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**LABOUR ADJUDICATIONS
IN INDIA
' 1942-47**

LABOUR ADJUDICATIONS IN INDIA

COMPRISING TEXT OF BOMBAY AWARDS AND SUMMARIES
OF A FEW AWARDS MADE IN OTHER PROVINCES
DURING 1942-47 UNDER D.I.R. 81A.

Compiled by

D. G. DAMLE

Assisted by

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NOTE

Amongst the various changes that occurred in the labour field during World War II, Compulsory Adjudication of industrial disputes under Defence of India Rules, has a significance which can hardly be overestimated. The Adjudicators, particularly in Bombay, have been retired or working High Court Judges or men of similar standing and, therefore, their pronouncements carry great weight. In fact, their awards may be said to constitute the beginning of our modern Industrial Law. It is therefore desirable that these awards should be available in one place; hence this publication.

This volume contains the full text of almost all the (non-textile) awards made in Bombay, under Defence of India Rule 81A, till the end of 1947. Hence, it may be taken as a predecessor volume to the *Industrial Court Reporter* of Bombay which has been published since January 1948 by the Government of Bombay. For ease of reference, the awards are broadly classified and arranged according to industries. It also gives summaries of a few awards from other provinces, notably from Bengal and U.P., just to indicate in brief the labour conditions in those provinces. One hopes that the authoritative character of the material will ever keep it useful.

I am deeply indebted to the Government of Bombay for granting permission to reproduce the full text of the awards. I am grateful to all my well-wishers and friends for their encouragement and my thanks are due to my friend, Shri R. V. Matkari for his help in summarising a few awards and in going through the proofs.

D. G. DAMLE

NOTE

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INTRODUCTION

The problem of industrial peace, since it attained serious proportions after the cessation of World War I, has engaged the constant attention of Governments, industrialists and labour leaders. But no satisfactory remedy of universal application, based on broad principles, has been found to secure the real peace that arises from mutual satisfaction and confidence. Such a peace is still as elusive as ever. The declining figures, since 1948, of strikes and man-hours lost, can hardly be interpreted to indicate increase of peace and harmony between capital and labour. The peace that we see today, is at best an imposed truce, which both the parties being in a highly discontented mood, are waiting for a suitable opportunity to break.

From the early period of the trial of strength between the contending parties to the present approach of compulsory arbitration for resolution of industrial disputes, is a long, halting and somewhat tortuous journey and the history of legislation for settlement of disputes during this period reflects the oscillations of the Government's attitude on this march. The doctrine of *laissez faire* prevailed till about 1920, the Government contenting itself with complete neutrality. Instances of labour disputes having been settled by the intervention of Government officials and local leaders are not lacking in this early period but such efforts were based on a voluntary approach made by the parties concerned and the implementation of the settlement rested merely on mutual trust. However, even in those early days, responsible public opinion in Bombay favoured some kind of authoritative Governmental intervention, as may be seen from the following observations of the Reed Committee appointed by the Government of Bombay in November 1921: 'There are some who hold that the state has no right to intervene in industrial disputes. To that position we cannot subscribe. The state is responsible for maintenance of law and order. In the conditions prevailing in India, the discharge of this responsibility frequently means the use of armed force which entails loss of life. We hold it to be the infeasible right of the state to be satisfied, before it employs force for the preservation of peace and order in an industrial dispute, that all reasonable means have been adopted to secure adjustment of the points of difference and that the stand made by capital is based on equity and economic justice. The argument of those who would deny this right of the state, pressed to its logical conclusion, might mean the use of the armed forces of the state to enforce a sweating wage in a prosperous industry.'¹ The Committee,

¹ Bombay Labour Gazette—April 1922, p. 29.

however, suggested the establishment of a court with inquiry as its primary function, which was to be followed, if necessary, by an industrial court of conciliation. The Committee placed the function of inquiry first and separate from that of conciliation, to avoid the facile opportunism which seeks to patch up industrial disputes by proposing a compromise between the two parties without going deep into the economic principles involved. The Government of Bombay too, seems to have favoured the idea of statutory industrial courts as may be seen from the Bill prepared by the Government in 1924, following the serious strike in Bombay cotton mills during that year. The Committee, appointed in Bengal in March 1921, recommended the establishment of joint works-committees which would have acted like the *panchayats* of old, a system with which India was quite familiar, but they rejected, as inapplicable to Bengal conditions, all schemes involving any element of compulsion by legal process.¹ No action was, however, taken on these recommendations by the respective Governments and the strike-waves in the twenties were generally allowed to break and cripple either capital or labour or both. The increasing tempo of strikes in the major industries in the country in 1928 seems to have ultimately roused the Government of India to do something, and a Trade Disputes Act was passed in 1929. This Act provided for establishment either of Courts of Enquiry for investigating and reporting on disputes or of Boards of Conciliation for promoting settlements thereof. Provision was also made late, in 1938, for the appointment of Conciliation Officers charged with the duty of mediating, or promoting settlements. Though it did not adequately meet needs of the times, this measure ended the attitude of neutrality maintained by the Government till then and paved the way for future legislation. It would appear from the records that this Act was not much availed of.²

The Bombay State—Province as it was then known—finding the above measure inadequate to deal with the industrial unrest within its area, introduced the Bombay Trade Disputes Conciliation Act in 1934, providing for a special conciliation machinery and an officer to attend to the grievances of the workers. The Act was soon replaced by another, the Bombay Industrial Disputes Act of 1938, which went a step further, requiring compulsory submission of every dispute to conciliation. It also created a machinery for arbitration when both the parties were willing. It may be noted that both the Acts i.e. of 1934 and of 1938

¹ Bombay Labour Gazette: Oct. 1921, p. 26.

² Mr. N. M. Joshi complained . . . that legislation was not used . . . The Governments in this country did not, not only apply that legislation, but did not make proper use of that legislation . . . The machinery was wrongly used . . . No permanent court of enquiry was appointed . . . Central Legislative Assembly Debates . . . Official Report Nov. 1, 1946' p. 409

were made applicable only to the Textile Industry which is the biggest in the state.

Thus, while attention was concentrated on the creation of external agencies for intervention in disputes, little or no efforts were made by the industry itself for regulation of its relations with labour, except at Ahmedabad. There, under the guidance of Mahatma Gandhi, a new approach was adopted from about 1920. In the event of direct negotiations failing, both parties agreed to submit all disputes to arbitrators of their own choice. The arrangement seems to have been very successful as there have been no major disturbances during the last thirty years in that centre despite several strike-waves that swept other centres, particularly Bombay, during this period, and caused heavy loss to both employers and workers.

The outbreak of World War II, and the subsequently developments in the industrial field, brought about a rapid change in the field of industrial relations also and the necessity of keeping production at the highest possible level without interruptions, made the Government of India introduce, in January 1942, under the Defence of India Rule 81A, compulsory adjudication for solution of industrial disputes. In Bombay, the Bombay Industrial Disputes Act of 1938 was already amended by an ordinance in May 1941, providing for reference of a dispute to arbitration when Government was satisfied that continuance of the dispute was likely to cause hardship to a large section of the community or seriously affect the industry, the prospect or scope of employment in it or cause any serious outbreak of disorder or breach of the public peace. Under both these measures, i.e. central and provincial, strikes were prohibited not only till the award was made after reference to arbitration, but also thereafter till such period as the adjudicator's award remained in force.

After the cessation of war, the new Industrial Disputes Act of 1947 replaced the old Act of 1929 and also the Defence of India Rule 81A, but it incorporated a provision for reference of disputes on any matter appearing to be connected with, or relevant to the dispute to a tribunal for adjudication, where the appropriate Government was of opinion that any industrial dispute existed or was apprehended. Government also armed itself with authority to prohibit such strikes as may be in existence on the date of reference. In Bombay, the Bombay Industrial Relations Act replaced the old measure of 1938, but it continued the war-time provision regarding compulsory arbitration. Though no resistance was offered to compulsion during war-time, its continuance in Bombay and the Central Acts of 1946 and 1947 respectively were hotly opposed by certain powerful sections of labour maintaining that the power to impose compulsory arbitration on a worker at any stage of a dispute ultimately resulted in suppression of his right to strike - his only weapon against employers. And it was

further argued that if arbitration was to be imposed, it should be done after providing the worker with a decent minimum living wage, satisfactory hours of work, leave with pay and other necessary conditions of work and living. Otherwise, it would be merely a cooling process.¹ On the provision of prohibition of strikes, it was argued that to make strikes illegal was to introduce indirectly a form of compulsory labour slavery.² As against this, the attitude of the Government was that in the larger interests of the community, nay, in the interest of workers themselves,³ and in the present industrial conditions in the country, such curtailment of the right was inevitable, and the arbitration approach became the order of the day. Hundreds of disputes have been referred to arbitration under the provisions of the Defence of India Rule 81A as well as under the provisions of the Industrial Disputes Act 1947 all over the Indian Union till now, and there is hardly any industry or organised trade left which has escaped imposition of arbitration if it has not accepted it willingly.

Now, what are the achievements of this approach? Has it fulfilled the purpose for which it was introduced? Is the peace in industry now prevailing the desired peace? How do the labour relations in industries stand at present. What are the experiences of the parties concerned and their reactions to compulsion? How is discipline affected? These and several other questions raise themselves in an assessment of the consequences of this approach and a dispassionate search for the answers should prove to be of some utility, especially at the present juncture when Government is considering introduction of a revised measure to replace the Act of 1947.

The economic and other material gains which have accrued to labour through arbitration awards have undoubtedly been very substantial and it is not proposed to examine them here; in fact it would not be possible to do so owing to the immensity of the labour involved. Material gains, important though they are, are not everything, if the process which secures them is likely to damage the source itself. There are many other consequences of arbitration, which in the long run have a bearing on the successful running of an industry and hence ought to receive as much attention as the economic gains. An examination of these conse-

¹ *Ide*—S. A. Dange—Bombay Legislative Assembly Debates Official Report, Oct. 1, 1946, pp. 53-60 and Oct. 10, 1946, p. 1926.

² *Ide*—N. M. Joshi's speech—Central Assembly Debates Official Report, Nov. 1, 1946, p. 413.

³ "I do not do it (compel workers) even in the interest of the community. I do it in the interest of the worker himself. The consideration of the interest of the community is incidental, but my primary concern is the worker who stands to suffer. If the workers strike, there will be a reduction in the production of goods; but I am ignoring that fact. What I am concerned with is the worker's sufferings. To mitigate that suffering provision is made in clause 73. We have taken the power for compulsory arbitration." Mr. Gulzarilal Nanda—Bombay Legislative Assembly Debates—Oct. 10, 1946—Official Report, p. 1926.

quences would be clearly beyond the scope of this short introduction, but of late, these have assumed such significance that they deserve some notice here.

