be set aside, that the costs of the hearing of the Motion and the costs of this Appeal be awarded to the Appellant, and that any other relief be granted to the Appellant as to this Honourable Court may seem just.

(8) Persons directly affected by the appeal are :

(1) The Bustamante Industrial Trade Union,
98 Duke Street, Kingston.

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(2) The United Port Workers and Seamen's Union, 20 West Street, Kingston.

(3) The Trade Union Congress of Jamaica, 3 South Camp Road, Kingston.

(4) The Shipping Association of Jamaica, 2 Port Royal Street, Kingston.

DATED this 26th day of October, 1961.

(SGD.) D.C.TAVARES
D.C. TAVARES
Solicitor for and on behalf of the Appellant - The United Port Workers and Seamen's Union.

THIS NOTICE AND GROUNDS OF APPEAL are filed by D.C.TAVARES of No: 64 East Street, Kingston, Solicitor for and on behalf of the abovenamed Appellant - The United Port Workers and Seamen's Union.

No.10

Judgment of Phillips J. (President Ag.) 31st December 1962

NO.10 - JUDGMENT OF PHILLIPS J. (PRESIDENT, Ag.)

COURT OF APPEAL, JAMAICA

CIVIL APPEAL NO.16 of 1961

B E T W E E N

THE BUSTAMANTE INDUSTRIAL TRADE UNION)
THE UNITED PORT WORKERS AND SEAMEN UNION)
THE TRADE UNION CONGRESS OF JAMAICA)
APPELLANTS

A N D

THE SHIPPING ASSOCIATION OF JAMAICA RESPONDENTS

BEFORE:

The Honourable Mr. Justice Phillips
" " Mr. Justice Lewis
" " Mr. Justice Waddington

10th, 11th, 12th, 13th, 14th, 17th, 18th, 19th, 20th December, 1962.

Mr. E.C.L. Parkinson for the Bustamante Industrial

Trade Union

Mr. David Coore, Q.C. for The United Port Workers and Seamen Union.

Viscount Bledisloe, Q.C. for Respondents.

The Trades Union Congress of Jamaica not represented and do not appear.

In the Court of Appeal

No.10

Judgment of Phillips J. (President Ag.) 31st December 1962 continued

J U D G M E N T

A trade dispute between the parties was referred to an Arbitration Tribunal, consisting of three arbitrators, under the provisions of the Public Utility Undertakings and Public Service Arbitration Law, Chapter 329.

The Arbitration Tribunal made its award on the 19th of April, 1961 and the same was submitted to the Ministry of Labour, and in due course was sent to the parties.

By law the award takes its effect from its date, unless it is stated to the contrary. By section 12, sub-section 2 of Chapter 329 an award may be made retroactive to such date as the Tribunal shall determine, and the decision of the tribunal as to such date shall be conclusive.

By section 8(c) of the Arbitration Law, Chapter 19, the arbitrators have the power to correct in an award any clerical mistake or error arising from any accidental slip or omission. The award of the 19th April, 1961 related to the increase of wages for four separate categories of workers and were set out in four paragraphs. It was alleged in this case that an additional paragraph worded as follows:

> "(5) that these wage rates should be retroactive to the 15th May, 1960,"

was omitted from the award by an accidental slip or omission. The Respondents made an application by motion to set aside "any amendment of, or addition to," the award made by the Arbitration Tribunal dated 19th April, 1961.

The matter was heard by the learned Chief

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Justice, who stated in his judgment that he was satisfied that the award as signed on the 19th April, 1961, exactly expressed the decision of the arbitrators, at which they had arrived, and that the decision to include the paragraph (5) above, namely that the increase of wages should be retroactive as from the 15th of May, 1960 had not been arrived at on or before the 19th April, but at a subsequent date after the 9th of May, 1961. This was not the case of a supplementary award.

The order made by the learned Chief Justice is as follows:

> "The association is therefore entitled to succeed and to obtain an order from this court in terms of the notice of motion, that any amendment of or addition to the award dated the 19th day of April, 1961, which purports to have been made after that date, be set aside."

The Appellants have appealed against this decision and order of the learned Chief Justice.

Mr. Parkinson, for the Appellant the Bustamante Industrial Trade Union, submitted that if the Association desired to challenge the correctness of any statement in the record that there had been an error arising from an accidental slip, it ought to have supplied the necessary evidence to establish this, by affidavits or otherwise, which they had failed to do. He submitted also that in reaching his conclusion the learned Chief Justice had drawn erroneous inferences, made unwarranted assumptions and speculations, and concerned himself with irrelevant considerations. He maintained that the Tribunal had made an accidental slip or omission which they had corrected, and had the power so to do; and, finally, that if there was any technical error in the manner of correcting the award of the 19th of April, 1961, this was a proper case for remission to the Tribunal so that such technical error may be regularised.

Counsel for the Respondents main submissions argued with consummate artistry were that the "masterly" judgment of the learned Chief Justice,

and his finding of fact, should be accepted, that in any event this was not the case of any accidental slip or omission, consequently the award could not be amended - that any purported amendment had been made after the Tribunal was functus officio and that the burden of proof in this matter lies on the Appellants, but that if the onus of proof was on the Respondents that onus has been shifted by reason of the evidence disclosed on the record, and in particular the matters disclosed in the affidavit of Mr. John C. Wilman, of the 30th June 1961, filed by the Respondents and in which is set out the relevant facts.

Counsel for the Appellant, The United Port Workers and Seamen Union, in a very forceful argument, submitted that the burden of proof on the contrary rested on the Respondents which burden of proof the Respondents had failed to discharge. He, too, maintained that there had occurred on this occasion an accidental slip or omission which the Tribunal had within their powers properly corrected - that the Tribunal had not acted in excess of their jurisdiction as was claimed by the Respondents and that he would not dissent from the view that this may be a proper case for remission to the arbitrators.

It would be necessary, first of all, to examine certain aspects of the available evidence to see what reasonable inferences can be drawn.

I think I will deal at this point with the argument that there is no evidence as to how and when, and in what circumstances this alleged accidental slip or omission took place.

The parties were informed of the award on the 28th of April, and the Unions immediately brought it to the attention of the arbitrators that an important part of their submission had been omitted from the award, namely, that no retroactive date had been mentioned. The arbitrators apparently wished to rectify the matter or "the point in issue", by consent of the parties, but decided to hold a meeting of the Tribunal in the presence of the parties, to hear their submissions.

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The Appellants and the Respondents made submissions to the Tribunal, whether this omission could or could not be set right under section 13 of Chapter 329, which deals with the interpretation of an award, or under section 8(c) of the Arbitration Law, Chapter 19, which deals with the correction of any accidental slip or omission. The Tribunal adjourned to give its decision on the next day, that is the 10th of May, 1961. On this day the Tribunal made a pronouncement, but for whatever reason there may be did not state how the slip or omission came to be made, and a great deal has been made of that fact.

I shall state the observations of the chairman of the Tribunal in full. It is as follows:-

"Chairman: Gentlemen, you will remember when we adjourned yesterday, we adjourned to hand down our ruling this afternoon at three o'clock. We are a bit late but still we'll do our best. And here I read gentlemen -

On the 1st of May, 1961, the Honourable Hugh Shearer addressed a letter to the Secretary of the Essential Services Tribunal and Shipping Association, requesting an interpretation from the Tribunal of the award on the question of the date on which the new rates should become operative as that was part of the issue put to the Tribunal. Consequent upon this letter and another received from the Honourable Thossie Kelly, the Secretary of the Tribunal convened a meeting yesterday, Tuesday, 9th May, 1961 at 2.15 p.m. at the Ministry of Labour. At this meeting submissions were made by Mr. Lett of Counsel and the Hon. Hugh Shearer and the Hon. Thossie Kelly. The Tribunal then adjourned and indicated that its ruling would be handed down today, 10th May.

The Tribunal at this stage would like to state <u>that there is in the award an error arising from an accidental omission.</u> The Tribunal is of the view that this error once corrected will answer the question of the Hon. Hugh Shearer and the Hon. Thossie Kelly. <u>In the light of the foregoing the</u>

Tribunal has not addressed its mind to the submissions of yesterday, but having regard to Section 24 and Section 8(c) of the Arbitration Law, Cap. 19, it will "endeavour to correct this error. The correction will be forwarded to the proper authority in due course and the interested parties will, we are sure, be informed of the nature and import of this correction."

Counsel for the Respondents, as also did the learned Chief Justice, regarded this failure to state then and there how this mistake had occurred as a rather peculiar circumstance, as it would have been more reasonable to expect, they suggest, that if the Tribunal had made its decision about retroactivity, before the 19th April, there was, at this meeting, a clear opportunity to have stated to the parties how this came about, but they never did so.

Mr. Coore, for the Union, on the other hand, pointed out that the arbitrators had to make their report or award, first to the Ministry of Labour, and that the Ministry of Labour would in turn indicate the nature of the original award or any amendment thereto to the parties, and that whilst the Tribunal are not obliged to give reasons for their awards, they may have rightly or wrongly thought that any communication of that nature should have been made first to the Ministry of Labour. But it has also occurred to me that if there was in fact an omission, the Tribunal themselves may not have wished, rightly or wrongly, to expose their folly or their extreme carelessness, or might have been in some doubt as to the proper procedure, and were fearful of making another mistake. But these are all speculations. I would guard against the error of substituting attractive speculations for reasonable inferences of fact.

Two of the arbitrators, the Chairman and Mr. Johnson, gave affidavits with the object, no doubt, of showing that this decision as to the retroactive date had been in fact made before the 19th of April, and not afterwards: for otherwise there would scarcely be any

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necessity for the affidavits of two of the arbitrators. The learned Chief Justice did not accept the affidavits as categorically stating that fact, but found that they were ambiguously worded and thoroughly unsatisfactory. It will be necessary, therefore, to examine in some detail this aspect of the matter.

Before doing so however it may be convenient to deal with the question of the burden of proof.

Lord Denning said in Brown vs Rolls Royce Limited, 1961 (1) A.E.R., page 581, "it is important to distinguish between a legal burden, properly so called, which is imposed by the law itself, and a provisional burden which is raised by the state of the evidence."

In my view, the legal burden in this case was imposed by law on the respondents who sought to establish that there had been no amendment or omission in the original award, and the burden was on them to establish what they sought to prove. The learned Chief Justice in his judgment, thought that this burden had been discharged and shifted to the Appellants. The Appellants claimed otherwise; firstly, that the Respondents had not, by the evidence, discharged the legal burden of proof, and further, that the evidence contained in the affidavits filed by the Appellants had, at any rate, discharged any burden of proof which may have, on the state of the evidence, shifted to them - that is to say, the Appellants.

Counsel for the Respondents submitted that he was not alleging dishonesty in the arbitrators, but misconduct in the sense of exceeding their authority by purporting to make an amended award after they had become functus officio, and that any such purported amendment was not within the "slip rule" so called. On the other side it was suggested that it is impossible to escape the conclusion, from the learned Chief Justice's judgment, that dishonesty was imputed to the Tribunal.

The burden on proving bad faith or the like,

is upon the person asserting it. (See Potato Marketing Board vs Merricks, 1958, 3 W.L.R., page 145, per Devlin, J.) The issue clearly was, in this case, whether the decision as to retroactivity was made before the 19th of April or after that date, when the award had already been made.

After the meeting of the Tribunal on the 10th of May, by letter dated the 17th of May, 1961, it is alleged that the Tribunal informed the Ministry of Labour of this decision, and the Ministry in turn wrote to the parties on the 24th of May, 1961, in which it is stated that by an accidental slip or omission the retroactive date of the increases of wages from the 15th of May, 1960, had been omitted from the original award of the 19th of April, 1961. The Respondents applied to the Ministry of Labour for a copy of the letter of the 17th of May, 1961, but the Ministry replied that their request could not be acceded to. (However, it would seem that a copy of this letter was eventually sent to the parties).

The conduct of the Ministry in not delivering a copy of that letter of the 17th of May was severely criticised by the learned Chief Justice in his judgment, with which I entirely agree.

On the 30th of June, 1961, the Respondents applied by motion to set aside this purported amendment to the original award of 19th April. After the hearing of this motion had actually commenced, the present Appellants filed the affidavits mentioned above, executed by the Chairman of the Tribunal, Mr. Noel Silvera, and another member of the Tribunal, Mr. Roy Johnstone. The affidavits were submitted for the consideration of the court, no doubt with the object of showing that the retroactivity of the wage increases had not been made after, but before the 19th of April. For my own part, I cannot see that there can be any adverse criticism of the Tribunal, of the procedure they adopted of informing the parties through the Ministry of Labour. At any rate section 9 of Chapter 329 enacts that the Tribunal may regulate its procedure and proceedings as it thinks fit, and it was their duty to report to the Ministry.

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It has been suggested that the letter of 17th May referred to may not have been signed by one of the three arbitrators since its production had been refused, and the letter of the 24th of May had only been signed by the acting Permanent Secretary to the Ministry of Labour. A lot has been made of this letter of the 24th of May on both sides, and it is therefore necessary to set it out in full.

"Dear Sir,

RE: Arbitration 'to determine and settle the dispute which now exists between the Bustamante Industrial Trade Union, The United Port Workers and Seamen Union and the Trades Union Congress of Jamaica jointly representing the Port Workers on the one hand, and the Shipping Association of Jamaica on the other, over the Unions' claims for increased wages for Port Workers.'

In a letter dated 17th May, 1961, the Tribunal appointed under the Public Utility Undertakings and Public Services Arbitration Law, Cap. 329, to determine the dispute referred to above, informed the Ministry of Labour that the Award of 19th April, 1961, did not entirely reflect the decision of the Tribunal as the operative date of the Award was omitted and that this constituted an error arising out of an accidental omission.

2. The Tribunal in the aforesaid letter requested that the Award be corrected to read -

'(i) 8d per hour increase for dockmen now getting 3/8d to establish a rate of 4/4 per hour;

(ii) 8d per hour increase for holders now getting 3/9d (workers working in ships holds) to establish a rate of 4/5d per hour;

(iii) 8/- per day for foremen now getting 38/5d per day and 46/10d per day to establish a new rate of 46/5 and 54/10d per day, respectively;

(iv) 10d per hour for winchmen and gangway men now getting 4/- per hour to establish a rate of 4/10d per hour;

(v) that these wage rates should be retroactive to 15th May, 1960.'

Yours faithfully,
(Sgd.) E.G. GOODIN
Acting Permanent Secretary
to the Ministry of Labour.

"The Chairman,
Shipping Association of Jamaica,
2 Port Royal Street,
KINGSTON.

c.c. Mr. Daniel Lett."

It would be monstrous if impropriety and dishonesty were to be imputed to the Government department and its officers on the flimsiest pretext, and without strict and clear proof.

The learned Chief Justice in his judgment makes the following observations about the two affidavits:

"(1) It is not stated in either affidavit that the decision as to the award was made upon the occasion of the meeting at the Ministry of Labour, which took place between the 7th or 11th April, and the 19th April.

(2) That decision may have been arrived at on the occasion then referred to, but it may have been arrived at on a subsequent occasion between the date of that meeting 19th April, the date of the award, because it was on that

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latter date that the Chairman informed the Secretary of 'the terms of the Award'.

(3) It was submitted by Counsel for the Unions that the date upon which the Chairman informed the Secretary of the terms of the Award was wrongly stated in the affidavit as the date of the Award, and that it was intended to state it as the date of the meeting at the Ministry of Labour. It may be that that was the intention but the affidavit clearly states that the communication was made on the 'said date of the Award', which was the 19th April, and which date was mentioned in the previous paragraph. I am not prepared to assume that a mistake has taken place in the affidavit.

(4) But assuming that the date of the decision was the date of the meeting, there is nothing in the affidavits to show that that decision was not subsequently altered. In fact, the inference to be drawn from the last paragraph of the Chairman's affidavit is that a change of opinion did take place. The terms of the Award, he said, were communicated to the Secretary upon the date of the Award. We know what were the terms of the Award, viz. increases in wages in respect of four classes of workers. It is clear therefore that what was communicated to Mr. Goodin was the amount of the increases, and nothing about retroactivity. I cannot see that there is any other inference available.

(5) It has been submitted that the decision as to the retroactive date may not have been arrived at until after 19th April. This submission is based upon the failure of the deponents to state that their decision was arrived at on the date that the members met at the Ministry of Labour, and communication to the Secretary of the terms of the Award on the date of the Award, and the fact that the Award made reference only to the increases of pay. I am of opinion that this submission is correct.

(6) No mention has been made in the affidavits

as to how the draft of the Award was prepared or by whom. Presumably, a draft must have been prepared and checked, at least, by the Chairman. Nor has it been stated by whom the Award was typed. It is not known whether the original draft, if there was one, contained any reference to the retroactive date. There is no evidence as to the circumstances under which the Award was signed.

(7) The Award of the Tribunal having been received by the Secretary on the 19th April, must have been copied in his office for the parties. If Mr. Goodin had been informed that the arbitrators had agreed to make their award retroactive, how is it that when he checked the copies for the parties he did not then notice the omission, and bring it to the attention of the Chairman?

(8) The Court has not had the benefit of any explanations from Mr. Geddes, the other member of the Tribunal, nor from Mr. Goodin, the Secretary. I was informed that both gentlemen have left Jamaica, Mr. Geddes on 26th September, and Mr. Goodin on 12th September".

When one considers what had transpired before:

(a) the chairman's statement at the meeting of the 9th and 10th May, namely, that there was in the Award an accidental slip or omission,

(b) the letter alleged to have been written on the 17th May,

(c) the letter of 24th May, stating finally what was in fact the Award and the subsequent filing of the affidavits of two of the arbitrators,

and upon the reading as a whole of each of the two affidavits - one cannot say that one agrees with the conclusions arrived at by the learned Chief Justice.

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First of all, what is the proper approach? In Meyer vs. Leanse, 1958, 3 A.E.R., page 217, "the approach that the court makes to an award has always been to support the validity of the award and to make every reasonable intentment and presumption in its favour". I must say the same about these affidavits which are a part of the record. It is either that the depenents are saying that the decision of retroactivity was made at or before the award of the 19th April, or that they are dishonestly and deliberately attempting to deceive the court, in order to give that impression which was false, they having actually made that decision after the 19th April, and possibly after the 10th May as was suggested by the learned Chief Justice.

That the Respondents now disclaim allegations of dishonesty cannot now extricate them from that position nor can the fact that their notice of motion was so formulated as to cast upon themselves the burden of proving a negative.

The relevant part of the Chairman's affidavit reads as follows:

> "3. That the Tribunal consisted of myself as Chairman, Mr. Paul Geddes as Employers' Representative and Mr.Roy Johnstone as Workers' Representative.
>
> 4. That on a date subsequent to the 7th April 1961 and prior to the 19th of April 1961 the Tribunal met at the Ministry of Labour, Kingston, and gave considerations to the submissions of the parties.
>
> 5. That it was unanimously decided by myself and the other members of the Tribunal that the increases should be made as stated in our Award dated the 19th April 1961 and also that these increases should be retroactive as of the 15th of May 1960.
>
> 6. That after our decision as stated above, I personally on the said date of the Award, informed Mr. R.G.GOODIN and Secretary of the Tribunal of the terms of the Award."

The Appellants suggest that the word "Award" in the second line of paragraph 6 might be read instead as "decision". On the other hand, the Respondents suggest that in the first line of paragraph 5, after the phrase "that it was unanimously decided", it could have been there clearly stated on what date, but that it has not been so clearly stated, and that in a prosecution for perjury the deponent could in his defence correctly allege that he had not in his affidavit deliberately stated that the unanimous decision was before the 19th April.

Reading the affidavit as a whole, and without imputing dishonesty, I think it can be reasonably construed to mean what the Respondents contend. I am not prepared to impute impropriety and dishonesty on this evidence alone.

Mr. Roy Johnstone's affidavit reads as follows:

> "3. That the Tribunal consisted of Mr. Noel F. Silvera as Chairman, Mr. Paul Geddes as Employers' Representative and myself.
>
> 4. The Tribunal met on the 4th and 7th of April, 1961 and heard the submissions of the respective parties.
>
> 5. That on the date between the 11th and 19th of April 1961 the Tribunal met at the Ministry of Labour, Kingston and gave considerations to the submissions of the parties.
>
> 6. It was unanimously decided by the Chairman of the Tribunal, Mr. Paul Geddes the Employers' Representative and myself that the increases should be made as stated in the Award dated the 19th of April 1961 and also that these increases should be retroactive as of the 15th of May, 1960".

In my view paragraph 6 read with the other parts of the affidavit, without imputing impropriety, agrees with the contention of the Appellants that the deponents wished to convey by their

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words that the decision as to retroactivity was not made after the 19th of April. If I am correct as to the interpretation of the words used in these affidavits, then it would seem that any burden of proof which might have been placed upon the Appellants had been discharged.

Counsel for the Appellants, however, further contended that as the Chairman and Mr. Johnstone were actually in court and were there for cross-examination by the other side if they wished, but which was declined, and as the learned Chief Justice himself may have asked these deponents any question he desired about the facts contained in the affidavits, but having declined to do so ought not thereafter to impute impropriety to the Arbitrators and that the learned Chief Justice was wrong in his findings of fact and his decision on the affidavits. Some weight was attached to this submission, and I must, therefore, refer to the decision in the case of Enoch vs Zaretzai, 1910, 1KB., page 317 - that "neither a judge nor an umpire has any right to call a witness in a civil action without the consent of the parties, and that arbitrators are bound to observe the rules of evidence no less than judges."

It would seem from the decision of Fallon and Calvert, 1962, A.E.R. page 346 - "that although a judge (or arbitrator) has no power to call witnesses without the consent of the parties, a witness who has in fact given evidence, orally (or by affidavit) may be recalled and may be asked any question by the court." The learned Chief Justice in this case exercised his discretion and did not ask the deponents any questions. In my view he was not obliged to do so.

Having come to the conclusion that the evidence, I underline evidence, taken as a whole establishes that the disputed decision of retroactivity was taken before 19th April; the next question to be determined is whether, the Award nevertheless ought to be set aside in the circumstances, or whether it ought to be upheld by reason of the fact that a correction had been made of an accidental slip or omission.

A number of cases have been cited on this point, and counsel for the Respondents relied

strongly on the case of Oxlev vs Link, 1914, 2 K.B., 754 - the decisions in these cases, of course, must be examined on their particular facts and the principles extracted accordingly; An award will only be set aside on three grounds - namely, for an error of law, or for misconduct, or for an improper procuring of an award, (See Meyers vs. Leanse Supra).

The local jurisdiction is contained in section 8 of the Arbitration Law, Chapter 19. The old law, on this topic, (before the modern introduction of the special powers of arbitrators, as contained in section 8(c) Chapter 19) is conveniently summarised in Comyn's Digest and may be thus stated:

"the arbitrators cannot reserve to themselves a further power, since that would enable them to make a double award without the interposition of those who empowered them at first.

The arbitrators cannot make their award by parcels at several times, for when they have made an award they have executed their authority and can do no more.

Therefore an alteration by the arbitrator in the award, though only to correct a mistake in figures, is void if made after the delivery of the award, and even after it is ready for delivery, and notice thereof given to the parties; but the award in its original state will stand good. Menfree vs. Bromley, 6 East, 309. Irvine vs.Elnon, 8 East, 54. However, if the arbitrator make affidavit of his having committed a mistake, the courts will set aside the award unless the parties will consent to refer the matter back to him. Rogers vs. Dallimore, 6 Taunton, 115; but see Dowling and Rayland 774."

The modern statutory power was enacted to give elasticity to the rigidity of the old law and to save time and expense. The slip or omission must be an important one, otherwise you do not want to remedy it. It is no use to make a rule correcting slips or omissions

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that are of no sort of importance, as Kennedy, J.said in Oxley vs Link, supra; the question is more "whether or not the thing which is asked for is a thing, as it seems to me, which in discretion ought to be amended, and it matters not how great in importance the slip or omission may be."

In that case -

> "the plaintiffs signed judgment in default of appearance against the defendant, a married woman, sued in respect of her separate estate. By mistake the judgment was drawn up in the ordinary form of a personal judgment against the defendant, instead of in the appropriate form laid down by the Court of Appeal in Scott v. Morley, 1887, 20 Q.B., 120. The plaintiffs having taken out a summons for leave to amend the judgment so as to follow the form of judgment prescribed in the case of a judgment against a married woman upon a contract made during coverture, a Master and a judge at chambers declined to make any order upon it."

However, Lord Buckley, J. in that same case (decided by majority) said:

> "To my mind an error in something means that the thing of which you are speaking contains parts which are right and parts which are wrong, and that you are going to alter so much of it as is wrong. It is not correcting an error in a thing which is wrong from beginning to end, to substitute for it something which is right. If this order applies I have to see whether this judgment contains something which is right and which I am to correct by adding something, if it be a mistake which arises from an omission, or by correcting something if it be something which requires modification or correction of some sort. So that to see whether the order applies or

not it is vital in the first instance to see whether this is a document, parts of which are right and parts of which are wrong. If I am right in what I have said already, there is no part of it which is right. It is wrong altogether."

In my view in the case before us this award is right and which is to be corrected by adding something which was a mistake arising by an omission, and consequently the Tribunal had the power, under section 8(c) Chapter 19, to correct it.

Counsel for the Appellants submit that this Court has the power under section 11 of Chapter 19, to remit the matter to the arbitration Tribunal, but from the conclusion I have reached, the Tribunal having already made its decision that the increase of wages should be retroactive as from the 15th of May, 1960, there would be no matter for their reconsideration and so, no necessity to remit.

In this case this Court has equal opportunity to assess and evaluate the evidence.

When the question is: what is the proper inference to be drawn from the facts, an appellate court, though it will naturally attach importance to the judgment of the trial judge, should form an independent opinion.

Benmax v. Austin Motor Co.

1955 (2) A.E.R., page 421.

After full consideration of all the evidence in this matter I have come to the conclusion, with respect, that the learned Chief Justice came to a wrong decision as to the reasonable inferences to be drawn from the established facts. The evidence adduced by the Respondents if it amounted to a "strong suspicion" merely, did not discharge the legal burden of proof which clearly and unmistakenly rested on the Respondents.

For these reasons I would allow the appeal

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with costs to the Appellants here and the Court below. The Respondents will have the costs of the application for leave to call fresh evidence.

Dated this 31st day of December, 1962.

/S/ R.R. Phillips
Actg. President, Court of Appeal.

No.11

Judgment of Lewis J.A. 15th January 1963

NO.11 - JUDGMENT OF LEWIS J.A.

I agree.

First: as to onus of proof, I am clearly of opinion that the onus lay upon the respondents to establish the alleged excess of jurisdiction. The general rule is that he who moves the court to act must prove the facts necessary to found the order he seeks. In this case, the respondents seek to have set aside the correction of an Award which the Arbitration Tribunal has purported to make by virtue of a statutory power. It is not suggested that a lack or excess of jurisdiction is shown on the face of the record. The court will only set aside that part of the award inserted by the correction, if it is satisfied that either there was in fact no omission or that the omission was not accidental, and it is the respondents who seek the order who must establish one or other of these alternatives.

Counsel for the Respondents submitted that they should not be required to prove a negative. The answer to this is, as Bowen, L.J., said in the well known case of Abrath v. Northeastern Railway Company (1883) 11 Q.B.D., 440 at p.457 -

> "If the assertion of a negative is an essential part of the plaintiff's case, the proof of the assertion still rests upon the plaintiff."

It is essentially important in a case such

as this, which is relatively bare of evidence, to bear in mind at all times where the legal onus of proof lies. For, assuming that the respondents established enough to shift the evidential burden of proof to the appellants, all that was necessary for the discharge of this burden was for them to equalise the probabilities. In other words, they must establish that there may have been, not as the learned Chief Justice held that there was, an accidental omission.

It may be convenient here to state that in the instant case the document amending the award has not been put in evidence for reasons to which it is unnecessary now to refer, and the case was fought and determined in the court below on the basis that the letter of the 24th May correctly recorded the amendment, and that only the question of jurisdiction was in issue. This court accordingly ruled, during the hearing, that it would consider this appeal on the basis that, notwithstanding the use of the word "requested" in the Ministry's letter of May 24, the Tribunal did, by the document of May 17, purport to amend its award by the addition of a fifth paragraph.

As I have said, this case involves the purported exercise by the Arbitrators of their statutory power to correct an error arising out of an accidental omission in their award. The court was assisted by a very full discussion by Counsel on both sides, of the principle upon which the Slip Rule is applied. I do not consider it necessary to deal at any length with the cases to which we were referred. It is clear that the rule must be applied with caution. The fact that the Arbitrators are of opinion, as in this case they stated they were, that the circumstances constitute an omission, does not conclude the matter. The court is entitled to enquire into the facts, and if satisfied that they do not fall within the strict limits of the Slip Rule, it will set aside the correction. The rule cannot be used for the purpose of inserting a fresh act of judgment or of substituting one act of judgment for an earlier one - Henfree v. Bromley (1805) 6 East 309; Oxley v. Link (1914) 2 K.B. 734 - nor can it be used for the purpose of altering a decision which has been deliberately set out in words, where the words have

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proved inadequate to express what the Arbitrators intended - Sutherland v. Hannevig (1921) 1 K.B., 336 - or where something has been omitted because of a mistaken view of the law (Bentley v O'Sullivan (1925) A.E.R., 546). But it is clear, and I did not understand this proposition to be disputed at the Bar, that where there is an error in the award because some part of the Arbitrators' decision was accidentally omitted from the award, the Arbitrators may correct it by adding what was omitted.

In Oxley v. Link (supra), Buckley, L.J., referring to Order 23, Rule 11, the Slip Rule Order, said at page 41 -

> "In order to see if this Order applies I have to see whether this judgment contains something which is right and which I am to correct by adding something, if it be a mistake arising from an omission, or by correcting something, if it be something which requires modification or correction of some sort."

In their notice of motion the respondents alleged that the Tribunal had not made any error arising from any accidental omission. The Court had, therefore, to determine whether, on the facts proved, it was established either that the Tribunal had not prior to the issue of its award of the 19th April, made a decision as to a retroactive date, or, if it had made the decision, its omission from the award was a deliberate act of the Tribunal. The learned Chief Justice held that no decision had been made.

Counsel for the appellants have submitted that this finding is unreasonable and cannot be supported by the evidence. The learned Chief Justice, they contended, did not give sufficient weight to the statements of the Tribunal made on the 10th May and in the letter of 17th May; misdirected himself in that he treated as facts his own unwarranted and question-begging assumptions; misdirected himself as to the meaning and purport of the affidavits sworn by Silvera, the Chairman of the Tribunal and Johnstone, a member of the Tribunal.

The reasons set out by the learned Chief Justice, or urged by Counsel for the Respondents before us, as justifying the Chief Justice's finding, are as follows:

1. The Failure of the Tribunal to state promptly upon receiving letters from Kelly and Shearer that the retroactive date upon which they had decided had been accidentally omitted from the award; not until the 10th of May did they state that there had been an error, and even then they failed to state what the error was or how it had arisen.

2. The Tribunal, by its letter of May 2nd, summoned a meeting "to clarify the point at issue", and invited the parties "to make submissions on this matter." By so doing it impliedly admitted that it had not reached a decision as to the date.

3. Neither the statement of 10th May nor the letter of 24th May states clearly and unequivocally that the decision had been reached before the signing of the award on the 19th April, and had been accidentally omitted therefrom.

4. The affidavits are unsatisfactory; do not state categorically that the decision as to the retroactive date was arrived at at the same meeting at which the increased rates of pay were agreed, and leave room for an inference that the decision was made subsequently, at another meeting held between May 10 and May 17. Moreover, they do not state how the error occurred, or explain how it was that no member of the Tribunal observed the omission at the time of signing the award.

I agree with Counsel for the appellants that some of the "established facts" set out by the learned Chief Justice as sufficient to shift the onus of proof, are really comments, and I am unable to accept certain of these comments as valid. But it cannot be denied that the failure of the Tribunal to announce promptly

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that there was an error in their award must raise in the mind of the court serious doubt as to whether the error did exist. The award itself recites that the Unions' claim included a request for increased wages retroactive to 4th April, 1960. It had been common ground at the hearing that the retroactivity arose on the reference to the Tribunal, and the Tribunal had heard submissions on this issue. It is reasonable to expect that on its being pointed out to the Tribunal that its award contained no decision on this issue it would promptly have stated the fact, if it was a fact, that its decision had been accidentally omitted. Even if, as has been submitted, the Tribunal felt itself bound in law to convene a meeting on the application of one of the parties it is hard to understand why it did not make the announcement at the commencement of the meeting. Add to this silence the unusual circumstance that such an omission should pass unnoticed by all three members and the Secretary, and, further, the expressed willingness of the Tribunal to clarify the issue of the effective date of the award and its invitation to the parties to make submissions on this matter. In my view these facts are sufficient, in the absence of any satisfactory explanation, to arouse grave suspicion as to whether there was in fact an omission from the award, and to require a close examination of the facts which it is said constitute the accidental omission.