The object behind the order made under Rule 81A of the Defence of India Rules in 1942 was a very limited one, namely to secure efficient prosecution of the war. The adjudication was introduced primarily to secure industrial peace and thereby uninterrupted production. Looked at from this point of view, the economic and other gains to labour were rather incidental. The aim of Sec. 49A introduced by an ordinance in May 1941 in the Bombay Industrial Disputes Act of 1938 providing for compulsory arbitration, was to avoid (i) serious outbreak of disorder or breach of public peace (ii) serious or prolonged hardship to a large section of the community and (iii) serious effects on industry and curtailment of the prospect and scope of employment as a result of continuance of an industrial dispute. It is necessary to pause here and note that these measures were meant to be temporary and were introduced merely as expedients by an alien régime against the background of national opposition to the war effort. Probably, because of the satisfactory experience gained during the War, the national Government has adopted compulsory arbitration or adjudication as part of its labour policy in regard to the settlement of labour disputes and obtained powers to intervene in every dispute if and when required. Accordingly the Bombay Industrial Relations Act of 1947 has not only retained, in Sec. 73, the three objects from the old Sec. 49A, but has added two more circumstances under which a dispute could be submitted to compulsory arbitration, viz. (i) absence of other means to settle a dispute, and (ii) requirements of the public interest. The Central Act i.e. the Industrial Disputes Act of 1947 makes no mention of the object but merely states that when an industrial dispute exists or is apprehended, the appropriate Government may, by an order in writing refer the dispute to a Tribunal for adjudication. Usually, orders referring the disputes to arbitration are accompanied by orders prohibiting strikes and lockouts, the obvious aim being the maintenance of industrial peace and thereby production. So much then for the statutory objectives in imposing arbitrations.

Let us now turn to the objective of industrial peace on which depends uninterrupted production. It is not disputed that, by and large, the adjudication approach did very well indeed during war-time to secure peace, and that the resentment felt by capital at the compulsion as well as the rising temper of labour resulting in occasional dislocations, was assuaged by easy and increasing profits, and by the conviction that the compulsion was only a temporary phase. Labour also secured continuous gains and did not have much to grouse about. There was thus mental and physical peace in industries. Cessation of war, followed immediately by the advent of Independence, brought about a radical

change in the social, political and economic spheres. Concepts of relations between capital and labour also underwent a change and the arbitration approach which was primarily introduced as an expedient came to be adopted as part of the labour policy and as a means of obtaining social justice for labour. The application of arbitration or adjudication for this purpose, however, upset all the traditions of capital and also almost roused labour to defiance when putting forward demands. The result is that the peace achieved through the imposition of arbitration and the prohibition of strikes has ceased to be the desired one.

It is customary to point out the declining figures¹ of disputes involving work-stoppages and of the man-hours lost since 1948 to indicate the improving position of the industrial peace. These however cannot provide a correct index even to the outward peace achieved, for there are no figures available of work-stoppages avoided as a result of disputes being referred to arbitration.

Year	No. of disputes	No. of workers involved	No. of man-hours lost
1939	406	409,189	4,992,795
1940	322	452,539	7,577,281
1941	359	291,054	3,330,503
1942	604	772,653	5,779,965
1943	716	525,088	2,342,287
1944	658	550,015	3,447,306
1945	820	747,530	4,054,499
1946	1,629	1,961,948	12,717,762*
1947	1,811	1,840,784	16,562,666
1948	1,259	1,059,120	7,837,173*
1949	920	685,457	6,600,595
1950	814	719,883	12,806,704
1951	1,071	691,321	3,818,928
1952	963	809,242	3,336,961

It is also not possible to know how many disputes would have really ended in strikes if arbitration was not forced on unwilling employers. Likewise separate figures are not available of work-stoppages even after reference to arbitration. There should, however be no surprise if a major percentage of man-hours lost, was in spite of imposition of arbitration. Thus the figures cannot even indicate correctly the peace, in the sense of avoidance of work-stoppages, due to arbitration. What matters most is the peace in the sense of harmony and good relations, and this, as everyone at present in touch with industrial labour knows by experience, has almost ceased to exist. Each side is worried about

¹ Industrial disputes resulting in work-stoppages since 1939 (Indian Labour Gazette, Aug 1953 issue, p. 160).

* Statistics up to 1946 relate to preparation India.

** Industrial Truce Resolution was passed in December 1947.

the intentions of the other and energies and talents which should be utilised for improving the industry itself, are being utilised to plan moves and counter-moves against one other. Such belligerent attitudes do not lead to industrial peace. True, there is no interruption in production, no wage-loss to labour, but no protagonist of arbitration would seriously contend that this peace has brought contentment to either capital or labour.

In order that industrial peace should result in all-round welfare, it must principally arise from a mutually appreciative and satisfied attitude of labour and capital; for the dissatisfaction of either, on a genuine grievance, is bound to have an adverse effect on the industry itself. First of all, capital must accept the new rôle it is called upon to play in the social and economic order as envisaged in our Constitution; labour also must realise that hard work, and hard work alone, will secure the desired advantages. Short-sighted and selfish attitudes must yield to a broader outlook, to mutual faith and confidence. Unfortunately, mutual respect, faith, etc., have been among the first casualties of compulsory arbitration. Witness, for instance, the large number of adjudications which could have been avoided if only the parties had shown some regard for one another's point of view. Even if this view be open to exception, it would not be disputed that the easy availability of arbitration has certainly been responsible, if not for emergence, then, at least for continuance, of the recalcitrant attitude of both sides. Without a change in this attitude, arbitration technique, as it stands and is being applied today, is not likely to secure that peace which industry needs for continued progress.

One of the fundamental grounds on which compulsory arbitration is objected to, is that the arbitrators or adjudicators are authorised to lay down fresh terms and conditions of employment. Commercial arbitration is always confined to the interpretation of terms actually existing between the parties, but over which differences of opinion have arisen. It has been such a success that nobody would normally think of resorting to court if it is available. In industrial arbitration, as it is in vogue today, the arbitrator has a difficult task to perform and often finds himself in the position of a lawgiver rather than law-interpreter. "If he endeavours to apply justice and fairness it may well be asked: what is justice and fairness in such a dispute except what the parties themselves are prepared to accept and work under? The industrial arbitrator is therefore usually driven to abandon the search for abstract justice and to ask himself what settlement the parties will accept, what terms will avoid an industrial stoppage, and often ends with the undignified expedient of splitting the difference.¹

Experience has shown great divergence of views among arbitra-

¹ U. S. Kirkaldy *The Spirit of Industrial Relations*, p. 56.

tors and contradictory awards have been given on important issues such as profit-sharing, retirement benefits, etc. In the absence of principles laid down in advance for the guidance of adjudicators, this was inevitable. And it was for this reason that the Royal Commission on Labour in India (1929) observed: "It seems to us that if an award is to command sufficient confidence to justify its enforcement, it must rest, like a judicial finding, on application of criteria which are accepted beforehand by the public. In other words the principles which are to guide the Tribunals must be formulated in legislation."¹ And yet, while the Labour Appellate Tribunal which came into existence in 1951 under the provisions of the Industrial Disputes (Appellate Tribunal) Act 1950 to co-ordinate the activities of the large number of Industrial Tribunals set up by the Central and Provincial Governments is still striving to bring about uniformity on important issues, influential trade unions are demanding its abolition. It would therefore appear that arbitrations have more unsettled than settled matters and there are many industries which are not yet out of the courts which they entered years ago. The cheap availability of compulsory arbitration has induced many trade unions to put forward petty as well as impossible demands. There are frequently no negotiations of even a formal character, and the litigious mentality which has developed in both parties is responsible for this. Very few lay their cards on the table at the time of conciliation, fearing that the concessions made by them would be used in arbitration to effect a midway compromise or to make an award on that line, regardless of the merits of the case. Despite the industrial law that has been made through the awards during the last decade, there is still a degree of uncertainty which discourages both the parties from making any definite stand in the negotiations or conciliation proceedings. The Trade Union officials who frequently are not sure of the support of their members to proposals which they themselves find reasonable, are obliged to put the dispute through the arbitration proceedings and make the latter a scapegoat for disappointing results. It is not a case of leaders guiding labour, but the case of labour ordering its leaders to carry out instructions, and often enough, the guiding voice is that of a militant minority. What sort of industrial peace is possible in such circumstances? What sort of relations can exist between parties who have no mutual faith and can compel each other to go to court even for trifles? The verdict of Sir Harshidhrai Divatia, a former President of the Industrial Court, in Bombay, who has spoken from experience puts a final seal on this question. He observes: "The principle of voluntary agreement or arbitration in industrial disputes is much more conducive to the improvement of industrial relations than compulsory adjudication or arbitration. It is indeed unfortunate that, although the voluntary

¹ Report, p. 346.

principle was adopted in the Bombay Industrial Disputes Act, it had been abrogated during the recent war and arbitration was made compulsory under certain circumstances. In the recently enacted Industrial Disputes Act of the Central Government, too, compulsory adjudication by the Industrial Tribunal is provided for any industrial dispute. Such compulsory measures may be necessary during the stress of war, . . . its extension to ordinary disputes in normal times is not conducive to the promotion of happy relations between employers and workers and may, in some circumstances, lead to a breach of industrial peace by mass strikes which defy the penalties of law and order."¹ So much therefore for industrial peace and good relations through compulsory arbitration or adjudication of practically every dispute.

The rôle to be played by trade unions in the maintenance of industrial peace and making industrial progress possible is now as vital as that to be played by capital itself. Trade unions which can play this rôle, however, are very few at present because the trade-union movement, despite its age of thirty years, is still in its infancy and also in a fluid state. In the twenties, the unions were described as strike committees and some describe them now as arbitration committees. Many unions have no stable basis and many have disappeared the moment arbitration failed to bring them any concessions. The growing unemployment or a serious trade depression may wipe out more. On the other hand, several are existing today solely because of the availability of arbitration. Exploitation of unions for political ends has weakened the movement in general, while the uncertain existence of a large number of individual unions has rendered its foundation shaky. The existence of outside leadership even after thirty years, though necessary, has introduced many problems not strictly germane to the movement. Witness, for example, the existence of four different all-India trade-union organisations with different ideologies, each trying to draw labour towards itself. The paradox of the situation is that each organization claims to eschew politics both from its policies and working and yet cannot work on a common platform, and what is worse is the actions that make them almost appear to be wings of the different political parties in the country. Much is rightly expected of labour in the task of achieving rapid industrialisation and hence the divided counsels of different organisations, one fears, are highly detrimental to the cause of both industry and labour. All the privileges and encouragement given to trade unions have failed to develop them on sound lines, with a few exceptions. Perhaps, like the co-operative movement, the trade-union movement being non-indigenous, is finding the root-taking process thwarted by misconceptions, misdirections and prejudices. Anyway its weakness renders it unequal to the task of entering into negotiations and collective agreements

¹ Introduction to "*The Spirit of Industrial Relations*", p. xiii.

from a position of strength. Hence reliance has come to be placed more and more on compulsory arbitration which, however, in its turn weakens the movement, by making it possible for the emergence of mushroom unions. It is significant to note that in the majority of cases, it was at the instance of labour that arbitration has been imposed on unwilling employers. Though the number of individual unions and their membership has increased considerably during the last decade, the growth does not appear to be sound and is likely to suffer seriously at the first signs of a trade depression which really provides a test for the soundness or otherwise of the movement. Whether the workers, who under the advice of labour leaders got betterment of wages and conditions of work, will willingly submit to reductions if and when these become inevitable and whether the leadership would have the courage to advise the labour to accept reductions, whether the arbitration machinery which has been so skilfully exploited, would enjoy the same esteem and respect of labour, and whether the latter would not resort to unauthorised strikes, and whether membership would dwindle, these and other questions are difficult for mere observers to answer, but those who know labour may not be inclined to take an optimistic view.

Arbitration, as it is being applied today to every issue without going into the vital principles involved, has introduced an element of uncertainty which makes planning for the development and progress of industries difficult. A reasonable degree of certainty is necessary in the factors involved to make a project successful and an industry is no exception. Industry would not mind compliance with certain labour standards fixed in advance, provided there is an assurance that there would be no change except under certain circumstances. Constant changes introduced under compulsion make the steady growth or planned progress of industries difficult, if not impossible. Hence some sort of definiteness about the major items in the field of industrial relations would be welcomed by all. Some of the field, though covered by the decisions of various Tribunals, is still in an uncertain shape and it would be desirable if general principles on important items of labour policy to be followed by employers, are laid down in advance, preferably through legislation. Capital and labour may then know what is due to each other and adjust their relations by mutual consultation. The standards may be made applicable to new enterprises by stages to enable them to build enough strength to take the burden.

Discipline is also of the utmost importance to any organisation but it is being constantly mauled. Not that the arbitrators or adjudicators have treated cases of indiscipline on the part of labour or breaches of labour standards on the part of employers leniently or less severely; in fact they have condemned such attitudes in the severest possible terms. Nevertheless, the atmosphere generated by the entire process is such that it is hardly conducive to

the maintenance of effective discipline or a feeling of confidence among workers. Sec. 33 and 33A of the Industrial Disputes Act 1947, are primarily designed for the protection of workers from any action against them by employers during adjudication proceedings. Laudable as the aims are, the sections have made punishment, even of offences proved beyond doubt, a lengthy procedure involving permission from the Tribunal. Wide variations in the interpretation of law, provision for appeals, interim injunctions from High Courts and possibly from the Supreme Court and then their decisions—all these have unsettled the entire atmosphere and one of the consequences is the slackening of discipline. Reaction of forced reinstatements cannot be obviously measured in concrete terms, but it must be disastrous when both sides have fought the issue with the conviction that each is in the right. In our economy most of the industries still have a personal character and the human reactions being what they are, the precept of 'forget and forgive' is more easily preached than practised. It would be interesting if an inquiry is instituted in some industries where reinstatements have been ordered to find out the standard of discipline prevailing before and after such orders, their effect on the morale of the management, and possibly on production. The uncertainties of the awards and restrictions on some of the elementary disciplinary measures during the adjudication proceedings, whose average duration runs into many weeks, have the effect of undermining the confidence of those who are responsible for the maintenance of discipline and there has ensued a state of helplessness and resignation among them. The reinstated employee, though triumphant, is generally apprehensive of reprisal or victimisation on fresh excuses.

▼ The purpose in emphasising these drawbacks of arbitration and adjudication is not to condemn the approach as such, but to focus attention on the shortcomings with a view to inducing remedial measures. None can gainsay the tremendous advantages secured by labour, especially by weak or ill-organised labour, which helped to bring about social justice without physical strife in which labour would generally have been worsted. At the same time it must be remembered that the easy acquisition of concessions through the agency of court has been responsible for many of the obstacles now standing in the way of good labour relations. Organised labour also benefited considerably by arbitrations, but not without loss of its former satisfactory relations with capital. The arbitration approach is also responsible for the outward peace prevailing in industry at present, though instances are not wanting when either labour or capital have declared strikes or lockouts even after their disputes were referred to arbitration. It is, however, quite apparent that the peace is not peace between contented parties; but can at best be described as a truce. Looking to the needs of the country during the war and the immediate post-independence period—a period of momentous changes in the poli-

tical, social and economic sphere—none would grieve much over what has happened. One might even claim with some justification that compulsory arbitration of industrial disputes has saved the nation from what would have otherwise been a fierce struggle on the part of labour, precipitating the country into a severe crisis. However, from the state of labour relations prevailing at present in different industries, it would appear that some modification in this approach is called for. It may perhaps be premature at this stage, when the Five Year Plan is only halfway through, and the economy is showing signs of depression leading to unemployment to effect any fundamental changes in the basic policy, but it is submitted that suitable modifications in the arbitration approach would do perhaps more good than harm. It would therefore be desirable if serious attention is paid to the drawbacks of compulsory arbitration, some of which have been noticed above, and a study of these on an all-India basis by a committee of experts in industrial psychology and labour economics would prove fruitful.

COMPILERS.

November, 1953
BOMBAY,

(Bombay Castle, 26th May 1942, No. 5907/34. Government Gazette, dated 28th May 1942, Part I, pp. No. 1899-1908).

THE GENERAL MOTORS WORKERS' UNION

AND

THE GENERAL MOTORS (INDIA) LIMITED, SEWRI, BOMBAY.

Arbitrator:—The Honourable Mr. Justice M. C. Chagla.

Counsel:—Mr. H. R. Pardiwalla, instructed by Mr. G. D. Ambekar and Mr. Saad Ali, for the Union.

Mr. M. G. R. Aitken of Messrs. Crawford Bayley & Co.,
Attorneys for the Company.

The appointment of the Arbitrator was made by Government in pursuance of the agreement arrived at between the parties to refer certain points of difference to an arbitrator to be nominated by Government.

Summary of Demands and Awards

1. A regular classification with definite minimum and maximum scale of pay, with proper grades fixed for each occupation. The following classification was settled between the parties: 1. Skilled, 2. Semi-skilled 1st class, 3. Semi-skilled 2nd class, 4. Unskilled, and 5. Coolies. Each of these five classes had a class of 'Group Leaders' attached to it. Two classes were given to Inspectors, one to those for Shell Division, and the other to the rest. In addition, Assistant Foremen and Specialists were grouped under one class.

Regarding wages, the Adjudicator considered seriatim four conditions urged by Mr. Pardiwalla as governing fixation of wages in the present case:

(1) The economic price level: at the index figure of 105, the Bombay Textile Labour Enquiry Committee had recommended Rs. 50 to Rs. 55 as normal living wage; the index figure having gone up now to 138, Mr. Pardiwalla proposed Rs. 66 as the living wage. On this the Arbitrator observed: "I think that the Bombay Textile Labour Enquiry Committee laid down the ideal which labour legislation in India should ultimately attain to. It should also be an ideal at which model employers should aim, but I do not think it would be right on my part to compel any

particular employer to conform to this ideal. The wages paid in the City of Bombay are still very far from this standard. All that I can do in giving my award is to see how far I can legitimately prevail upon the employer to come as near this standard as possible."

(2) The financial state of the Company: the profits in 1939 and 1940 were large enough and those in 1941 were designated by Mr. Pardiwalla as 'fantastic' and 'staggering'. Here the Arbitrator observed: "It is almost a universally accepted principle now that the profits are made possible by the contribution that both capital and labour make in any particular industry, and I think it is also conceded that labour has a right to share in increased profits that are made in any particular period. But the distribution of increased profits amongst workers is better achieved by the giving of an annual bonus than by a further increase in wages. Wages must be fixed on the basis of normal conditions."

(3) The trend of the industry: the Engineering industry in which the Company was engaged was a vital one in India, and also practically a monopoly of the Company in respect of the kind of work it did; hence, said Mr. Pardiwalla, the employees deserved special consideration. The Arbitrator did not contradict the principle.

(4) The average wage history of the workers, *i.e.*, what they had been earning in the past by way of (a) regular wages, (b) overtime wages, and (c) dearness allowance;

- (a) the average rate per hour for the period 1936-41 was 4.3 as., 4.5 as., 4.6 as., 4.8 as., 4.8 as., 4.9 as., and the corresponding monthly earnings were Rs. 41-2, Rs. 46-9, Rs. 41-13, Rs. 53-14, Rs. 57-10, and Rs. 62-4.
- (b) In 1940, 13½ hours' overtime was given, in addition to 45 hours' normal wages, per week. In 1941, for a period of seven months, the workers received 22½ hours' overtime per week. The present position was that the workers worked for 45 hours a week and were being paid wages at the rate of 49½ hours.
- (c) From February 1940 to November 1941, 7 per cent. of the wages was paid as dearness allowance, thereafter at a flat rate of 7 as. per day.

Mr. Pardiwalla wanted to get back the conditions that prevailed during the seven months of 1941 when overtime was 22½ hours, per week, and the dearness allowance 7% of the wages, making up the total wages of the workers Rs. 75-12-0 per month. The Arbitrator, however, did not think it reasonable to draw inferences from a particular period of abnormal conditions, when, instead of having two shifts, the same men worked the whole day and the weekly hours of work were 60, instead of 49½ as now. "It was hardly fair," said the Arbitrator, "to suggest that when the hours of work had been cut down, the employees should continue to be paid at the same rate." As to adequacy of dearness allowance

even the Government of Bombay had not recommended one that was proportionate to the increase in the cost of living. Again, owing to the new classification and re-grouping, as also the gratuity scheme and the Arbitrator's decision in respect of leave with pay, the Company was going to have a heavy financial burden put upon it. The Company had proposed certain increases, according to which a worker would be getting a total of Rs. 68-10-0 per month, which was not far from what a worker should get, viz. Rs. 71-2-0, in view of the 32 per cent. increase in the cost of living over the 1939 cost of living, when the worker had been getting only Rs. 53-14-0. The Arbitrator, therefore, made a suggestion, which was accepted by Mr. Pardiwalla, that the minimum basic wage proposed by the Company should be accepted.

The dearness allowance was to continue at the same rate as the Company had been paying, viz., at a flat rate of 7 as. per day.

As to increments, the Arbitrator awarded 4 annual increments in place of only one or two offered by the Company, and the maximum wages fixed by the Company were to be altered accordingly.

2. The demand which related to the Stores Department and the Service Garage Department was not pressed.

3. The minimum of 8 hours' work and/or wages per day, and 26 working days per month.

The Company agreed to continue the present arrangement of 45 hours' work and 49½ hours' wages, and, in any case, not to exact more than 48 hours per week. As to monthly working days, the Company gave an undertaking on the basis of normal working, to see that the workers were assured of 26 days in a month, adjusting the leave days accordingly, in consultation with the workers' representatives. If holidays exceeded 53 in any year, the workers were to get payment for the excess, up to 5 days. If the factory remained closed due to *force majeure* or technical reasons, beyond the Company's control, or on account of strikes or lock-outs, the closure was not to be considered as holidays entitling the workers to payment. The Arbitrator did not grant the Company's request to allow the Factory to be closed for about a week for the purpose of taking an inventory without making it incumbent upon it to pay the workers for those days. The Arbitrator observed: "I do not think this proposal of the Company is reasonable. The taking of an inventory is part of the business of the Company. If the Factory of the Company has to remain closed, it is no fault of the workers who are prepared to do the work. The Company can arrange so to take an inventory as not to deprive the worker of his right to receive wages for 26 days a month on the average."