Counsel for the appellants submitted that the Tribunal on discovering the error may have been in doubt as to how it could legally be corrected, and hesitated to make a statement about it until they were sure of their power to do so. Counsel pointed out that the law (Cap.329) under which the Tribunal was operating contains a power to interpret (section 13), but no reference to the applicability of the Arbitration Law (Cap. 19), section 8(c) of which confers the power to correct an error arising from an accidental omission. There is no evidence that the Arbitrators became aware of their power to correct until Shearer made his submission on May 9th, and it cannot be assumed that they had previous knowledge of it - there is no presumption that they know the law governing their powers and rights (see Kiriri Cotton Co.Ltd. v. Dewani, 1961, A.E.R. 177 per

Lord Denning at page 181).

It was further urged that the letter of May 2nd is consistent with uncertainty on the part of the Tribunal as to its powers. It is useless to speculate now as to what course the proceedings on May 9th would have taken had Shearer made submissions when called upon by the Chairman. In the event no submissions as to clarification of the award were made for Mr.Lett, Counsel for the Shipping Association, took a preliminary objection to the jurisdiction of the Tribunal to clarify its award. The parties were heard on this objection. Shearer referred the Tribunal to section 8(c) of Cap.19 and the Tribunal then adjourned to consider the submissions. On the following day, May 10, it made the announcement that it proposed to act under section 8(c) to correct the error in its award in the terms which have been referred to by the learned President in his judgment.

Pausing for a moment to consider the position up to this stage, in the light of these submissions, one is forced to ask oneself the question - when the Tribunal made its announcement on May 10 did it mean that the date decided upon had been accidentally omitted from its award, or that the Tribunal had omitted to decide upon a date and that this was an accidental omission? Had the case rested here I would have felt constrained to support the judgment of the learned Chief Justice, for I could not say that an inference that no decision had been reached was unreasonable. It seems to me, however, to be erroneous to say that at this stage the onus of proof shifted to the appellants, for the respondents' case included the Ministry's letter of May 24, the contents of which to my mind are important, and which the learned Chief Justice appears to have treated as part of the appellants' case. This letter states that the Tribunal had informed the Ministry that "the award of 19th April, 1961, did not entirely reflect the decision of the Tribunal as the operative date of the award was omitted." The clear meaning of this appears to me to be that the Tribunal, before issuing its award of 19th April, had made a decision which included the operative date, but that this part of the decision was not recorded in the award.

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The Tribunal then goes on to state that this omission was accidental. The wording may be rather laborious, but the meaning is clear.

The respondents have disclaimed any allegation of dishonesty on the part of the Arbitrators, nor is any alleged in their notice of motion, and I see no reason to assume that the Arbitrators were deliberately using words which clearly purport to convey one meaning for the purpose of veiling some other meaning. Nor is there any evidence that the decision as to a retrospective date, if made prior to the issue of the award, was deliberately omitted. In my opinion the learned Chief Justice did not attach sufficient weight to the contents of this letter.

I turn now to consider the two affidavits. The learned Chief Justice in his judgment stated -

> "They purport to allege that the decision as to retroactivity, and that as to the increase of wage rates took place on the date when the members met, a date between 7th or 11th April and 19th April, and that both decisions took place on that same date."

But the learned Chief Justice, after a close analysis of their terms, held that they did not say what they purported to say. He considered their contents so vague and the omissions so many that they left room for the inference, which he held to be the proper inference, that although a decision may have been reached at the meeting prior to the 19th April, this decision was altered at a subsequent meeting held before the issue of the award, and that the decision stated in the corrected award was only reached after the 10th May.

I have carefully considered the learned Chief Justice's reasoning, as well as the submissions of Counsel for the respondents in support, and am unable to accept that this is a reasonable inference. The affidavits speak of only one meeting for the consideration of the submissions, and only one decision - a unanimous decision - and I can find nothing in them to

justify the inference that there was a subsequent meeting for further consideration, or any change of opinion.

The learned Chief Justice said of paragraph 6 of Silvera's affidavit -

> "Paragraph 6 of the Chairman's affidavit must now be looked at -
>
> (d) "After our decision as stated above" suggests a reference to the two decisions arrived at as stated in paragraph 5.
>
> (e) "on the said date of the "Award"... and "I.... informed Mr. Goodin.... of the terms of the "Award" certainly states that all Mr.Goodin was informed as being the Award was what was in the Award, i.e. the increases of pay;
>
> (f) and that gave rise to the inference that the terms of "the decision as stated above" which was communicated to Mr. Goodin, being only the decision as to the increases of pay, the decision as to retroactivity had not yet been made."

It will be noted that the learned Chief Justice here fell into the same error which he had earlier rejected, of confusing the "decision" with the "award". Both affidavits plainly state that the decision was in two parts, (1) increased wages, (2) retroactivity. The award contains only one part - increased wages. Silvera says that it was he who told the Secretary of the terms or contents of the award. He does not say that he told the Secretary the terms of the decision. I come to the conclusion that Silvera omitted to tell the Secretary of the second part of the decision, namely retroactivity. This conclusion that the mistake was Silvera's is consistent with the silence of the Tribunal when the omission was discovered and with the otherwise inexplicable conduct of the Secretary, for it is the Chairman who would have to speak for the Tribunal, and there is no

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evidence that the Secretary knew more of the decision than what was stated in the award.

Counsel for the Respondents submitted that if it subsequently turned out to be the fact that the decision as to retroactivity was made after April 19, the deponents could not be convicted of perjury because the paragraphs in their affidavits which refer to the decision arrived at and which are in similar terms, do not expressly state that this decision was made at the meeting referred to in the preceding paragraph. Assuming, without accepting, that this is correct, it still remains that the affidavits, having regard to the sequence of the paragraphs, clearly purport to convey that the decision as to retroactivity was taken at the only meeting to which they refer. I am not prepared to assume that they have been prepared and sworn with the object of concealing the truth and of evading a possible prosecution for perjury.

It would undoubtedly have been preferable and more satisfactory if the affidavits had set out fully the circumstances in which the error occurred so that the court inquiring into the matter might have all the facts before it, but the similarity of the two affidavits indicates that they were drafted by the same hand, and the two arbitrators who were not parties to the case may have been content to depose to what the parties' solicitors considered sufficient, so long as they were satisfied that what they were swearing to was substantially true. It was stated at the Bar that the two arbitrators were in court, ready to testify if required, but that Counsel for the Appellants stated that they would not be required for cross-examination. It would be unfair, by innuendo or otherwise, to impute prevarication to them when the opportunity to investigate their statements in their affidavits was not taken. For my part, I am content to accept the affidavits as meaning what they purport to convey, and not to seek a hidden meaning based upon the niceties of language.

To sum up. It appearing on the face of the proceedings that the Tribunal had purported

to exercise its statutory power to correct an error arising out of an accidental omission, the onus of proving that it acted in excess of that power lay upon the Respondents who moved to set aside the amendment. The evidence as to the Tribunal's silence and its summoning a meeting to clarify its award and hear submissions on retroactivity, does suggest that no decision had been taken. The letter of May 24 and the two affidavits, however, sufficiently state that this decision had been taken prior to the issue of the award, and, as I see it, that the Chairman accidentally omitted to tell the Secretary about it. I do not think that the facts warrant the inferences of a second meeting, a change of opinion, and then after May 10, a final decision on retroactivity, which the learned Chief Justice has drawn.

In my opinion the respondents failed to establish that the circumstances did not fall within the ambit of section 8(c) of the Arbitration Law, and this appeal should be allowed.

I agree with the order proposed as to costs.

(Sgd.) A. M. LEWIS
Judge of Appeal.

15th January, 1963.

NO.12 - JUDGMENT OF WADDINGTON J.A. (Ag.)

No.12

Judgment of Waddington J.A. (Ag.)

I regret that I find myself in the invidious position of having, with great respect, to dissent from the judgments delivered by my brethen herein.

It appears to me that the Tribunal having delivered its award of the 19th April 1961, became functus officio and could not therefore make any subsequent amendment of or addition to its award. Prima facie therefore the documents of the 19th April 1961 must be taken as the award of the Tribunal. The Tribunal however purported to make an amendment to the award by the addition of clause V, making it retroactive to the 15th of

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Judgment of Waddington J.A. (Ag.) continued

May 1960. This it purported to do under the provision of S.8(c) of the Arbitration Law, Cap. 19, on the ground that the award contained an error arising from an accidental omission to include the clause as to retroactivity.

Whether or not the Tribunal could so amend the award depended on whether or not it had in fact arrived at the decision as to retroactivity before the award was signed and such decision was accidentally omitted from the award.

In these circumstances the question arises, on whom did the general burden of proof lie.

If the Tribunal had been made the Defendants in this matter I think the burden would have been on it to establish the validity of the amendment. It is true that in this case the Appellants are not seeking to enforce the award. Indeed there does not appear to be any power in the appellants to enforce the award, as it is provided by Sec.10(5) of Cap.329, that the award shall be binding on the employer and workers to whom the award relates, and shall be an implied term of the contract between the employer and workers. It would seem that only the workers could enforce the award. The Appellants are however the representatives of the workers, and will obviously benefit if the amendment is allowed to stand. In these circumstances would there be any onus on the Appellants to establish the validity of the amendment? It is not an easy question to decide, but as it was the Respondents who were seeking to set aside the purported amendment I am prepared to adopt the view that the onus was on them to show that the Tribunal had not made the decision as to retroactivity before they signed the award of the 19th April, 1961. This they must do either by direct evidence or by evidence from which it would be reasonable and more probable than not to draw such an inference.

The evidence tendered by the Respondents show the following :-

1. The Tribunal sat on the 4th and 7th April, 1961 and considered the submissions made by the parties, including submissions on the question of retroactivity.

2. On 19th April, 1961, the Tribunal made its award granting increases in the rates of wages payable, but silent as to the issue of retroactivity.

3. The award was forwarded to the parties by the Ministry of Labour on the 28th April, 1961.

4. On the 28th April, 1961, Mr. Kelly wrote the Ministry of Labour, pointing out that the award did not contain an operative date, notwithstanding the fact that the Unions had sought to have it retrospective to the 3rd April, 1960, and requesting clarification of the matter.

5. On the 1st May, 1961, Mr. Shearer wrote the Ministry of Labour pointing out that the award omitted reference to the portion of the dispute as to retroactivity, and requesting an interpretation by the Tribunal under Sec.13 of Cap. 329 on the question of the date on which the new rates should become operative.

6. On the 2nd May, 1961, Mr. Goodin, the Secretary of the Tribunal, telephoned Mr. Wilman, the Solicitor for the Respondents, advising that Mr. Silvera, the Chairman of the Tribunal, wished to know whether the Respondents would consent to the Tribunal dealing with Mr. Shearer's letter without a hearing, under Sec.13 of Cap.329. Mr. Wilman informed Mr. Goodin that the Respondents did not so consent.

7. On the same day the Secretary of the Tribunal wrote the Respondents referring to the letters from Messrs. Kelly and Shearer, and stating that the Tribunal was prepared to clarify the point in issue, and in accordance with Sec.13 of Cap. 329 it decided to invite them to make submissions on the matter at 2.15 p.m. on the 9th of May, 1961.

8. On the 9th of May, 1961, the Tribunal met and after hearing submissions from the parties as to whether it could act

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Judgment of Waddington J.A. (Ag.) continued

under Sec.13 of Cap. 329, or Sec.8(c) of Cap. 19, adjourned to the 10th of May 1961, to consider its ruling on the point.

9. On the 10th of May, 1961, the Tribunal resumed its sitting and instead of making a ruling on the submissions which were made on the 9th of May, made the following announcement -

> "------The Tribunal at this stage would like to say that there is in the award an error arising from an accidental omission. The Tribunal is of the view that this error once corrected will answer the question of the Honourable Hugh Shearer and the Honourable Thossy Kelly. In the light of the foregoing, the Tribunal has not addressed its mind to the submissions of yesterday, but having regard to Sec.24 and Sec.8(c) of the Arbitration Law, Cap.19, it will endeavour to correct this error. The correction will be forwarded to the proper authority in due course and the interested parties will, we are sure, be informed of the nature and import of this correction."

10. On the 24th May, 1961, Mr. Goodin, who was then the Acting Permanent Secretary of the Ministry of Labour, wrote the letter appearing at page 157 of the record to the respondents stating inter alia:

> "the Tribunal...informed the Ministry of Labour that the award of the 19th April, 1961 did not entirely reflect the decision of the Tribunal, as the operative date of the award was omitted and that this constituted an error arising out of an accidental omission. The Tribunal in their aforesaid letter requested that the award be corrected to read ----(V) That these wage rates should be retroactive to 15th May, 1960."

It appears to me that if the Tribunal had come to a decision before the 19th April, 1961, that the increased wage rates should be retroactive to the 15th of May, 1960, but due to an accidental slip or omission this was not stated in the award of the 19th April, 1961, it would be reasonable and natural to expect that when the matter was brought to its attention by the letters of Messrs. Kelly and Shearer, it would have immediately informed the parties that it had in fact made such a decision, but that the decision had been accidentally omitted from the award. Not only did the Tribunal not do so, but at no time during the meeting on the 9th of May, was it so stated. Even on the 10th of May, when, without addressing its mind to the submissions made by the parties on the 9th in respect of which it had adjourned to give a ruling on the 10th, it stated that at that stage it would like to state that there was in the award an error arising from an accidental omission, one would have expected that it would at that stage have stated what the error was and how it came to be made.

In my view on the facts established by the Respondents down to the 10th of May, 1961, the only reasonable and probable inference to be drawn was that the Tribunal had not in fact made any decision as to retroactivity before the 19th April, 1961, whether from an oversight or otherwise, and as this was an issue in respect of which they should have made a decision, they purported to give themselves the power to do so under Sec.8(c) of the Arbitration Law, Cap.19, on the basis of having made an accidental slip or omission by their failure to decide that issue.

I do not think that the letter of the 24th of May, 1961 from the Ministry of Labour to the Respondents is inconsistent with this inference. That letter may be construed as meaning that the Tribunal had made an error arising out of an accidental omission to include an operative date in the award and (the matter having been brought to their attention by the letters from Messrs. Kelly and Shearer resulting in the proceedings of the 9th and 10th of May) were now correcting that error, by inserting an operative date (decided on as a result of the proceedings of the

In the Court of Appeal

No.12

Judgment of Waddington J.A. (Ag.) continued

9th and 10th May). In these circumstances the award of the 19th of April, 1961 would not reflect the decision of the Tribunal.

I agree with the view expressed by the learned Chief Justice (at page 180 of his Judgment) that enough was proved by the Respondents to shift the onus to the Appellants.

The only evidence tendered by the Appellants were the affidavits of Mr. Noel P.Silvera, the Chairman of the Tribunal and Mr. Roy Johnstone, the workers representative on the Tribunal.

Now if the Tribunal had in fact decided on an operative date for the increases before the 19th of April, 1961, and this was accidentally omitted from its award, the circumstances in which this occurred would be peculiarly within the knowledge of Messrs. Silvera and Johnstone and one would expect that such circumstances would be stated clearly and unequivocally and in some detail in the affidavits which they swore on behalf of the Appellants, particularly when at that stage it was known exactly what the Respondents were alleging. I regret to say that in my view neither of these affidavits could claim these qualities, and I think that most of the criticisms made in respect of them by the learned Chief Justice were justified.

But even if these affidavits could be construed to mean that the decision as to retroactivity was made before the 19th of April, 1961, that would not be the end of the matter. The question would still remain whether the failure to include the decision in the award was due to an accidental slip or omission. Now the circumstances in which the alleged omission occurred could not be known to the Respondents. Those circumstances would all be matters peculiarly within the knowledge of Messrs.Silvera and Johnstone, who had sworn affidavits on behalf of the Appellants, and who could quite easily have stated the facts if there were any, showing how the accidental slip or omission had occurred. In my view the onus at that stage was on the Appellants to establish not only that the decision as to retroactivity had been made before the

19th of April, 1961 but that the failure to include it in the award was due to an accidental slip or omission. Up to now no one knows whether :-

(a) Mr. Silvera communicated the decision as to retroactivity to Mr. Goodin, and if so, how the communication was made and how it came about that the decision was omitted from the award when it was being prepared, or

(b) Mr. Silvera omitted to communicate the decision to Mr. Goodin, and if so, how it came about that none of the members of the Tribunal discovered the omission when the award (a comparatively short document) was being signed.

The Court cannot presume that an accidental slip or omission had occurred. The Appellants must establish this on a balance of probabilities, and in my view they failed to do so on the evidence which they tendered in the Court below.

Much has been made by the Appellants of the fact that the Respondents made no allegation of fraud or dishonesty against the Tribunal. An allegation of Fraud or dishonesty is a serious allegation and one that cannot be established except by some cogent and direct evidence. As pointed out before, the circumstances in which the alleged accidental slip or omission occurred were peculiarly within the knowledge of the members of the Tribunal and in those circumstances the Respondents in my view very properly refrained from making any allegation of fraud or dishonesty. The members of the Tribunal were the only persons who could say exactly how the alleged slip or omission occurred but they chose not to do so. The conduct of the Tribunal can only be gauged by a comparison with what one would expect of reasonable men in their position and if the Tribunal by its conduct lays itself open rightly or wrongly to suspicions of impropriety they only have themselves to blame for that.

I am not sure that I would have reached some of the conclusions reached by the learned Chief

In the Court of Appeal

No.12

Judgment of Waddington J.A. (Ag.) continued

Justice in this case, but that is not the test. In my view he applied himself with great care to a difficult and unusual task and I find myself unable to say that he was wrong in the decision to which he came.

With regard to the question of remission, I do not agree that the absence of a motion to remit in accordance with O.59, r.39 and O.64, r.14 would preclude the making of an order for remission in this case if the circumstances otherwise warranted such an order. The learned Chief Justice did not, however, base his refusal to remit on the absence of a motion, but also considered the matter on the merits and in the exercise of his discretion refused remission. It has not been shown that he exercised his discretion on any wrong principle, and I can see no reason to interfere. For these reasons I would dismiss the appeal with costs to the Respondents.

I agree that the Respondents should have the costs of the application for leave to call fresh evidence.

J.A.WADDINGTON
Judge of Appeal (Ag.)

No.13

Order 18th January 1963

NO.13 - ORDER

JAMAICA
CIVIL FORM 9

IN THE COURT OF APPEAL

CERTIFICATE OF THE ORDER OF THE COURT.
CIVIL APPEAL NOS. 16 & 17/61.

Appeal from the Judgment of the Supreme Court, Kingston, Jamaica, dated the 26th day of October, 1961

BETWEEN

THE BUSTAMANTE INDUSTRIAL TRADE UNION
THE UNITED PORT WORKERS AND SEAMEN UNION
THE TRADES UNION CONGRESS OF JAMAICA
Appellants

AND

THE SHIPPING ASSOCIATION OF JAMAICA Respondent

THIS Appeal coming on for hearing on the

In the Court of Appeal

No.13

Order 18th January 1963 continued

12th, 13th, 14th, 17th, 18th, 19th & 20th days of December, 1962 before Mr. Justice Phillips, (President, Ag.) Lewis and Waddington JJA in the presence of E.C.L. Parkinson, Esq., for the Bustamante Industrial Trade Union, David Coore, Esq., Q.C. for Seamen Union, and Viscount Bledisloe, Q.C. and with him David Lett Esq. and Peter Judah, Esq. Trades Union Congress of Jamaica not represented and do not appear,

I HEREBY CERTIFY that an Order was made as follows:-

Judgment of the Court (Phillips, President Ag., Lewis and Waddington JJA read) Waddington JA dissenting

"15th January, 1963.

Appeal allowed with costs of appeal and in Court below to Appellants. Respondents to have costs of application for leave to call fresh evidence. By consent Stay of Execution granted for 21 days while Respondent considers question of Appeal to Privy Council."

Given under my hand and the Seal of the Court this 18th day of January, 1963.

(Sgd.) Boyd Carey
Deputy Registrar.

No.14

Notice of Motion for Leave to Appeal to Her Majesty in Council 1st February 1963

NO.14 - NOTICE OF MOTION FOR LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE COURT OF APPEAL

CIVIL APPEALS 16 and 17 of 1961

ON APPEAL from the High Court of Justice

B E T W E E N

THE BUSTAMANTE INDUSTRIAL TRADE UNION
THE UNITED PORT WORKERS AND SEAMEN UNION
THE TRADE UNION CONGRESS OF JAMAICA

Appellants

AND

THE SHIPPING ASSOCIATION OF JAMAICA

Respondents

TAKE NOTICE that this Honourable Court will

In the Court of Appeal

No.14

Notice of Motion for Leave to Appeal to Her Majesty in Council 1st February 1963 continued

be moved on Monday the fourth day of February 1963 at 10 o'clock in the forenoon or so soon thereafter as Counsel can be heard by Counsel on behalf of the above mentioned Shipping Association of Jamaica for an Order granting leave to appeal to Her Majesty in Council against the decision of this Honourable Court (Hon. Mr. Justice Phillips and Hon. Mr. Justice Lewis: Hon. Mr. Justice Waddington dissenting) delivered on the 15th day of January 1963 reversing the judgment of Mac-Gregor C.J. in the High Court of Justice, upon the following grounds :-

(1) The said judgment of this Honourable Court is a final decision in civil proceedings.

(2) The appeal involves directly or indirectly a claim to or a question respecting a right of the value of upwards of five hundred pounds.

(3) By virtue of Section 110 subsection 1 (a) of the Constitution of Jamaica an appeal lies from the decision of this Honourable Court to Her Majesty in Council as of right.

AND TAKE FURTHER NOTICE that it is intended to read in support of this Motion an Affidavit of Arnold Claud Alexander Webster sworn and filed this day a copy of which Affidavit is served herewith.

DATED this first day of February 1963.

(sgd) Judah & Randall
Solicitors for the said
Shipping Association of Jamaica.

To:
The Bustamante Industrial Trade Union
The United Port Workers and Seamen Union
The Trade Union Congress of Jamaica.

FILED by JUDAH & RANDALL of No.11 Duke Street, Kingston, Solicitors for and on behalf of the Shipping Association of Jamaica whose address for service is that of its said Solicitors.

In the Court of Appeal

No.15

Affidavit of Arnold Claud Alexander Webster in support of Motion 1st February 1963

NO.15 - AFFIDAVIT OF ARNOLD CLAUD ALEXANDER WEBSTER IN SUPPORT OF MOTION.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE COURT OF APPEAL

CIVIL APPEALS 16 and 17 of 1961

ON APPEAL from the High Court of Justice

BETWEEN:

THE BUSTAMANTE INDUSTRIAL TRADE UNION
THE UNITED PORT WORKERS AND SEAMEN UNION
THE TRADE UNION CONGRESS OF JAMAICA
Appellants

- AND -

THE SHIPPING ASSOCIATION OF JAMAICA
Respondents

I, ARNOLD CLAUD ALEXANDER WEBSTER make oath and say:-

1. My true place of abode and postal address are 5 Tankerville Avenue, Kingston 6, and I am the Chairman of the Shipping Association of Jamaica.

2. The Shipping Association of Jamaica does not have in its possession a calculation of the exact amount which would be payable to dockmen holders foreman winchmen and gangway men employed on the Kingston waterfront if the Arbitration Award dated 19th April 1961 awarding increases of pay to them had retroactive effect as from May 15th 1960 and it would take the staff of the Shipping Association of Jamaica several weeks to calculate the exact amount of back pay involved.

3. The Shipping Association of Jamaica does have in its possession details of total wages paid to the said categories of portworkers for

In the Court of Appeal

No.15

Affidavit of Arnold Claud Alexander Webster in support of Motion 1st February 1963

the periods January to June 1960 inclusive and January to December 1960 inclusive from which I have calculated that during the period of six months from 1st July to 31st December 1960 the total wages paid to the said portworkers affected by the said Arbitration Award was approximately three hundred and ninety-three thousand one hundred and forty-six pounds (£393,146).

4. If the said increases in pay were paid to the said portworkers for this six months period alone the total amount payable would be approximately seventy-two thousand and thirty-four pounds (£72,034).

5. The period from May 15th 1960 to 18th April 1961 covers approximately twelve months and the total amount of back pay payable to the said portworkers if the said Arbitration Award had retroactive effect would be approximately one hundred and forty-four thousand pounds (£144,000).

6. In addition the members of the Shipping Association of Jamaica would have to pay a further sum of approximately seven thousand two hundred pounds (£7,200) into the portworkers superannuation fund and a further sum of approximately two thousand eight hundred and eighty pounds (£2,880) into the emergency relief fund.

7. The effect of the majority decision of this Honourable Court delivered on January 15th 1963, is that the sums mentioned in paragraphs 5 and 6 hereof would become immediately payable.

8. The appeal by the Shipping Association of Jamaica to Her Majesty in Council against the majority decision of the Court of Appeal in Jamaica reversing the judgment of the Learned Chief Justice involves directly or indirectly a claim to or a question respecting a right of

the value of upwards of five hundred pounds.

SWORN by the said ARNOLD CLAUD ALEXANDER WEBSTER at Kingston in the Parish of Kingston this first day of February 1963 before me :-) (sgd) ARNOLD WEBSTER

(Sgd.) A.H.B. Aguilar
Justice of the Peace
St. Andrew.

FILED by Judah & Randall of 11 Duke Street, Kingston Solicitors for and on behalf of the Shipping Association of Jamaica.

In the Court of Appeal

No.15

Affidavit of Arnold Claud Alexander Webster in support of Motion 1st February 1963 continued

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NO.16 - ORDER GRANTING CONDITIONAL LEAVE TO APPEAL

No.16

Order granting Conditional Leave to Appeal 12th February 1963

IN THE COURT OF APPEAL

CIVIL APPEALS 16 and 17 of 1961

ON APPEAL FROM THE COURT OF APPEAL

BETWEEN

THE SHIPPING ASSOCIATION OF JAMAICA
Applicants

- and -

THE BUSTAMANTE INDUSTRIAL TRADE UNION
THE UNITED PORT WORKERS AND SEAMEN UNION
THE TRADE UNION CONGRESS OF JAMAICA
Respondents

Before the Honourable Mr. Justice Duffus

In the Court of Appeal

No.16

Order granting Conditional Leave to Appeal 12th February 1963 continued

(President (acting)).

UPON A MOTION coming on for hearing on the 4th February 1963 and UPON HEARING Counsel for the Shipping Association of Jamaica and UPON HEARING Counsel for the Bustamante Industrial Trade Union, the United Port Workers and Seamen Union having been served but not having appeared and the Trade Union Congress of Jamaica not having filed Notice of Appeal or appeared at the hearing of the appeals and UPON READING the affidavit of Arnold Claud Alexander Webster filed on the 1st February 1963.

THIS COURT DOTH ORDER that leave to appeal to Her Majesty in Council against the decision of this Honourable Court delivered on the 15th January 1963 is granted to the Shipping Association of Jamaica upon the following conditions :-

(1) five hundred pounds to be paid into Court as security pursuant to section 4 (a) of the Jamaica (Procedure in Appeals to Privy Council) Order in Council 1962 before the 7th March 1963.

(2) The Applicants (Shipping Association of Jamaica) shall take the necessary steps for procuring the preparation of the record and the dispatch thereof to England by the 31st May 1963

(3) execution of the judgment to be suspended pending the appeal.

(4) Liberty to apply.

AND IT IS ORDERED that the costs of this application are to be costs in the cause.

DATED this 12th day of February 1963.

(sgd) Boyd Carey
Deputy Registrar.

FILED by Messrs. Judah & Randall of 11 Duke Street, Kingston, Solicitors for the Shipping Association of Jamaica.

In the Court of Appeal

No.17

Order Granting Final Leave to Appeal 15th May 1963

NO.17 - ORDER GRANTING FINAL LEAVE TO APPEAL

IN THE COURT OF APPEAL

CIVIL APPEALS 16 and 17 of 1961

ON APPEAL FROM THE COURT OF APPEAL

BETWEEN

THE SHIPPING ASSOCIATION OF JAMAICA
Applicants

- and -

THE BUSTAMANTE INDUSTRIAL TRADE UNION
THE UNITED PORT WORKERS AND SEAMEN UNION
THE TRADE UNION CONGRESS OF JAMAICA
Respondents

Before the Honourable Mr. Justice Duffus

UPON A MOTION coming on for hearing on the 8th May 1963 and UPON HEARING Counsel for the Shipping Association of Jamaica the Bustamante Industrial Trade Union and the United Port Workers and Seamen Union having been served but not having appeared and the Trade Union Congress of Jamaica not having filed Notice of Appeal or appeared at the hearing of the appeals and UPON READING the affidavit of John Cecil Wilman filed on the 1st May 1963.

THIS COURT DOTH ORDER that final leave to appeal to Her Majesty in Council against the decision of this Honourable Court delivered on the 15th January 1963 be and is hereby granted to the Shipping Association of Jamaica the conditions attaching to the

To the Court of Appeal

No.17

Order Granting Final Leave to Appeal 15th May 1963 continued

Conditional Order of this Honourable Court dated 12th February 1963 having been satisfied.

AND IT IS ORDERED that the costs of this application are to be costs in the cause.

DATED this 15th day of May 1963.

L.S. (Sgd.) BOYD CAREY
Deputy Registrar.

FILED by Messrs. Judah & Randall of 11 Duke Street Kingston Solicitors for the Shipping Association of Jamaica. 10

E X H I B I T S

Exhibits

EXHIBIT "JCW1" - TRANSCRIPT OF PROCEEDINGS OF THE ARBITRATION TRIBUNAL

"JCW1"

Transcript of proceedings of the Arbitration Tribunal

4th April 1961

NOTES OF PROCEEDINGS OF THE FIRST DAY'S SITTING OF THE ARBITRATION TRIBUNAL APPOINTED UNDER THE PUBLIC UTILITY UNDERTAKINGS AND PUBLIC SERVICES ARBITRATION LAW (CAP.329) TO DETERMINE THE DISPUTE BETWEEN THE BUSTAMANTE INDUSTRIAL TRADE UNION, THE UNITED PORT WORKERS AND SEAMEN UNION AND THE TRADES UNION CONGRESS OF JAMAICA (ACTING JOINTLY) AND THE SHIPPING ASSOCIATION OF JAMAICA OVER CLAIMS FOR INCREASED WAGES FOR PORT WORKERS, HELD AT THE MINISTRY OF LABOUR ON TUESDAY, 4TH APRIL, 1961.

The following persons were in attendance -

Mr. N.P. Silvera - Chairman

Mr. Paul Geddes - Employers' Representative

Mr. Roy Johnstone - Workers Representative

Mr. Daniel Lett (Legal)
Mr. John Wilmot
Mr. Arnold Webster (Manager)
Mr. K.A. Gaynair (Manager, Kgn.Wharves)
Mr. Paul Scott
Mr. E. Cox
Mr. L. Ffrench
- Representing the Shipping Association of Jamaica

Hon. H.L.Shearer (of the BITU)
Hon. T.A.Kelly (of the UPW&SU)
Approx. 6 Worker/Delegates
- Representing the Unions

Mr. E.G. Goodin of the Ministry of Labour - Secretary

The proceedings commenced at approximately 2.35 p.m.

Chairman: Gentlemen, we are formally called to order. I need hardly tell you why we have met here this afternoon. Suffice it

Exhibits

"JCW1"

Transcript of proceedings of the Arbitration Tribunal

4th April 1961 continued

Chairman (Contd.)

to say I have asked the Secretary to the Tribunal to read the correspondence which was directed to us convening the meeting here this afternoon.

(The Secretary read the Cabinet Decision of the 6th of March, 1961 setting out the Terms of Reference of the Committee).

Chairman: May I just formally introduce to you Mr. Geddes on my left and Mr. Johnstone on my right. I would like to ask who represents the Shipping Association.

Mr. Lett: I appear for the Shipping Association instructed by the legal firm of Judah & Randall. I might indicate at this particular juncture that I appear for the Shipping Association now. It does not follow necessarily that I will be conducting the case all the way through.

Chairman: But you will take care of the necessary transition.

Mr. Lett: That is so.

Chairman: Who represents the Seamen Union and TUC?

Mr. Shearer: It is a joint claim from the Unions and the position is that the Unions are acting jointly and will share the handling of the case between the leading representatives; myself from the BITU, Mr. Thossy Kelly for the Seamen and United Port Workers Union and a representative of the TUC who is not here yet.

Chairman: You do not know who will represent them?

Mr. Shearer: No Sir. To set any fear you may have at rest, let me say we do not propose three presentations and three replies. We propose to share the presentation and the replies.

Chairman: I am consoled. Gentlemen, you are

Chairman (Contd.)

well familiar with the procedure adopted in forums of this nature. I would say from the nature of the terms of reference that the Union side, the right hand side, Mr. Shearer and Mr. Kelly, will lead off first.