4. Annual bonus of one month's pay.

This had already been paid for the year 1941, at the rate of 1/12 of the total earnings inclusive of dearness allowance; and the question in respect of the year 1942 could not be considered, as the profits had not yet been known.

5. Revision in the Company's gratuity scheme, which was as follows: (a) for 2000 hours of actual work performed during a period of continuous service, including actual overtime hours, the worker was entitled to receive from the Fund 90 hours' pay, payable at the time when the worker's services were dispensed with by the Company, and calculated on the basis of the worker's basic pay at that time, (b) the maximum benefit was not to exceed 1080 hours, (c) if a worker was leaving of his own accord, or through dismissal from just cause, he would be getting the benefit of the scheme only if he had already put in not less than 30,000 hours of work.

The revision demanded was: (1) in place of 90 hours' pay, it should be 180 hours' pay; (2) the condition of 30,000 hours should be dropped.

The Arbitrator thought the scheme basically sound, but recommended certain changes.

He retained clause (a) unchanged in spite of demand (1).

He removed clause (b), remarking: "as the Company does not pay any pension to its workers it would not be fair to fix a limit to the gratuity which a worker can earn."

He restricted the condition in (c) to causes other than ill-health or old age, the latter to be decided by the Trustees of the Gratuity Fund. He remarked in this connection: "I do not agree with Mr. Pardiwalla that no limit should be fixed before a worker becomes entitled to the benefit under the scheme although he may voluntarily leave the service of the Company. One of the main objects of a scheme like this is to ensure that workers should continue to serve their employers faithfully as long as possible, and the minimum period fixed for the earning of a gratuity serves as an incentive to workers to remain in the same service. Every scheme for Pension or Provident Fund also usually provides a minimum period of service before a person becomes entitled to receive a benefit under either the one or the other."

6. Annual leave with pay to be increased from 1 week to 3 weeks.

As the General Motors had achieved a degree of rationalization and mechanization never known in India before, the workers were put to the greatest amount of both physical and mental application; and the Arbitrator had no doubt that the work was of a very strenuous character. He therefore awarded 1 week annually during the first three years of service, and thereafter 2 weeks, the award to take effect retrospectively.

7. The Company to frame rules regarding dismissal.

The demand was not pressed in view of the Company's assurance to the Union's Secretary that the Company did not intend to be arbitrary in the dismissal of its employees and that every case would receive the fullest consideration of the Labour Relations Officer, and of the Production Department. Yet as dismissal had now assumed greater importance than ever in view of clause (c) of the Gratuity scheme above, it was advisable that a decision of dismissal was such as was readily acceptable to the workers. Of course, a worker had his redress in the ordinary Court of Law, but, as Mr. Pardiwalla had argued, and as the report of the Bombay Textile Labour Enquiry Committee had expressed, "for such matters, the creation of a speedier and more conclusive machinery was advisable." The Arbitrator, therefore, expressed the opinion, with the hope that the parties would act upon it, that in the event of the Labour Relation Officer's decision not being acceptable to the employees concerned or to the Union, the matter should be referred to the arbitration of the Commissioner of Labour or some one nominated by him, or to a Joint Board consisting of two representatives each of the employees and of the Company, with an independent chairman nominated by these four persons.

8. Establishment of a Co-operative Credit Society.

The parties had agreed upon a scheme and no award was called for.

9. Full wages to the workers during the period of strike, *i.e.*, from 9th March to 5th April 1942.

The Arbitrator awarded $\frac{3}{4}$ of the wages up to 22nd March.

In granting the major part, yet at the same time refusing a part, however small, the Arbitrator gave effect to his opinion that the workers were, to that extent, right and wrong respectively, as against the Company and the Law. He traced the history of the dispute ever since the first strike had taken place two years before, in February 1940, and showed how the Company, by their delay or indifference or severity, had given cause to the workers to feel that their demands could not be satisfied unless they had recourse to the drastic step of a strike, which step they took on the 9th of March. A couple of days before this, the Government of India had declared every strike without proper notice as illegal. The strikers were, therefore, committing a breach of the law. Yet when they realized this, on the 11th of March, they offered to go back to work and were prepared to refer the dispute to arbitration, on the only condition that the Company did not victimize, and the Government did not prosecute, any one of them. This attitude of the strikers was quite fair; and the Commissioner for Labour assured them that in that case they would not be prosecuted. It was the Company who refused to give the undertaking and thus

put itself in the wrong. The Company wanted to dismiss certain people suspected of sabotage. Even this question of the dismissal of guilty workers, the Union was prepared to refer to arbitration. But the Company refused to accede even to this. Then on the 21st March the Company announced that it was prepared to take back all those who would present themselves for work on 23rd March. From 23rd onwards, therefore, the Company stood on correct ground. And if, thereafter, up to 5th April, the strikers refused to go to work unless their demands were substantially satisfied, whatever the moral of it, legally they were wrong, and therefore, had no right to any payment from 23rd March to 5th April (they went to work on the 6th April under an agreement entered into by the parties on the 4th April). The Arbitrator's reason for cutting $\frac{1}{4}$ of the workers' wages was that "however just their demand might have been, they were not justified in going to strike contrary to the provisions of the Law, and they must be penalised for their act."

(*Bombay Castle, 23-10-45, No. 8951/34-1 Government Gazette 1st Nov. 1945, pp. 2660 to 2668*).

FORD MOTOR COMPANY OF INDIA LTD.

AND

ITS EMPLOYEES

Adjudicator:—K. B. Wassoodew Esq., (Retired Judge, High Court, Bombay).

Counsel:—Sir Jamshedji B. Kanga, instructed by Mr. M. G. R. Aitken of Messrs. Crawford Bayley & Co., Solicitors, and Mr. B. O. Stevenson, Managing Director, for the Ford Motor Company of India Ltd.

Mr. K. T. Sule, Advocate, with Mr. V. Chaudhari, General Secretary, Bombay Iron and Steel Workers' Union, for the employees of the company.

A W A R D

By Government Order, Political and Services Department, No. 8951/34, dated the 25th July 1945, issued under sub-rule (1) of

rule 81-A of the Defence of India Rules, read with Government of India, Department of Labour, Notification No. L. 3005, dated the 20th May 1942, I was appointed to adjudicate in the trade dispute between the Ford Motor Company of India Ltd., Bombay (hereinafter referred to as "the company") and its employees. Under the same Order, I was to exercise such powers as are conferred on, and follow such procedure as is prescribed for, a Board of Conciliation under the Trade Disputes Act, 1929, and the Bombay Trade Disputes Rules, 1930.

2. The matters in dispute referred to in the above Government Order are as follows:

(1) "What notice, if any, or how many days' wages in lieu thereof, should be given to the workers before discharge from service?

(2) Should any standing orders be framed requiring the management to give a worker against whom any charge is levelled adequate opportunity to explain his conduct, and if so what?

(3) Does the existing practice of granting the annual leave with pay to workers at one and the same time require any change, and if so in what respect?

(4) Do the existing rates of wages require any revision and if so how?

(5) Should a 'service fund' be started and if so on what terms and conditions?

(6) Should the existing Provident Fund Scheme be modified on the lines of the draft model Provident Fund Rules for industrial employees framed by the Government of India? Should provision also be made in the Rules for giving to a worker part of his contribution when he is in need of it?

(7) What standing orders, if any, should be framed with regard to the grant of casual leave?

(8) Should the workers be paid full day's wage for half day working on Saturdays?

(9) Should Mr. Kamat (Ticket No. 31 from the wiring department) be reinstated and if so on what terms and conditions?

(10) Should the Bombay Iron and Steel Workers' Union (Red Flag), Bombay, be recognised by the management?

(11) Are injured workers required to remain in the factory for the rest of the day as alleged by the Union? If so, should the practice be continued?"

3. The usual notices to the parties to file their respective written statements were issued on 2nd August 1945. The Bombay Iron and Steel Workers' Union (hereinafter referred to as "the Union") filed its claim statement on 14th August 1945, on behalf of the employees of the company. The company filed its written reply on 1st September 1945, through its attorneys Messrs. Crawford Bayley & Co. The hearing of the case commenced on

24th September 1945 and continued on the 25th September. On 26th I visited the factories of the company at Charni Road and Parel. The hearing then continued on 27th and 28th September and 1st October, and terminated on 2nd October 1945, when the parties amicably settled six out of the eleven matters in dispute and signed before me the memorandum of settlement. The other demands upon which settlement was not found possible have been left for my decision.

4. In order to appreciate the background of the dispute in question, I shall state in brief the nature of the work and the conditions of employment in the company's factories which are situated at Charni Road (Swadeshi Mills' compound) and Parel. The Ford Motor Company of India Ltd., is a subsidiary venture of the Ford Motor Company of Canada, and was incorporated, I am told, in or about 1926 in Bombay. It was then a purely sales organization. The assembling work was undertaken in 1931. Its present activity consists principally of assembling motor trucks of various sizes. Since the war, owing to large Government orders, there has been an enormous increase in the volume of work in the factories. The company has now in its employment nearly 1,400 workmen, as against the normal strength of about 200 before the war. Most of the employees are mechanics, skilled and semi-skilled artisans, and coolies. These have been classified according to their jobs and the pay scales are arranged according to that classification. In the lowest classification are included car washers, cleaners, coolies, and sweepers. They are permitted according to their qualifications and competence to go higher in the mechanical branch as parts handlers, repairmen's helpers and, still higher, as assemblers, battery-men, brush painters, case makers, and the like. Some have risen even to higher wage groups and work as welders, carpenters, compressor attendants, electric crane drivers and lathe operators. In the highest paid wage group are Crawler Crane drivers. All these employees receive wages at the rate of certain annas per hour, the lowest rate being $2\frac{1}{2}$ annas rising in 4 years to $3\frac{1}{2}$ annas per hour by an annual increment of $\frac{1}{4}$ anna per hour. The highest rate paid to employees is annas seven per hour, which, calculated on an average working day of 8 hours, works out to Rs. 3-8-0 per day. The factory gives half holiday on Saturdays but no pay is given for the holiday period. The factory is closed on all Sundays and Public Holidays. It is the special feature of this company that it grants two work weeks' (89 hours) vacation with pay in a year. But that vacation depends upon the exigencies of service. The period of vacation is made to coincide with the annual cleaning of the machinery and other electric process units and the general stock-taking in the factories.

5. The relationship between the company and its employees

is determined by a written agreement of service. That agreement is printed in English at the back of the "Employment Record Card" (Ex. 15), maintained for registering the name of the employee, the date of employment, the wage rate, and the job on which he is employed. It is material to note that the first stipulation in the service agreement gives liberty to the employee to determine the employment at the end of any day on a notice in writing given by him to the company. Likewise the company reserves to itself the right to determine the employment of the employee at the end of any day without notice or salary in lieu thereof. The employee has to sign that agreement on the date of his joining the company's service in the presence of an attesting witness. No separate standing orders have been framed regarding leave, conduct, punishment, discharge, or dismissal of the employee.

6. The demands in dispute in these proceedings are made on behalf of the employees of the company working on the plants in the factories referred to in the above job groups. The watchmen are also included in the employees making the demands, but not the members of the clerical establishment.

7. The demands are nearly 11 in number. It is gratifying to note that demands Nos. 2, 3, 4, 7, 10 and 11, referred to above, have been amicably settled, through the intervention of Sir Jamshedji B. Kanga, counsel for the company and Mr. Sule, Advocate, representing the employees and their Union. Mr. Stevenson, the Managing Director of the company, was most conciliatory in certain matters. The demands which are left to me for decision chiefly relate to disciplinary measures and improvement in the provident fund rules, gratuity, leave-pay, etc., upon which divergence of views was noticeable. Sir Jamshedji thought that having regard to the status of the company and its future, any commitment on some of these matters at this stage would not be advisable and any concession on the part of the company as to others would be regarded as a weakness and might undermine discipline. I shall, therefore, deal seriatim with the disputes which are left to my adjudication.

8. The first dispute with which I have to deal relates to the question as to whether any notice before discharge from service is necessary, and how many days' wages in lieu thereof should be given to the workers. That point arises upon the first clause in the service agreement to which a brief reference has already been made above. That clause is as follows:

"I may determine the employment at the end of any day on notice in writing given by me to the company and that the company may determine the employment at the end of any day without notice or salary in lieu thereof."

Apart from the mutuality of rights, in my opinion, that clause is detrimental to the employees' interests. An Indian factory worker is generally improvident and lives from hand to mouth. The jural relation created by the agreement of service makes the worker's tenure extremely precarious and leaves him completely at the mercy of the employer, who for no assignable reason is permitted to get rid of him and leave him stranded with perhaps no immediate prospect of employment elsewhere and without sufficient wherewithal to maintain himself till he finds a new job. Such a state of uncertainty and insecurity of service requires, in my opinion, to be remedied. In other employments, particularly in the textile industry, the hardship involved in an unwarranted discharge is mitigated by the rule of notice or payment of wages for a certain period in lieu of notice. The company's objection to adopt such a rule was that having provided provident fund to the employees they should not be mulcted in an additional loss if sudden cessation of Government orders required drastic retrenchment. It was prepared to consider a provision for a short notice period provided it applied to old workers only, that is, those with more than one year's service to their credit. The basic idea of giving notice to a worker is to give him sufficient and reasonable time to seek another employment elsewhere and, if possible, to reduce the chances of starvation. I think a reasonable period of notice must be given to every permanent employee. The probationary workers need no special treatment. At the same time, in my opinion, the probationary period need not be prolonged beyond three months. During that period, the company can make up its mind whether the worker should be continued or discharged. Therefore, in my opinion, a notice is necessary to be given to every permanent worker or employee before discharge from service and a rule shall be adopted by the company in respect to the giving of such notice or the payment of wages in lieu thereof in the following form:

"The employment of any permanent worker, that is, a worker who has put in three months' continuous service in the company, may be terminated by 14 days' notice or by the payment of 13 days' wages in lieu of notice. An employee desirous of leaving the company's service, shall give a like notice of 14 days to the department head of the company before the date of his leaving service. The 13 days' wages in lieu of notice to the worker shall be computed on the average daily earnings of such worker for the days he actually worked during the previous wage period. The reason for the termination of the service by the company shall be recorded in writing and shall be communicated to the worker. Such notice will be given only to the employees or workers who are discharged from service for causes other than misconduct, as defined in the rules referred to in the memorandum of settlement (Annexure 'A') attached hereto."

My award on the first demand in dispute is in terms of the above rule.

9. The second item in dispute, which corresponds to issue No. 5 in the Government Order, upon which my adjudication is sought by the parties, is as follows:

"Should a 'service fund' be started and if so on what terms and conditions?"

The basis underlying this demand is set out in the claim statement of the Union under that head. It is said that a company of the name and fame as the Ford's should institute a "service fund" for workers, to be paid to them at the time of their discontinuation or retirement, and that it should be one month's salary for every completed year of service. In other words the claim is for gratuity upon discharge or retirement. It has been pointed out that upon discharge of a worker for unavoidable causes a compassionate allowance is generally given in certain industries where no other provision for the future is made. In this company a Provident Fund Scheme has been instituted and it generously provides for the company's contribution of 10 per cent., of the wages of the worker, so that in a period of 6 to 7 years, with the accumulation of interest, a fairly decent sum stands to the credit of a thrifty employee. In these circumstances, I do not think it is fair that the company should be called upon to make an additional contribution in the shape of gratuity. The expansion of the company's activity is only temporary due to war orders and when general retrenchment is in contemplation the insistence on the making of any additional benefit provision at this stage is not proper. I, therefore, reject this demand.

10. The third disputed demand involved in issue No. 6 in the Government Order, is as follows:

"Should the existing provident fund scheme be modified on the lines of the draft model Provident Fund Rules for Industrial Employees framed by the Government of India? Should provision also be made in the Rules for giving to a worker part of his contribution when he is in need of it?"

The company has instituted the Employees' Provident Fund for the benefit of its employees generally and has framed Rules for its administration. The important modifications suggested in the Rules may be summarised as follows:

(1) That the membership of the fund is not necessarily open to all employees and must not be dependent, as may follow from Rule 17, upon the whim and pleasure of the trustees of the fund.

(2) That the members or the workers should have an effective voice in the management of the fund, and that therefore the two Member Trustees of the fund should be elected by the

employees themselves and not nominated as provided in Rule 10 by the company's directors.

(3) That the members should be allowed to obtain loans from their contributions for their personal necessity upon an undertaking to return them and that a suitable provision should be made in the existing rules in that respect.

(4) That the forfeiture clause of the company's contribution, upon dismissal, resignation and insolvency, provided for in Rule 29, should be toned down according to the model rules relating to provident fund so that the loss of the company's contribution will be reduced according to the length of the member's service in the company.

The first modification sought affects rule 17 of the company's Provident Fund Rules, which reads as follows:

17. Every Employee who has completed a period of three months' continuous employment with Company or Other Company shall be eligible for membership in the Fund, provided nevertheless that the Trustees may, without assigning any reason therefore, refuse membership to any Employee.

Any Member whose employment is terminated for whatever cause and who subsequently re-enters the employment of Company and becomes again a Member of the Fund shall not be entitled to reckon his previous employment with Company as employment for the purpose of membership of the Fund.

II. The proviso to the first part of the rule places in the hands of the Trustees wide powers of refusal to admit an employee as member, which, if abused, may result in rendering the benefits of the scheme nugatory. Sir Jamshedji Kanga stated that the object of rule 17 was to emphasize the fact that membership was a privilege and not a right. If the institution of the Fund was intended primarily for the benefit of the employees, I do not think there is any necessity for emphasizing the privilege. On the contrary, it is desirable to emphasize the obligation to become members if the benefit or amenity is intended to be real. I would, therefore, delete the proviso to the first clause of rule 17.

12. Rule 10 is the next in order which was subjected to comment. It is said that although rule 10 makes provision for the representation of members on the Board of Trustees, that supposed representation is frustrated by the manner of appointment of Member Trustees by the Board of Directors of the company and that the will of the employees or members in the matter of appointment of such Trustees should be expressed by an open election. There is no instance cited of any real injustice done by the Member Trustee or Trustees. In view of the general state of literacy and sense of responsibility among the working classes in this country, I do not think the time is opportune for introducing an innovation.

13. It was next urged that provision should be made in the rules for withdrawal of the contribution made by the members for their personal necessity upon an undertaking to return it. In that connection the company has pointed out that there is a Co-operative Credit institution known as the "Ford India Employees Co-operative Credit Society" and that its rules make ample provision for giving loans to the members of the society, and that the society can meet all the requirements of the employees in that respect. I agree that the Credit Society will be able to satisfy the workers' demands for loans. Moreover I do not think that the principle of taking advances from Provident Fund contributions should be encouraged.

14. The rule upon which considerable controversy was raised is Rule 29. It is as follows:

29. Any Member—

(a) who shall be dismissed from the employ of Company by reason of misconduct (of which the Board shall be the sole judge), or

(b) who shall voluntarily retire from the employ of Company before having completed ten years' continuous employment with Company or jointly with Company and an Other Company, or

(c) who shall become insolvent,
shall be entitled to receive only the amount recorded in the account of such former Member or Member as the case may be in the books of the Fund as at the date of such termination of employment or insolvency in respect to the contributions of such former Member or Member and the Net Profit thereon and in respect to the balance remaining in such account shall be *ipso facto* forfeited to the Fund to be dealt with as herein-after provided in the Rules.

'Misconduct' for the purpose of the Rules shall include the unauthorised disclosure or divulgement to any person whomsoever of any information relating to Company or to customers of Company or any trade secrets of which a Member shall become possessed while in the employ of the company."

15. Sir Jamshedji B. Kanga strenuously urged the retention of the rule on the ground that any alteration in the rule would undermine discipline. I had occasion in another case to consider an analogous provision which deprived a member of the employer's contribution to the fund upon a single lapse on the part of the member in spite of his long, approved and meritorious service. I have had there expressed the view that a provident fund scheme must be regarded as part of the service amenities and benefits to which an employee looks forward to at the time of his employment, and, therefore, becomes part and parcel of his service tenure. The deprivation of that benefit could not be made to depend, after a certain length of approved service,

upon the will of the employer. In other words the payment of the employer's contribution should be less dependent on chance or use of discretion, in the event of discharge, resignation or dismissal of an old employee. I had in that case approved the provisions in that respect in the draft Model Rules relating to Provident Fund for Industrial Employees, approved by the Tripartite Labour Conference in 1943, and the Standing Labour Committee at New Delhi in 1944. Rule 12 (2) of those Rules is to the following effect:

12 (2) If any subscriber is dismissed from service for serious misconduct, or resigns or leaves his employment at his own request otherwise than on medical grounds, or if any voluntary subscriber while remaining in his employment discontinues his subscriptions to the Fund, the Board may direct that deductions shall be made from the amount paid into the subscriber's account by the employer under rule 8 (including interest) in accordance with the following scale:

(a) Subscribers of less than		
3 years' standing	...	100 per cent.
(b) Subscribers of 3 but less than		
6 years' standing	...	50 per cent.
(c) Subscribers of 6 but less than		
9 years' standing	...	25 per cent.
(d) Subscribers of 9 or more		
years' standing	...	Nil.