Mr. Shearer: Yes.

Chairman: You know you have the right to call witnesses and Mr. Lett, you know you have the right to cross-examine and vice versa - Mr. Shearer and Mr. Kelly you have the right to cross-examine.

Mr. Lett: Could I ask one question at this stage? I am not lulled into any sense of false security by Mr. Shearer's statement. I gather Mr. Shearer and Mr. Kelly and this unknown gentleman from the TUC will all be talking in the presentation of their case. Now, as far as I am concerned that is about fair, there are three of them and one of me, but apart from that, am I to understand that they will all be talking again in closing their case too?

Chairman: I would hope not. I hope in the final stages that you will select one of your numbers to do the final presentation.

Mr. Kelly: May I answer the Chairman's statement? It does appear, Mr. Chairman, that experienced trade unionists as we are, with little or no time to waste, we would not wish to burden the Tribunal with three different presentations and at the end three different discourses. As an ending rather I would prefer if you left the matter without any specific ruling, to the good judgment of the Leaders here. If the need is not shown to exist we would not indulge in the time-wasting exercise of having three final addresses. But I really would ask you quite seriously not to put forward the view, as coming from the Tribunal, that we should be hindered from having three final addresses, however brief they may be if the need is shown to exist judged from our own perspective.

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"JCW1"

Transcript of proceedings of the Arbitration Tribunal

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Chairman: For the time being, Mr. Kelly, I won't rule.

Mr. Lett: I might add I should oppose that line of action most vigorously. It is my submission that we are gathered here today to decide the way in which the arbitration is going to be conducted and I have deliberately raised this point so that I may be acquainted with what is to happen. We have so often in the past had the situation arise where although a reply may be confined to dealing with fresh matters which have arisen as a result of the defence, so to speak, this business of request from people to be allowed to speak again, and so it goes on to and fro, and I would like a clearly defined policy right now.

Mr. Kelly: If I might address myself to the last statements of Mr. Lett, I would like to say, we on this side are not trained legal luminaries. It may well be if any of us elect to undertake the task of making the final address to the Tribunal, by virtue, of lack of legal training we may omit to speak on important aspects that are pertaining to our case. In that context another of the leaders interested in the case ought to exercise his competence to add that point. Mr. Shearer made it clear we are not going to be repetitious. In short, one union leader saying something and the other saying something all over again, even if he does it in different terminology. I submit, with respect, that the Tribunal ought not to be affected by the criticisms of Mr. Lett but we will leave the matter as the Chairman has said - he is not going to dogmatise on what should be done. I submit, that is the spirit that should characterise this Tribunal as well as defacto behaviour that ought to be expected at the level of this Tribunal.

Mr. Shearer: I would just like to make the Unions' side very clear. We propose to share the presentation of the case and we propose to share the reply if the necessity arises.

Chairman: By reply you mean, Mr. Shearer, that that when you start to reply there will be one continuous thing, you won't stop.

Mr. Shearer: Oh no; one continuous thing. It is just as Mr. Kelly puts it, he may make notes of the points I may omit.

Mr. Johnstone: May I ask Mr. Chairman, Mr. Lett to explain, how do you propose to make your submissions, how many people will speak.

2.45 p.m. (2)
4/4/61 c.m.

Mr. Lett: I am the only person who will be entitled on this side to make verbal submissions on behalf of the Shipping Association. In fact, what it boils down to is this, provided you gentlemen do not alter this ruling I will be entitled to speak once and the other side six times.

Chairman: It appears to me that Mr. Lett might have the last word depending on what evidence is presented here. I can tell Mr. Lett do not be unduly worried about it. I prefer to rule immediately before the presentation if the case is finished and before the final address starts I will make my ruling. Am I understood, gentlemen?

Mr. Lett: When you say immediately before . .....

Chairman: If the case has been started and before the final address starts I will make my ruling.

Mr. Lett: I understand what you mean. That will be after I have finished my case and before any question of a final address arises, you will make your ruling.

Chairman: After I have made that ruling you will have no more opportunity of advancing any evidence. Is that understood, gentlemen?

Mr. Lett: With great respect, Sir. Could we

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"JCW1"

Transcript of proceedings of the Arbitration Tribunal

4th April 1961 continued

2.45 p.m. (2)
4/4/61 c.m.

Mr. Lett (Contd.)

have some idea at this juncture of dates and things like that? Are we proposing to launch into this Arbitration as of this moment?

Chairman: I am prepared to go on until 4 o'clock.

Mr. Lett: There is an alternative procedure - a preliminary hearing - rather in the nature of a summons for Court - whereby the actual machinery is set up, that is to say the dates as to whether you require written submissions in the form of pleadings and so on.

Chairman: I am prepared to go along; if you gentlemen have any written evidence, documents, you want to tender as you go along. I do not think that you want to put in the form of pleadings where the Trade Union set out their submissions and you reply.

Mr. Shearer: We are prepared to make oral submissions.

Mr. Lett: I think it is in the Masterton's Award there is set out in black and white, it is deemed desirable in such proceedings as this to have some form of written pleadings and I quote from Russell on Arbitration - Sixteenth Edition, page 149 -

" 'The Preliminary Meeting' "

"It is customary for the arbitrator to hold a preliminary meeting with the parties, before commencing the actual hearing.

The proceedings at this preliminary meeting are somewhat in the nature of the proceedings on a summons for directions in an action in the High Court.

Matters usually dealt with

The subjects generally dealt with are applications by either party:-

2.45 p.m. (2)
4/4/61 c.m.

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"JCW1"

Transcript of proceedings of the Arbitration Tribunal

4th April 1961 continued

Mr. Lett (Contd.)

(a) For particulars of his opponent's claim or counterclaim as the case may be;

(b) For discovery and inspection of documents;

(c) For inspection of property and things

(i) by parties,
(ii) by the arbitrator;

(d) For delivery of points of claim and defence;

(e) For the fixing of a time and place of hearing;

(f) For the arrangement of other matters to shorten or facilitate the hearing.

"Unless section 12 (1) is excluded, by the arbitration agreement, the arbitrator will have wide powers to deal with those matters, while the court also has power to make orders as to these and other interlocutory matters."

"Pleadings

"Points of claim and defence

"In some cases it may be desirable that pleadings or points of claim and defence shall be delivered, so that each party may know the exact issues which have to be tried and the case he has to meet."

"Points of claim and defense are similar to pleadings in an action. The arbitrator has a discretion to order them, and after hearing the parties he should do so if he thinks that they are necessary for properly defining the issues to be tried."

If he decides to make such an order he ought to fix a time within which the claim and defence respectively are to be delivered, giving so long after the delivery of the claim for the delivery of the defence.

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"JCW1"

Transcript of proceedings of the Arbitration Tribunal

4th April 1961 continued

2.45 p.m. (2)
4/4/61 c.m.

Mr. Letti (Contd.)

The time allowed in each case should be reasonable.

Whether the parties particularly wish it or not, the arbitrator must obtain a clear statement of the disputes which are submitted to him for his decision, particularly if the disputes are not already defined by the terms of the submission. For example, in the case of disputes arising out of a contract in which there is an arbitration clause, it not infrequently happens that at the date of the appointment of the arbitrator the disputes are not fully defined. An account may have been delivered, disputes may have arisen upon that account, an arbitrator may have been appointed, yet at the date of the preliminary meeting or the hearing it may not be clear what is in dispute between the parties or what it is the parties desire the arbitrator to decide."

If I may put my point of view clearly, the Unions are in a position if one wants to take an analogy of Civil Proceedings, of the Plaintiff. We have been told that they want some more money. We have not got a clue as to why they are entitled to more money, and it is my submission that I should know today.

Mr. Johnstone: It is customary, I think Mr.Chairman, in an arbitration like this to have preliminary meetings and that the parties concerned should submit oral - it should be both oral and written documents to be submitted if necessary - I think it should be books and papers if necessary. It should be understood that it is quite in keeping with a meeting of this sort that there should be written submissions sometimes.

Chairman: Mr. Shearer do you intend to present any documents?

Mr. Shearer: We have not prepared any written

2.45 p.m. (2)
4/4/61 c.m.

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"JCW1"

Transcript of proceedings of the Arbitration Tribunal

4th April 1961 continued

Mr. Shearer: (Contd.)

memoranda on the case. This case involves a claim presented in 1960 and we propose to make oral submissions this afternoon. The Ministry of Labour is doing what it normally does, that is to provide stenographic service whereby verbatim notes of the Arbitration are taken and we have relied on the notes to guide us in addition to the copious notes that are taken.

Mr. Kelly: The Unions place much reliance on the notes taken, as well as the ---------- While Mr. Lett has read from some author what possible course is to be pursued, it does not mean in this context if the Tribunal so rules, that the Unions could not proceed on the basis we have planned to proceed and indeed, planned to pursue, unless the Tribunal rules otherwise, we are going to make our submission with clarity of diction that will present no difficulty for our friend and I submit that he can depend on the reliability of the notes to guide us properly as to what our case it.

Mr. Lett: I would like to draw your attention to the provisions in the Masterton Award of November 1953 which says in paragraph 3 - the submission of the Shipping Association of Jamaica .....
(Mr. Lett quotes from the Award)
I have made my point and it is an important submission that the correct proceeding in this matter would be however lacking in formality, for Pleadings so to speak, to be delivered by both sides.

Chairman: The Law is clear. We are competent to decide our own procedure and in the circumstances we are prepared to listen to the start of the proceedings this afternoon.

Mr. Shearer: Mr. Chairman and members, before proceeding with the submission for our case, on behalf of the Trade Unions I wish to

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"JCW1"

Transcript of proceedings of the Arbitration Tribunal

4th April 1961 continued

2.45 p.m. (2)
4/4/61 c.m.

Mr. Shearer (Contd.)

record our thanks to you for making yourselves available to serve as Arbitrators in settling this industrial relations dispute. It is a very valuable service to the community to assist in settling matters involving industrial relations though unrewarded and it is for that reason why the Unions would jointly like to thank you for making yourselves available. Mr. Lett, I am sure, would like to endorse my statement.

Mr. Lett: I should on behalf of my clients and the Shipping Association most heartily wish to endorse what Mr. Shearer has said.

Mr. Shearer: The issue involves a claim made jointly by the Unions on the Shipping Association on the 14th April, 1960. In that claim the Unions asked for wage increases on the following basis -

10d per hour increase for dockmen now getting 3/8 to establish a rate of 4/6 per hour.

10d. per hour for holders (workers working in the ships' holds) to establish a rate of 4/7: they are getting 3/9.

1/- per hour for winchmen and gangway men now getting 4/- per hour to establish a rate of 5/- per hour.

10/- per day for foremen now getting 38/5 per day and 46/10 a day to establish a new rate of 48/5 and 56/10.

The term "holders" cover watermen and coopers which are categories who work on ships in ships' holds. That claim submitted on the 14th April, 1960, has not yet been settled. The Unions propose to satisfy you and your colleagues, Sir, that you should award increases as set out, and that the award should be effective as from the 14th April, 1960,

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which was the date of the claim.

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Mr. Shearer: We think, Sir, that you should know the background to these rates. The existing rates were fixed as long ago as April 1959. The rate of April 1959 was the settlement of a claim that was made in 1957. One of the factors which we submit you should take into account in awarding this full rate is the movement of the wage rates for these categories over the past years; and the period we ask you to take into account is the period 1952 to 1959. Our submission there, Sir, is that in that period 1952 to 1959 the portworker got only one wage increase and that one wage increase was put into effect in December 1954. So you had this peculiar unfavourable situation affecting the portworkers where from 1952 to 1954 there was no wage increase. They got an increase in December 1954 and no more wage movement for them until 1959. It is also important to say that you should know, Sir, that on the two occasions between 1952 and 1959 that the portworkers received wage increases, the wage increases were provided out of substantial increases in revenue provided for the employers by the Government increasing the wharfage rates.

It is important also that you should know how the labour cost is shared on the waterfront. The wharf owners pay dockmen only. The Shipping Companies pay holders and winchmen and watermen and coopers and ship foremen and they also pay the overtime portion of those categories plus the dock workers who the wharf owners pay. So the wharf owners pay only the straight time rates of the dock workers only.

In 1954 when the workers got an increase of

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Mr. Shearer: (Contd.)

6d. per hour, it was met by the wharf owners out of an increase in wharfage rates of 80 per cent given by the Government of the day, on wharfage rates which is the source of their revenue - 80 per cent one time, one shot.

Mr. Lett: I hate to interrupt Mr. Shearer but I should point out that I am a firm believer in one party being allowed to present his case without interruption so any inaccuracies that I observe in Mr. Shearer's submissions to you I will keep until such time as I can address you quietly in the same way that he is being allowed to do so now.

Mr. Shearer: Mr. Chairman and Members, when the wharf owners got the 80 per cent increase of wharfage rates on import cargo, the increase was sufficient to provide substantial increases in revenue for the wharf owners and to the extent where the Shipping Companies benefitted to the tune of between £75,000 - £77,000. That benefit was by the way that before they got the wharfage rates increase the Shipping Companies used to pay a fee called "side wharfage" which amounted to that figure, which was discontinued when the wharf owners got the wharfage increase. Labour on that occasion got a 6d. an hour and some superannuation provisions.

An application for wage increases was made in 1956 but was not accepted. In 1957 when we made another application for increases it was not implemented until 1959, and at that time to get the increases the Government again gave generous increases in revenue and substantial increases of the wharfage charges. In some instances I am advised, Sir, as much as 100 per cent. I make that point of the source of the basis of the increases because it is important to know that on the both occasions in the past seven years that the portworkers got the small

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Mr. Shearer: (Contd.)

increase of 6d. per hour, on both occasions it was not out of the profit of the employers, it was directly out of increased revenue provided by revision of the wharfage rates which did the job of providing the small increase for labour and giving them increased profit. It was the last increase of 1959 that produced the existing rates which I have given to you of 3/8d; 3/9d; and 4/- an hour.

Now Sir, it is our submission that the rates of 1959 should be increased to the increases proposed by the Unions, because, Number One, we submit that workers are entitled to not only maintain their living standards, living levels, but to improve their living standards. I will soon be quoting the figures, Sir, but the position is that since the rates were fixed in 1959, which were fixed on rates claimed in 1957 - that is important, Sir - the rates of 1959, the increase was an implementation of a claim for increases made in 1957. The fact is that since 1959 after waiting five years for a wage increase, the level of living that was allowed by the rates fixed in 1959 cannot be maintained now because there has been a steep increase in cost-of-living.

Interestingly enough, Mr. Chairman, I have here the figures of the Retail Price Index calculated by the Government and this is what it shows: that in 1959, February, the Index carried a figure of 112 points. Today in 1961 it is not 112, it is 121 points. It shows a movement of 9 points. The effect of that movement is that it shows by the weighted system how much the prices of goods and services contained in the Index have moved over the period. It shows that the items that are covered here have gone up in price. The effect of that is that the 3/9d; 3/8d, and 4/- an hour cannot now buy what it was able to buy in 1959.

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Mr. Shearer (Contd.)

But there is still another consideration, Mr. Chairman, and that is the Tribunal should not restrict the workers to merely providing an adjustment to maintain levels but there should be an increase over and above the reflected retail price index increase to provide for him a standard of living, because an increase to merely restore and maintain value means you are merely freezing the level that was fixed at a particular time that a wage rate was put into effect. It means that you are allowing them just the one suit, you are merely giving them an increase to replace that one suit; it means that you are allowing them to eat that amount and that standard of food.

Our submission is that your thinking should be that you should not only provide them to use what they use but you should provide for them to produce more, a better diet, better accommodation, better cultural and social life, and provide for them sufficiently in excess of the amount required for the restoration of wage value and purchasing power to enable them to create an increase in the demand for goods in the community. A demand for more of the services in the community and that to us, Mr. Chairman and Members, is an urgent and relevant point in considering this subject of wage increases, because you will want to know how it is we ask for 10 when the 10 is more than all the increases in the retail prices, and the reason is that our ambition, our claim, is for the workers to improve their living standards. Fortunately a Tribunal of your calibre does not require any elaborate submission as to how a community as ours depend on purchasing value power and volume.

Fortunately we do not have to emphasise to Mr. Geddes, Mr. Johnston and yourself what it means to have a work force of 1360 men and their families which when you examine it is a

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Jamaican family, you will see that you are dealing with a matter affecting some 5,000 odd Jamaicans. The benefit itself to the community, how dependent the community is on the purchasing power, and the realisation of the ambition of this large work force and the dependents. It would be wrong and narrow for any Tribunal to subscribe to any submission that wages should be merely related to price index movement. Because it would mean that you are merely confining the worker to probably one tin of milk. We say that he should be put into a position to use more than one tin - and not a tin and a one-half - as you are going to suggest. The worker should be put into a position where he can have more than one good suit: should be put in a position where he can meet his family demands, household increases: the expenditure of children growing bigger and to be able to participate in cultural activities in the community.

These things can only be provided when you put the worker in a position - the practical position of good wages, because you cannot have lectures and tell them about it and print and circulate literature for them to read: you must put them in a position to participate in what is recommended for them.

The next point is that all indications are that prices for goods and services are going to continue to increase. There is no indication, no suggestion that anything is being done or is proposed to arrest prices, and when you have evidence as we have and know that the factors that influence these prices all point to and suggest further increases, it is a factor which the Tribunal should also take into account. Because, Sir, I am using February since that is the only figure I have now.

What we have from 1957 is a steady rise in prices.

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Mr.Shearer (Contd.)

In 1957 February it was 108
In 1958 " " " 107
In 1959 " it went to 112
In 1960 " " " " 114
In 1961 " " " " 121

A steady rise in the Cost of Living means a steady reduction, deteriorating in purchasing value of the wages.

Our submission is that the port workers are not able to maintain the living standards fixed in 1959 on rates claimed in 1957 and that in view of that evidence that is before the Tribunal the Tribunal should agree that there is a case for wage increases. I do not think I now say what are the factors that influence price increases.

As from yesterday we see where factors that influence prices have gone up, taxation matters affecting price transportation costs by higher licences, rental, light and power bills gone up by 8% in ten years.

On this question of Cost-of-Living, I have another submission to make - an interesting one.

I was doing some research on the matter and came across an agreement that was made in 1944 between the Union and the Shipping Association. It was by a Tribunal - that was during the war years - comprising of Honourable Savary, H.V. Lindo, representing the Shipping Association and H.E. Fagan representing the Workers, and I observed an interesting provision in that Agreement. In 1944 that Tribunal fixed the Cost of Living bonus of 9d. to make it 1/- and, sorry it was 1/2d, making it 1/11d, and they said after that that wages should move at the rate of 1d. per 10 points, and they took the figure then as 155. It says here:- "In the event of there

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being an increase in the Cost of Living as discussed by ..... 10 point rise in the Cost of Living".

I made some calculations and found that at 155 the rate was 1/11 per hour. If you use the same formula you would find that the figure paid would work out at 393 because the Index was converted in 1955 at 325 so the movement over that in terms of the previous Index would be 3¼ points to each, that makes 393. It means that using even that Index of olden days, the worker today in receipt of 3/8d. would be getting 3/10d. as against 3/8d. they are getting, but even then the 3/10d. would be merely preserving at a rate of 11d. per ten points, a living standard that was worked out in 1944.

I make reference to this to show that when we propose the figure of 4/6d an hour which allows only 8d. in standard of living improvement in 16 years, the Union is being extremely modest and ultra-reasonable. The fact that the evidence is that the Index is one of the measurements to be used has shown an increase and that wages is static over the period that the Index has risen there is justification for increases.

I would like you to look at another matter to see the rates that are being paid in some other industries and make a comparison of the movement of wages in those industries as compared with the movement of port workers wages.

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In recent Arbitrations the Employers' Representative made reference to Bauxite workers from time to time. To try to make out a point that in terms of fringe benefits port-workers were equal to, and in some cases he would even want to suggest, better off than bauxite workers. Well, Sir, bauxite workers

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Mr. Shearer (Contd.)

are part of Jamaicas work force and contrary to propaganda that he is ..... by the employers, we do not accept at all that they are exceptionally well paid. Their rates only look good when you compare them with lower rates. Let us take some instances, Sir, and I am taking bauxite.

Mr. Lett: I am objecting, Sir.

Mr. Shearer: In 1950 - before giving the figures, Sir, I would like to make this submission, that is it has been argued that port workers are among ....

Chairman: You are maintaining your objection?

Mr. Lett: I just want it on the record.

Chairman: Just for information, what is your reason?

Mr. Lett: I cannot cite the authority offhand, but my recollection is that there was an agreement between the Unions that the bauxite workers came into a special category and that their wage scale should not be related to the community as a whole. I will support that in due course.

Mr.Kelly: There has never been any such ruling of that nature. The Unions have never taken official cognisance of any such ruling because it is not a factor we support at all.

Mr. Shearer: There are workers getting better than bauxite rates.....

Chairman: Mr. Lett will support it in due courss.

Mr. Shearer: One of the views advanced over the years was that port workers, by the nature of their work, were among the premium paid in the community, so much so that on the Port

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the work-force is a closed work-force. Only a certain number of individuals are registered for the work. It will surprise you Mr. Chairman and Members to know that whereas the wage structure suggest that the portworkers as a group, by the strenuous nature of the work, the absence of promotional opportunities which I will deal with later, are entitled to and should be paid considerably in excess of other categories, that that differential has disappeared. Not that the strenuous nature has disappeared, not that the absence of promotional opportunities has disappeared, that that all the other factors have disappeared. The fact is that because the port workers have been kept back badly, deprived of normal wage adjustments over the years, other sections of the workers to whom they were premium have caught up with them, and, in some cases, passed them.

Let us look at some. In 1952 bauxite was 1/8d to 1/10d - all these are unskilled rates in the business - port workers 2/8d an hour. What have we found? Bauxite today is gone from 1/8d and 1/10d to 4/6d an hour minimum, the portworker is down to 3/8d an hour. The portworkers at Port Esquivel - whilst Kingston portworkers get 3/8d an hour, the portworkers at Fort Esquivel get 4/9d. an hour. When we ask 10d, to put them to 4/6d. they still will be less paid than portworkers at Port Esquivel.

Let us take the Condensary, Bog Walk Condensary, when portworkers were 2/8 an hour, the Condensary was 1/10d an hour. The Condensary has moved from 1/10d to 3/10d an hour; portworkers have moved to 3/8d. See the complete reversal of the situation? Let us take Cement. Cement was 1/10d an hour when portworkers were 2/8d. Cement is now 3/10d an hour, I am advised that that was the last offer made in negotiation. Portworkers are 3/8d. So the portworker who was 2/8d as

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Mr. Shearer: (Contd.)

against the Cement man's 1/10d - that is he was in excess of the Cement man - he is now under the Cement worker. Let us take Desnoes and Geddes. At that time Desnoes and Geddes rate was 1/7d.....

Mr. Lett: What time is it?

Mr. Shearer: 1954. That time the portworker was 2/8d. Today by regular increases and better treatment to their employees, the Desnoes and Geddes rate is now gone to 3/5d. an hour for a 40 hour week, the portworker is 3/8d. So whereas the portworker used to get 1/1d. more, right now they are 3d. Wray & Nephew was 1/6d. an hour when the portworker was 2/8d an hour, and Wray & Nephew has now made an offer of 3/5d. an hour; the portworker is 3/8d and Wray & Nephew's 1/6d is now 3/5d. The same thing for Captain Morgan. Seprod Limited who were in this same period 1/5d when the portworker was 2/8d they are now gone to 3/1d as against the portworker's 3/8d.

When you put on the increase of 10d. an hour for the portworker, you will find, Sir, that even that amount would not maintain the differential and in some cases they will still be under what other categories who were originally under them are now getting and bearing in mind that in these other cases negotiations are now going on between the parties where offers are still being made for wages higher than we have proposed here. There is a reason for it. The reason is by ill-treatment of the portworkers between 1952 and 1959 they have kept them on one level for five years without any wage increase - five years of steady increases in the cost-of-living and steep devaluation of the money; non-participation in any form of economic advancement or improvement with the rest of the community and they have had the extremely unusual fortunate situation, and that is on

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the two occasions when they made the small wage increase adjustments, it was not made out of their profits. Like Silas Marner the profit was counted by night under the floor and the increases came out of the pockets of the importers and consumers.

Mr. Chairman, for the reason that wages and improvements for other categories of employees have moved more regularly, more substantially, and has established this situation where the differentials expressing status quo of workers in a community has been disturbed, on the basis of the few examples given here - there are more that can be given - we submit that is another reason why the portworkers should get the modest increases proposed by the Unions.

Another factor we would like you to take into account, Mr. Chairman and Members, is the nature of the work. It is a job that does not provide for training and promotional opportunities. It is not like a position where you enter as a messenger and end up as a Director. Portworkers remain portworkers. They move from dock men to holders by death and age and for the few who can get to the limited scope for winchmen because it is two winches per hatch.

Now, Mr. Chairman, the fact that a job is not providing promotional opportunities, and that the worker stagnates in the job, in that enviroment, is a factor that should be taken into account. A man can start as an apprentice in a garage and you can well say that you can take it on the thin and stay for five years and get no increase, or small increase, as when you qualify as a workman you can get up to any position, not so on the Waterfront. At a factory there are different grades of jobs - this is three jobs, three rates - 3/8d; 3/9d, 4/-. The absence of promotional opportunities affect a large

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work force and this is a factor, we submit; you should take into account, Mr. Chairman, in weighing this small increase we have proposed to establish a rate of 4/6d an hour.

The next thing we ask you to look at, Mr. Chairman, is the question of what the increases produce and on that score let me say, by the rates we have shown you of what is operating in other businesses a wage scale based on 4/6d is nothing to sing and shout and be glad about in terms of present-day ambitions, in terms of standard of living and community ambition, in terms of Jamaica's strides and goals.

It is the working class purchasing power, wage scales and activity that will generate Jamaica's economy and social advancement. It is not the purchasing power and the special view in the ivory tower. We are not a number that can create demand for goods to any extent to impress or accelerate production. It is what the masses of people, the working class like the class of the 1350 registered portworkers and their families can earn good wages to be able to buy goods and create a demand in an economy such as ours so that Jamaica can look to go forward and to the Trade Unions that is an important and extremely relevant point. It is a total waste of time, Mr. Chairman and Members, for social bodies, Government agencies, volunteer workers, to criticise conditions, to give talks on the necessity for improvement of these conditions that they criticise. It is urgent that opportunities and means be provided to help the people who are existing in those conditions they are criticising to improve their conditions they are criticising, and it is in that respect that a modest increase of 10d. to 1/0 can contribute, for 10d. an hour on a normal work day under normal working conditions which happens to be 7 hour day including lunch time, that is 5/10 a day,

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and under single time normal conditions I deliberately calculated in terms of single time because overtime pay is for abnormal work. Premium pay for Sundays and Public Holidays is premium pay for deprivation, the earning of the worker and the benefit of the increase calculated in terms of normal single time working hours. And what it would mean is that for workers who have had between 1955 and 1960 one wage increase given in 1959 - that is in five years they have had one, it means that at 10d. a week at normal single time the work week that would be worked and established is admitted to be of an exacting physical nature.

I submit that the scale of wages that would be established by the modest increase of 10d. an hour is the minimum amount that the portworker should get at this time.

After a history of poor treatment between 1953 and 1959, after a history in which their employees on both occasions been given the means not provided within their own pockets by a charge on the Public to meet the two modest increases they have got over the period of 7 years on this question of the rate, I wish to ask the Tribunal from now not to be confused between rate and earnings by the worker putting in abnormal hours by working on Sundays instead of going to devotional services or spending time with their families or indulging in any cultural or social activity by using a Jamaican term "scuffling" work on a Public Holiday rather than participating in the community observance of a Holiday..... earnings included under abnormal circumstances which should be a guide for the Tribunal. What the Tribunal is concerned with is the rate, and the rate is 3/8 going to 3/9 and 4/- by categories: 3/8 is the basic rate - 3/8 is nothing to write home about. There are other categories that are far above that. You should take into account a basis

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of employment of these workers - that to us is relevant and is a factor which we submit you should take into account if they are hourly employed.

Hourly employment is a disadvantage to the worker and a great advantage to the Employer. Hourly employment allows the Employer to use the employees at the Employer's convenience. When an Employer is using employee's on a weekly basis whether he works or not..... they have to pay them the week's pay, and if he wants to terminate his services, except in cases of insubordination or criminal conduct, they have to give them 2 weeks' notice - not so with the portworkers. The port worker is the only category who is hourly paid, so if things were to happen and there is a strike in England or America and the ships are held up the ship is light and they do not use them. If ships carry little cargo they are only used for the precise work of operating that is required to handle that volume of cargo. It is not a case that they are weekly employed. When things are "thin" they are not guaranteed a week's pay. Shippers ge. their pay, wharfingers get their pay, the portworkers are the only hourly paid categories.

Mr. Lett: When ships do not come in they do not get pay?

Mr. Shearer: When ships are not in, the weekly staff get their pay.

Mr. Lett: I thought you said that the wharfowners get their money....

Mr. Shearer: Yes.

Mr. Lett: Sorry. I did not mean to interrupt.

Mr. Shearer: Sir, the rate of pay being hourly, allowing for the most casual basis of employment is a factor, we submit, you should take into account in determining that this

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figure of 4/6 and 4/7 and 5/- represent a reasonable minimum rate at this time. This, Mr. Chairman, I should point out, that there is reason for the slight difference of 2d. in one category - that is winchmen who are now getting 4/-. You will observe that the existing wage structure recognises that the winchmen by the nature of his duties should get a slightly higher figure than the dockman and the holder.

The winchman operates equipment and has a heavy degree of responsibility, he takes up cargo from ships' holds that are loaded on by workers in the holds. He is responsible for taking it up and lowering it safely on the wharf. Human lives are involved. It is to the credit of the Jamaican winchmen that there has been little accident rate. It is testimony to their efficiency, diligence, for a winchman who, including his overtime would start at 7 in the morning, go through to 10 at night with two meal breaks, removing the cargo at the rate of 5/-, handling that equipment with utmost responsibility, I submit to you, Sir, it is an extremely reasonable request on behalf of the Unions. It is not a job that allows for various rest periods like in a restaurant where you can relax for time off - the rush time is the meal hour - it is not like in the theatre where the cashier's only rush time is to sell tickets and immediately after the main film is through he is free. The portworkers job is a constant physical effort - in-loading and off-loading of cargo.

Mr. Chairman, the next point I wish to submit is there is no middle way between us. It is not a question that it is 3/8 and they have offered 4/1 and we are asking 4/6. It is either that our figures are reasonable and are right, or the 3/8 fixed in 1959 which is no longer 3/8 in value, should be maintained and that the portworkers and their families should go into 1961 to 1962 at the wage scale established in 1959 at figures established in 1957.

We are asking and submitting, Mr. Chairman and Members, that in this issue the case is so clear and established that there is no room to consider

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Mr. Shearer (Contd.)

any other figure than the figures of 4/6d,4/7d, 5/- and 56/10d. and 48/5d. With respect to the Foremen the figure of 10/- per day proposed for them applies to a work day of from 7 a.m. to 6 p.m. with one meal break. When you apply 10/- over those hours, that is 10/- over 10 work hours, you will see that that it is at no higher level than the rate for the winchmen. It works out at 1/- an hour - that is all for the Foreman who is directly responsible for the efficient productivity of labour, carrying out directions and managerial orders and instructions for this meagre figure, where we propose an increase of 1/- an hour.

The submissions we have made with respect to other categories apply in their case also, Mr. Chairman. The reason why one set of Foremen get 38/5d and another get 46/10d. I have just been informed, with the Shipping Association the 38/5d is the dockman and his rate is in relation to dock labour which is 3/8d.....

There is no question of ability to pay involved. It has not been suggested and we do not know if the Shippers propose to adduce that submission. If that is part of their case we will reserve the right to deal with it and to ask for the production of such documents as a certified Accountant who will be our Adviser in the matter will require. So we do not propose to make any statement on that aspect of it since at no stage that aspect of it was introduced into the case.

I think, Sir, you should also know that the workers working under those conditions - no promotional opportunity, hard constant physical work, employment on a basis which does not guarantee them any pay, used conveniently by the employer, does not enjoy any other facility to compensate for those hardships. He gets overtime for overtime work, he gets ordinary vacation, he gets sick leave and there is a provision for superannuation which is even less than the full amount allowed under the Law for superannuation purposes - it is a total of 7 per cent where the Income Tax Laws allows up to 10%.

Chairman: Mr. Shearer, may I just indicate we propose to stop at 4.15. All right for you, Mr. Lett?

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Mr. Lett: I thought you said 4, Sir, actually.

Mr. Shearer: Mr. Chairman, we are going to endeavour, Sir, as this matter has been outstanding so long, to close off this afternoon, and what I propose to do is to rest my portion of the Unions' submission at this stage and I am assured by my colleage that such additions as he has to make would be made within the time to close off the Unions' case this afternoon.

Chairman: In 10 minutes time? In any case, Mr. Kelly, whether you finish your submissions or not, we will be stopping at 4.15 so you have 10 minutes. If you cannot finish up I am not tying you in any say.

Mr. Shearer: Mr. Kelly will take over at this stage, Sir.

Chairman: And we stop at 4.15.

Mr. Kelly: Mr. Chairman, with respect, Sir, since you have brought to our attention with such clarity of diction that you intend to stop precisely at 4.15, which leaves me just another eight minutes or so, may I ask that you take the adjournment now and I will begin tomorrow morning bearing in mind that we are going to make the further submissions as briefly as possible.

Chairman: It is a matter now of trying to arrange a date convenient to everybody.

Mr. Shearer: The Unions hold themselves available to the Tribunal.

Chairman: Tomorrow, 5th, may I ask Mr. Lett which will be the earliest convenient time?

Mr. Lett: I have Friday the 7th. Is that by any chance....

Mr. Shearer: Mr. Kelly is due to leave the Island and if you could accommodate him before.....

Chairman: Mr. Shearer, Friday is convenient to us three and Mr. Lett.

Mr. Shearer: Friday - we can do, Sir.

Chairman: Can we start at 10. Sir?

Exhibits

"JCW1"

Transcript of proceedings of the Arbitration Tribunal

4th April 1961 continued

4.00 p.m.
4/4/61 bmc.

Mr. Shearer: Earlier, 9 o'clock?

Chairman: 9.30.

Mr. Kelly: I am trying to confine my further submissions on behalf of the Unions' case to not more than half hour which will give Mr. Lett the remaining portion of the day to make his submissions and if we can finish, with Mr. Lett's cooperation, if we can finish Friday night, if you don't mind.

Chairman: Mr. Johnstone must leave at 4. Gentlemen, we can only hope. I am not tying anybody down. Am I to understand that the TUC representative will not make any submission?

Mr. Shearer: No, Sir, not in the presentation.

Chairman: If the TUC representative does not present his case immediately after Mr. Kelly.....

Mr. Shearer: The case is closed.

Mr. Kelly: If it transpires that the TUC wishes to participate in the presentation, assuming that I was going to take half hour, I will be prepared to revise my period of time in order to accommodate the TUC so we can still work on this very close time schedule.

Chairman: My only view on that is I am not limiting you to half hour. One thing I must insist on as you are through, if the TUC is going to bat they must bat. Friday 9.30 to 4 - take the adjournment at 1, come back at 2.15.

Proceedings adjourned at 4.10 p.m.

Exhibits

"JCW1"

Transcript of proceedings of the Arbitration Tribunal

7th April 1961

NOTES OF PROCEEDINGS OF THE SECOND DAY'S SITTING OF THE ARBITRATION TRIBUNAL APPOINTED UNDER THE PUBLIC UTILITY UNDERTAKINGS AND PUBLIC SERVICES ARBITRATION LAW (CAP.329) TO DETERMINE THE DISPUTE BETWEEN THE BUSTAMENTE INDUSTRIAL TRADE UNION, THE UNITED PORT WORKERS AND SEAMEN UNION AND THE TRADES UNION CONGRESS OF JAMAICA (ACTING JOINTLY) AND THE SHIPPING ASSOCIATION OF JAMAICA OVER THE CLAIMS FOR INCREASED WAGES FOR PORT WORKERS, HELD AT THE MINISTRY OF LABOUR ON FRIDAY, 7TH APRIL, 1961

The following persons were in attendance:-

Mr. N.P.Silvers	-	Chairman
Mr. Paul Geddes	-	Employers' Representative
Mr. Roy Johnstone	-	Workers' Representative
Mr. Daniel Lett (Legal) Mr. John Wilman Mr. Arnold Webster Mr. K.A.Gaynair Mr. E. Cox Mr. L.J.Ffrench Mr. Paul Scott	-	Representing the Shipping Association of Jamaica
Mr. Peter Evelyn	-	Secretary, Joint Industrial Council
Hon. H.L.Shearer Mr. A. Heath — BITU		
Hon. T.A.Kelly - UPW&SU Mr. Martin Allen - TUC	-	Representing the Unions
Approx. 8 Worker/Delegates		
Mr. E.G.Goodin of the Ministry of Labour	-	Secretary

The proceedings commenced at approximately 9.40 a.m.

Chairman: Gentlemen, we are formally called to order. May I ask if the representative from the TUC is here?

Mr. Shearer: Yes, Sir.

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Chairman: Could you say who the gentleman is?

Mr. Allen: Martin Allen

Chairman: Mr. Allen, do you propose to make your submissions this morning?

Mr. Allen: By Agreement with the Unions, Mr. Shearer has made the presentation of the case which Mr. Kelly will make a short addition to. We reserve the right to reply to the case by the Shipping Association and in that case I will do so at that time.

Mr. Shearer: Mr. Allen says he will have the opportunity of participating in the reply if required.

Chairman: I have not ruled on that yet, whether it will be a triumvirate or just one person. Immediately after Mr. Lett is finished, I will rule.

Mr. Kelly: It may very well be that this side of the table won't have to reply after his submissions, because facts are facts.

Mr. Johnstone: Mr. Chairman, I would like to say that the essence of this Tribunal is justice and democracy and I feel that we would not be serving the interest of justice if we did not hear both sides. Seeing that in the terms of reference we have the Shipping Association on one side and the Unions on the other, I think the Unions, each one has the right of expressing itself and I think that is the principle which this Tribunal will eventually follow.

Chairman: I just want to make it quite clear that my friend has expressed a personal view and as I indicated before, after Mr. Lett has finished his submission we will meet among ourselves and make a ruling.

Mr. Lett: Might I make the point that this is of course a joint claim by the Unions which is being, so to speak, jointly resisted by the Shipping Association.

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Chairman: Mr. Kelly please.

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Mr. Kelly: Mr. Chairman and gentlemen, in furtherance of the Unions' case, I would like to address you on one further point and that is the question of retroactivity. As the Tribunal has already heard, it is the intention of the Unions to seek the application of the claim with effect as of the 3rd of April 1960 - 4th April, 1960, that is to say, and I submit this should include members of the Tribunal, since it is common knowledge in Jamaira today that retroactivity as a consideration becomes operative only if and when employers, having had a claim served on them, elect to defer for any reason whatever the final negotiation of that claim for implementation. In the circumstances, common trend not alone in industry but in the Government Service as well, is that if and when a union claim is properly submitted to the employer, the wish of the Union is that it should be straightway adjudicated on and a final decision arrived at. The Unions having served a claim, are always available to enter into negotiations immediately the claim is served with a view to having it ultimately resolved. The delay has invariably been occasioned by the employing authorities who have pleaded a variety of reasons for not having the claim negotiated on the day or soon thereafter as the claim is served.

Now, in the circumstances, it is entirely justified in our claim that whatever award the Tribunal in its wisdom makes, should be with retroactive effect to the date we proposed, the 4th of April, 1960. I submit, Sir, that it may be argued, and the possibilities are it will be argued, that a series of factors have intervened to justify the delay, and, therefore, to cause a sharing in the overall responsibility for the delay. If that point is raised, we will deal with it in our reply. Suffice it to say at the moment, Mr. Chairman, that the retroacvity policy applicable to wage increases in this country is long established, has now become an integral part of our industrial relations life, and should not be divorced from this particular case when the decision is handed down.

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Further, Sir, having regard to the well established policy which even the Government as an employer conforms with, it is necessary that the Tribunal recommends that any award, if not made retroactive, is bound to make inroads in what the workers are legitimately entitled to, thereby depriving them of their legitimate deserts due to no fault of their own but to the recalcitrant employer. Let us bring to the Tribunal's attention what a previous legal luminary defending the interests of the Shippers had to say on the question of retroactivity, and I refer you to no less august an individual than Mr. Leslie Ashenheim. I quote verbatim for the Tribunal's guidance - copies are available for the Tribunal and my friend can be accommodated too.

Mr. Lett: That is indeed thoughtful of you.

Mr. Kelly: I read for the Tribunal's edification.

Chairman: You are tendering this in evidence?

Mr. Kelly: Yes, Sir.

Chairman: We will call it Exhibit 1.

Mr. Lett: U-1, Sir, Union 1.

Mr. Kelly: Mr. Ashenheim is speaking:
"Now what is the principle behind the payment of retroactive pay? The principle is that the workers should not be prejudiced by the delays which have taken place in the course of negotiation, and should as far as possible be placed in the same position as if what was subsequently agreed on had been the basis as when the negotiation started. That is the principle for retroactive pay."

I rest the Unions' case on this view with which the Union entirely agrees.

Mr. Lett: He may have announced the principle but that does not say he agrees with it.

(Humourous asides).

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Chairman: May I say, Mr. Shearer, Mr. Kelly, Mr. Allen, as far as the claims made on the Shipping Companies last year are concerned, we would like to have some evidence either in writing or orally.

Mr. Lett: I am going to put that in; I can assure you of that.

Chairman: We have just been hearing submissions but we would like to see something whether it was a letter or minutes of joint meetings or....

Mr. Shearer: It was a letter.

Mr. Lett: I will put it in right away.

Chairman. We would just like to see it because once we have closed this side it remains closed.

(Document tendered in evidence).

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Chairman: I just want to have the blessing of both sides. If both sides could initial it, or something like that.

Mr. Kelly: We assure the Tribunal it is a true copy, Sir.

Chairman: Mr. Shearer, this demand was served on the 14th of April, 1960.

Mr. Shearer: Yes, Sir, and the first paragraph.

Chairman: Why we asked this is, Mr. Kelly in his submission just now mentioned two dates, 3rd and 4th.

Mr. Lett: Mr. Shearer said 14th.

Mr. Shearer: Letter dated on the 14th and in the letter of the 14th we requested that it be requested as from the 4th and went on in the second paragraph to point out that the rates

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on which we are asking increases were the rates established as from the 3rd. First and second paragraphs of the letter before you explain the situation.

Chairman: You have made a formal demand on the 14th of April.

Mr. Shearer: That was the date of the letter.

Chairman: Have you got any conferences or correspondence between yourselves and the Company previous to the 14th of April, 1960?

Mr. Kelly: There has been Joint Industrial Council discussion on the question. The matter properly came up for discussion the JIC meeting. Copies of that meeting can be made available to the Tribunal.

Mr. Shearer: I see the point you are making. The point is between the 4th and 14th it was not raised - this 10 days. The fact is there was no discussion and no formal claim served before the 14th.

Mr. Geddes: Is it usual before a claim is made that you give a certain amount of notice?

Mr. Kelly: It all depends on the agreement. If you have a clause in the Agreement that stipulates that, the answer is yes, if not, it is generally understood and appreciated that any claim served on the employer becomes effective on the expiry date of the current agreement.

Mr. Geddes: Usually the practise is to give thirty days' notice.

Mr. Kelly: Not usually. There have been cases...

Mr. Shearer: There is no set pattern in the absence of specific provision. Where there is specific provision for 30 days or if it is 3 months you have to serve it 3 months. The reason why the Union selected the date 4th, was that the 4th of April represents the earliest date immediately following one year from the establishment of the

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rate in 1959, 3rd April. That was the basis of the 4th.

Chairman: Previous to the 14th April you had no correspondence. What was the last correspondence previous to the 14th of April between yourself and the Company?

Mr. Shearer: On the subject of wages?

Chairman: Yes.

Mr. Shearer: There was no correspondence on the subject of the specific hourly wage rates immediately preceding the 14th because the rates were put into effect on the 3rd of April, 1959, and following that we were engaged in quite a number of other matters between the Shipping Association and the Unions on the Waterfront and it was the engagement in these matters, as a matter of fact, which caused us to delay our serving of the claim until the 14th. So technically, strictly technically speaking, that 10 days between the 4th and 14th is the only break of continuity - the only departure from the precise timing that we should have maintained; but the reason for the departure was the engagement of both sides on other matters.

Chairman: Is that in dispute?

Mr. Lett: What is in dispute as far as I understand is, there is no agreement between us and the Unions - no question of an agreement which comes to an end at the end of a year.

Chairman: The rates went into operation when?

Mr. Lett: April 3, 1959.

Chairman: No agreement which expired at a particular time?

Mr. Shearer: That is right.

Chairman: You have selected this date - refresh my memory.

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Mr. Shearer: This date represents one year of operation of the rate on which we were asking increases and the history of the treatment of wages between the Shipping Association and the Unions will confirm that we had been treating wages on that basis. In the case of the wage increase which went into effect in 1955 we asked for an increase in 1956 and again we asked for an increase in 1957. That is to establish the fact that the wages were subject to annual review.

Mr. Lett: My instructions are, and I would like it on record, we have never treated wages on an annual basis. Mr. Chairman, I would like to make this point clear that my instructions are we have never treated this question of wage review on an annual basis.

Chairman: I am satisfied with the information. I am very grateful to you, gentlemen. Mr. Kelly, were you through?

Mr. Kelly: I was, but I want to volunteer a statement here since it could be illustrated to the Tribunal that in Jamaica a pattern has been invariably evolved in relation to the serving of wage claims, and is one that coincides with our actions in this case - where a wage claim having been decided on or agreed on or accepted and this, of course, is conditioned by whether it is a voluntary agreement or handed down by a Tribunal such as your Tribunal there sitting.

In this case, one year having elapsed and a new claim having been served by the Unions, compares favourably with the principle that obtains where Unions seek a revision of the wage rates after twelve months operation of that particular wage rate in the course of the activities of the Company and the Union. If there is a variation, Mr. Chairman and gentlemen, the variation can only come about - variation from the time limit of one year - it can only come about because there is a clause in the agreement stretching the life of that agreement to a period over 12 months or one year.

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Chairman: Thank you, Mr. Kelly, I am satisfied.

Mr. Shearer: Could I just number this document U2?

Mr. Lett: It is my document. I better tender it. It is only for identification at the moment, Sir.

Mr. Shearer: Mr. Chairman, having raised the point, I would like to satisfy the Tribunal that the statement that we on this side make, is correct, and the fact is that wage rates were - an increase was given in 1952, a claim was made in 1953. When the claim was made in 1953 it was - certain recommendations were made along with the claim which caused a delay of implementation until 1954, when increases were put into effect in 1954, 1st December. Another claim was made for increases in 1955. That claim went to arbitration in 1956. Following that another claim was made in 1957. The claim in 1957 was finalised and put into effect in 1959. A claim is now made in 1960 and by delays to which we are not putting blame at this stage, is now being dealt with in 1961.

It is to establish and reinforce the Unions' submission to you, Sir, as to the pattern and the reason and basis on which this modest and convincingly justified case for increases has been made on this occasion.

The Unions' case now rests. Thank you, Mr. Chairman.

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Chairman: Thank you. Mr. Lett.....

Mr. Lett: Mr. Chairman and gentlemen, before I proceed to develop my case at any length, I want to take up a few minutes in discussing with you actually what it is we are trying to do here and actually what your part is going to be.

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Now, Sir, I make no apology to you for doing this because your conferees are not perhaps fully acquainted with the basis on which an arbitration must be conducted. You are a panel of lay judges and you are engaged in what can accurately be described as quasi judicial proceedings. An arbitration as I understand it is a system which serves people, for advice for settling points of views that have hitherto proved irreconcilable, but in approaching it you are of course bound to go in a completely judicial manner. I do not intend to quote any authority for this. There are examples from Halsbury, which I will read in due course.

I suggest that what you are doing is functioning essentially as a Court of equity. Although you are created by the law, what you are required to do here is to administer equity, to administer normal justice in its truest sense, and one of your difficulties is that you are not going to be in a position to go to the law records. In 1959 Justice Denning justified this. I suggest that the only yardstick that you are going to have in arriving at your decision are the following:- your own conscience that right should be done. What is fair and reasonable should be done and that this equity of what is reasonable must guide your thinking.

Now, Sir, when I mention to you that you are in my submission essentially a court administering equity, I am going to remind you, and it is well known that there are several hoary maxims. My whole argument will, to a great extent, revolve around these principles. The first - "He who seeks equity must do equity", which is one thing, and the second is "He who goes into equity must go with clean hands".

Now, Sir, in the course of my submission I am going to have to submit various documents to you. It will be for you to decide how much proof you want of these. I am in a position to prove if you so desire, but you know that you have a great deal of latitude in accepting facts as having been proven. You are not required to indulge in the same statute approach in regard to proof in these proceedings as in a

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court of law. These documents are tendered and it is for the other side to dispute what the contents of them are.

I do not know whether you would like to indicate to me what your thoughts are in that respect.

Chairman: If you have a document that you want tendered, we will be glad to have them. If they are documentary I am sure that you will make them available.

Mr. Lett: I can therefore tender my Exhibit 1 which is a letter that you have already in your possession. Would you mark that - Association's Exhibit A1, and I would further like to tender our letter in reply (4 copies I am passing up to you). Would you mark this one A2. I am going to have to go back to these letters at greater length in due course.

I might at this stage also tender my 3rd Exhibit which is a written memorandum which tells the case on which we rely.

Mr. Johnstone: I would like to inform you that as a member of the Tribunal I have studied law myself- Roman Law, Legal History and Contracts, and I have read all the laws concerning Trade Union arbitrations.

Mr. Lett: I am much obliged. I had no idea that formed part of your accomplishments. I am obliged to you, so to speak, for putting me on my guard.

Chairman: That would be Exhibit A3.

Mr. Lett: Now, it is my submission that in this matter my Exhibits 1 and 2 contain, in effect, your terms of reference because you are called upon to decide a dispute which arise from them. I am not going to develop that point at the moment. My case will be more logical if you

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consider with me this memorandum of ours, which you can follow and I hope with some degree, by following in sense of time.

In this Exhibit 3 you will see the heading of it - "Memorandum submitted by Shipping Association of Jamaica to Arbitration Tribunal on Increased Wages for Registered Port Workers - April, 1961". It consists of three parts:- (i) General Information which we conceive to be relevant and which we hope will be of assistance to you in arriving at your deliberations; (ii) a History of this particular dispute; and (iii) the Submissions on which the Association relies in reply to the Unions' case. Will you bear with me, while we go quickly through this part (i). The first paragraph says that the "Shipping Association of Jamaica (hereinafter referred to as "the Association") is a trade union of employers and was duly registered as such under the Trades Union Law of January 4th,1939.

Paragraph 2. "The members of the Association carry on business as public wharfingers under the Wharfage Law (Cap.412) or as steamship agents and/or operators. Under this Law, a public wharfinger is obliged to receive all inward and outward cargo tendered to him provided he has accommodation to receive it and he is only permitted to charge the rates set out in the Law."

There is an observation that I would like to make in respect of that paragraph. We as a business are completely regulated by statute. I say this for this reason, that it is going to be a vital factor .....

Chairman: You will agree that when you read from your memorandum I am going to ask the ladies not to take down those aspects.

Mr. Lett: It is absolutely in accordance with my thinking. We are completely regulated by

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statute. I make this point for this reason that it is going to be a vital factor for you to consider when you come to them in the picture as a whole, and to decide what is fair and what is reasonable. It is part and parcel of the essential background to our whole mode of life, our actual being - this fact of our being regulated entirely by statute. The point is, and it is my argument and I shall develop it later, that ability to pay as such is irrelevant to these proceedings.

I would like to make this observation. We simply are not a milk business or a patty business. It is not a question of because we incur certain additional expenditure therefore we pass on that additional expenditure to the public in the form of increased revenue to us.

Looking at paragraph 3, and I am going to quote: "Cargo is handled on wharves and ships by portworkers recruited and registered under a scheme first introduced in 1939 when approximately 3,000 men were put on the register. The scheme was revised in 1954 when the superannuation scheme referred to in paragraph 5 (infra) was introduced. Details of the Registration Scheme are contained in regulations approved by the Minister of Labour (Gazette Supplement (1953) p.327)."

The point to be noted in this particular paragraph is that when the scheme was first introduced in 1937 there was approximately 3,000 men on the Register. There was, as you may well know, I do not intend to tender it myself, there was something known as the Barrow Award at the end of 1952. What Barrow said at that time was that the Port Workers were not getting a good living wage for the reason that there were too many of them and he put forward certain suggestions whereby that number would be reduced. He also made the observation that the Shipping Association was not doing too well also.

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I think he said that since 1952 there had not been any increase. That was in 1954 and there wasn't another increase until 1959. The Barrow Award, of course, in December 1952, made an increase. It was a purely sympathetic one. It said there should not be any increase at all but nevertheless gave a 3d. I am sure Mr. Shearer meant that from 1952 there was an increase in 1954 and another in 1959. Now, Sir, and I am quoting again, paragraph 4:-

"4. (1) On August 26th, 1952 a Joint Industrial Council was established under the title of the Port of Kingston Joint Industrial Council (hereinafter referred to as "the JIC") the primary object of which is stated as follows:-

'to secure the largest measure of co-operation between management and labour with a view to the development of the Port of Kingston on the most efficient lines and for the improvement of the conditions of all engaged in the operation of that port.'"

Now, Sir, that sounds perhaps a little sort of battered to us at this particular stage. It may well be a question of man proposes and man disposes. The second part of it is:-

"The Unions and the Association are equally represented on the JIC and the chairmanship alternates every month between a Union member and an Association member.

5. In 1954 in order to make way for the reduction of what was considered to be an unnecessarily large pool of portworkers a superannuation scheme was instituted under the Kingston Port Workers (Superannuation Fund) Law (Law 36 of 1954). Under this scheme, a deduction of 5% is made from the port worker's wages and an equivalent

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Mr. Lett: (Cont.)

contribution is made by the employer; the fund thus created is used to make lump sum payment of a minimum of £100 to superannuated port workers. At the same time a further "emergency" fund was created to which the employer alone contributed 2% of all wages paid. (For details of schemes see Gaz. Supp;(1954) p.315)."

One observation I want to make about that. It is my instruction - you will observe the lump sum payment of a minimum of £100 - my instructions are that it is invariably very much in excess of that sum - it is nearer £200 than £100.

Paragraph 6.

"There were 1349 registered portworkers on the roll as at December 1st., 1960."

You will immediately see what the effect has been - from three thousand odd in 1939 the numbers have been gradually diminishing. I am quoting again -

"They are free to report themselves every day as available for work at one of the following four centres:-

1. Central Labour Office
2. No. 3 Pier Centre
3. South Street Centre
4. No. 1 Pier Centre

By arrangement with the Authorities and with the consent of the Unions, some non-registered workers are used from time to time when a sufficient number of registered portworkers do not make themselves available for work."

Now, Sir, this is an important little point because in fact this use of non-registered portworkers is on the increase. That is to say, that not all of the registered portworkers

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Mr. Lett (Cont.)

are turning out to take up the work which they could have taken and we are being forced to use non-registered portworkers.

I am quoting on page 3 -

"The daily work force requirement is sent to the appropriate centre by the various wharves and steamship agents. The portworkers' names are then called on a rotating basis, and the required men are given tickets which entitle them to be "taken on" on the various wharves and ships."

The Port of Kingston is ordinarily worked every day of the year (including Sundays and public holidays) except only Christmas and Good Friday.

7. Rates of pay for registered portworkers are negotiated from time to time at JIC level.

8. The following awards made by arbitration tribunals of which three were appointed by the mutual consent of the Unions and the Associations, have an important bearing on the present issues.

Barrow (1952) Award
Masterton (1953) Award

Fitz-Ritson (1956) Award
Farley (1960) (Go Slow) Award

Fraser (1960) (Retroactivity) Award
Wynter (1960) (Fringe Benefits & Incentive Scheme) Award".

Chairman: Mr. Lett, may I make an observation? This has been tendered in evidence and this speaks for itself. We would suggest that save and except the paragraphs where you are going to make observations, could we sort of, in the essence of time, avoid reading that?

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Mr. Lett: If you wish it, Sir,

Chairman: It speaks for itself. The parts where you are going to make your observations you could read, but you have read (2) and (3) here and you have not made any observations.

Mr. Lett: I want to get the contents of this document formally impressed on your mind.

Chairman: Do you believe it would make more of an impression if you read it than if we were to read it quietly at home?

Mr. Lett: It was designed specifically for the purpose you just mentioned.

Chairman: If you prefer to have it read, you may do so.

Mr. Lett: A nod is always as good as a wink so far as I am concerned.

Chairman: (After conferring with Mr. Johstone), My colleague says he would prefer to have it read - please go through as you are doing; we will listen.

Mr. Lett: I had got to the Barrow Award, etc. The one point that emerges from that, of course, is that the Docks were brought under the provisions of the Essential Services Law in April, 1959, so that the last three of these awards were under the same law which you are sitting under now. The first three were under voluntary agreement.

We come now to the "History of the Dispute". On the 6th of April, 1959, there was entered into what is commonly referred to by the Unions as the Hart Agreement. It was implemented from the 3rd of April, 1959. You will notice it says this -

"The Shipping Association and the Unions agreed upon -

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Mr. Lett (Cont.)

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"An increase of 6d. per hour for holders, dockers, coopers and watermen.

An increase of 8d. for winchmen and gangwaymen.

An increase of 3d. in the meal hour payment.

All increases to be effective from 3rd April, 1959.

The agreement also referred to the settlement of an incentive scheme and this aspect was later dealt with by the Wynter Arbitration Tribunal but no incentive scheme has yet been accepted by the Unions.

14th April, 1960 The three Unions in a letter to the Shipping Association claimed on behalf of the hourly paid ship and dock portworkers and daily paid foremen, an increase of 10d. per hour for dockers and ship workers, an increase of 1/- per hour for winchmen and hourly paid foremen, and an increase of 10/- per day for daily paid foremen, to be effective in each case as from the 4th April, 1960".

One point I would make about that, and Mr. Shearer has already admitted it, that what the Unions' case seems to be is that by the sheer effluxion of time of one year they felt they were justified in making another claim.

"23rd April, 1960. The Shipping Association replied by letter that it would not entertain the claim as outlined in the Unions' letter and referred the Unions to the letter from the Shipping Association to the JIC dated the 16th April, 1960 in which a proposal was made whereby registered portworkers could earn more take home pay."

This deals, of course Sir, with this

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Mr. Lett (Cont.)

incentive scheme to which I wish to refer in due course and I shall be putting in a document dated 17th August, 1960 which will put you fully in the picture as far as this incentive scheme is concerned.

"July 1960 The BITU called for a JIC meeting to discuss the wage claim dated the 14th April, 1960.

25th July, 1960 In a letter to the JIC the Shipping Association (replying to a letter dated 19/7/60) stated that it could not agree to the proposed meeting.

28th July, 1960 The Secretary of the JIC wrote to the BITU enclosing a copy of the letter (5 above) and said that he regretted that he was unable to summon a meeting of the Council and would be pleased to hear from the Union regarding the matter.

29th July, 1960 The BITU wrote to the Ministry of Labour enclosing copies of the above letter and requested a conference to be convened at the Ministry.

16th August, 1960 Conference at the Ministry of Labour. The representatives of the Shipping Association said that the Association would not deal with the claims until the Hart Agreement had been carried out.

17th August, 1960 JIC meeting. The Shipping Association represenative read a prepared statement as to its stand."

This is a document that I will tender in due course.

"25th August, 1960 Mr. D.J.Judah sent to the Ministry of Labour a copy of the statement."

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Mr. Lett (Cont.)

> "13th October 1960 Emergency meeting of the JIC. The agenda did not include the wage claim. The Chairman ruled that this item should be placed first on the agenda."

I wonder who was the Chairman in this particular instance.

> "Mr. Johnstone on behalf of the Shipping Association referred to the above statement whereupon Mr. Kelly asked the Chairman to instruct the Secretary to report the deadlock to the Ministry of Labour and to request arbitration.
>
> 17th October, 1960 The Secretary of the JIC wrote to the Ministry of Labour reporting the dispute.
>
> 11th March, 1961 The Ministry of Labour notified the Shipping Association of the appointment of the Tribunal.
>
> 24th March, 1961 The Ministry of Labour wrote to the Shipping Association advising it of the date of the hearing."

And, Sir, I might add, here we are. Now, Sir, I come to the question of developing my case in greater detail. I invite your attention to the first of my 'Submissions' which reads -

> "The Tribunal is set up under the provisions of the Public Utility Undertakings and Public Services Arbitration Law (Cap. 329) and is bound to act in a judicial manner and in accordance with equitable principles."

Now Sir, I do not propose to elaborate on that. I have already said in a few brief words what I conceive to be your duty here.

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Chairman: There was one thing that operated in my mind. You have made reference to certain maxims about 'equitable principles'. I wonder if you intend to bring some evidence in that respect.

Mr. Lett: I intend to invite your attention to certain things which have happened in respect of wage claims. I am not making any allegations of impropriety. It may be that there is some logical and sound reason for it. I am merely bringing these things to your attention.

Chairman: Certainly, I was bringing that to your attention.

Mr. Lett: Now Sir, the second paragraph is that "since this arbitration arises from and has the force of law, the Tribunal is bound to keep clearly in mind that there is no element of consent by the parties involved." Now Sir, the great point about this in my submission is that there has been suggestion in the past that industrial relations, by their very nature, are rather divorced from our concept of law. I would suggest to you that the reverse is quite the position - that you are a Tribunal which is created under the law of the Land and although you are entitled to a certain latitude in the conduct of your affairs, you are a statutory creation just as much that what you do here will have the same effect on the parties involved as if there was a Bill passed in the House of Representatives and this is the point I would ask you most sincerely to bear in mind.

10.40 a.m.
bmc

Now, you are bound to be activated by one concept and that is complete impartiality of natural justice and you are not entitled to approach this matter with any question of sympathy in your minds at all. You are entitled to look at the facts which you regard as sufficiently proven. That

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and nothing more is my submission.

Now, Mr. Kelly had a little word to say on the subject of retroactivity and I am going to say something to you too in case I think for one moment the question will arise for you to decide. Quite clearly, you should make no award whatsoever and therefore you do not have to consider this question of retroactivity but if you have to consider what it is, I would say this, it is the alteration of a contract so as to give it effect prior to its being entered into. Indeed, Sir, you only have to think in terms of what your own reaction would be if retroactivity should apply to certain things of vital importance to you. Let us assume for a moment that the Government of the land was going to increase income tax and made it retroactive for three years.

Chairman: Certainly, Mr. Lett, if I am considering this dispute I cannot be subjected. Am I right?

Mr. Lett: Yes, but my point is it is a concept that strikes at the very root of our idea of contract.

The other point I want to make to you is this. I would first of all like to quote from Halsbury's Laws of England, Third Edition, Volume II, page 2, paragraph 1.

(Mr. Lett read the quotation).

There is no question at all in our minds, there cannot be, what our position is - we are here because we are hauled here by the scruff of our neck - let there be no mistake about this. I say it with the greatest respect for you gentlemen. What I understand the Unions are in fact asking you to do is this, to create a new contract which will be binding on us whether we like it or not.

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That is the first thing they are asking you to do, and then to make that contract, as yet unborn, to have effect from April, 1960. That is what you have been asked to do. At the very lowest I would regard it as the height of immorality to ask you to do such a thing.

Mr. Kelly: Is my friend saying the law is immoral? The law has a specific provision to take care of the point of view he has advanced.

Mr. Lett: Where there is consent by the parties, the question of retroactivity can and has arisen but it is either an agreement between tne parties or an implied reference to the arbitrator. My short point is, where there is no consent there can be and should be no question of retroactivity.

Now Sir, I have here 13 cases I should and I would like to be in a position where I can say to somebody in this Ministry that can we have the notes and so forth of what happened in such and such an arbitration but in point of fact this question was dealt with at some length - and I am trying to make it as short as possible - dealt with at some length in the Wynter Arbitration of February 1961. These are the cases which Mr. Judah cited to that Tribunal and he invited the Unions to say that they were wrong if they felt they were.

The first one was the BITU versus the Shipping Association on the 13th of November, 1952 and the terms of reference were this: the arbitrator is asked to say what increases and from what date should be granted to all hourly employed portworkers. So there it is clearly set out; the arbitrator being specifically asked to say what increase and from what date. This is a matter of consent. The BITU and the Shipping Association, the 3rd

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of November, 1953. There was no specific reference. The BITU and the Jamaica Omnibus Service - again there was no consent to retroactivity - in the terms of reference there was no specific reference. The point is this, there are 13 cases there and the question is whether you can expressly invoke a consent from the terms of reference. You are probably going to say that this question of consent may arise in the terms of reference here, but my whole point is still based on this, that you are being asked to create a new contract. You are being asked to make that unborn contract retroactive. It is completely contrary to any concept of natural justice and I ask you to see and I invite you to see that this question of retroactivity does not arise in this particular instance.

Now, the one other point I would make and it is very important to make because on this little matter of retroactivity - we say first of all it will be impossible for you on the facts of this case to make any award whatsoever. We go further and say this, in the history of all disputes, of disputes between the Shipping Association and the Unions, no arbitration tribunal has ever made any award retroactive and I invite my friends to say that is wrong if they can. And you notice the words "no arbitration tribunal" - the words I used.