The chief merit of that rule is that it ensures to the subscriber a definite percentage of the employee's contribution after certain years of service and secures stability of service to the latter, for, there is an inducement to continue at least for 9 years in service without giving any cause for disciplinary action. It is thus mutually beneficial. To the worker it gives a feeling of security and certainty of gaining—in his old age and retirement—what he hoped to gain under the benefit scheme. I am not impressed by the argument that under the Model Rules after a period of service the employee would become defiant, as if they set a premium on impudence. I would, therefore, adopt that rule with some verbal alterations in lieu of rule 29 as in Annexure C. I do not think there is any necessity to amend rule 30 in consequence of the alteration in rule 29. Under rule 30, notwithstanding the altered rule 29, power would be reserved to the Trustees to condone forfeiture of a part or whole of the company's contribution where the case is not covered by the new rule, except that in clause (b) for the word 'ten', the word 'nine' shall be substituted. The provisions of rule 33 would always be necessary.

At one time it was suggested that the minimum contribution provided for in the present rule 22 is inadequate. But Mr. Sule, in view of the statistics supplied by the company, did not press his contention in this respect.

16. I turn now to the consideration of the next demand involved in dispute No. 8 in the Government Order. The point is whether the employees should be paid full day's wages for half day's work done on Saturdays. In other words whether for short Saturdays the workers should be paid the average of a day's wage. It is necessary to remember that on Saturdays the factory is closed at 1 o'clock after $4\frac{1}{2}$ hours' work instead of 8 hours'. Those who work for more than $4\frac{1}{2}$ hours on Saturdays get overtime at the rate of $1\frac{1}{2}$ times the hourly wage-rate of the worker without any dearness allowance. Sir Jamshedji B. Kanga offered to work the factory for the whole period on Saturdays to meet the workers' objection that there are too many compulsory holidays without pay. But that offer was not acceptable, first because a large number of workers get overtime on Saturdays which is more than the average hourly rate and secondly because there might be greater unemployment according to the present conditions. Now the workers cannot have it both ways. They cannot have full day's pay for short Saturdays and also overtime for those who work for more than $4\frac{1}{2}$ hours on Saturdays. Several institutions were named in which, I was told, full wage was paid for short Saturdays. These are (1) R. I. N. Dockyard, (2) Bombay Port Trust, (3) Bombay Garage, (4) National Radio Engineering Co., (5) Tata Air Lines, (6) Mazgaon Dock, and (7) Mackinon Mackenzie. Reliance was placed on the Wage Census Report, Part I, First Report, page 32, where names of companies paying full day's wage for short Saturdays are mentioned. On the other hand the company has relied upon the reduced wages paid for short Saturdays in General Motors in support of the company's practice, as it is an allied and similar concern. Now the obvious motive underlying the demand is to secure an increase in the number of holidays with full pay. It may be that certain companies do pay full wage for short Saturdays; but that question must ultimately depend upon the number of holidays with pay which they allow their employees to enjoy during the entire year. In this company full two work weeks (89 hours) are given as holidays with pay during the year. That is a fairly generous leave rule. Even under the Factories (Amendment) Act of 1945, a provision for lesser number of holidays has been made. It is not stated that same number of holidays with pay as in this company are provided by the other companies who pay full day's wage on short Saturdays. I do not think any case has been made out to my satisfaction for granting full day's wage on short Saturdays. I, therefore, reject the demand.

17. Then there remains one more demand in dispute, which is No. 9 in the Government Order, relating to the question of reinstatement of one Mr. Kamat, an employee of the company. The question is thus formulated:

Should Mr. Kamat (Ticket No. 31 from the wiring department) be reinstated and if so on what terms and conditions?

The first point to be considered is whether Mr. Kamat was discharged on 7th June 1945 for just and reasonable cause. Mr. Kamat had been working in this factory since May 1941, that is nearly four years before his discharge. During that interval he was reputed to be a good worker. He gradually rose from a low grade to the grade of annas 5 per hour that is Rs. 2-8-0 a day. According to his statement, he was an assembler and fitted coils and condensers to motor car engines. No punishment except one suspension for smoking in December 1942 was awarded to him. The ostensible reason for his discharge according to the discharge order recorded against him (Ex. 17) is as follows: "laid off under reorganization." That was apparently the recommendation of the branch superintendent Mr. Ernest Mitson which was accepted without inquiry by his superior Mr. Miller. On the same day his pay was given to Mr. Kamat and also the provident fund in the amount of Rs. 163. At the time of his discharge, it may be noted, there were conciliation proceedings pending between the parties before the Commissioner of Labour and it is the case of the employees that inasmuch as Mr. Kamat was an active worker of his Trade Union, he has been victimized by the management. On the other hand it is stated on behalf of the company by Sir Jamshedji Kanga that Mr. Kamat was found smoking in the lavatory by Mr. Mitson on the day in question and having thus committed a breach of the order prohibiting smoking in any part of the premises of the factory which was strictly enforced on account of inflammable material stacked in it, a serious view of Mr. Kamat's act was taken and he was dismissed. It is said that notices have been pasted on the notice board in English and in the vernaculars and also in the lavatories warning employees that they would be liable for summary dismissal for smoking in the premises. Mr. Kamat has maintained that on the day in question he was not smoking there and that the charge against him is not true. There are two stories before me, the story of Mr. Mitson that he was smoking and the story of Mr. Kamat to the contrary. Ordinarily I should have accepted Mr. Mitson's word against that of his subordinate. But the evidence of Mr. Mitson is not borne out by his own remark in the discharge order. Mr. Mitson's explanation for the inconsistency is that his intention in making an untrue record of Mr. Kamat's discharge was to permit Mr. Kamat, who was an old and a good worker, to draw his full provident fund, for otherwise, by the loss of employment on account of misconduct, he would have forfeited the company's contribution. Now that object could have been gained without making a false record by recommending to the Trustees under rule 30 for the grant to Mr. Kamat of his full contribution on account of the extenuating circumstances. There is, therefore, no reasonable justification for

resorting to the alleged circuitous device. In the circumstances it is difficult to rely implicitly on Mr. Mitson's word.

18. But my attention has been drawn to a remark upon the back of the discharge order to the following effect: "smoking in the lavatory at 10-30 (a.m.) on 7th June 1945." That remark has not been initialled nor dated, although Mr. Mitson says that it is his handwriting, and was made simultaneously with the contrary observation in the main record. Now such a remark would obviously have defeated the object of his recommendation if the Trustees who had to consider the question of granting the provident fund had persued that remark. No Trustee has been examined to say whether they did so or not. That is one more circumstance which adds to the difficulty of appreciating the true circumstances in which Mr. Kamat was "laid off". If official inquiry were formally held its record would have been confirmatory of the reason assigned. But there were no standing orders requiring such inquiry and, therefore, no formal inquiry was held. In this particular instance Mr. Mitson was himself the judge and witness. His superior, Mr. Miller, to whom he made the recommendation, did not care to make inquiries as to whether the alleged offence was committed. The rules of natural justice were completely ignored. Mr. Mitson says that he privately saw his superior and told him what he had seen and that was sufficient for Mr. Miller to discharge Mr. Kamat. Mr. Miller has not been examined to corroborate Mr. Mitson. The latter has stated that the true reason for the discharge of Mr. Kamat was recorded at the back of the order to remind him thereof if Mr. Kamat applied later for readmission. That is an explanation which I am not prepared to accept as satisfactory. Unquestionably smoking on the premises could rightly be treated as a serious misconduct but before a drastic step like dismissal was taken some formal inquiry was necessary. According to Mr. Kamat, most people are in the habit of smoking in the lavatory and that he too sometimes smoked there. Although what others did would not be a palliative, his own admission could not equally be made the foundation for an order of dismissal for the specific accusation of breach of order on the day in question. One Mr. Mehta, a clerk of the company, was examined to prove the confession of Mr. Kamat implied from his conduct in not objecting to the action taken against him. Such conduct on the part of an employee when he is confronted by an actual order of discharge is capable of explanation upon his innocence also. I am, therefore, not prepared to condemn Mr. Kamat on the charge of misconduct on the evidence before me.

19. Sir Jamshedji Kanga has urged that even if the company were unable to substantiate the alleged misconduct, it was within its rights in summarily discharging Mr. Kamat, by

reason of the first clause of the service agreement whereunder the company could terminate the employment without notice or without any pay in lieu of notice. It is true that a reasonable notice would be necessary only in the absence of a special contract dispensing with notice. The question, therefore, arises whether Mr. Kamat had entered into such a contract with full knowledge of its implications. Now the service agreement (Ex. 15) is in English. Mr. Kamat says that he does not understand English and the terms of his agreement were not explained to him. The only person who could have thrown light on the point was one Mr. Chalam who was supposed to have attested Mr. Kamat's signature. Mr. Chalam has not been examined. On the other hand there is evidence of the company's clerk, one Mr. Anant Mayekar, to show that Mr. Kamat asked him to explain the contract terms when his signature on the duplicate contract form was obtained by him. Mr. Mayekar declined to oblige Mr. Kamat because the latter had signed the original. In the circumstances there is no reason to discredit Mr. Kamat's statement that the terms of the contract were neither understood nor explained to him.

20. In the result it must be assumed that there was no special contract dispensing with reasonable notice of termination of service. That being so, reasonable notice should have been given to Mr. Kamat and the formal procedure for discharge followed. I tried to persuade the company through its counsel to agree to take back Mr. Kamat but it seemed that the company was advised that the effect of taking him back would be to undermine discipline. I could not consider the alternative and the more usual and appropriate remedy open to an employee against his wrongful discharge, namely to treat the contract as rescinded and claim damages for the pecuniary loss resulting from the wrongful termination of his service, as that question does not arise upon the demand as formulated in the Government Order. In the circumstances my award on demand No. 9 is that Mr. Kamat should be reinstated.

21. On the question of terms and conditions of such reinstatement my award is that he should be reinstated on the same pay which was paid to him at the time of his discharge. I do not direct payment of any compensation for loss due to unemployment as Mr. Kamat made no attempt to seek employment elsewhere after his discharge in order to minimise the loss to him.

22. On the other demands Nos. 2, 3, 4, 7, 10 and 11 the parties have come to an amicable settlement. The memorandum of settlement which has been appended to this award as Annexure "A" has been duly signed before me by the parties

and their representatives. I, therefore, award that that agreement should be given effect to by the parties. On the other demands my award is as follows:

DEMAND No. 1.—14 days' notice or 13 days' pay in lieu of notice shall be given to the permanent workers who have completed three months' continuous service before discharge, as stated in the Rule Annexure " B ", which should be adopted by the company with effect from the date on which this award is published in the *Bombay Government Gazette*.

DEMAND No. 5.—" Service fund " should not be started. Second part of the question does not therefore arise.