Now Sir, I deal with our third submission and it is this, there is only one issue that the Tribunal is empowered under the terms of reference to decide and that may be set out in the two following inter-dependent questions.

Chairman: The Union has tendered U1 by Mr. Ashenheim.

Mr. Lett: I place no importance on it at all. All happens is it is being tendered as a

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definition which Mr. Ashenheim has made at some time. I have no quarrel at all. It is unfortunate that it is entirely removed from its context. There is nothing in that that suggests that Mr. Ashenheim is agreeing with the principle of retroactivity. I would put my head on the block and say rather firmly that he never did.

Chairman: I just thought of bringing it to your attention because it was tendered and you may want to challenge it at some stage.

Mr. Lett: I would like to see a little more of the context of it. Frequently, you know, it is most unfair to remove a tiny bit from its context.

The third submission is, there is only one issue that the Tribunal is empowered under the terms of reference to decide and that may be set out in the following two interdependent questions.

(a) Are the Port Workers entitled to an increase on the existing rates of pay?

(b) If the answer to (a) is 'yes' to what extent should the existing rates be increased and as from what date?

Once again, I have no doubt you are going to say to me, there you are, there is the element of consent, but my whole point is this, and I keep going back to it, you are being asked to hang a contract round our neck whether we like it or not. This is the true position and you are being further asked to say whether it must be retroactive. You are not required to do what other tribunals are being asked to decide whether the wharf rates should be increased as a pre-requisite of an increase in rates of pay to workers or what constitutes a fair return on the wharf owners capital investment. You are not being asked

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to do anything of this nature, it is outside your terms of reference and irrelevant but the one thing that you have got to decide, and I specifically put it down in this way, is the question "is there to be any award at all", and my answer to that is, having heard the further facts which I propose to adduce, your answer should be 'no' in which case you will no longer be worried with the second question. What is relevant, I think at this stage, is to draw your attention to what the nature of our business is; that we are not in the ordinary run of business. Indeed, we must be regarded as a most extraordinary business.

10.55 a.m.
(pw)

I want to invite your attention to Section II of the Wharfage Law (Cap.412) which says:-

Laws of Jamaica Revised Edition 1953 - Cap.412
Page 6480: Sec.II. 13. 15.

II. Every wharfinger is hereby obliged, to the extent of the accommodation available, to receive, ship or deliver all goods, wares and merchandise, other than explosives, brought to his wharf and to put into a good proper store or stores, or other safe and dry place, such of the goods, wares and merchandise as are liableto damage by exposure and are by custom ordinarily placed in stores, and to weigh, gauge, measure, count or examine, according to their nature and quality, all goods, wares and merchandise when received or landed, and if thereto required when delivered or shipped at his wharf.

For the purposes of this section, coconuts, coals, dye-wood, bitter wood, cedar, mahogany, and other woods, lumber, shingles, and heavy pieces of machinery are to be considered

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goods which it shall not be necessary to place in a store.

In any case in which any goods shall be refused to be received for want of accommodation and the owner of such goods lands or delivers such goods on any other wharf, beach or riverside he shall not thereby render himself liable to wharfage rates under section 3 of this Law.

13. Every wharfinger shall erect and maintain on his wharf a proper crane for landing goods, and adequate sheds, or other places of security for storing such goods as may be brought to the same; and no articles liable to damage from exposure shall be allowed to remain exposed longer than the time necessary for removing them to the said sheds or places of security; and every description of goods liable to damage from contact with the ground shall be placed on skids of the height of four inches at least from the ground, and be properly secured, under a penalty, not exceeding Two Pounds for every day in default, irrespective of liability to an action at law for damages in respect of any goods which for want of such precaution shall be damaged or shall be lost or stolen from such wharf.

15. If any wharfinger shall neglect or refuse to do and perform his duty in any of the particulars hereinbefore set forth for which no penalty is by this Law imposed, or shall ask, demand or receive any greater or larger rates than are fixed by law, shall be guilty of an offence under this Law and shall on prosecution by the party aggrieved and on conviction, forfeit a sum not exceeding Ten Pounds for every such offence."

In regard to Section II. The short point is that we are bound to provide storage facilities provided we have room. That is the first thing that emerges.

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Mr. Lett (cont.)

Section 13: I merely read this point to illustrate to you how we are governed by this particular Law.

Now Sir, I come to perhaps the most important point of my submission on behalf of the Association, and it is this: That increases that establish practice, the Tribunal should (a) ascertain the rates last established, whether by free negotiation or arbitration, which rates must be presumed to be fair and reasonable; (b) decide whether since these rates have been established any circumstances have arisen to make them unfair and unreasonable.

The first purpose - I have good authority - it was set out in record by Honeyman some years ago. He was the gentleman who came to decide the dispute in relation to the bauxite industry. He said, and he regarded it as a matter of common-sense, that you have to find some starting point. You should go back and find when the parties were last on common ground - were they voluntary or bound by a decision handed down in a reasonable award. The point about it is, I suppose that if the parties voluntarily agreed to something they must be presumed to know what they have accepted.

The second point is that we decided that since....."In 1954 in order to make way for the reduction of what was considered to be an unnecessarily large pool of portworkers a superannuation scheme was instituted....." Once again that is common sense. You have to find a starting point and take into account all the circumstances which have arisen which might make that starting point unfair or unreasonable.

As to the 5th submission that the obvious date to be applied to 4 above is 3rd April, when by free negotiations there was

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an award of 6d. an hour for holders, dockers, coopers and 8d. per hour for winchmen. At the same time it was agreed that the parties would at once examine and negotiate upon the framing of an agreed incentive scheme and that if they were unable to agree upon the terms of the scheme, the matter would be referred to arbitration. Greater details will emerge when I put the documents to you. Re the 6th submission of the Unions: since that day there have been 3 arbitrations - the Farley 1960 Go-Slow Award; the Fraser 1960 Retroactivity Award and the Wynter 1961 Fringe Benefits and Incentive Scheme Award. The Unions lost the first two. The Wynter Award made certain concessions to the Unions in respect of fringe benefits, and recommended an incentive scheme to be tried out for one year.

The point about this arbitration Award is that one of the points of the Farley 1960 Award is that he found that there was no guaranteed minimum rates on the principle of "a fair hour's work for a fair hour's pay". This is an award which arose out of a dispute arising out of a go-slow on the Waterfront.

Farley in 1960 said - no retroactivity - to the Unions' claim for retroactivity. Wynter in 1961 said this, inter alia, "that during the hearings, the Unions told us that they agreed to an incentive scheme." He recommended an incentive scheme. He also, and I am going to tender the Fraser and Wynter Awards in due course, he also found that the Portworkers now are in a higher class, in a higher scale of pay. This was Wynter in 1961 (February).

Can we go to see what in effect, has been the Unions' case? I have itemized what I conceive as the six points on which the Unions batted. i) <u>No facilities for promotion</u> (I have not put in any particular

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Mr. Lett (Cont.)

order - just what seems to me to be the logical order.)

What we say in rebuttal to that is set out in (a) at the bottom of the page of our submission - A3 (page 7) - "There are approximately 20 supervisory staff (including supercargoes) in Kingston Wharves Ltd. who started as portworkers. By and large the portworkers are not interested in promotion being by nature extremely independent in his thinking and preferring to be foot-loose and fancy-free to work or not as he chooses. I do not think that the Unions would challenge that statement.

Our short point is this. The door is not closed to the right type of man. If he shows keenness and ability he could get there. Some don't turn out to take up all the work that they can get. This, in my submission, is not the sort of material that executives are made of. If you don't take up all the work that you can get, I do not think that that would suggest this tremendous drive for promotion. But there it is - irrefutable. In our submission there are 20 of our supervisory staff including supercargoes that started as portworkers. It is clearly a question of whether the material is there in a man and whether he wants to adapt himself so as to merit promotion.

ii) Once again the second leg on which the Unions batted was that the nature of the work in the port was extremely strenuous. We have to say that portworkers - we do not attempt to deny it entirely - but by the nature of the work it can be described as strenuous, but the one thing that we do insist upon is that the average worker does not actually, as I put it, ruin himself with effort and some of them when spelling are either resting or off about their own business whilst being paid at standard rate. This is my point in the context of the strenuous work. For example - my instructions

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are, that there are 8 men to a gang so that in a full morning's work 8 people will report at, say, 7 in the morning. Of that 8 down in the hold, only 4 are working at any one time. It may be it seems to be nothing but a hand-over from when the Port was operating on a 24-hour basis and in effect, if you take a full morning's work this is the picture: 8 people report for work at 7 a.m. and start getting pay from 7 and the first hour from 7 to 8 is overtime.

Now, four of them will work down in the hold - they are out to split it up as to how they arrange their work. Four of them will work from seven o'clock to half past nine. They stop and the other four start to work at half past nine and will work through to twelve o'clock noon when there is a lunchbreak.

11.10 a.m.
hbd.

What is interesting about it is this that although in theory the first four who work and finished at 9.30 should still be available around the place, more often than not they go off about their own business and will return at one o'clock. So that in fact, and this is important, what has happened is that from seven o'clock to one o'clock they draw their pay (the first hour at overtime rate and the next four at standard rates) and of that time they would actually have worked 2½ hours. I do not wish to belabour the point but in all fairness I do not think you would describe this as being hideously strenuous and it has an extraordinary impact upon the real wages because it means that these men are actually - actually working for half the time but drawing their pay for the full hours' work including the first hour's overtime.

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Mr. Lett: (Cont.)

I am instructed that dock gangwaymen do exactly the same. The spelling system applies to them. I am further instructed that winchmen do the same where the two winches are fairly close together. This is something that fascinates me, that where you have the two winches together, one man will operate the two. There is one winch with one man and the other winch with one man and one man will go off and take a rest while the other operates the two. You remember we heard from Mr. Shearer how dangerous this work is and how strenuous - operating one winch with one hand and the other with the other. I am further advised that an attempt is being tried (I put it no higher than that) in the warehouse.

Let us go back, Sir, if I may, to the third leg of the Unions' case which was - you remember Sir, Mr. Shearer told you that they are employed on an hourly basis and this was a tremendous factor in favour of the employers.

This is what we say in reply:-

> "The wharfage business cannot fairly be compared with any other industry. It is completely controlled by law and we are not free to increase prices like an ordinary mechant. Clearly we cannot control the arrival and departure of ships and the system we use is the only practical one for the industry."

I already explained the point about the law. This answer of ours seems to be perfectly self-explanatory. Clearly we have no control over the ship, when it comes in and leaves. We must work it when it arrives. It is true that it is fairly continuous work. The port is open from seven in the morning to ten at night - fairly continuous work. What else could we do having regard to the nature of the business as a whole? In my submission, nothing at all. The fourth point that the

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Mr. Lett: (Cont.)

Unions used in their argument was that the differential that used to exist between the portworker and other casual workers has been reduced compared to other industries. The first point that we make in this, according to our paragraph 7(d) is -

> "Portworkers' rates of pay were fixed at a relatively higher rate because of the irregular nature of his work, and, at least in the eyes of the Wynter Tribunal (February 1961) they are still so fixed.."

(I am going to tender the document in due course).

> "...although the irregular nature of the work is gradually diminishing. Over the years, the number of registered portworkers has been consistently and substantially reduced whilst tonnage handled has steadily increased. A Registered Portworker can and does earn over £600 a year for a week that averages between 34-43 hours - if he wishes to turn out regularly and work."

Now, taking this question of the portworkers rates of pay being fixed at a relatively higher rate, Mr. Barrow said in his 1952 arbitration award, and so has practically every tribunal that has considered this point down to the latest one, which is Mr. Wynter, who was considering fundamentally fringe benefits but one of the findings - and it is important, it is something you have to take into consideration that it was a unanimous decision, the Wynter decision - and it was clearly a finding of fact in the Wynter decision that the portworker is still in a relatively high class for casual labour and you have got to bear in mind (and clearly it must be a logical conclusion) that when that Wynter Tribunal was considering fringe benefits they must of necessity have taken into account what the wage rates

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Mr. Lett: (Cont.)

were. This is a picture where you cannot divorce one from the other. The worker's class is based quite clearly on two essential factors, fringe benefits on the one hand and wage benefits on the other, and the two are, so to speak, interlocked. So if a unanimous decision was arrived at by the Wynter Tribunal as recently as February 1961, which said they had taken into consideration that the port-worker was in a relatively higher scale this, in my humble submission, should be a factor which should influence your thinking very considerably. This is not something that happens every year. You might say that factors have changed since Barrow, but this is February 1961 and this is a finding of fact by the Wynter Tribunal. If I had to just paint a quick word picture of what really has happened since 1952 I would say this, that the cake - the size of the cake has steadily increased and the number of people entitled to a slice of the cake has steadily diminished. This is a true picture, in my submission, of what the gradual evolution through the years on the waterfront has been.

We say this, therefore, that the thinking which said that because of the irregular nature of the work therefore the portworker should be in a relatively higher scale of pay, no longer applies so forcibly as it did. I do not say it does not apply altogether, we say it no longer applies so forcibly as it did because the one point that was engaging everybody's mind was the irregular nature of the work; he does not know when he is going to work; he may be days without working aship and so forth. Our contention is that this picture has changed very substantially and with the increase of tonnage and the reduction of the number of workers, the nature of his work has become very much more (I put it no higher) very much more regular.

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Mr. Lett: (Cont.)

Now, Sir, we say this. Although there may have been some slight flattening out in the differential, that the portworker still remains in a favoured bracket as far as rates are concerned. I want to put in some exhibits now and we will start getting this picture very much more clearly. There are four

Chairman: Exhibit A-4.

Mr. Lett: Now Sir, this shows as indicated by the heading, the rates of pay which have been current on the waterfront since the 3rd of April, 1959. I do not know that I need elaborate on it to any great extent. This - once again you will see largely it is self-explanatory - deals with the different categories: Dockmen, Casual Foremen, Winchmen and Gangwaymen; Holders and Casual Foremen again. The point I would ask you to observe is, the little note that "these current rates are those requested by the Unions. Their demands were met in full" on the 3rd of April, 1959. That Sir, is Exhibit 4.

This is for your information, a copy of the Fraser Award (handing documents to the Chairman).

Chairman: A-5.

Mr. Lett: It sets out to a great extent the history of the Waterfront since the Barrow Award, November 13, 1952. It will enable you, I think, to follow more clearly what has happened in the intervening years. The great point about this, of course, the Fraser Award, was that, and I invite you to look at the Award at the end. This was a claim by the Unions that the award of 1959.....

Mr. Shearer: The increases.

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Mr. Lett: The increases, I am much obliged, of 1959 should be made retroactive to 1957. Mr. Fraser decided, no. I put that in for your consideration. Now Sir, I have called this 6A and 6B and they are statements of portworkers' earnings from the Shipping Association's four centres for two 12-month periods.

Chairman: One moment, Mr. Lett, may I have another copy please of 6A. We have not got 6B yet.

(Mr. Lett supplies the Chairman with the copies requested).

11.25 a.m.
bmc.

Mr. Lett: Now Sir, you will have a chance in due course to peruse this at your greater leisure but I want to invite your attention to- let us not at this stage deal with individuals, but let us look in terms of averages - look at 6A, you will see that first of all at the Central Labour Office there were 914 workers. Their total earnings for the 12 months set out there. The weekly earnings are those set out in the next column on a 52 weeks basis. In the last column there is the average earnings per man per week - £10.7. 2d. at Central Labour Office; £10.12.4d. at No.3 Pier Centre; £10.9.10d. at No.1 Pier Centre; £11.9.2. at South Street Centre.

Chairman: Straight time, Mr. Lett?

Mr. Lett: This is all earnings. We added up the figures at the bottom and you will see 1,401 workers for the 12-month period January to December, 1959, there was an average earning of £10.9.5d. Overleaf you will find the individuals concerned, the number of hours they worked, their numbers on the roster, and so on, and following on that you will find we have broken down our four recruiting centres - Central Labour Office, No.3 Pier, No.2 Pier, South Street. That is 6A and that is January to December,1959.

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Mr. Lett: (Cont.)

Now Sir, will you look, on exactly the same basis that the records are made up for January to December, 1960, 6B is set out in exactly the same way and you see at the Central Labour Office the number of workers has declined from 914 to 812 and the average earnings per man per week has gone from £10.7.2d. to £11.14.8d. No.3 Pier numbers involved reduced from 384 to 340, average earnings per man per week up from £10.12.4d. to £12.1.8d. No.1 Pier reduction again in numbers from 54 to 41. Average earnings per man per week up from £10.1.10d. to £11.13.9d. South Street, reduction in numbers, from 49 to 43, increase in the average earnings per man per week from £11.9.2d. to £12.14.9d. The overall picture reduction sets out in the bottom line, reduction of number of workers from 1,401 to 1,236 and increase in the average earnings per man per week from £10.9.5d. to £11.17.4d. My respectful submission is that these documents are of the most tremendous significance to this Tribunal.

Could I have 7A and 7B now please? This Sir, is 7A and four copies have been passed up. Before we go on to this, Sir, I am sorry but I should have made the point when you do come to go through these figures, if you care to check on the 12 months from January to December, 1960, you will find that there are approximately 100 of the workers who are making £800 or more a year. Now I pass up 7A to you, Sir, and herewith I tender our Exhibit 7B.

Now, 7A sets out for your information the average weekly earnings of registered port workers - various categories set out on the lefthand side dated from 1953 through 1954, 1955, 1956, 1957, 1958, 1959 and 1960. That is purely for your information but the document which I think is going to be extremely important to you is 7B because this is put in

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Mr. Lett: (Cont.)

now in rebuttal of an anticipation that the other side will start trying to convince you that what in effect we are doing is working people for 25 hours a day for 380 days a year. If you look at 7B you will find that such is not the case at all. Will you follow it with me please?

On a week-day the dockers, portworker docker, and we use docker all the way through here because whatever applies to a docker is even better for the other categories, so we have in all fairness taken the least favourable of the categories to illustrate our point.

A docker on an ordinary day does 7 - 8 which is overtime; 8 - 12, 4 hours regular time; 12 - 1 a meal hour not worked; 1 - 4, 3 hours regular time and 4 - 6, 2 hours overtime. 6-7 meal hour not paid and 7 - 10, 3 hours overtime. So, if you summarise that day you get 7 hours regular time at 3/8d., a meal hour not worked for which he receives 1/8d. and 6 hours overtime at 7/4d. That would be a total in any event of £3.11.4d. and if he is required to work the meal hour he would receive in addition 5/4d. for that. On a Saturday afternoon, Sunday or Public Holiday this is the position - 7-12 noon, 5 hours overtime; 12 noon to 1 o'clock, a meal hour not worked; 1-6, 5 hours overtime; 6-7 meal hour not worked; 7 - 10, 3 hours overtime. The summary of that would be 13 hours overtime at 7/4d. is £4.15.4d., meal hour not worked 3/4d. So from 7 - 10 he earns £4.19.8d. If he works the meal hour he gets in addition 10/8d.

Now the point is going to be taken, of course immediately, what a long day. You remember, Sir, I have already submitted to you that we have to work ships as and when they arrive, we have to get them unloaded. There is no other system of work. Admittedly when a ship is in there is plenty of work to

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Mr. Lett: (Cont.)

do but let us see what the effect is because you must, in all fairness, take the roundabouts with the sweets. So let's see how he can achieve this average weekly earnings, January to December, 1960. Let us look at how a docker can earn his £11.10.3d. which is his average weekly earning for 1960. The first example is that he does 3 work days at 13 hours and an additional 4 hours from 7 to 11 on a weekday. That would be 43 hours regular time and 19 hours overtime. The actual sum arrived at would be £11.12.4d. on that basis. Here is a man who does 3 long days' work for which he gets a great deal of overtime pay - if you like to round it off - and a ½ day's work. That will have him working only 3½ days, and I use the word "days" advisedly. A ship is in and the work has to be done. It does not alter the fact that he has the remainder of the week to please himself. This is one of the facts that I have spoken to you about. This is one of the directions - that you can turn out and get good pay when you want it; work for 2 or 3 days and then you can, having made your money, take a breather.

The second example is one Sunday or one public holiday and one weekday. He is going to work on a Sunday or a public holiday and a week night, (9 at night because that is the end of a full day. The Port closes at 10), a total of 38 hours which would be, broken down, 14 hours regular time and 24 hours overtime. The actual sum would be £11.14.0d. a little more than the average of £11.13.10d.

The third example is that in a week where you have Christmas or Easter, or what it may be, he can earn this amount by working one Sunday, one Public Holiday, and an additional 8 hours. So, once again in these circumstances he would be working less than 3, admittedly longish days, 8 to 4 on a weekday and that would be a total of 34 hours, 7 hours regular

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Mr. Lett: (Cont.)

time and 27 hours overtime. That sum would be £11.12.0d.

It is going to be open to you to say - I cannot speak to you: my clients cannot speak to you - but it is going to be open to you to say that these people... and in the face of these figures, I would suggest that that is a conclusion which is impossible to arrive at.

(Hands Tribunal 4 copies of a statement dated 11th August, 1960 - Exhibit 9).

I think we will have to go back and consider some parts of it later. This is a copy of our proposal which was put forward for an incentive scheme. It was not acceptable to the Unions and the matter was eventually referred to Wynter under this Law for settlement as a dispute together with the question of fringe benefits and in the Wynter Award, which I will put in evidence in due course, you will find that Wynter made certain other recommendations as to an incentive scheme. We have not been able to persuade our friends to adopt that one.

(Hands in 4 copies of the Wynter Award - Exhibit 10).
(Hands in copies of Exhibit 11 - a series of graphs showing various trends.

I want to make something abundantly clear. This has not been done on squared off paper. I am making no claim that it is to scale. It is actually a graph prepared as fairly as we believe, to show certain trends and to show the curves that indicate these trends. I hope to make myself clear on this point. It is a perfectly honestly and perfectly factually prepared graph, prepared from our records. It has not been done on squared off paper and I do not want to be accused of increasing the curve or altering the axis on any particular occasion.

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Mr. Lett: (Cont.)

Once again, Sir, largely self-explanatory, the first page deals with the increase of tonnage in the Port of Kingston. The second shows the decline in the number of portworkers. The third shows the increase of the average weekly earnings of portworkers from 1959 to 1960.

On the second page we have attempted to indicate to you how the cost of living index and the average weekly earnings of the dockmen and the rates of pay of dockmen are inter-related. In the last graph we are showing the percentage increases of the average weekly earnings in various industries some of which were quoted by Mr. Shearer. These graphs, this one in particular, are prepared to the best of our belief and knowledge.

As you readily understand some of these increases are not easy to get hold of.

Mr. Shearer: Mr. Chairman, so as to follow it...

Mr. Lett: Before Mr. Shearer asks his question - this Exhibit 12 is a copy of a Resolution that was passed unanimously by the portworkers on the 21st of March, 1961. I think it will be of interest to you.

Mr. Shearer: I do not need to ask the question again. I see that the end of the 4th Graph shows the average of weekly earnings, not rates.

Chairman: Exhibit 11 - Under the average weekly earning portworkers. What happened between 1958 and 1959? There is a sudden rise.

Mr. Lett: You are referring to 1958/59?

Mr. Shearer: It does not say what period it is.

Mr. Lett: It is over the 12 months. Just the figures.....

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Chairman: .....What happened? Was the volume increased?

Mr. Scott: The 1959 increases.

Mr. Johnstone: Was that increase as a result of the claim of 1957?

Mr. Shearer: It is a combination of factors - reduction of men, more hours.....

Mr. Lett: As you see, the slope for the 12 months finishes at the end of the year; 1960 is beginning from 1.1.59 to the £11.17.4d. which is the end of 1960. £10.9.3d. is the end of 1959 and the rates came into effect in April, 1959. It was the increase on the rates in force in 1959. The £11.17.4d. is the end of 1960. You have Exhibit 12, do you not, Sir?

Chairman: Yes.

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Mr. Lett: I am still on this answer (7D), One thing I would like to draw attention to is this. Mr. Shearer has asked you quite definitely and formally not to confuse two things, the two things being the rate of pay one, and the other the take home pay. He has asked you not to confuse these two issues and I do not blame him because he can seldom, if ever, have had a worse case, the take-home pay angle. Let us consider together this question of rates as he did. Before I go any further I want to clear up one point which I said I would let the Tribunal have authority for. It is my submission that there had been an agreement arrived at in the past that at these arbitrations, that is arbitrations involving anything but the bauxite industry, bauxite rates should not be quoted as an example. Mr. Kelly said very firmly that I was wrong and I have made enquiries into this point. I have gone to

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Mr. Lett: (Cont.)

the very fountain head - somebody who was present and represented the bauxite companies at the time. What happened was that in the Honeyman Arbitration the companies' argument was largely this: You must not, Mr. Arbitrator, make any vast increase in the bauxite industry, or related to wages paid in the bauxite industry in the United States and Canada because of the disruptive effect it would have on all the other rates in this Island of Jamaica. The Union involved, or Unions, said this, and this is the important part; no, Mr. Arbitrator, you must take into account the United States background to this dispute; these are American companies with all that it means and therefore this is the correct background against which you are to assess your award. The Unions said, have no fear about disruptions of rates locally because we never intend to cite the bauxite rates in other local arbitrations. I make that as a statement of fact. It would be little trouble, but you should really have this disputed before you. I can, I think, produce a witness to swear to it. This was, I understand, put forward at the Honeyman Arbitration and the Fletcher Arbitration subsequently. The gentleman in question assures me that this was the assurance given by the Unions in each case and that was: You must for obvious reasons assess this business against the backdrop of the United States, not Jamaica, and when we said what was going to happen to the local rates if you do that, that the whole economy would go haywire, they said 'don't worry about this, Mr. Arbitrator, we are not going to cite these in other arbitrations.'

Mr. Johnson: Are those words recorded in that arbitration?

Mr. Lett: I have no doubt and with a little bit of luck it should be filed in its usual classic order.

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Mr. Lett: (Cont.)

That is the first point I make and you will notice that Mr. Shearer referred to Aljam and, I think, Kaiser. When referring to Port Esquival (and I readily believe it was just a slip) he said that portworkers at Port Esquivale get 4/9d. an hour whereas the portworkers in Kingston get only 3/8d. an hour. Our enquiries reveal that this is not so. The portworkers in the ordinary sense of the word (the way in which we use it here) at Port Esquival gets exactly the same rate of pay as the portworker in Kingston. What Mr. Shearer may have been confused about (and that is why I say I more than readily agree it was just an accidental slip), what he may have been confused about is that there is apparently a permanently employed bauxite worker who is employed on an hourly basis and being a bauxite worker he gets his 4/6d. Apparently this type of worker, whol incidentally is fundamentally engaged in bauxite work as distinct from port work and who is, I understand, rather more in a supervisory capacity, does not get overtime after four o'clock in the afternoon, and as compensation for this fact he apparently is given something in the nature of a shift premium of threepence an hour. So there it is, the normal bauxite worker 4/6d. plus his usual shift premium of 3d. an hour. Our information is that the portworker at Port Esquival gets exactly the same as the portworker in Kingston.

Mr. Shearer: Just to ensure that my friend interprets me correctly, the comparison is made between the dock worker at Port Esquival and the dock worker at Kingston. He confirms it by the fact that he referred to 3/8d. an hour - not the ship worker who is employed by the Shipping Companies.

Mr. Lett: I quoted what you quoted. Mr. Shearer has referred to the Bog Walk Condensary. It will all be in the record for your comparison. My understanding

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Mr. Lett: (Cont.)

was that when Mr. Shearer was referring to the Bog Walk Condensary - I am not sure which he was referring to, the Jamaica Milk Products or Bybrook....

Mr. Shearer: Jamaica Milk Products.

Mr. Lett: Jamaica Milk Products on our information, Sir, (and once again it is difficult to put in any concrete evidence of this nature), have daily-paid workers, as we understand it, who are paid at 18/6d. a day. The point is that we understand that the casual labourer at Bybrook is paid 3/4d. an hour for a 44 hour week. In fairness, and I do not want to mislead the Tribunal in any shape, size or form, I am told that at Bybrook hardly any casual labour is employed. In Kingston, apparently the same firm has many casual labourers employed and they work between two and five days a week.

Mr. Johnson: I beg your pardon, Mr. Lett, are you submitting that the worker at Jamaica Milk Products Condensary is paid at 3/4d. an hour for a 44-hour week? Is that it?

Mr. Lett: That is so, but I am also saying, in order not to mislead the Tribunal, that they have very few casual workers down there. They have quite a few in Kingston.

Mr. Shearer mentioned two other firms - I think Wray & Nephew and Caribbean Cement. In fairness to him I must say he talked of the latest offers. I am clearly not in the same position he is to discuss that engle. The latest information we have about Caribbean Cement is kthat they pay 3/7d. an hour. That was in 1960.

Mr. Shearer: I am sure that in my submission I said they have made the offer.....

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Mr. Lett: I agree. I am not in a position to dispute that; if you say so I cannot come here and say you are wrong.

Mr. Shearer: The expired rate is what Mr. Lett says, 3/7d.

Mr. Lett: Which is the rate in existence.

Mr. Shearer: The expired rate is in existence?

Mr. Lett: Don't they still pay it?

Mr. Shearer: Go ahead.

Mr. Lett: Of course, Mr. Shearer was at some pains to pick what I think can be fairly described as some of the very best payers in the Island. That is why I suppose he was in a hurry to drag in the bauxite industry, but there are one or two extremely reputable firms who are considered to pay well and fairly that I would like to draw your attention to on behalf of the Association. The Jamaica Public Service Company, old, established, sound, reputable firm, good history of labour relations, and they pay 2/8d. The Jamaica Telephone Company, my information is that they pay 2/3d. an hour for a 45 hour week. I am sure Mr. Shearer will like this one: Public Works Department pays 7/7d. an hour for a 48 hour week. Thompson Hankey pays 2/3¾d. for a 39-hour week; Hardware Trade pays 15/- a day for a 39-hour week, which is 2/3d. an hour; Radio Jamaica works on a similar basis - 15/- a day for a 45-hour week.

Mr. Shearer: Comparable categories in the Hardware Trade get 3/9d. an hour as a result of an arbitration award arising from an arbitration conducted in this Ministry.

Mr. Lett: I am obliged to you. All we want is a fair picture. Radio Jamaica - 15/- a day, 45 hour week - 1/11d. I think that is. Kingston Ice - my instructions are they pay 2/10d. in some instances and 3/3d. in others.

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Mr. Lett: (Cont.)

Metal Box 2/- and 2/4d. Masterton, for a 45-hour week, 2/-. Well, there you are, Sir. I merely quoted these rates because I think it is fair that you should know and see the other side of the picture, and it is our contention that from these rates - and I distinguish as Mr. Shearer would like me to distinguish, from these rates the portworker is still among the elite of casual workers as far as rate is concerned.

Now Sir, I move on to point (e) and the Unions' heading, I describe as the increase in the cost of living. Now Sir, will you considerkthat important - (e) which we have set out as our rebuttal, and we said this,

> "The Fraser Arbitration sat to consider claims by the Unions retroactive to 1957. Clearly, therefore, the agreement entered into in April 1959 whereby wage rates were increased approximately 16.2/3 per cent must have had a "forward look". In any event, take home pay has increased to an extent which more than compensates for the rise in the C.O.L.".

This is the point that when I had the working of equity in my mind I impute nothing, I am merely going to draw attention to this and there can be a perfectly simple explanation. It strikes me that the picture was this - On the 3rd April, 1951, the Unions voluntarily and willingly took their 6d., 6d., 8d. - that is from the 3rd of April, 1959. Now, certain problems arose and a dispute was subsequently referred to Mr. Fraser in which they said they were claiming 4d., 4d., 6d., which was their claim, they said, from 1957. So in other words they settled for 6d., 6d., 8d. on the 3rd of April and then they go along and say they want retroactivity and so they are basing the retroactive claim on the 4d., 4d., 6d. which was their claim from 1957. This was refused by Mr. Fraser.

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Mr. Lett: (Cont.)

Now, the first thing that will occur to you, of course, as a lawyer is, there is a matter that is res judicata. It was a straight claim by the Unions for 4d., 4d., 6d. from 1957 to April 1959 and it was turned down. Now clearly then, Sir, this must emerge I think beyond a shadow of doubt that since they asked for a retroactive claim on that basis, the Unions did not consider that the agreement as to wages which they voluntarily entered into on the 3rd of April, 1959, absorbed the claim which they said was outstanding from 1957, because otherwise if they had thought the 6d., 6d., 8d. took into account everything from 1957, they would clearly not be going back to Mr. Fraser and saying we want retroactive claim to 1957 based on 4d., 4d., 6d. because, let me put it this way, if the Unions had considered in April 1959 that the 6d., 6d., 8d. absorbed their claim from 1957, it would have been very, very naughty of them - put it no higher - to go back and ask for retroactive pay on a different basis.

So the one thing that I think must be assumed is, as of the 3rd of April, 1959, the Unions were not looking backwards at all. They are saying we are going to have another bite at the cherry, and try and recover 1957 to 1959 on the basis of our 1957 claim, which they did - they had another bite at the cherry and it did not come off. So there is one thing that must be clearly established and this point put the very point I was making to you earlier on - you must arrive at a basis which you must consider that everything stems, as far as you gentlemen are concerned, from the 3rd of April 1959, going forward; because these gentlemen have already tried to recover their 1957-59 retroactive pay on the 4d., 4d., 6d. basis and failed.

I only bring this thing to issue, so to speak, because of the opening of Mr.

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Mr. Lett: (Contd.)

Shearer and you remember this rather gloomy picture he painted to you at the start about this long history dating from, in one instance, 1944, and certainly his allegation was, and I made a careful note of it, that from 1952 to 1959 there was only one increase. As I pointed out already, Barrow was December 1952, there was an increase in 1954 and subsequent increase in April 1959 and an attempt which failed to get a retroactive increase on the basis of 4d., 4d. 6d. for 1957 to 1959.

Now Sir, I go on and I say this. The date that you have to consider is clearly the 3rd of April, 1959, as your base line. You cannot, dare not, I would say, in the light of what the Unions have done since, say there was any backward look. Cannot have it both ways.

So there must have been, we assume these are proved, intelligent Union Leaders, we assume there must have been a forward look. Now, let us see what evidence there is to support that. There is, first of all, the admissions made this morning by my friends on the other side that what happened was they allowed a year to go by. They allowed a year to go by before they thought they would have another tilt at the bucket and it is a fair and reasonable assumption to make that they allowed that year to go by because they had made ample prepar;ation for at least that lapse of time in accepting the increases on the 3d. of April, 1959. So that the one thing that emerges and it must be a fair assumption, is this, that they themselves considered that the rates of pay to port-workers were fair and reasonable up and till at least April 1960. This must be a fair assumption to make from the facts, supported rather by the submission - made this morning from the other side of the table.

Now, what in fact then is your job

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Mr. Lett: (Cont.)

reduced to? Surely it is this: you have got one thing to consider. You are entitled to say to yourselves It is by common agreement admitted that the rates were fair and reasonable up to April 1960. What, if anything,has happened to make them unfair and unreasonable since. This, is the only thing, in my submission, that you really have to consider. All right, let us consider it together then. The first point that is made is this increase in the cost of living. Mr. Shearer put in certain figures and I checked them. His were rather more widely placed than mine - I have them month by month. In April 1960, the Cost-of-Living Index stood at 114. In May, it actually went down to 113, but we are not concerned with the minor ups and downs. The point is that in February 1961, which is the last information I have been able to obtain, the Cost-of-Living Index stood at 121, so that I do not think it will be seriously disputed that the increase over the 10 month period April 1960 to February 1961 was a 7 point increase based, of course, on the original 114 points. Are you in agreement by any chance with my figures?

Chairman: I think they are substantially correct.

Mr. Lett: Now, if you resolve that in terms of percentage you will find that that amounts to 6.1% that is, an increase in 10 months of 7 points on 114. Percentage-wise, it is 6.1%, as against that, you are bound in my submission, to set out the other part of the picture which I hope has been really put forward and that is something of the order of a 12% increase at that time of the take-home pay. The actual 12% increase for a Docker was in the average of the 1960 Wage-Packet over the 1959 Wage-Packet. That amounts to 12% for a Docker. Even at the very worst, from my point of view, there is a question of the 6.1% in cost of living which has been more than off-set by the 12% increase of the take-home pay.

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Mr. Johnson: According to the cost of living you say that the overall index increased by 1 point in the month of March, that would make 122 instead of 121.

Mr. Lett: I do not dispute the accuracy of that. As I said I just got to February. We come, finally, to this last submission of mine which relates to the Unions' leg that the worker is entitled to a higher standard of living. I want to make something abundantly clear before I embark on this. I do not suppose there is anybody sitting in this room who would not like to see all workers in this country and other countries in the world, achieve a higher standard of living. I would not for one minute want it in any way suggested that I am opposed to the principle that it is desirable, other factors being equal, for a worker to be able to advance his standard of living, but of course it is a question of the factors involved. It is a view with which we all sympathise. There is no doubt about that - I would say this, and it will be the crux of my submission, and I think perhaps I should say this - some of what I am about to say may be relatively unpalatable; I am bound to say it because it seems to me to be true. It will be my submission that the worker is not, or let me put it this way:- the world does not owe a worker a higher standard of living irrespective of the efforts of which he himself makes. What I think is the correct position is that the world undoubtedly owes a worker the right to be able to work and work hard to increase his standard of living.

This is something that I feel must be true. One of the greatest tragedies in the world is the worker who wants to work and cannot find it. This is a tragedy. This is a terrible state of affairs! It is a terrible thing for a person sitting down, say like a child who likes candy and says - I want more candy, and now! It is different- merely wanting something is not enough. There

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Mr. Lett: (Cont.)

has to be constructive work by the worker towards achieving the ends that he desires. This must be a fair and reasonable proposition.

I have already put in front of you Exhibits 8, 9 and 12. 8 is the one that refers to the statement of the JIC, the one I promised to put in front of you. I do not propose at this time to go through it at any great length, but there you will see a short story set out.

This agreement was entered into and it was understood that there would be efforts to arrive at an incentive scheme acceptable to everybody. Notwithstanding all efforts on our part, we have never been able to implement a scheme. We put forward a scheme that was unacceptable to the unions. Eventually the matter was put to arbitration. Wynter made recommendations. That has not been implemented either.

Finally there was of course that later letter that was put before you recently on the events on the waterfront relating to the JIC. Apparently, and I think I would be right in saying that the sole object of the exercise was to "mash up" the JIC. This is, with the greatest respect, where I think the second maxim of equity applies - "He who seeks equity must do it". If these people say that they are entitled to higher rate of pay, you are in my submission, entitled to say - so you may, but you in your turn must take all reasonable steps to help yourselves. My submission is very logical and the very obvious way to approach the matter. We hear about operation "Boot String". The question of actually trying to help itself up by its own boot string. Operation "Boot String" really means what it says - get out and work and try to improve the lot of yourself and your country.

My submission is that this claim is

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Mr. Lett: (Cont.)

nothing more or less than a very sad malaise which seems to be afflicting the whole country just recently and that is the deisre of somebody to have more, but more for nothing. It an old saying and truism - you don't get something for nothing. In my submission, both on the facts and the equities of this matter, you are entitled when dealing with the first question that I posed, to say most definitely the answer is no. You are not entitled to any award at this juncture. We think it is fair and reasonable that if you want to improve your standard of living you should make the effort on your behalf and that an incentive scheme should be implimented, before any increase in pay.

I would be the first to admit - Nobody knows what the results of an incentive scheme would be. It must be fair and right to assume that this scheme which has been recommended should be tried to see if it does not help the worker to some of those desired aspirations.

I conclude this submission on behalf of the Shipping Association of Jamaica by thanking you most sincerely for your patient hearing and I would like to express my thanks to the gentlemen on the other side of the table. I think it would be unfair to say, with reference to Mr. Kelly, that he has sometimes attempted to jump in, and I appreciate very much the entire decent hearing which my friends have given me here this morning.

Chairman: I think we are reaching the final stages of this arbitration and it seems to me that my friend on the right would like to address me first and Mr. Lett last. I suspect that you would like a little time to arm your thoughts and possibly you can take the adjournment now and come back at 2 p.m.

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Chairman: Gentlemen, we are formally called to order. Mr.Geddes unhappily got caught in traffic.

You will remember, gentlemen, that I promised to make a ruling as far as the addresses are concerned. We have considered it and we are of the view that each party, the BITU, UPWU, and the TUC, have the right to reply if they see fit so to do, but because of the nature of the presentation of this case, and the close association with which the parties to my right have advanced their case, we are ruling out any repetition or duplication of address. Either party might be free to address us but every succeeding person to address us, as far as the Trade Union side is concerned, will not be permitted to repeat the words or duplicate the address of the former speaker. Mr. Lett, you will have the last word, Sir, and I am sure you gentlemen are aware of the fact that time is the essence. Mr. Shearer, or Mr. Kelly, Mr. Allen?

Mr. Shearer: Mr. Chairman and members, we accept and will abide by the ruling you have made and will in reply co-operate in the sharing of the job to your satisfaction as we did in the case of the presentation.

Chairman: May I just say out of the abundance of caution - emphasise that you will not have the right to introduce any new argument at this stage.

Mr. Shearer: I can rebut what has been submitted orally and what is contained in the document.

Chairman: That is right, but you have not got the right to introduce any new argument without consent. Before you address us Mr. Shearer, my colleague here, Mr. Geddes, would like to hear - in the course of your address could you indicate to us why this incentive scheme that has been suggested by the Wynter report was not adopted?

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Mr. Shearer: Yes Sir. Mr. Chairman, we are unable because of unfamiliarity to reply to the legal and technical submissions involving reference to and quotations from Russell, but for whatever purpose we were subjected to this irrelevant parade of legal intellect.

(Mr. Shearer paused while members of the Tribunal had short consultation).

I am saying that we are unfamiliar with and so are unable to address ourselves on the legal and technical references to subjects like quotations from Hallsbury and Russell, but for whatever purpose we on this side as laymen were subject to this irrelevant parade of legal intellect, we are confident that such submissions will get proper examination from your training, competence and experience and intelligence; that you will assist and guide your colleagues, one of whom we are fortunate to also learn, has in the process of his training read laws and contracts and other matters which came into the scope of his studies. I refer to Mr. Roy Johnstone. We propose to deal with Exhibit A-3 which is the memorandum submitted by the Shipping Association and to say, Sir, that with respect to Clause 2, for whatever purpose it has been put in, it is not a point to be taken into account at this stage because the conditions of operation in the wharfage business existed since the commencement of the business. The first schedule was prepared in 1895, I believe, or before that, or was last revised in 1895. So all the investments in the business were investments made with knowledge of the conditions under which the investments would have to operate and it makes nonsense of the terms of reference and purpose of these proceedings to, in 1961, introduce as an argument against a modest and justified increase a submission that they operate under the law. The question of the restriction of the rates as a result of the law is not a factor that comes up either, because there has been no contention on the part of the Shippers that there is any

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Mr. Shearer: (Contd.)

inability to pay, but for what it is worth, let me say that where government control is exercised in matters of the sort we must accept that the government of the country is a responsible body and provided a case can be made out, such control in existence will be operated to the benefit of the parties that are involved. It is not a flaw to have the control; it only means that when there is such control, rather than having the freedom to apply increases on their own, they have to satisfy some statutory authority by the production of their books, records, etc., to show that there is inability to meet their expenses and treat labour properly under the circumstances allowed by such restrictions.

The next thing I wish to deal with is that this submission only applies to a portion of the business. It applies only to the wharfage portion. It applies only to the single-time pay of the dock staff. The other section of the business employing holders, winchmen, coopers, watermen, ship foremen, and the part of the business that pays the overtime even to the wharf workers who are employed by the wharfowners affected by Clause 2, the expenses are not borne by the wharfowners; they are borne by the shipping companies whose revenue is not controlled by legislation. I do not think I need to emphasise the point that with respect to Clause 2, the Tribunal won't lose sight of the fact that this wharfage business has not got the competition that other businesses brought into this discussion have. My friend advises me that it can almost be treated like a cartel. In the Alcoholic and Non-Alcoholic Trade you have very serious competition; you have to be at your wit's end. He says they are not patty and milk business. That is true. Patty and milk business is extremely competitive. I won't have to convince you what competition and risk they suffer and it is because of these factors of risk etc., are not there why, despite the

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Mr. Shearer: (Cont.)

restriction and revenue control, so much money has been invested and if Clause 2 is to make any impression on the Tribunal it is only fair that the Tribunal should test the validity of the submissions of both sides and see the figures of the investments in the wharfage business over the years to see if the investment has risk, or if the investment has been reduced, or if the investment has been static.

With respect to Clause 3, this is part of a historical (not hysterical) presentation, and we have marked it here irrelevant that "cargo is handled on wharves and ships by portworkers recruited and registered under a scheme first introduced in 1939..." We regard it as irrelevant. It has nothing to do with whether or not the rates should be increased.

With respect to Clause 4 we will show its relevance when we come later on to show how the Unions made genuine, constant efforts to have the claim settled through the Joint Industrial Council. The Joint Industrial Council that has such importance in it that the Shippers extracted the quotation contained in Clause 4 and despite the glorious and elegant expressions and the goodwill that is supposed to be contained in the verbiage here, we are going to show you later on when we deal with that development in chronological order, how they forgot the usefulness and intention and purpose of this Joint Industrial Council, one of the purposes and usefulness of which they so rightly quoted in Clause 4.

As to Clause 5, Mr. Chairman and members, Clause 5 is only an expression of implementation between the parties of certain recommendations made in 1952 and this is only saying we did at this time what Barrow had recommended in 1952. I do not think the port-

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Mr. Shearer: (Cont.)

workers re-registered. They established this scheme to take care of the portworkers. What is interesting is the very sly fashion, the adroit manoeuvre of my friend to mention "but bear in mind there is a hundred pounds provision there". Mr. Chairman, the hundred pounds provision is made not by the Shippers but is guaranteed by the Fund itself. It is an interesting arrangement where, when portworkers are retired before they are able to save their £50 to match the employer's £50, an arrangement is made where they are guaranteed a minimum of £100 and that is funded back by profit and other things out of the investment. But, the interesting thing is that the hundred pounds is for portworkers who have had up to forty years of service and irrespective of the unreasonableness of my friend at any time, I am certain he would never attempt to try to convince a Tribunal of your calibre that £100 as severance pay or compensation is a reasonable amount for a man who has given 45 years of constant service without promotion in an organisation. Bear in mind that out of the hundred pounds the worker had to contribute a portion of it.

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bmc.

Now Sir, the bottom of Clause 6 referring to the use of non-registered workers, would be almost correct if after the word "worker" which is the last word, they had continued to give the true story by merely adding because of age, strain of work, sickness, vacation, disagreeableness of cargo, and other factors because these are the circumstances that cause substitute workers to be engaged, which is an arrangement made between the parties to say that if a sufficient number of portworkers are not available to handle the number of ships that may come to the Port at a time, certain categories who are recognised and identified can be used in certain

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Mr. Shearer: (Cont.)

circumstances. Now, what cause portworkers not to turn out in adequate number when the port has a certain demand? I think it is when it is over 1250 - these factors, disagreeableness of certain cargoes - some portworkers cannot take things like fish manure, caustic soda, some of these things - there is a factor of sickness, there is a factor of a number of workers qualifying for a vacation which is on the stingy basis of 4% - 4 days for 700 hours. There is the question of the age of the man, there is the question of the strenuous nature of the work involved.

The 7 again, Sir, although put in this simple fashion, gives me an opportunity to again inform the Tribunal as to what "from time to time" means. Expertly drafted, wonderful effort but it shall not escape our vigilance. Time to time means by record annually, 1953 an application for wage increase was made following a fixing of rate in 1952. 1954 the rate was increased at the same time that they got a substantial, magnificent increase of 80 per cent on import cargo at one time. 1955 an application for increase was made and a wrongful decision was taken in 1956. 1957, a year from the date of the decision in 1956, another claim was made. It was not until 1959 when again by Government's generous revision and preparation of a brand new schedule of wharfage rates they got substantial, plus increases and labour as late as 1959, got the increase that was claimed in 1957. And right here, I think I should clear up a misunderstanding that is likely to flow from the manner and presentation. In 1959, the Unions asked for the implementation of the increase that was claimed in 1957 retroactive from 1957. The Shippers agreed to put it into effect as from the date that the new Wharfage rates went into effect and to put, as to whether or not the retroactivity should be paid, to arbitration.

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Mr. Shearer: (Cont.)

Now Sir, having explained what 7 really means and by explanation justifying the date of our claim in 1960 April, we go on to Clause 8. Barrow Award referred to, has value and relevance to this arbitration in one very unique and interesting respect, because thetruth is that Barrow made an Award to say too many men, re-organise the pool, here is a 3d. In the meantime when you re-organise the pool fix a fair rate - no retro-activity - and it will interest this Tribunal, Sir, comprised of yourself, Mr. Roy Johnstone and Mr. Paul Geddes to learn that it was at the time of the Barrow Award that retroactivity was introduced on the Waterfront because, although Barrow specifically said no retro-activity, the Shippers and Trade Unions agreed on six months of retroactivity.

I proceed to the other Awards - Masterton - we will deal with the wages when we come to deal with the exhibits, Sir, but I proceed to deal with Part 2, and here again, Sir, I ask you to look at Exhibit 8. Exhibit 8 is relevant to Item (1) of Part 2 and the relevance is, I ask that your attention be directed to the first page, you will see paragraph 1 with an indentation there under the fourth line saying "it was unanimously agreed". Look at Clause 4 reading "nothing contained herein shall prejudice the negotiation at any time hereinafter of higher hourly rates". Interestingly enough, that was not put in at this stage of the memorandum but I call your attention to it at this particular stage.

Now, Sir, right here we may deal with the question asked by Mr. Geddes as to the incentive. It is a fact that the Shippers proposed an incentive scheme. It is a fact that the Unions agreed in principle to consider an incentive scheme. It is a fact that proposals were submitted by the Shipping Association as to what type of incentive scheme there should be. It is a

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Mr. Shearer: (Cont.)

fact that we disagreed with those proposals. It is a fact also, that we asked for detailed information on several aspects of the Waterfront's operation to enable us to intelligently negotiate an incentive scheme. It is a fact that we did not get it. It is a fact that the Shippers referred the matter to an arbitration tribunal. It is a fact that the arbitration tribunal has recommended that we should consider an incentive scheme and try it out on some simple cargoes which are easily understood some time around June this year.

What is important, Sir, is that the incentive scheme is not an answer to ..... If you will allow me, Sir, I will read. I am sorry I will have to take up some time to read the Award in respect of the incentive scheme.

> "Both sides explained to us the history of the discussions of an incentive scheme. During the hearings, the Unions told us that they agreed in principle to an incentive scheme. The question in dispute was therefore, what type of scheme should be adopted.
>
> "In our opinion an incentive scheme should be simple and capable of being understood easily; it should make clear what are the benefits to the workers beyond their normal hourly rates for performance beyond the normal."

I pause right here, Sir, to deal with this question of the relationship of incentive scheme to this claim. No.1, the incentive scheme is to work out an arrangement for pay for workers for production above the normal rate. The benefit of that is for kthe Shippers to enable the quicker loading and offloading of cargo so that ships can turn round quicker - save murage and other charges at the wharf. I think the thing here is self-

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Mr. Shearer: (Cont.)

explanatory. The scheme should make clear what are the benefits to the workers beyond their normal hourly rates for performance beyond the normal, and alongside with that declaration, I invite you to pay special attention to the insistence of the Union from 1959 that incentive does not mean that hourly rates remain frozen or is affected. It says- "nothing herein" the fact that you agreed to 6d., 6d., 8d. shall not be construed to prevent higher rates than 3/8d., 3/9d., and 4/-d.

Now, Sir, with respect to Clause 2 dealing with the 14th April, this is a statement of fact again. The important point we wish to make at this stage is that the claim of the Unions in 1960 on the 14th of April, effective from 4th April, was a claim for wage increases on the rates established a year behind, 1959, but that the rates that were established in 1959 were rates claimed in 1957. That is the full story with respect to 2 - the date here 14th April. //3, 23rd April, correct, but it carries meaning. I am dealing with their memorandum. 23rd April confirms the fact that the Shippers acknowledged the demand. They said no but they acknowledged it. From there and then they knew that their rates were in dispute. They confirmed to us nine days later that they got this claim of the 14th and as good businessmen I would expect even though they were going to resist the claim, knowing that it is outstanding, knowing that it is justified, despite their initial 'no', that good businessmen make kprovision in their accounts. They circulate their members. It is not patty and milk business, it is not bulla exercise book business. This is shipping - the service so essential to the community that the Government in its widsom and authority added it to the one Law which is there to identify the essentiality of the service that is related to the life-blood of the community.

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Mr. Shearer: (Cont.)

I would never suggest that there is any level of inefficiency and incompetence managing this large, money making, prosperous and responsible business. Then we had pressure on both sides. The activities of the Unions (Item 4) called for a meeting of the JIC. (From here is important). What reply did we get? "'Acknowledging your letter - sorry not coming to any meeting to discuss any scheme with you'.

Mr. Chairman, here were these employers having an obligation to the community talking about - in risky business - the importance of smooth industrial relations - having a responsible body like the JIC which according to that memorandum and I quote:- (Page 2:A3)

> "To secure the largest measure of co-operation between management and labour with a view to the development of the Port of Kingston on the most efficient lines and for the improvement of the condition of all engaged in the operation of that port".

And if you were to read it further you will find expressions and references to smooth industrial relations, larger level of co-operation between the parties, and what do we find? A proper request for a meeting of this body of which they are a part and they tell us six days after "We cannot agree to a meeting".

The Secretary of the JIC (Item 6) told the Unions again - "Sorry cannot arrange any meeting because the employers said they are not coming". This is after they had a claim in April which was acknowledged on the 23rd, rejecting our anxious efforts to use the very agency that they have to bring about negotiations of a claim made. You see the determination of the Unions.

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Mr. Shearer: (Cont.)

On the 29th we were faced with nothing else but to refer it to the Ministry. This so-called self-government in industry which they are supposed to be a member, no wonder that you find in Exhibit 12 the portworker say that they are wondering if it is serving any purpose.

The Ministry got a meeting at last on the 16th August (Item 8). The Association came and this is what they say:- "We will not deal with the claim yet", although in that very agreement it says that the incentive must not in any way affect hourly rates.

On the 17th they came to a meeting of the JIC which they had refused to attendin July. From the efforts of the Ministry they decided to attend, condescended to attend a JIC meeting and the mighty Shippers rolled up and merely handed in a statement which was a statement reiterating what they had said before.

Then we have Mr. Judah submitting a copy to the Ministry on the 25th.

On the 13th October a meeting of the JIC came about and we see that the Chairman had to exercise his uthority on the day in question to instruct that the wage claim they had omitted from the Agenda should be on it. All this is relevant.

It is relevant to the justification for retroactivity. The Chairman, I am reminded, tried his best on the occasion to persuade them to co-operate and when they blatantly refused he had to issue instructions. Following that, Sir, on the 17th the matter was reported to the Ministry and then we have what happened from the 11th to the 24th and today.

Now, Sir, my colleague will be dealing with the subject of retroactivity but I

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Mr. Shearer: (Cont.)

have some notes on this subject which I would like to make, not interfering with his aspect of it. After dealing with Part II Mr. Lett went on to make reference to the subject of retroactivity, so in an effort to follow him, I made notes. On this subject retroactivity, in the Law its authority is given to you. I hear arguments about immorality, and you know when I hear arguments about immorality, sometimes I wonder to whom it applies. The high ideals and morals of the trade unions prevail under these circumstances, but when my friend was quoting I recall that I took part in these proceedings and there was another side to his own quotation that I am interested in, because whilst the Shippers' Counsel mentioned some awards when retroactivity was involved, I wish to point out from the same documents, there are awards involving rectroactivity. This is his copy, not mine - Page 11 the Barrow Award on the 13th November, 1952.

Chairman: What are you quoting from?

Mr. Shearer: I am quoting from the Minutes of an arbitration heard here between the Shippers...

Chairman: ...Has it been tendered?

Mr. Shearer: It has not been tendered.

Chairman: The Law is quite clear.

Mr. Shearer: I want to make the point that the first item in this document that the employer had, I think, said he could quote whatever he wanted to suit his own case. I would like to also quote. Mr. Chairman, the BITU versus the Association - Award 13th November, 1952. Arbitrator F.W.Barrow, Resident Magistrate. Terms of Reference:- (Quotes from the Award).
Note: At a subsequent meeting in June 1952 and with the consent of the two applies, the ship owners consented to make it retroactive to 6 months.

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Mr. Shearer: (Cont.)

Here is a case where whilst the Arbitrator had said "no" they introduced it. In the issue of the BITU versus JOS, the award which was in September 1954 says - "This Award is made retroactive to 1st June 1954". Again retroactivity by a Tribunal under the same Essential Services Law. In the case of BITU versus JOS, again in 1955 ...."Confirmation is hereby recorded of the agreement made between the parties that the above Wage Rates shall commence retrospectively from the 19th day of September, 1954" NWU/JOS in 1958 - decided in September, 1959. The Award should be retroactive and apply to 1st January 1958.

I cite these cases under this particular law, not to mention the large number of cases involving retroactivity that have been made by other tribunals which we call ad hoc.

The other thing about retroactivity is the point made with respect to the principle concerning retroactivity which we submit is relevant and which applies in this case for the reason that the very document, the very case of the Shippers establishes in intelligent and chronological order, that from the claim was made the Unions had been dndeavouring to settle it and it is their obstinate conduct, their unreasonable refusal to use the very instrument of which they are a part, that caused it to be held up to this very time.

Part 3 of their submission deals with Item (i) - reference to the fact that you are bound to give in a judicial manner and in accordance with the equity principle, As far as the trade unions are concerned we of the Unions are completely satisfied that the findings of this case shall get the type of impartial, the type of objective examination, and we do not propose to put in any warning to you. We are confident of your ability, integrity and impartiality in this matter.

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Mr. Shearer: (Cont.)

Now, Sir, with respect to Item (ii) in Part 3 that there is no element of consent by the parties, the Shippers themselves agree that when we have a dispute and we cannot settle it we can put it to arbitration. It happens to be under this Law because this service is decreed by the only competent authority of the land, Government, that shipping is essential and in this democratic society there is legislation to say when you are engaged in these services that are essential to the life of the community, certain statutory provisions apply and it is in keeping with these provisions in a democratic society that we are brought here under these circumstances and I cannot understand why the reference is made in one breath that there is no element of consent by the parties and in the next breath, the Shippers themselves say that arbitration is a civilized means of settling. What the Government does in these matters is to ensure in exercise of its duties sense of responsibility and obligations to the community - the Government provides that in this service you do not have strikes and lockouts and other factors; you must use this machinery. There is no element of consent to the rate of income tax.

3.20 p.m.
(hbd),

With respect to Clause 3, Sir, we submit two answers to the questions they raise there. The answer to (a) is 'yes' and the answer to (b) is 4th April, 1960 - paragraph 3 of the submission "Are the Port Workers entitled to an increase on the existing rates of pay?" The answer is 'yes'. "If the answer to (a) is 'yes' to what extent should the existing rates be increased and as from what date?". The answer is 4th April, 1960 and 10d., 10d. 1/- and 10/- per day respectively.

I now turn to Item 4. With respect to the point raised at 4(a) I have already made

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Mr. Shearer: (Cont.)

the point that the rates established in 1959 were the rates claimed in 1957, and subjected to two years of delay.

Turning to Page 7, here again reference is made to the incentive scheme. I have already dealt with that. Clause 6 deals with three arbitration awards. I propose to deal with them as they arise in order of the exhibits.

I do not know if immediately after the reference to the three awards this statement 'The Unions lost the first two' means that the Unions lost the first two and they lost one so we should equal them with a second one so that we can be 2:2. Except, Sir, the Unions' case is not based on any frivolous basis as is implied in their reference. We based our case exclusively and strictly on the facts presented to you by both sides and it is based on those facts why we urge on you and will finally emphasise the point that an uncontradictable case has been made out for the full award of the Unions' claims as made out before you.

They say - "there are approximately 20 supervisory staff (including supercargoes) in Kingston Wharves Ltd. who started as port-workers." At another port of the same brief they say there were over 3,000 workers. If 20 of them over 40 odd years have reached supervisory positions I want to know if it is not a shame to mention it. And who are they, this supervisory staff? We had an experience recently where watchmen were defined as supervisory staff because they had to watch the other men; Validating Clerks and even drivers of machines. Not that it means anything because even if there were 20 it is a disgrace, and it does nothing more than to emphasise the justification of the Unions' submission that the absence of promotional opportunities is a factor to be taken into account because from

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Mr. Shearer: (Cont.)

the days that portworkers started to work only 20 out of 3,000 have reached what they call suoervisory positions. Now we turn to (b) and that is this reference here to "spelling" and honestly I feel at this stage I could well pause and look at Dan and say "et tu Brutus" because this is truly the unkindest cut of all. This 'spelling' that is made an issue, is an accepted arrangement that operates to the benefit of the port, working in hatches of the ships, because of the confinement, the conditions of work, the drain on energy and other factors, so as to ensure a constant rate of procedure it has been accepted for years - long before Mr. Lett ever got a brief from the Shipping Association and long before I, Hugh Shearer, joined the Bustamente staff, and this is my twentieth year out of 38 years, Sir). It is a good arrangement. What happens is that under the circumstances of working in a ship's hold, the drain on human effort is unusually harsh and heavy. It is not like working in air conditioned factories and offices; it is gruelling, exacting, and constant effort and what happens? The men spell so as to ensure continuity of production level. All the bodies, or organizations and experts who study productivity will tell you that in some organizations that is the history and purpose of breaks for snacks, because when you check the physical effort of a worker starting at seven, by around 9.30 - 10.00 fatigue sets in and production drops. That is the whole purpose of tea breaks. Socially enlightened people who think of workers in terms of human beings, arrange for their staff to stop at 10, get fifteen minutes to have a snack - sometimes they provide the snack with sugar in it to give energy - and those experts who examine and deal with it declare)not the Unions - impartial people), declare that that arrangement allows for continuity of physical effort and production and redounds to the benefit of the staff. You have new employers coming to

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Mr. Shearer: (Contd.)

Jamaica whose time-table includes breaks for snacks in the morning and afternoons and at the Waterfront it works where the men take it..... the sling goes and comes back. You could not have four men alone doing that. When one set of men are making up the other set are breaking down. In some cases where cold storage is involved, the men have to go out at a certain time. Arrangements are made - I think it is fifteen minutes - it is provided in other civilised circumstances. If the men stayed any longer you would have to defrost them and it is not correct that this 7.00 to 9.30 and 9.30 to 12 o'clock is shared by Hold and Winchmen so that you have one Winchman operating two winches, and unloading on both sides of a ship. How could that be? It is a ridiculous suggestion that I am sure my friend did not really intend to be a serious submission.

Mr. Lett: Yes, I did.

Mr. Shearer: I am not saying that because of shortage of men, when a worker as a human being has to leave to answer nature's call, that rather than let the winch stay there a worker might not turn to the right and help - willing, conscientious, co-operative - but that is not to be used in condemnation of the men. For the information of the Tribunal, it is not correct that there is any 'spelling' of the men in the warehouses.

Mr. Lett: I do not think, in all fairness, I made that allegation. I think it was being attempted.

Mr. Shearer: I just say that no attempt is being made because four men handling a barrel, two holding one end, two holding the other end, what are you going to do? Let two rest and one grab the whole carton at each end?

With respect to Clause (c), I am glad that the Shippers have submitted that

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Mr. Shearer: (Cont.)

their business cannot be fairly compared with any other industry. That is part of our case, so when he compares the rates with Machado rates or Government unskilled rates, it is in condemnation of his own point that his business is special and separate and it also confirms the point made by the Unions that the incomparable position of the industry was recognised in terms of the wage rate in 1952. That is why when they used to pay 2/8d. others were only paying 1/1d. and 1/7d. The last sentence is also important:-

> "Clearly we cannot control the arrival and departure of ships and the system we use is the only practical one for the industry."

The arrival and departure involves inconvenience and it is the inconvenience that the portworkers have to fit into. I make another point. The arrival and departure if also tied up with another of the Union's submissions - the economy submission. The arrival and departure of the ships is influenced by the activity of the area at which they call, the demand for goods. Upon the demand for goods, the industrialisation of the area, depend the value of business brought and as conditions improve they benefit, which I will deal with shortly.

(d) says "Portworkers rates of pay were fixed at a relatively higher rate...." That is true. Our figures also confirm that they were fixed at 2/8d. relatively higher. They say..."in the eyes of the Wynter Tribunal they are still so fixed." I do not want to be unkind to that Tribunal but I think they exposed themselves to criticism and must withstand it. The Tribunal made a declaration on a point that was not before them and on which no submission was made to them. There was no argument or submission on rates for portworkers. Relatively higher to what?

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Mr. Shearer: (Cont.)

Restaurant rates? Government unskilled rates? It was a hasty loose remark that was not in the competence of the Tribunal and so outside their term of reference, and the facts are that it is not now higher than really comparable ones and the fact is that even in cases where it was higher that differential has been disturbed.

I will have to take some time right here to deal with this question that you cannot control prices like an ordinary merchant. It involves a couple of interesting economic submissions because there is a misleading attitude on the part of employers from time to time who are not controlled against those who are controlled.