DEMAND No. 6.—The existing provident fund scheme shall be modified in certain respects on the lines of the draft Model Provident Fund Rules for Industrial Workers in the manner stated in paragraphs 10 to 15 above and Annexure " C ", subject to the sanction of the Income-tax authorities under the provisions of Chapter IX-A of the Indian Income-tax Act, 1922, as amended by the Indian Income-tax (Provident Fund Relief) Act, 1929.

DEMAND No. 8.—The workers should not be paid full day's wages for half day working on Saturdays.

DEMAND No. 9.—Mr. Kamat should be reinstated on the same pay which he earned before his discharge.

(Signed) K. B. WASSODEW,
Adjudicator.

Bombay, 13th October, 1945.

ANNEXURE " A "

In the matter of the trade dispute between the Ford Motor Company of India Ltd., Bombay, and its employees.

MEMORANDUM OF SETTLEMENT

ISSUES

- No. 1. *What notice, if any, or how many days' wages in lieu thereof, should be given to the workers before discharge from service?*
- No. 2. *Should any standing orders be framed requiring the management to give a worker against whom any charge is levelled adequate opportunity to explain his conduct, and if so what?*

TERMS OF SETTLEMENT

- No. 1.* It is agreed that this dispute is left to the decision of the learned Adjudicator.
- No. 2.* (i) (a) An employee may be dismissed by the Department Head without notice or any compensation in lieu of notice if he is found guilty of misconduct.
- (b) No order of dismissal for misconduct shall be made unless the employee concerned is informed in writing of the alleged misconduct and is given an opportunity to explain the circumstances alleged against him and to tender the evidence of his witnesses, if any.
- (c) In awarding punishment under this rule, the Department Head shall take into account the gravity of the misconduct, the previous record, if any, of the employee, and any other extenuating or aggravating circumstances that may exist.
- (d) A copy of the order made by the Department Head shall be supplied to the employee concerned.
- (ii) The following acts or omissions will be treated as misconduct:
- (a) Wilful insubordination or disobedience whether alone or in combination with another or others to any lawful and reasonable orders of a superior.
- (b) Participating in an illegal strike.
- (c) Inciting any workman to an illegal strike.
- (d) Theft, fraud, or dishonesty in connection with the Company's business or property or on the Company's premises.
- (e) Taking or giving bribes or any illegal gratification whatsoever.
- (f) Habitual absence without leave or absence without leave for more than ten consecutive days.
- (g) Habitual late attendance.
- (h) Collection of any moneys within the Company's premises for purposes not sanctioned by the Company.
- (i) Drunkenness or riotous or disorderly behaviour during working hours or any act subversive of discipline or efficiency.
- (j) Habitual negligence or neglect of work.
- (k) Malingering.
- (l) Habitual breach of any rules or instructions for the maintenance and running of any department or maintenance of cleanliness.
- (m) Smoking in the prohibited areas of the Company's premises.
- (n) Idling or sleeping on duty.
- (o) Engaging in trade within the Company's premises.
- (p) Entering or leaving or attempting to enter or leave the Company's premises except by gates provided for the purpose.
- (q) Wilful damage to work in progress or to any property of the Company.

- (r) Interference with any safety device installed in the Company's premises.
- (s) Distributing or exhibiting in or on the Company's premises handbills, pamphlets or posters without the previous sanction of the Company.
- (t) Absence without leave or without sufficient cause from appointed work in the works.
- (iii) An appeal within 10 days from the decision of the Department Head shall lie to the Factory Manager.

No. 3. Does the existing practice of granting the annual leave with pay to workers at one and the same time require any change, and if so in what respect?

TERMS OF SETTLEMENT

An employee who according to the Rules and practice of the Company was entitled to take leave with pay for two work weeks (89 hours) in 1945 may, if he was prevented by the exigencies of the Company from taking such leave before 31st December 1945, avail himself of that leave as and when he requires it in the year 1946, subject to the exigencies of the Company. That the said leave shall be in addition to the leave with pay which the employee would be entitled to take in pursuance of the provisions of the Factories Amendment Act of 1945, and any rules that may be made thereunder. The Company agrees that the leave to be granted under the said Factories Amendment Act, shall not be less than the period of two work weeks (89 hours) and will be granted according to the convenience of the employee entitled to it provided that the taking of such leave as and when required by the employee shall be in consonance with the provisions of the Factories Amendment Act, 1945, and the rules that may be made thereunder.

No. 4. Do the existing rates of wages require any revision and if so, how?

TERMS OF SETTLEMENT

In view of the fact that the Company has agreed to adopt the following revised scale of emergency allowance, the employees of the Company do not press this demand and they withdraw it:

To employees receiving under Millowners' scale for textile
Rs. 45 p.m. as wages for regular time (exclusive of over-
time). workers in the City of Bombay.

- | | |
|--|---|
| <p>To employees receiving Rs. 45 to Rs. 59-15-0 p.m. as wages for regular time (excluding overtime).</p> <p>To employees receiving Rs. 60 to Rs. 74-15-0 p.m. as wages for regular time (excluding overtime).</p> <p>To employees receiving Rs. 75 to Rs. 89-15-0 p.m. as wages for regular time (exclusive of overtime).</p> <p>To employees receiving Rs. 90 to Rs. 119-15-0 p.m. as wages for regular time (excluding overtime).</p> <p>To employees receiving Rs. 120 to Rs. 149-15-0 p.m. as wages for regular time (excluding overtime).</p> | <p>Millowners' scale or 60 per cent. of the amount representing earnings on regular time (not overtime), whichever is higher.</p> <p>55 per cent. of the amount representing earnings on regular time (not overtime).</p> <p>50 per cent. of the amount representing earnings on regular time (not overtime).</p> <p>40 per cent. of the amount representing earnings on regular time (not overtime).</p> <p>35 per cent. of the amount representing earnings on regular time (not overtime).</p> |
|--|---|

This scale will be given effect to from 1st August 1945 and will be maintained for a period of six months, that is, till 31st January 1946. Thereafter the same may be revised according to the variations in the scale of dearness allowance paid from month to month by the mills in the City of Bombay on the basis of the rise or fall of the cost of living index number. The first two items which are according to the textile scale are to fluctuate according to that scale during the said six months. The arrears of emergency allowance calculated according to the above scale shall be paid on or before 1st November 1945.

No. 5. *Should a "Service Fund" be started and, if so, on what terms and conditions?*

TERMS OF SETTLEMENT

It is agreed that this question be left to the decision of the learned Adjudicator.

No. 6. *Should the existing Provident Fund Scheme be modified on the lines of the draft model Provident Fund Rules for Industrial employees framed by the Government of India? Should provision also be made in the Rules for giving to a worker part of his contribution when he is in need of it?*

TERMS OF SETTLEMENT

It is agreed that this question be left to the decision of the learned Adjudicator.

No. 7. *What standing orders, if any, should be framed with regard to the grant of causal leave?*

TERMS OF SETTLEMENT

An employee of the Company who is on the permanent register shall be entitled to casual leave without pay for a period not exceeding 10 days in the aggregate in each calendar year. The grant of such leave shall depend on the exigencies of the Company's service.

An employee who desires to obtain leave of absence without pay under this rule shall apply to his Department Head. It shall be the duty of the Department Head to make orders on such application within four days of the making of such application, provided that if the leave applied for is of an urgent nature, i.e., to commence on the day of the application, or within three days thereafter, the orders of the Department Head shall be made without any delay.

Where applying for previous permission is not possible, the employee must send a written application stating the circumstances, within 7 days of his absence. Continuous absence for 10 consecutive days without permission will be treated as misconduct.

If the leave asked for is granted, a leave pass shall be issued to the employee concerned. If, however, the leave is refused or postponed, the fact of such refusal or postponement and the reasons thereof shall be recorded in writing in a register to be maintained for the purpose, and a copy of such entry in the register shall be supplied to the employee. If the employee after proceeding on leave desires an extension thereof he shall make an application for the purpose to the Department Head in writing. A written reply either of the grant or refusal of an extension of leave shall be sent to the employee if his address is available and if such reply is likely to reach him before the expiry of the leave originally granted to him.

No. 8. *Should the workers be paid full day's wage for half day working on Saturdays?*

TERMS OF SETTLEMENT

It is agreed that this question should be left to the decision of the learned Adjudicator.

No. 9. *Should Mr. Kamat (Ticket No. 31 from the wiring department) be reinstated, and if so, on what terms and conditions?*

LABOUR ADJUDICATIONS

TERMS OF SETTLEMENT

It is agreed that this question should be left to the decision of the learned Adjudicator.

No. 10. Should the Bombay Iron and Steel Workers' Union (Red Flag), Bombay, be recognised by the Management?

TERMS OF SETTLEMENT

The Union does not press this demand and it is withdrawn.

No. 11. Are injured workers required to remain in the factory for the rest of the day as alleged by the Union? If so, should the practice be continued?

TERMS OF SETTLEMENT

The Company agrees to grant leave immediately to such injured workers, in case the workers ask for such leave.

(Signed)

B. O. STEVENSON,
Managing Director,

CRAWFORD BAYLEY & CO.,
Solicitors,

For and on behalf of the Ford
Motor Company of India Ltd.,
Bombay.

V. CHAUDHARI,

For and on behalf of the
Bombay Iron and Steel
Workers' Union
(Red Flag), Bombay.

Before me,

(Signed) K. B. WASSODEW,
Adjudicator.

Bombay, 2nd October 1945.

ANNEXURE " B "

The following rule regarding termination of service of a worker shall be adopted by the company:

" The employment of any permanent worker, that is, a worker who has put in three months' continuous service in the company, may be terminated by 14 days' notice or by the payment of 13 days' wages in lieu of notice. An employee desirous of leaving the company's service shall give a like notice of 14 days to the department head of the company before the date of his leaving service. The 13 days' wages in lieu of notice to the worker shall be computed on the average daily earnings of such worker for the days he actually worked during the previous

wage period. The reason for the termination of the service by the company shall be recorded in writing and shall be communicated to the worker. Such notice will be given only to the employees or workers who are discharged from service for causes other than misconduct, as defined in the rules referred to in the memorandum of settlement (Annexure 'A').

This rule shall come into operation with effect from the date on which this award is published in the *Bombay Government Gazette*.

ANNEXURE " C ".

The Rules and Regulations of the " Ford Motor Company of India, Ltd., Employees' Provident Fund " shall be amended as follows:

(1) In rule 17, paragraph one, the words " provided nevertheless that the Trustees may, without assigning any reason therefor, refuse membership to any Employee " shall be deleted.

(2) For rule 29 the following rule shall be substituted:

" Notwithstanding anything contained in these Rules, if any Member is dismissed from service for serious misconduct, or resigns or leaves his employment at his own request otherwise than on medical grounds, or if any Member while remaining in his employment discontinues his subscriptions to the Fund, the Trustees may direct that deductions shall be made from the amount paid into the Member's account by the employer in accordance with the following scale:—

- | | | | | |
|-----|---|-----|-----|---------------|
| (a) | Members of less than
3 years' standing | ... | ... | 100 per cent. |
| (b) | Members of 3 but less than
6 years' standing | ... | ... | 50 per cent. |
| (c) | Members of 6 but less than
9 years' standing | ... | ... | 25 per cent. |
| (d) | Members of 9 or more
years' standing | ... | ... | Nil. " |

(3) In rule 33(b), line 3, the word " nine " shall be substituted for the word " ten " before the words " years' continuous employment " etc.