3.35 p.m.
(bmc)

The fact that a rate is not under control does not mean in truth and in fact that it is at the whim and mercy of the merchants because in the absence of statutory control there is another form of effective control, there is another form of competence in the field, there is consumer resistance. There might be no control today to rum but can you move Appleton to 30/- a bottle?

Now Sir, this argument about how much a portworker can earn is also a misrepresentation and right here I would like to turn to this schedule 6A and 6B and to say, No.1 - I would also like to turn to 7B. I would like to deal with 6A, 6B and 7B. I would also like to take one bite and deal with 7A - 6A, 6B, 7A and 7B and say, Sir, No.1: That £12 a week for portworkers with average 30 to 43 hours a week is impossible. Now, Sir, how do they arrive at these figures? By taking into account gross earnings, overtime every day, Sunday work, Public Holidays work. Now, Sir, there is a distorted position because

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Mr. Shearer: (Cont.)

of two things - the overtime is only earned because of ships schedule. When ships come here that are not on tight schedule, they do not incur overtime. And after all that you cannot, it would be irresponsible on the part of the Tribunal to arrive at a decision as to earnings of workers under abnormal circumstances of work because Public Holidays work is premium because it is not a normal work day. To earn it, it is a deprivation on the part of the worker from participation in the observance of the day with the rest of the community, with people gone to cultural activities, and social intercourses and other factors, the portworker has to be there on the job.

Mr. Chairman, the next thing is, when you look on 7B, the average weekly earnings involve here quite a lot of fallacy. With respect to the bottom part of (a), average weekly earnings, how it can be attained, we reject that the weekly earnings should be calculated on an assumption or inclusion of overtime work and on top of that this basis of work is not performed on the Waterfront. With respect to (b) and (c), it is merely a further exposure of the fallacy of the argument for the reason that one Sunday, one Public Holiday can only occur certain times of the year. You can only have the situation one time in January, one time in February, one time in March - around Ash Wednesday, 2 Public Holidays in two different weeks in April - Good Friday one and Easter Monday. National Labour Day on the 23rd of May. Queen's Birthday in June, July none, in August Freedom from Slavery. October none, September none, November one - Constitution Day, and the two Christian Holidays in December. With those two of the eleven not involved, you cannot have a situation of one holiday and assume that ships are going to be in port at the time and assume they are going to work as if this is a regular situation.

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"JCW1"

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3.35 p.m.
7/4/61. bmc.

Mr. Shearer: (Cont.)

With respect to 7B this is also a meaningless document because it is merely a division of the total that is paid by the employers by the number of men.

But, Sir, there is some other shocking and interesting bits of information. Would you look at 6A and 6B for me, 6A tells us that the Shippers and Wharf Owners pay a total of £762,857.16.7d. in 1959. Bear in mind, Sir, that on that occasion, nine months of it include the increases that were put in effect on the 3rd April. Now, Sir, 6B tells us that in 1960 when they had not nine but twelve months at the full rate the bill is gone to £762,446 with a higher rate.

I do not think I need put in salt and pepper in the wound at this stage but I think it is relevant also to move immediately to another exhibit. I was going to obtain the figures, I have got it in this information and I psopose to use it. In 1959 they handled 684,720 tons.....

Chairman: What exhibit is that?

Mr. Shearer: Exhibit 11, Sir. In relation to the 1959 figure of 762,857 with nine months at new rate, tonnage was 684,720. For 1960 look at the graph - it goes up to 770,499 which works out to around 85,679 tons more: and what do we find, that by good organization, hard work on the part of the port workers volume of business went up by 85,700 tons, wages absorbing a full year's increase dropped £411.15.3d. I submit to you, Mr. Chairman, that these figures set an interesting, convincing story in support of the Union's claim. I ask you, Mr. Chairman, in the name of the Unions to reject the submissions of the employers as to how a worker under certain peculiarly assumed, impossible circumstances can earn a certain figure because to take it ad absurdum, what they are saying is, if you

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Mr. Shearer: (Cont.)

accept that the man works two straight days he could earn more than the £12 a day. That is now how sensible persons with the calibre of the Tribunal - intelligent and impartial people - examine a problem affecting human beings. It is not right to say that if he wishes to turn out regularly and work - that too is assumption, about 3 days of 13 hours, they can make it 2 days. You can add two 22½ that would bring you 45, and it would produce the amount of money but you do not fix wages for people on that basis. You fix it on how much they can earn under normal circumstances.

Mr. Chairman, my friend will deal with the question of retroactivity and at that stage will bring in the Fraser Arbitration. With respect to Exhibit 9 which is a statement on the incentive scheme.

Chairman: I am just enquiring - as you observe we are perilously close to 4 and Mr. Johnstone wanted to have left at 4 but he is prepared to sacrifice himself a bit and stay until 5. Do you think we can finish by 5?

Mr. Shearer: I am finishing now.

Chairman: Mr. Lett?

Mr. Lett: I am prepared to stay until 5.

Mr. Shearer: Finally, Sir, subject to my colleague dealing with the arbitration, I wish to say Exhibit 9 dealing with the incentive scheme is irrelevant to your terms of reference, is not a subject for your consideration, is nothing agreed on yet it is a subject that a previous arbitration tribunal recommended that we should deal with later this year and thar arrangement is being made. It has nothing to do with a wage claim for increases on the prevailing hourly rates. Number one and secondly, dealing with this item, even in

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Mr. Shearer: (Cont.)

the agreement where we agreed in principle to an incentive scheme and to consider the details, specific provision is included that the incentive scheme must in no way preclude the negotiation of higher hourly rates and thirdly, incentive scheme does not give wage increases on hourly rates. Incentive scheme may only increase earnings - entirely different from rates by normal work output and effort by the employees involved.

Mr. Chairman, subject to the additions of my colleagues I am humbly submitting that on the facts of this case a powerful, convincing case has been established to enable your Tribunal to award fully in our favour on the increases proposed and that the Award should be effective from the 4th April. It is my pleasure to again thank you, Sir, and to say of my friend what he said of me, and that is that he listened to me with such patience and conviction.

4.05 p.m. Mr. Kelly: Mr. Chairman and gentlemen of the Tribunal, it is necessary that we dispel an erroneous impression that the Tribunal was invited to contemplate in a serious vein and in order to do so it is imperative that the Tribunal be told that it was that the Unions sought retroactivity of the claim that the Fraser Tribunal rejected.

When we served a claim as far back as 1957 we did so in an atmosphere created by the Shippers which created the impression that they were making profits - they admitted that they were making profits to the tune of 7½% in some instances and in some instances they contend that they would not honour our claim because they were not making 12½% on their capital. When we came to examine this situation from the point of view of profits, we concluded, and rightly so, Sir, that workers had the right, the inaleinable right, and this may be a mechanical theory.....

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Chairman: I must ask you to sum up the argument that has adduced before.....

Mr. Kelly: ....Mr. Lett introduced the question of the rejection of the Unions' retroactive claim by the Fraser Tribunal and that is what I am attuning my mind to in this submission.

I was making the point that because the Tribunal - because the employers did not plead inability to pay only that they were not making the quantum profit that the previous Tribunal had ear-marked for them, they gave this as the only reason for not making the Unions' claim. We are not impressed with that line of argument, if profits were made the workers have the right to share in these profits. We referred the question, with the approval of the Shippers to the Tribunal. The Tribunal judged and the Unions' claim for retroactivity was rejected because of the particular reason Mr. Lett did not bring to the Tribunal's attention. The reason given by the Fraser Tribunal was clear cut. It said:- "We therefore find that as the Award of the 22nd August, 1956 definitely decided that there should be no increase in wages until the Wharfage Rates were increased....." I submit with respect that this puts a materially different complexion on the reason for the rejection of the Unions' claim from that which Mr. Lett invited the Tribunal to contemplate.

The next point is the legal competence of the Tribunal. I am alarmed, Mr. Chairman and Members, to hear from my friend who I adjudge to be a legal luminary coming here and so brazenly attempting to mislead the Tribunal. The Law is here, very clear, precise, in unequivocable terms, such as lawyers understand. In relation to the competence of the Tribunal, notwithstanding that Mr. Lett would have the Tribunal to believe that they lack the legal competence to award with retroactive effect. An Award on any matter referred to a Tribunal for settlement.....

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Mr. Kelly: (Cont.)

Cap.329 Sec.12(2) "may be made retrospective to such date as the Tribunal shall determine."

Now, Sir, how dare Mr. Lett to make this vigorous effort to mislead the Tribunal. I say no more but to add my quota of appreciation for the honour that the Tribunal has taken, as members, to be participating in an exercise of this nature - a job exacting as it is, is a contribution of note towards the furtherance of industrial peace in this country and we on this side of the table only trust that the findings that you hand down will serve as a further indication of the faith and confidence we have in the Jamaican arbitrators which will be a credit to the industrial relations movement of Jamaica.

Mr. Allen: Mr. Chairman, I have but a few observations to make. I would just like for you to look at Exhibit 7(B). It is very interesting to see a document drawn up by the Association and when one reads that document, he is alarmed, because under cover of Weekly Earning January to June, we find (a) 3 days of 13 hours and an additional 6 hours from 7 to 2 on a weekday giving a total of 45 hours. Now what the Association is telling.....

Chairman: Are you quoting from something we have?

Mr. Allen: They are asking in fact, that the portworker must do 5 and 5/8 normal days' work in 3¾ days. The position goes on and they point out under (c) 1 Sunday, 1 Public Holiday and an additional 10 hours - that makes 36 hours. It is 3 days in which a worker is required to work 4½ normal days and that is the only way in which he can possibly hope to earn what they say is £12.

We believe that that is a contradiction of the entire concept of human relations practice in Jamaica today. Naturally the

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Mr. Allen: (Cont.)

workers' health is never taken into consideration in this. If a man is to work 5¾ in 3¾ days that man is going to die, his life span is not going to be 70 but 45 years.

When we look at the graph as presented here, we will really see that from 1959 where there were 418 portworkers and in 1960 there is 349 we see a reduction of 69 within that time. No wonder that reflection is shown when we note that between 1959 when there were 684,720 tons of cargo against 770,499 tons, we now realise that the portworker is producing over 85,000 tons more with a reduction of 69 in his number; with a reduction of 69 is producing over 85,000 tons in his production annually and he has not been increased (in wages?) as pointed out by Mr. Shearer.

We see that although the portworker is supposed to retire at 65 or 70, he will not live that long, so we won't have any retired portworkers after a while. They will just die out after a time. The point is that we refute categorically, the submission that is made in the Association's memorandum, page 2, paragraph 6:- "There were 1349 registered portworkers on the roll as at December 1st, 1960. They are free to report themselves every day as available for work at one of the following four centres...."

This submission, Mr. Chairman, is a gloss over the facts. While they are free to report to work, they are not free not to report for work because there is a regulation laid down by the Association which states emphatically - if the portworker does not report for work over a given period, which is 6 weeks, he is penalised. So while he is free to report he is not free not to report.

I would like that to be borne in

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Mr. Allen: (cont.)

mind, Mr. Chairman. On the question of the incentive that has been put before this Tribunal by the organization, we of the Unions believe it is a fast one being pushed over because incentive.....

Chairman: Mr. Allen, please, under the conditions we laid down earlier, although you have the right to address you should not repeat the arguments adduced by any previous speaker. I am of the opinion that Mr. Shearer touched upon the question of incentive.

Mr. Allen: What I was dealing with you have that before you and we must ask you to reject it completely.

Chairman: I am only saying that you are not free to speak on the incentive scheme because Mr. Shearer has already spoken on that aspect.

Mr. Johnstone: And I do believe we have got the points made by Mr. Shearer, so there is no need to deal with it again.

Mr. Allen: Very well, on the question of the Award by Mr. Fraser re retroactive pay, there is a point that was not taken by my colleague.

Chairman: Both Mr. Shearer and Mr. Kelly have both touched upon the question of retroactivity.

Mr. Allen: There is a point that was not taken.

Chairman: Whether they have done so wittingly or unwittingly, you cannot take it now. In other words, you cannot make submissions on that.

Mr. Allen: I submit to your ruling. In view of that, I thank you very much for listening - you and your colleagues - to the case presented and we believe that justice will be done to our case.

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Chairman: That has been said before, but we won't object to that.

Mr. Shearer: My colleague in an effort to co-operate forgot to refer to Exhibit II, on the graph, and I just wish to add that the Unions submit that you should reject the graphs as set out relating to portworkers' earnings. If you were to call them 1, 2, 3, on the first sheet.....

Chairman: I am certainly not going to give you another bite, Mr. Shearer.

Mr. Shearer: Can my colleague handle it, Sir?

Chairman: Yes, he can.

Mr. Allen: Mr. Chairman, we ask the Tribunal to reject the graphs as is presented by the Shipping Association in regard to earnings because what is really before the Tribunal is rates and, therefore, we must ask that these graphs be rejected because earnings are made under adverse conditions and these graphs represent adverse conditions earnings.

Mr. Shearer: The Unions' case now rests finally, Sir.

Chairman: Thank you, Gentlemen. Mr. Lett.

Mr. Lett: Mr. Chairman. I shall not, I hope, be very long and should you feel I am not entitled to make any points on which I embark, I wish you would just remind me of it.

I am much obliged to Mr. Shearer for making the point about retroactivity so crisp and clear. My submission Sir, (and I hope it is evident to you) is not that the Tribunal was not competent under the law to make such an award. I was merely pointing out that all that has happened in the past is that there has always been an element of consent in these matters. Mr. Shearer chose to call to your attention one or two

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Mr. Lett: (Cont.)

of those disputes and I must, I am afraid, go back over them. The first one he mentioned was the 13th of November, 1952 - Mr. Barrow's arbitration - and this point is in the terms of reference to Mr. Barrow. The arbitrator is asked to say what increase and from date, so there is the consent first of all in the terms of reference. Your terms of reference here are quite different. You are asked to determine the dispute that has arisen between the two parties with regard to rates of pay.

Mr. Shearer: And retroactivity.

Mr. Lett: No, not in the terms of reference in the letter.

Mr. Shearer: In the first paragraph of our letter we asked that the increased rates be effective from 4th April. I am sure, Sir, that the claim specifically mentioned the date.

Mr. Lett: Admittedly the Unions' claim asked for this but the point I am making is that there is no specific term of reference concerning this. Your letter says you are to determine the dispute.

Mr. Shearer: The dispute is the claim in the letter.

Mr. Lett: Secondly, as far as the Barrow Arbitration is concerned, there was consent a second time between the parties as to when the increased rates should be retroactive. The thing I want to impress is that we are not here of our own volition. We have to come here and what you are in fact being asked to do is to impose a new contract upon us about which we have no say, and you are being asked further by the Unions to make that retroactive. My sole point is that there is no element of consent as far as we are concerned. We are here willy nilly.

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7/4/61. hbd.

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Mr. Shearer: There is no consent to arbitration with JOS.

Mr. Lett: The second point I would like to bring to your attention is the terms of the Hart Agreement.

Mr. Shearer: You don't have to consent under statutory agreement.

Mr. Lett: May I draw this to your attention? The point that Mr. Shearer has taken is the fourth paragraph of the Hart Agreement and he is absolutely right in quoting it: 'Nothing contained herein shall prejudice the negotiation at any time hereafter of higher hourly rates'. The word used, you notice, Sir, is "negotiation" and admittedly our friend will say by their claim that they attempted to negotiate - negotiation brought down to what in effect is happening here and that is that we are forced to come here and submit to whatever is your finding. In this Hart Agreement there is the question of negotiation, but what in effect is happening is that this matter has been pushed up to dispute level and we are here whether we like it or not. Our point is that it is not our fault. The Unions have a perfect right, and so have we, to come here and report this dispute. This agreement says the parties will examine and negotiate upon the framing of an agreed incentive scheme. There is no incentive scheme but we are here just the same.

Mr. Shearer: We have the right to talk again, Sir?

Chairman: No.

(Humourous asides).

Mr. Lett: I quote from Mr. Wynter's award and these are the very points Mr. Shearer was referring to:-

"Our recommendations are as follows :-

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Mr. Lett: (Contd)

1. The parties should negotiate a scheme which should first be introduced as a trial scheme for a one year period as from 1st June,1961."

The second paragraph is the interesting one:-

"2. For the purposes of the scheme, there should be a minimum hourly rate, which should be the current hourly rates of pay, without prejudicing the employers' right to reduce it proportionately if the output falls below the 'norm' due to deliberate 'go-slow' of the workers.

3. The 'norms' established by the employers should be accepted for the trial period."

This is the important point that having earlier made the finding under the findings of Fringe Benefits to this effect:-

"Owing to the irregular nature of his work, we have borne in mind that the portworkers' rates of pay are fixed at a relatively higher rate and that on any individual day, the portworker is free to report or not to report, subject to possibility of discipline when he does not report for six weeks."

So that deals automatically with Mr. Allen's point. It is merely a matter that if he does not report for six weeks he is then subject to discipline. Here is a finding of fact: "We have borne in mind that the portworker's rates of pay are fixed at a relatively higher rate". This is a finding of fact in 1961.

When Mr. Shearer was referring to 'spelling' he said it was a good arrangement and my short answer to that is, he may well

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Mr. Lett: (Cont.)

feel it is a good arrangement for the worker. The other point I want to mention briefly is that Mr. Shearer took the point that we had said the wharfage business cannot fairly be compared with any other industry. The operative word there is 'fairly'. You are bound if there is no comparable industry to take what comparison you can and the only point we are making is that he cannot fairly compare, because there is no comparable industry in the Island; so that you cannot have a direct comparison and you are bound to take ksuch comparisons as can be logically and clearly drawn. The operative word is 'fairly' compared.

I want to deal right away with this interesting point that has come up about the difficulty - you will remember that I touched very briefly and it is in your written submissions that we had to employ non-registered portworkers because there were times when we could not get sufficient registered portworkers to turn out to take up the work that was available. This is in an agreement with the Unions.

Now, Sir, the difference in these figures are very easily explained. As Mr. Shearer has pointed out, the gross wage bill in 1959 was £762,857 and in 1960 it was £762,446. Now, Sir, we have - and I want you if you will to make a note of this, because I do not have an exhibit I can tender at this stage, but we have arrived at a figure that will indicate clearly to the Tribunal how much money the non-registered portworkers have received in the 10-months' period January to December 1960, and I am going to explain right away how the figure is arrived at. As you know there is a collection of 5% from the portworkers for superannuation and 5 per cent for us, and in addition we collect 2 per cent for the Emergency Fund. In other words we collect 12 per cent all together. We have

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Mr. Lett: (contd.)

not apparently got the figures of the actual sums drawn in cash by these non-registered portworkers but on a computation based on the 5% which we collect from them, the figure that we have is that non-registered portworkers, for the 12 months' ending December 1960, drew £37,360.

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bmc

That, Sir, added to the gross figure that is already here, will putkthe total wages paid out to registered and non-registered portworkers at the figure of £799,806.

Mr. Shearer: That is for 1960?

Mr. Lett: Yes, that is for 1960.

Mr. Shearer: What was it for 1959? What was the non-registered portworkers' bill in 1959?

Mr. Lett: There were none. My information is if there were any there were very few.

Mr. Shearer: Could we hear what the few cost??

Mr. Johnstone: These non-registered portworkers, are they members of the Trade Union?

Mr. Shearer: Yes sir.

Mr. Johnstone: Why are they called non-registered?

Mr. Lett: Because they are not on the roster of registered portworkers.

Mr. Shearer: What they called the registered ones is what is left of the number originally registered in 1939.

Mr. Johnstone: Registered where?

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Mr. Shearer: By the Minkstry of Labour. The Shippers and ourselves have arranged to allow certain workers to get some of the portwork and we call them non-registered port workers.

Mr. Lett: The one thing that obviously and clearly emerges from that is this - if the registered portworkers had turned out to take all the work that was available to them there would have been a further sum of £37,360 in the pockets of the registered portworkers as distinct from non-registered portworkers.

Now, there is one other point that I want to make. Mr. Shearer was talking about rates of pay should be computed under normal circumstances, and my short answer to that is that the circumstances that have been 3xplained to you at some length today are the normal circumstances for operating on the wharves and on the Waterfront these are the normal circumstances for the very reasons mentioned to you this morning.

Mr. Shearer: Point of correction, sir. I said normal hours. I said normal single time hours.

Mr. Lett: Your words were normal circumstances.

Mr. Shearer: Normal circumstances mean normal hours.

Mr. Lett: There is one final point that I would like to draw to your attention and it is still, I am afraid, not terribly clear to me. Mr. Shearer said twice that the rates established in 1959 were the rates claimed in 1957. He went on that the rates established.....

Now sir, what I do not understand is this, I am quoting now from the same document that Mr. Shearer quoted from the Minutes of the meeting of February 1960. In the Fraser Tribunal the retroactivity, and this

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Mr. Lett: (Cont.)

is what I have, the Secretary, this is Mr. Judah apparently talking but he is quoting - the Secretary writing to the Permanent Secretary says first of all there is a correction apparently of one letter by another letter. The first letter says this - I have been requested by the Unions' representative of the Port of Kingston Joint Industrial Council to correct an error in my letter to you of the 9th instant in which I stated that a dispute exists between the Unions and the Shipping Association of Jamaica on the claim of the Unions that the increases in pay of registered portworkers put into effect as from the morning of the 3rd of April, 1959, should be made retroactive to the 1st of October, 1957. So that is apparently the first information that was conveyed to the Ministry. This should read as follows:- A dispute exists between the Unions and the Shipping Association of Jamaica on the claim of the Unions that registered portworkers should receive retroactive pay from the 1st of October, 1957 to the morning of 3rd April, 1959 based not on the pay increases which registered portworkers received from the morning of the 3rd of April, that is 6d., 6d., 8d. but at the rate of 4d., 4d., 6d. an hour for the various categories of workers. So that what apparently had happened was this, that there was the agreement of April 3, 1959 which the Unions accepted on a 6d. 6d. 8d. basis, but when they went back to claim the retroactive part, it was a claim in respect of 4d., 4d. 6d. In other words it was not the claim based on the rates that came into effect on the 3rd of April 1959. How that can be reconciled to Mr. Shearer's statement that the rates established in 1959 were the rates claimed in 1957, I do not understand.

Mr. Shearer: I will just explain the relevance. The point is that the Unions for purposes of handling and determining our case, decided that we would reduce the retroactive part of

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Mr. Shearer: (Cont.)

it; strictly a matter of our own discretion which we in the exercise of our own judgment and responsibility elected to pursue.

Mr. Kelly: One thing - may I explain, Sir?

Chairman: No, Sir.

Mr. Lett: Well, Sir, it does not alter the position whatever the explanation of it as it does not alter the fact that my fundamental submission of this morning stands in my respectful submission unassailed and that is it was a freely accepted rate on the 3rd of April 1959. They clearly did not contemplate any backward look, they must have contemplated a forward look and that the only thing kyou gentlemen have to decide is what has happened since April 1960 to warrant an award which you are in a position, I put it no higher, to hang around our necks. Mr. Chairman, it is my most respectful submission that you will not see fit on all the facts and all the evidence to make any award whatsoever.

I thank you for your patience and understanding on the hearing of this arbitration between the Company and the Unions.

Chairman: I would like to hear you on the question of the dispute - what is in your view the dispute.

Mr. Lett: I think it is set out there - to determine a wage claim between the Union and the Shipping Association.

Chairman: Would that be crystallized in their letter of the 14th and yours of the 23rd? I suppose you would regard these as crystallizing the issue?

Mr. Lett: Yes Sir.

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Chairman: Gentlemen, it is now my pleasure to thank you all for co-operating in the way you have done in presenting the various cases in the very lucid and able manner which you have done over the last two days.

It will take us a little time for us to hand down this award. I am sure my colleagues and myself would also like to thank the members of the staff of the Ministry of Labour - the Secretary and these ladies who have recorded the proceedings.

Gentlemen, that about brings us to the end of the sittings.

Mr. Shearer: Could you allow me to join you, Sir, to thank the stenographers and the Secretary for the very conscientious and faithful manner in which they have performed their duties.

Mr. Lett: I would also like to join with Mr. Shearer in thanking the stenographers and the Secretary for their services.

The proceedings adjourned at approximately 4.35 p.m.

"JCW2" Letter, Appellants' Solicitors to Ministry of Labour

17th April 1961

EXHIBIT "JCW2" - LETTER, APPELLANTS' SOLICITORS TO MINISTRY OF LABOUR

JUDAH & RANDALL
17th April, 1961.

Ministry of Labour,
P.O. Box 481,
Kingston.

Attention E.G.Goodin

Dear Sirs,

re: Arbitration regarding increased wages for portworkers.

We are in receipt of the copies of the Notes of the Proceedings of the Sittings of the Arbitration Tribunal on the 4th and 7th instant, and have

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"JCW2"

Letter, Appellants' Solicitors to Ministry of Labour

17th April 1961 continued

been requested by Mr. Daniel Lett to draw to your attention the following errors which appear therein, so that you might draw them to the attention of the Tribunal:-

First Sitting - For "John Wilmot" read "John Wilman"

Second Sitting -

Page 7 Lines 11 & 12 - for "serve people for advise" read "civilised people have adopted"

Line 14 - "go" should read "do so"

Line 21 - "normal" should read "natural"

Lines 23 & 24 - "....the Law records. In 1959 "justified this" should read "the Law reports and see what L.J.Denning said in deciding the case in 1959".

Line 36 - "He who goes into equity must go with clean hands" should read "He who comes into Equity must come with clean hands".

Line 41 - After"to prove" add "them"

Line 44 - "statute" should read "statutory"

Page 8 Line 15 - after "some degree" add "of ease"

Line 45 - for "them in" read "consider"

Page 9 Line 10 - for "was" read "were"

Page 10 Line 1 - for "he" read "Mr.Shearer"

" " - "had not been any increase" should read "had only been one increase"

Page 11 Line 31- after "save" add "time"

" " - after "except" add "for"

Line 38- for "formally" read "firmly"

Page 14 Line 17-for "just as much" read "inasmuch"

Line 21- after "that is" add "the"

Exhibits

"JCW2"

Letter, Appellants' Solicitors to Ministry of Labour

17th April 1961 continued

Page 14	Lines 27 and 28	- for "in case I think for one moment the question will arise for" read "although my case is that not for one moment will the question arise for"
	Line 30	- after "if you" add "feel you"
Page 15	Line 33	- for "I ask you to see" read "I ask you to say"
Page 16	Lines 15 and 16	- for "are being" read "have been"
Page 17	Line 49	- for "increases that establish practice" read "in accordance with well established practice"
	Line 51	- after "arbitration" add "between the parties"
	Line 52	- for "have been" read "were"
Page 18	Line 5	- for "were they" read "whether it be"
	Line 30	- for "on" read "but that"
	Line 31	- after "pay" add "should apply"
	Line 33	- for "Farley" read "Fraser"
Page 19	Line 17	- for "hand over" read "hang over"
Page 20	Line 1	- for "out" read "allowed"
	Line 30	- for ".....then that)" add "to introduce spelling"
Page 21	Line 21	- for "workers' class" read "workers' castle"
Page 23	Line 22	- after "that is" add "from"
Page 23	Line 32	- for "sweets" read "swings"
Page 25	Line 12	- for "directions" read "attractions"
	Line 47	- after "fairly" add "as possible"
	Line 49	- for "is is" read "it is a"
	Line 50	- for "graft" read "graph"
Page 26	Line 8	- for "increases" read "figures"
Page 27	Line 20	- for "related to wages" read "relate wages"
	Line 21	- after "industry" add "here to wages paid"

Exhibits

"JCW2"

Letter, Appellants' Solicitors to Ministry of Labour

17th April 1961 continued

Page 29 Line 3 - for "7/7d." read "1/7d."

Page 30 Line 54 - after "at a basis" add "from"

Line 5 - for "really" read "clearly"

Line 39 - delete "it is a terrible thing for a person sitting down, say like a child, who likes candy and says I want more candy now" and insert "it is a terrible thing for a man who walks the streets looking for work and not to be able to find it. But in this instance it is like a child who likes candy and who has been used to getting candy by shouting for it. He always wants more and feels that if he shouts loud enough he will get it".

Page 82 Last Line-after "may" add "be"

Page 33 Lines 3 -and 5 - for "boot string" read "boot strap"

Line 26 - for "unfair" read "fair"

Line 27 - for "attempted" read "been tempted"

Yours faithfully,

(Sgd.) Judah & Randall.

c.c.to: Hugh Shearer
Arnold C.Webster.

EXHIBIT "JCW3" - AWARD OF THE TRIBUNAL

"JCW3"

Award of the Tribunal

19th April 1961

A W A R D

of the

PUBLIC UTILITY UNDERTAKING

appointed under

Section 10(3) of the Public Utility Undertakings

and

Exhibits

"JCW3"

Award of the Tribunal

19th April 1961 continued

Public Services Arbitration Law
Chapter 329 of the Laws of Jamaica
(Revised Edition) 1953
between
THE SHIPPING ASSOCIATION OF JAMAICA
on the one hand
and
THE BUSTAMENTE INDUSTRIAL TRADE UNION, UNITED PORT-WORKERS and SEAMEN UNION AND TRADES UNION CONGRESS OF JAMAICA
on the other.

CONSTITUTION OF THE TRIBUNAL AND TERMS OF REFERENCE:

WE, the undersigned were appointed members of the Public Utility Undertakings and Public Services Arbitration Tribunal by the Governor in Council -

Mr. N.P.Silvera - Chairman
Mr. Paul Geddes - Employers' Representative
Mr. Roy Johnstone - Workers' Representative

By letters dated 11th and 14th of March, 1961, in the case of the Employers' and Workers' Representatives, the Governor in Council in accordance with the provisions of the Public Utility Undertakings and Public Services Arbitration Law, Cap.329 of the Laws of Jamaica (Revised Edition) 1953 referred to the Tribunal for settlement the dispute between the SHIPPING ASSOCIATION OF JAMAICA (hereinafter called "the Association") on the one hand and the BUSTAMENTE INDUSTRIAL TRADE UNION, UNITED PORT WORKERS AND SEAMEN UNION AND THE TRADES UNION CONGRESS OF JAMAICA (hereinafter referred to as "the Unions") on the other with the following terms of reference -

> "To determine and settle the dispute which now exists between the Bustamente Industrial Trade Union, the United Port Workers and Seamen Union and the Trades Union Congress of Jamaica, jointly representing portworkers on the one hand and the Shipping Association of Jamaica on the other, over the Unions' claims for increased wages for port workers."

Exhibits

"JCW3"

Award of the Tribunal

19th April 1961 continued

HISTORY

2. A Joint Industrial Council for the port of Kingston was established on the 27th July, 1953. Under normal conditions, this Council deals with all matters affecting the operation of the Port of Kingston including matters affecting the port workers welfare and this could include the subject of wage rates and hours of work. Apparently sometime in April, 1960 "the Unions" in a letter dated 14th April, 1960, intimated to the Association that it was seeking increases in the hourly rates of pay for various categories of Port Workers on the Kingston Waterfront retroactive from the 4th April, 1960.

3. At an emergency meeting of the Council on the 13th of October, 1960, the Unions endeavoured without success to have these wage claims discussed.

4. Subsequently by letters dated 17th October and 25th October, 1960, the Ministry was informed by the Secretary of the Joint Industrial Council that the Unions wished these claims which they considered to be the subject matter of a dispute between themselves and the Association referred to Arbitration under Section 10(3) of the Public Utility Undertakings and Public Services Arbitration Law.

5. The Ministry of Labour acted upon this request and reported the dispute to the Governor in Council on the 30th November, 1960, recommending that an Arbitration Tribunal be set up to determine this issue. The Governor in Council accepted the recommendation of the Ministry of Labour on the 5th December, 1960, and directed that a Tribunal be established to deal with the dispute.

SITTINGS:

6. The Tribunal sat on the 4th and 7th April, 1961.

PARTIES:

7. The Shipping Association was represented by-

Mr. D. Lett — of Counsel, instructed by Mr. Wilman of the Firm of Judah & Randall (Solicitors)

Exhibits

"JCW3"

Award of the Tribunal

19th April 1961 continued

Mr. Arnold Webster
Mr. K.A.Gaynair
Mr. E. Cox
Mr. L.J.Ffrench
Mr. Paul Scott

Officers of the Shipping Association of Jamaica

The Unions were represented by -

The Hon. H.L.Shearer - Bustament Industrial Trade Union
The Hon. T.A.Kelly - National Workers Union
Mr. Martin Allen - Trade Union Congress of Jamaica

SUBMISSIONS:

8. Evidence was taken and oral submissions were made by both parties.

DECISION OF THE TRIBUNAL:

9. The Award is -

(i) 8d. per hour increase for dockmen now getting 3/8d. to establish a rate of 4/4d. per hour;

(ii) 8d. per hour increase for holders now getting 3/9d. (workers working in shipsholds) to establish a rate of 4/5d. per hour;

(iii) 8/- per day for foremen now getting 38/5d. per day and 46/10d. per day to establish a new rate of 46/5d. and 54/10d. per day, respectively;

(iv) 10d. per hour for winchmen and gangway men now getting 4/- per hour to establish a rate of 4/10 per hour.

DATED this 19th day of APRIL, 1961.

/s/ Noel P. Silvera
Chairman

/s/ Paul Geddes
Employers' Representative

/s/ Roy Johnstone
Workers' Representative

EXHIBIT "JCW4" - LETTER, J.C.WILMAN,ESQ. TO SECRETARY TO THE TRIBUNAL

Exhibits

"JCW4"

Letter, J.C. Wilman Esq. to Secretary to the Tribunal

2nd May 1961

JUDAH & RANDALL

2nd May, 1961.

The Secretary,
Silvera Arbitration Tribunal,
c/o Ministry of Labour,
East Street,
KINGSTON.

Attention E.G.Goodin, Esq.

Dear Sirs,

Re: Arbitration Award dated 19th April, 1961.

I am writing to confirm my telephone conversation with Mr. Goodin this morning, when he informed me that Mr. Silvera, the Chairman of the Arbitration Tribunal wished to know whether the Shipping Association would consent to the Tribunal dealing with the letter which had been sent to the Tribunal by Hon. Hugh Shearer of the B.I.T.U. requesting an interpretation of the Award, without a hearing for the purpose of section 13 of the Public Utility Undertakings and Public Services Arbitration Law (Cap.329).

2. I informed Mr. Goodin that the Shipping Association did not consent to the matter being dealt with in its absence.

Yours faithfully,

(sgd.) J.C.Wilman.

EXHIBIT "JCW5" - LETTER, SECRETARY TO THE TRIBUNAL TO SECRETARY TO THE APPELLANTS

"JCW5"

Letter, Secretary to the Tribunal to Secretary to the Appellants

2nd May 1961

C105/S2 111

2nd May, 1961

The Secretary,
Shipping Association of Jamaica,
2, Port Royal Street,
Kingston.

Exhibits

"JCW5"

Letter, Secretary to the Tribunal to Secretary to the Appellants

2nd May 1961 continued

Dear Sir,

Re: Award of Tribunal in the dispute between the Shipping Association of Jamaica on the one hand, the Bustamente Industrial Trade Union, the United Portworkers & Seamen Union and the Trades Union Congress of Jamaica (acting jointly) on the other with respect to wage rates for workers on the Kingston Waterfront.

The Arbitration Tribunal which heard the above issue, has received letters from the Bustamente Industrial Trade Union and the United Portworkers & Seamen Union, copied to you, requesting a clarification of its Award with respect to the date on which the increased wage rates should become effective. The Tribunal is prepared to clarify the point in issue and in accordance with section 13, Cap.329 - Public Utility Undertakings and Public Services Arbitration Law (Revised Edition) 1953, has decided to invite you to make submissions on this matter which will be heard at 2.15 p.m. on Tuesday May 9th, 1961, immediately preceding the hearings in the dispute between your Association and the three unions in respect of the -

"Amount of compensation which shall be paid to the 5 Timekeepers of the Unsited Fruit Company who were found by a previous Tribunal to be unjustifiably dismissed"

which has been re-scheduled for that time.

Yours faithfully,

(Sgd.) E.G.GOODIN
Secretary to the Tribunal.

c.c. Judah & Randall

EGG/pw

EXHIBIT "JCW6" - TRANSCRIPT OF PROCEEDINGS OF THE TRIBUNAL IN CONNECTION WITH ITS AWARD

Exhibits

"JCW6"

Transcript of proceedings of the Tribunal in connection with its Award

9th May 1961

Notes of Proceedings of the First Day's Sitting of the Arbitration Tribunal in connection with the Silvera Award of 19th April, 1961, held at the Ministry of Labour on Tuesday the 9th of May, 1961.

The following persons were in attendance:-

Mr. N.P.Silvera - Chairman
Mr. Paul Geddes - Employers' Representative
Mr. Roy Johnstone - Workers' Representative

Mr. Daniel Lett (Legal)
Sr. Douglas Judah
Mr. John Wilman
Mr. Arnold Webster
Mr. K.A.Gaynair
Mr. E. Cox
Mr. L.J.Ffrench
Mr. E.Milsted
Mr. H. Hart
Mr. R.Bentley
Mr. Paul Scott
Mr. R.S.Webster
— representing the Shipping Association of Jamaica

Hon. H.L.Shearer
Mr. A. Heath
Mr. W. Hooper
— representing the Bustamente Industrial Trade Union

Hon. T.A.Kelly - representing the United Port Workers & Seamen Union

Mr. Hopeton Caven
Mr. Martin Allen
— representing the Trades Union Congress of Jamaica

Approx. 50 observers and worker delegates.

Mr. E.G.Goodin of the Ministry of Labour - Secretary.

The proceedings commenced at approximately 2.30 p.m.

Chairman: Gentlemen, we are now formally called to order. On the 19th of April, 1961, this Tribunal handed down an award. On the

Exhibits

"JCW6"

Transcript of proceedings of the Tribunal in connection with its Award

9th May 1961 continued

Chairman: (Cont.)

1st of May a letter was addressed to the Secretary of this Tribunal over the signature of Mr. Shearer. It reads thus:

Secretary: Letter dated 1st May, 1961:

"The Secretary,
Essential Services Tribunal Shipping Association- BITU., UPWU.,TUC., Dispute,
Ministry of Labour,
Kingston.

Dear Sir,

We have received the Award of the Tribunal comprised of Messrs. N.P.Silvera (Chairman), Roy Johnstone (Workers' Representative) and Paul Geddes (Employers' Representative), in the matter of the dispute between the Unions jointly on the one hand and the Shipping Association on the other, over wage rates for hourly paid registered Portworkers.

The dispute involved the claim for wage increase and a claim that the wage increases should be retroactive as from 4th April, 1960.

Submissions were made by both parties to the dispute to the Tribunal on this portion of the claims also.

The Award has omitted references to this portion of the dispute.

In keeping with the provisions of section 13 of Cap.329, on behalf of the three Unions, we hereby request an interpretation from the Tribunal of the Award on the question of the date on which the new rates should become operative as this was part of the issue put to them.

Yours faithfully,
BUSTAMENTE INDUSTRIAL TRADE UNION,
Per: /s/ H.L.Shearer
Island Superior"

Chairman: Gentlemen, before we go any further may I just ask who are representing the Shippers?

Mr. Lett: I represent the Shippers and I am instructed by Judah and Randall.

Chairman: And who represent the Unions?

Mr. Shearer: I represent the Bustamente Industrial Trade Union.

Mr. Kelly: I represent the UPWU and it is assumed that our colleague Mr. M.Allen or Mr. H. Caven will in due course be here to represent the Trades Union Congress.

Chairman: Gentlemen, on the strength of this letter which Mr. Shearer wrote, this Tribunal has met again this afternoon, Mr. Shearer?

Mr. Lett: Before Mr. Shearer starts, could I have the letter of the Tribunal in answer to the two letters, one for Mr. Shearer and I believe one for Mr. Kelly, read into the record? The letter, I think, of the 5th of May - 2nd of May from the Secretary of the Tribunal addressed to the Shipping Association. I might point out at this stage, I do not have a copy of Mr. Shearer's letter but I have a copy of a letter from Mr. Kelly.

Chairman: (To the Secretary) You have a letter also from Mr. Kelly on the same point, Mr. Goodin?

Secretary: Yes sir. This letter is dated 28th April, 1961:-

"The Acting Permanent Secretary,
Ministry of Labour,
110, East Street,
Kingston.

Sir,

I have for acknowledgment your letter No.C105/S2111 dated 28th April, 1961 together with the Award of the Tribunal that adjudicated in the dispute between the Shipping Association

Exhibits

"JCW6"

Transcript of proceedings of the Tribunal in connection with its Award

9th May 1961 continued

of Jamaica and the three Trade Unions on the Water Front, acting jointly.

I refer you to page 3 where under the caption "Parties" the Hon. T.A.Kelly is incorrectly said to represent the National Workers Union in the proceedings. The National Workers Union should be corrected to read the United Port Workers and Seamen Union.

I must invite your attention to the fact that the Award handed down does not contain an operative date, notwithstanding the fact that the Unions sought to have it given retrospective effect to the 3rd April, 1960.

In the circumstances, may I request that you ascertain from the Tribunal the effective date of the Award as well as its approval for this clarification, based on my request.

Yours faithfully,
/s/ T.A.Kelly
President"

Chairman: Mr. Lett has asked if there was a reply to that letter. I have not seen that.

Mr. Lett: Written on the 2nd of May by the Secretary of this Tribunal and I make the assumption, on the instructions of the Tribunal.

Secretary: This is the letter dated the 2nd of May.

(Chairman scans letter and returns it to the Secretary)

Secretary: It is the one that I wrote and this one is to the Shipping Association.

Chairman: You would like this read?

Mr. Lett: I have the letter; I think it should be read into the record.

Exhibits

"JCW6"

Transcript of proceedings of the Tribunal in connection with its Award

9th May 1961 continued

Secretary: (Reading Letter)

" 2nd May, 1961

The Secretary,
Shipping Association of Jamaica,
2, Port Royal Street,
Kingston.

Dear Sir,

Re: Award of Tribunal in the Dispute between the Shipping Association of Jamaica on the one hand, the Bustamente Industrial Trade Union, the United Portworkers & Seamen Union and the Trades Union Congress of Jamaica (acting jointly) on the other with respect to wage rates for workers on the Kingston Waterfront.

The Arbitration Tribunal which heard the above issue, has received letters from the Bustamente Industrail Trade Union and the United Portworkers & Seamen Union, copied to you, requesting a clarification of its award with respect to the date on which the increased wage rates should become effective. The Tribunal is prepared to clarify the point in issue and in accordance with Section 13, Cap.329 - Public Utility Undertakings and Public Services Arbitration Law (Revised Edition) 1953; has decided to invite you to make submissions on this matter which will be heard at 2.15 p.m. on Tuesday, May 9th, 1961, immediately preceding the hearings in the dispute between your Association and the three unions in respect of the -

"Amount of compensation which shall be paid to the 5 Timekeepers of the United Fruit Company who were found by a previous tribunal to be unjustifiabily dismissed"

which has been re-scheduled for that time.

Yours faithfully,
/s/ E.G.Goodin
Secretary to the Tribunal."

Exhibits

"JCW6"

Transcript of proceedings of the Tribunal in connection with its Award

9th May 1961 continued

Mr. Lett: Could I see the letter - the original from Mr. Shearer, please?

(Document handed to Mr. Lett who examined it and returned it to the Chairman)

Chairman: Did you send a letter to the Secretary in reply?

Mr. Lett: What happened was: we were telephoned asking if we would consent and we said on the telephone we did not consent and we sent a letter in confirmation of that view.

Chairman: Is that the letter you want read now?

Mr. Lett: I am not fussy - unless you would like to.

Mr. Shearer: The Unions would want to hear the reply from the Shipping Association and have it read into the notes also.

Secretary: This letter is dated 2nd May, 1961.

"The Secretary,
Silvera Arbitration Tribunal,
c/o Ministry of Labour,
East Street,
Kingston.

Attention E.G.Goodin, Esq.

Dear Sirs, Re Arbitration Award dated 19th April, 1961

I am writing to confirm my telephone conversation with Mr. Goodin this morning, when he informed me that Mr. Silvera, the chairman of the Arbitration Tribunal wished to know whether the Shipping Association would consent to the Tribunal dealing with the letter which had been sent to the Tribunal by the Hon.Hugh Shearer of the BITU requesting an interpretation of the Award, without a hearing kfor the purpose of Section 13 of the Public Utility Undertakings and Public Services Arbitration Law (Cap.329).
2. I informed Mr. Goodin that the Shipping Association did not consent to the matter being dealt with in its absence.

Yours faithfully,
/s/ John C.Wilman".

Mr. Shearer: Could I see a copy of the letter?

Chairman: You can see the original.

Mr. Shearer: Could I see the original, please?

(Document handed to Mr. Shearer who returns it after Mr. Kelly and himself had examined it).

Chairman: Yes, Mr. Shearer.

Mr. Lett: I am taking a preliminary objection, sir, to the jurisdiction of the Tribunal. I have set out my objection in writing and I propose at this time to tender three copies for the Tribunal.

(Mr. Lett hands copies to the Tribunal, the Secretary and the Unions side).

I might add that I myself have written in the headings on these submissions, having omitted to have them typed in and that I myself underlined the word "interpretation" in ink. They have all been done on the copies and I would not like any point to arise on that. My objection is based as you read, sir -

> "Objection is taken by the Association to preceedings commenced on the basis set out in the letter dated 2nd May, 1961, from the Secretary of the Shipping Association."

Before I go any further I might make this point clear, that I had not seen Mr. Shearer's letter and Mr. Shearer asked for an interpretation. Mr. Kelly in his last paragraph says this -

> "In the circumstances, may I request that you ascertain from the Tribunal the effective date of the Award as well as its approval for this clarification, based on my request."

Now sir, my point is this, shortly put, that the general rule that applies to arbitration tribunals is that once they have signed their award they are functus officio, that is

Exhibits

"JCW6"

Transcript of proceedings of the Tribunal in connection with its Award

9th May 1961 continued

Mr. Lett: (cont.)

to say that the Tribunal dies at the moment it gives birth, so to speak, to its award. That is the general rule. Admittedly, section 13 of the Law under which we operate (Cap.329) can give it (the Tribunal) continued life, but only where any question as to the interpretation of the Award arises, in which case the Tribunal shall decide the matter.

What is happening at the moment according to the letter that has been read out from the Secretary of this Tribunal, is that the Tribunal purports at this stage to clarify this award and my short point is that there is nothing in section 13 which so much as mentions clarification, and that if this Tribunal is proceeding on the basis that it is going to clarify this award then it has no such power. These are my submissions, sir.

Mr. Shearer: Mr. Chairman, the BITU's letter uses the precise language in the Law itself and I gather from the employer that in view of the fact that that letter uses the correct term "interpretation" as against the word "clarify", which my colleague used to mean interpretation the reply of the Unions is that you are competent to hear us based on the submission we make also the additional point which we propose to introduce in support of the claim during the proceedings and as soon as you so direct, sir, I will proceed.

Chairman: Go ahead, please.

Mr. Shearer: Mr. Goodin, could I have the minutes of the 4th and 7th please?

Secretary: (after handing one document to Mr. Shearer) I am getting the 7th.

Mr. Lett: Have you made a ruling, sir?

Chairman: Mr. Shearer, would you repeat that submission, please.

Mr. Shearer: The submission we make, sir is that we are proceeding on the letter we wrote using

Mr. Shearer: (Cont.)

the term "interpretation" of the law and in addition to that we propose to make an additional point in support of the claim we are making here and we are asking you to accept, because we submit that the Tribunal is competent to hear us based on the letter from the BITU referring to section 13 for the purpose of interpretation.

Mr. Kelly: In support of that submission....

Chairman: Just a minute, Mr. Kelly. I would just like to hear you on the additional point, Mr. Shearer.

2.35 p.m./cm

Mr. Shearer: The additional point I propose to submit to the Tribunal that under the Arbitration Law itself (the Arbitration Law referred to is the Arbitration Law, Cap.19), Section 24 says:-

> "This Law shall apply to every arbitration under any law passed before or after the commencement of this Law, as if the arbitration were pursuant to a submission, except in so far as this Law is inconsistent with the Law regulating the arbitration, or with any rules or procedure authorised or recognised by that Law."

We propose to submit that if in respect of interpretation there is any suggestion that it does not apply that the point that the Unions are making is that the Tribunal omitted to make reference and hand down a decision on the subject of retroactivity, the Law, Arbitration Law 8 which is part of Chap.19 Law refers to that subject in 24. Under section 8 we propose, Mr. Chairman to submit that under the Arbitration Law, section 8(c), you have the authority to also act. That is the section which says that -

> "The arbitrators or umpire acting under a submission shall, unless the submission expresses a contrary intention, have power-

x x x x

Exhibits

"JCW6"

Transcript of proceedings of the Tribunal in connection with its Award

9th May 1961 continued

Mr. Shearer. (Cont.)

"(c) to correct in an award any clerical mistake or error arising from any accidental slip or omission."

And it is going to be our two-fold submissions that the matter should be dealt with under one of the 2. When that time comes my friend will be at liberty to make all the objections and I ask.....

Chairman: Have you anything to say Mr. Kelly?

Mr. Kelly: I want to say that in addition to a point made by my colleague the letter under my signature referred to by Mr. Lett and read by the Secretary for which clarification of the Award is sought, I am submitting that a request for clarification is merely an additional - is really an alternative word for interpretation. To clarify a position is to interpret it with the lucidity of diction that leaves no doubt in anyone's mind as to what is requisite and necessary and is consonant with the submissions made by Mr. Shearer earlier.

Mr. Lett: I think I should reply to that now. There has been, as I understand it a definite request under Section 13 of Chapter 329 for an interpretation by Mr. Shearer. This is the first point he makes. What I am asking this Tribunal to say in this Award it is proposing to proceed on the assumption that what the Tribunal has said that they are going to clarify is to be interpreted, and I use the word advisedly, in the same sense as the interpretation of section 13, notwithstanding what Mr.Shearer may have asked for, this Tribunal by its answer has indicated that what it proposes to do is clarify this Award, not to interpret.

Chairman: Could I hear Mr. Lett on 8(c)?

Mr. Lett: 8(c) in my submission would not apply if section 13 was not included in Chapter 329, the specific Law under which you gentlemen operate. So that having elected, having had a request from Mr. Shearer, if I understand the ruling of the Tribunal correctly, that he is in

Exhibits

"JCW6"

Transcript of proceedings of the Tribunal in connection with its Award

9th May 1961 continued

Mr. Lett: (Cont.)

order to proceed under section 13 of Chap.329 no question arises as to consideration of 8(c) of the Tribunal because the Arbitration Law specifically says that the Arbitration Law shall so apply as long as it does not clash with any provisions of any other Law. If it is argued that what is being done by the Tribunal is to correct a clerical error or slip of this Tribunal I say it is denied that action in saying that it is prepared to operate - to interpret the Award under section 13 of Chapter 329. This says it is no error, this is no slip; what we are trying to do is to interpret under Chapter 329.

Chairman: Section 24 of Chapter 19?

Mr. Lett: Section 24 of Law 19 which reads:-

> "This Law shall apply to every arbitration under any Law passed before or after the commencement of this Law, as if the arbitration were pursuant to a submission, except in so far as this is inconsistent with the Law regulating the arbitration ....."except"

and here you gentlemen are sitting here purporting to act under Section 13 of Chapter 329 - which automatically means that you are not considering the provisions of section 24 of the Arbitration Law, and must be taken as an admission as such.

Chairman: Are you saying that we cannot act under section 8(c) of the Arbitration Law, Chapter 19.

Mr. Lett: If you are electing.....

Chairman: I am asking a specific question: it is a straightforward question.

Mr. Lett: If you are electing to attract further life for your Tribunal under section 13 of this Law under which you are created, then Section 24 of Chapter 19 of the Law does not apply.

Exhibits

"JCW6"

Transcript of proceedings of the Tribunal in connection with its Award

9th May 1961 continued

Chairman: Section 8(c) of Chapter 19 has no application to this Tribunal at all?

Mr. Lett: That is what my submission amounts to.

2.30/hbd(1)

On resumption.

Chairman: Gentlemen, the Tribunal has given due consideration to the submissions of all the parties concerned and we consider it so important that we are inviting you gentlemen here at ten o'clock tomorrow morning to receive our ruling. We do hope that you can find it possible to attend.

Mr. Shearer: Is it proposed to proceed tomorrow morning?

Chairman: Well, it depends on our ruling.

Mr. Lett: I can be available at ten tomorrow.

Chairman: Mr. Shearer?

Mr. Shearer: It is extremely inconvenient for me to be here at ten tomorrow morning.

Chairman: 9.30?

Mr. Shearer: No sir - I mean extremely inconvenient for me in the morning at all.

Chairman: Would it be more convenient at 2.15?

Mr. Lett: I can make myself available any time tomorrow.

Chairman: I can't but I will. My view is, gentlemen, I think it is so important that I think I will make the sacrifice.

Mr. Shearer: Mr. Chairman, has the Tribunal taken note of the two bases of our approach?

Chairman: We have.

Mr. Shearer: You have taken note.

Chairman: May I say we have given consideration to all aspects and we are not likely to make a snap decision.

Mr. Shearer: I am going to explain my personal difficulty.

Chairman: You are not making submissions - just your personal difficulty?

Mr. Shearer: With respect to tomorrow morning; it is an appointment that is worrying me. I have an appointment involving employers from different parts of the island. We meet tomorrow in Montego Bay at 10.30 and it would be impossible for me at this time to say not to attend again.

Chairman: If we say 2.15, would you be able to get back?

Mr. Shearer: The later in the afternoon, the better.

Chairman: Would three o'clock help you, Mr. Shearer?

Mr. Shearer: Yes, I will endeavour to do it at three tomorrow.

Chairman: You, Mr. Lett?

Mr. Lett: Yes sir.

Chairman: Well, gentlemen, as far as this aspect is concerned this Tribunal which was borne out of Mr. Shearer's letter, we have adjourned and there is another matter before us. Gentlemen, we will just adjourn for five minutes and resume immediately. Mr. Lett, you are sitting in?

Mr. Lett: I am not appearing this time: Mr. Judah is. Mr. Judah, you are sitting in?

Mr. Judah: Yes sir.

(The adjournment was then taken)

Exhibits

"JCW6"

Transcript of proceedings of the Tribunal in connection with its Award 10th May 1961

Notes of Proceedings of the Second Day's Sitting of the Arbitration Tribunal in connection with the Silvera Award of 19th April, 1961, held at the Ministry of Labour on Wednesday, 10th May, 1961.

The following persons were in attendance:-

Mr. N.P.Silvera	- Chairman
Mr. Paul Geddes	- Employers' Representative
Mr. Roy Johnstone	- Workers' Representative
Mr. Daniel Lett (Legal)	Representing the Shipping Association of Jamaica
Sr. Douglas Judah	
Mr. John Wilman	
Mr. Arnold Webster	
Mr. George Smith	
Mr. K.A.Gaynair	
Mr. E.V.Cox	
Mr. R. Bentley	
Mr. L.J.Ffrench	
Mr. H. Hart	
Mr. R.S.Webster	
Mr. David D'Costa	
Mr. Paul Miller	
Mr. Paul Scott	
Mr. A. Heath	Representing the Bustamente Industrial Trade Union
Mr. W. Hooper	
Hon. T.A.Kelly	- Representing the United Port Workers & Seamen Union
Mr. Martin Allen	- Representing the Trades Union Congress of Jamaica

Approx. 30 Worker/Delegates and observers.

Mr. E.G.Goodin of the Ministry of Labour - Secretary.

The proceedings commenced at approximately 3.05 p.m.

Chairman: Gentlemen, you will remember when we adjourned yesterday, we adjourned to hand down our ruling this afternoon at three o'clock. We are a bit late but still we'll do our best. And here I read gentlemen -

> On the 1st of May, 1961, the Honourable Hugh Shearer addressed a letter to the

Chairman: (Cont.)

Exhibits

"JCW6"

Transcript of proceedings of the Tribunal in connection with its Award

10th May 1961 continued

Secretary of the Essential Services Tribunal, Shipping Association, requesting an interpretation from the Tribunal of the award on the question of the date on which the new rates should become operative as that was part of the issue put to the Tribunal. Consequent upon this letter and another received from the Hon. Thossie Kelly, the Secretary of the Tribunal convened a meeting yesterday, Tuesday, 9th May, 1961 at 2.15 p.m. at the Ministry of Labour. At this meeting submissions were made by Mr. Lett of Counsel and the Hon. Hugh Shearer and the Hon. Thossie Kelly. The Tribunal then adjourned and indicated that its ruling would be handed down today 10th May.

The Tribunal at this stage would like to state that there is in the award an error arising from an accidental omission. The Tribunal is of the view that this error once corrected will answer the question of the Hon. Hugh Shearer and the Hon. Thossie Kelly. In the light of the foregoing the Tribunal has not addressed its mind to the submissions of yesterday, but having regard to Section 24 and Section 8(c) of the Arbitration Law, Cap. 19, it will endeavour to correct this error. The correction will be forwarded to the proper authority in due course and the interested parties will, we are sure, be informed of the nature and import of this correction.

Mr. Lett: Sir, may I just say this. I have heard your ruling with interest. It is my duty to accept it, certainly at this table. It is quite clear, sir, that only you can say if there was an error in your award. I cannot get into your mind but I wish it to be clearly understood that it is on the record of this Tribunal that, firstly, a letter was addressed to the Tribunal both by the Bustament Industrial Trade Union and by

Exhibits

"JCW6"

Transcript of proceedings of the Tribunal in connection with its Award

10th May 1961 continued

Mr. Lett: (Cont.)

the United Port Workers Union applying for interpretation of the award under section 13 ofCap.329; that was followed by a telephone request of us that procedure under Section 13 should go on in our absence. We refused and wrote a confirmatory letter to that effect, after which we were informed by letter from the Secretary of this Tribunal that the Tribunal intended to proceed under Section 13 of the law and it is my submission that the Tribunal clearly elected to proceed under Section 13 of the law, otherwise there is no reason at all for any of us to be sitting around this table. The error could have been corrected at the time or immediately upon detection by the Tribunal, without reference to anybody.

Chairman: Are you through, sir?

Mr. Lett: Yes, thank you.

Chairman: Mr. Kelly, I was not minded to have a discussion on the ruling.

Mr. Kelly: I am not discussing the ruling; I am merely saying on behalf of the Union side that we take note of the Tribunal's ruling and we await the Tribunal's subsequent statement.

Chairman: Thank you, gentlemen.

Mr. Lett: Could I make one more observation, sir; that today the ruling is handed down, according to my computation, exactly three weeks after the award was handed down.

Chairman: I will not question that. Gentlemen, as far as that is concerned we will adjourn and we will now move into the other aspect. Gentlemen, may we adjourn for five minutes and afterwards resume to consider the other one.

The proceedings were adjourned at 3.10 p.m.

EXHIBIT "JCW7" - LETTER, J.C.WILMAN, ESQ. TO SECRETARY TO THE TRIBUNAL

Exhibits

"JCW7"

Letter, J.C.Wilman, Esq. to Secretary to the Tribunal

18th May 1961

JUDAH & RANDALL

18th May, 1961

The Secretary,
Silvera Arbitration Tribunal,
c/o Ministry of Labour,
East Street,
Kingston.

Dear Sir,

Re: Interpretation of Award dated 19th April, 1961.

With reference to the Notes of the proceedings of the first day's sitting of the Arbitration Tribunal in connection with the Silvera Award of the 19th April, 1961, held at the Ministry of Labour on Tuesday, the 9th May, 1961, I have been asked by Mr. Daniel Lett who appeared on behalf of the Shipping Association to request you to amend the Notes as follows.

On page 6 of the Notes in the paragraph commencing as follows "Mr. Lett: I think I should reply to that now" Kindly delete from "what I am asking this Tribunal to say....." to "....not to interpret" and insert the following:- "what I am saying is this. This Tribunal in proposing to clarify its Award is proceeding on the assumption that what they are going to clarify is to be interpreted, and I use the word advisedly and in the same sense as interpretation under section 13 - that notwithstanding what Mr. Shearer may have asked for, this Tribunal by its answer has indicated that what it proposes to do is clarify this Award not to interpret."

I should be glad if you would kindly supply all parties concerned with an amended copy of page 6 of the Notes in due course.

Yours faithfully,

(Sgd.) J.C.Wilman.

cc to Daniel Lett Esq.

Exhibits

"JCW8"

Letter, Acting Permanent Secretary to Ministry of Labour to Appellants' Chairman

24th May 1961

EXHIBIT "JCW8" - LETTER, ACTING PERMANENT SECRETARY TO MINISTRY OF LABOUR TO APPELLANTS' CHAIRMAN

MINISTRY OF LABOUR,
P.O. BOX 481,
KINGSTON.

No. C 105 /S2 111

24th May 1961

Dear Sir,

Re: Arbitration "to determine and settle the dispute which now exists between the Bustamente Industrial Trade Union, the United Port Workers and Seamen Union and the Trades Union Congress of Jamaica jointly representing the Port workers on the one hand, and the Shipping Association of Jamaica on the other, over the Unions' claims for increased wages for Port workers."

In a letter dated 17th May, 1961, the Tribunal appointed under the Public Utility Undertakings and Public Services Arbitration Law, Cap. 329, to determine the dispute referred to above, informed the Ministry of Labour that the Award of 19th April, 1961, did not entirely reflect the decision of the Tribunal as the operative date of the Award was omitted and that this constituted an error arising out of an accidental omission.

2. The Tribunal in the aforesaid letter requested that the Award be corrected to read -

" (i) 8d. per hour increase for dockmen now getting 3/8d. to establish a rate of 4/4d. per hour;

(ii) 8d. per hour increase for holders now getting 3/9d. (workers working in ships holds) to establish a rate of 4/5d. per hour;

(iii) 8/- per day for foremen now getting 38/5d. per day and 46/10d. per day to establish a new rate of 46/5d. and 54/10d. per day, respectively;

(iv) 10d. per hour for winchmen and gangway

men now getting 4/- per hour to establish a rate of 4/10d. per hour;

(v) that these wage rates should be retroactive to 15th May, 1960."

Yours faithfully,

(Sg'd.) E.G.Goodin

Acting Permanent Secretary to the Ministry of Labour.

Exhibits

JCW8

Letter, Acting Permanent Secretary to Ministry of Labour to Appellants' Chairman

24th May 1961 continued

The Chairman,
Shipping Association of Jamaica,
2 Port Royal Street,
KINGSTON.

c.c. Mr. Daniel Lett.

EXHIBIT "JCW9" - LETTER, APPELLANTS' SOLICITORS TO E.G.GOODIN, ESQ.

"JCW9"

Letter, Appellants' Solicitors to E.G.Goodin,Esq.

22nd June 1961

JUDAH & RANDALL

JCW/OL

June 22, 1961

E.G.Goodin, Esq.,
Ministry of Labour,
P.O. Box 481,
Kingston.

Dear Sir,

re Silvera Arbitration Award dated 19th April, 1961.

With reference to your letter of the 24th May, 1961, to the Chairman of the Shipping Association of Jamaica (your reference No. C 105/S2/111), we shall be glad if you will kindly supply us with a copy of the letter dated 17th May 1961 written by the Tribunal to the Ministry of Labour which is referred to in your letter.

Yours faithfully,

(SGD.) JUDAH & RANDALL.

Exhibits

"JCW1O"

Letter, Acting Permanent Secretary to Ministry of Labour to Appellants' Solicitors

4th July 1961

EXHIBIT "JCW1O" - LETTER, ACTING PERMANENT SECRETARY TO MINISTRY OF LABOUR TO APPELLANTS' SOLICITORS

Ministry of Labour,
P.O. Box 481,
Kingston,
Jamaica, W.I.

4th July, 1961

Dear Sirs,

Re Silvera Arbitration Award
dated 19th April, 1961

I refer to your letter JCW/OL of the 22nd June 1961, in which you request that you be supplied with a copy of the letter dated 17th May 1961, written by the Tribunal to the Ministry of Labour, and referred to in our letter No. C 105/S2 111 of the 24th May 1961, to the Chairman of the Shipping Association of Jamaica.

2. I am directed to inform you that this Ministry regrets its inability to accede to your request.

Yours faithfully,

(Sgd.) .....

for Acting Permanent Secretary
to the Ministry of Labour.

Messrs. Judah & Randall,
Solicitors,
P.O. Box 8,
11, Duke Street,
Kingston.

IN THE PRIVY COUNCIL — No.15 of 1963

ON APPEAL

FROM THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE MATTER of an Arbitration between the Shipping Association of Jamaica on the one hand and the Bustamante Industrial Trade Union, the United Port Workers and Seamen Union and the Trade Union Congress of Jamaica on the other hand, and

IN THE MATTER of the Arbitration Law, Chapter 19 of the Laws of Jamaica (Revised Edition) 1953.

BETWEEN

THE SHIPPING ASSOCIATION OF JAMAICA
(Applicants) — Appellants

- and -

THE BUSTAMANTE INDUSTRIAL TRADE UNION
THE UNITED PORT WORKERS AND SEAMEN UNION
and THE TRADE UNION CONGRESS OF JAMAICA
(Respondents) — Respondents

RECORD OF PROCEEDINGS

CLIFFORD TURNER & CO.,
11, Old Jewry,
London, E.C.2.
Solicitors for the Appellants.

ALBAN GOULD BAKER & CO.,
17, Northampton Square,
London, E.C.1.
Solicitors for the Respondents.