(Bombay Castle 27-12-1943, No. 7480/34-I., Government Gazette, dated 30-12-43, Part I, pp. 2916 to 2918.)

MUKUND IRON & STEEL WORKS LTD.

AND

ITS EMPLOYEES

Adjudicator:—A. LATIFI, Esquire, C.I.E., O.B.E., M.A., LL.M. (Cantab.), LL.D. (Dub.), Bar-at-Law, I.C.S., (Retd.)

Counsel—Mr. K. M. Munshi with Mr. Y. B. Rege, instructed by Mr. D. D. Romer of Messrs. Merwanji Kola & Co., Solicitors, and Mr. R. P. Nevatia, Manager, Mukund Iron & Steel Works Ltd., for the employers.

Mr. K. T. Sule, Advocate, with Mr. V. Chaudhari, Secretary, Bombay Iron and Steel Workers' Union, for the employees.

A w a r d

1. The dispute between Mukund Iron & Steel Works Ltd., Bombay, and its employees was referred to me for adjudication by Government Order, Political and Services Department, No. 7480/34 of the 14th September 1943, under rule 81-A of the Defence of India Rules. The matters referred to me are as follows:

(1) What, if any, further bonus in respect of the Company's financial year ending March 1943 should be paid to the Company's employees?

(2) What increase, if any, in dearness allowance should be paid to the Company's employees?

The Order directed that I was to exercise such powers as are conferred on, and follow such procedure as is prescribed for, a Board of Conciliation under the Trade Disputes Act, 1929, and the Bombay Trade Disputes Rules, 1930.

The history of this dispute, as also the proceedings and steps taken for ascertaining all relevant facts and circumstances for bringing about a settlement are recorded in the Annex which is an integral part of this Award.

2. The Mukund Iron & Steel Works Ltd., was incorporated in January 1938 with two units, one in Bombay and the other in Lahore, working separately, each with its own profit and loss account. The Bombay factory has at present fixed assets of about

Rupees five lacs and it is engaged almost exclusively in smelting scrap iron into steel and rolling it. The factory had 73 workers in August 1939 at an average monthly (26 days) wage of Rs. 23-14-0. It had about 768 workers in August 1943 at an average monthly wage of Rs. 30-14-0.

3. The workers' case is that this factory is a full-fledged engineering concern; and as the average wage in the engineering industry in this city was about Rs. 42-8-0 in 1934* the workers of this factory were already underpaid in August 1939. Mr. Sule claims that the fair wage to-day should, strictly speaking, be Rs. 99, that is to say, Rs. 42-8-0 (basic wage) plus Rs. 56-8-0 dearness allowance, in order to secure a hundred per cent., neutralisation of the rise in the cost of living. As against that he is only asking for the Bombay textile workers' dearness allowance, i.e. an addition of Rs. 33-1-0 to the actual present average wage of Rs. 30-14-0, total Rs. 63-15-0, which would neutralise dearness only to the extent of 80 per cent. On the other hand, the dearness allowance of Rs. 22-2-0 offered by the Company would neutralise it only to the extent of 53 per cent.

4. The Company's reply is that the factory is only a half-fledged "engineering concern". It is the first in the Bombay Province to do the melting of scrap iron and rolling of steel, and for the present its operations are very simple. In fact, two-thirds of its staff consists of coolies. Even its moulders do simple work. In 1939 the factory engaged labour at fair current wages for this class of work, and paid its moulders Rs. 1-7-10. This was not a low wage because, according to page 106 of the General Wage Census, cited above, moulders in Bombay got anything between annas 8 and Rs. 4-4-0. Similarly the factory paid fitters Rs. 1-8-9. The average wage in Bombay according to the same Report then ranged between As. 8 and Rs. 5. Mr. Munshi argues that in August 1943 as against August 1939 there is an increase of 29 per cent. in the average wage in this factory. If to this is added a dearness allowance of Rs. 22-2-0 per month, i.e. two-thirds of the Bombay textile mills' scale, there is a rise of 116 per cent. over the wage in August 1939. On the other hand the average wage in the textile industry still stands at what it was in August 1939, i.e. Rs. 32-8-0. Thus the wage (Rs. 32-8-0) plus the dearness allowance (Rs. 33-1-0) of the textile worker in August 1943 (Rs. 65-9-0 in all) is an improvement of only 95 per cent. over his wage (Rs. 32-8-0) in August 1939.

Again, taking the Bombay cost of living index figure for August 1939 at 105 and of August 1943 at 238, there is a rise of

* General Wage Census, Part I, First Report, Engineering Industry, 1934, page 95.

126 per cent. The dearness allowance paid to textile workers neutralises this rise to the extent of 76.5 per cent. while in this factory the rise has been neutralised to the extent of 93 per cent.

5. Mr. Munshi cites the following telling figures of the working of the factory (Ex. 5):

Accounting year.		Gross Profit. Rs.	Approximate Tax. Rs.	Net Profit. Rs.
1938-39	... ..	Loss 81,866	...	Loss 81,866
1939-40	... ..	23,581	6,238	17,343
1940-41	... ..	17,796	7,931	9,865
1941-42	... ..	1,82,152*	99,396	82,756
1942-43	... ..	66,624*	25,678	40,946

It seems that the factory did very well in 1941-42 when it paid to its workers a bonus equal to four months' wages, or in other words, 30 per cent. of the profits. In April 1942, however, this factory with others in this industry came under Government control, by virtue of which Government supplies to the factory raw materials at a fixed price and purchases almost 90 per cent. of its finished products at a rate which leaves a narrow margin of profit. Hence the smaller gross profit of Rs. 1,17,300 in 1943 against Rs. 2,57,108 of the preceding year.

Mr. Munshi filed Exhibits Nos. 5 and 6 to show the handicaps of this struggling industry, which comprises only two concerns in Bombay City and Province. Eighty-two per cent. of the rolling mills of India are in Bengal, the United Provinces and the Punjab, where wages are much lower than in Bombay City. Costs, however, are fixed by the Government with reference to the lower costs of the mills in Northern India.

From the figures cited above it is clear that the additional dearness allowance claimed would absorb about 94 per cent. of the gross profits and leave a net loss to the Company of Rs. 28,000. In spite of this Mr. Munshi offers to raise the dearness allowance to three-quarters of the Bombay textile workers' rate. This to my mind is a generous gesture that might well have been accepted by the Union. They seem to prefer, however, that this should go down as the decision of the Adjudicator.

As for additional bonus, Mr. Sule wisely dropped it in the light of the figures in Ex. 4.

6. My decision, therefore, is that the Company should pay to its workers dearness allowance at three-quarters of the sliding scale of the Millowners' Association, Bombay, with retrospective effect from 1st January 1943, to all the operatives in its Bombay factory, the accounts being made up monthly, pies being rounded off in the usual way. The arrears of the dearness allowance

* These figures are Rs. 2,57,108 and Rs. 1,17,300 if bonus disbursed is added.

should be paid within four weeks of the communication of this decision to the parties.

A. LATIFI,
Adjudicator.

Bombay, dated this 4th day of December 1943.

ANNEX.

1. The dispute began with a general stoppage of work in the factory on 2nd January 1943, mainly on the grievance of inadequate dearness allowance. On the advice of the officials of the Bombay Iron and Steel Workers' Union, work was resumed by the employees on 8th January. On 1st February 1943, the management put up a notice that they would pay dearness allowance at the rate of two-thirds of the scale adopted by the Mill-owners' Association, Bombay. Between January and July 1943 several workers of this factory joined the Bombay Iron and Steel Workers' Union, and on 5th of August the employess of this Company gave a strike notice under rule 81-A of the Defence of India Rules, demanding dearness allowance on the full scale of the textile industry in Bombay, together with a four months' bonus for the year ending March 1943. On 9th August the Union approached the Commissioner of Labour who attempted to bring about a conciliation. As these efforts failed the Government Order of 14th September 1943, cited in the first paragraph of the Award, followed.

2. After a preliminary hearing on 18th September, when I considered questions relating to the statements and other exhibits to be filed by the parties, as also the procedure to be followed, I issued, on the same day, formal notices calling upon the Bombay Iron and Steel Workers' Union and such other workers as did not desire to be represented by this Union, to file their written statement and the employers to file their replies thereto. Accordingly the written statement for the employees was filed by the Bombay Iron and Steel Workers' Union on 22nd September 1943, and the reply of the Company by their Solicitors on 5th October 1943. No other workers made any submission. On 6th October Mr. D. D. Romer put in an objection to filing the detailed statement regarding employees for which the Union had asked. This objection was overruled after hearing the parties on 13th October. Mr. Romer then applied that the hearing should be adjourned to some date after the October vacation, because Mr. K. M. Munshi who was briefed for the Company was ill. The case was, therefore, taken up on 16th November and the hearing concluded on 17th November. On 19th November I paid a surprise visit to the workshop of the Company.

(Bombay Castle 11-10-1945 No. 7480/34-I Government Gazette
25-10-45 Part I, pp. 2585—2586).

MUKUND IRON & STEEL WORKS LTD.

AND

ITS EMPLOYEES

Adjudicator—K. B. Wassoodew Esq. (Retired Judge, High Court, Bombay).

Counsel—Mr. K. M. Munshi with counsel Mr. Y. B. Rege, instructed by Mr. Romer of Messrs. Merwanji Kola & Co., Solicitors, for the Mukund Iron and Steel Works Ltd.

Mr. K. T. Sule, Advocate, with Mr. V. Chaudhari, General Secretary, Bombay Iron and Steel Workers' Union, for the employees of the Company.

A w a r d

By Government Order, Political and Services Department, No. 7480/34, dated the 30th July 1945, issued under sub-rule (1) of rule 81-A of the Defence of India Rules, read with Government of India, Department of Labour, Notification No. L. 3005, dated the 20th May 1942, I was appointed to adjudicate the dispute between Messrs. Mukund Iron and Steel Works Ltd., Bombay, (hereinafter referred to as "the Company") and their employees. The said Order also directed that I was to exercise such powers as are conferred on, and follow such procedure as is prescribed for, a Board of Conciliation under the Trade Disputes Act, 1929, and the Bombay Trade Disputes Rules 1930.

2. The only matter in dispute referred to in the Government Order is as follows:

"Do the existing minimum wages of coolies (men and women) require any revision and, if so, how, and from what date?"

3. The usual notices to the parties were issued on 6th August 1945, requiring them to file their respective written statements. The Bombay Iron and Steel Workers' Union (hereinafter referred to as "the Union") representing the employees of the company filed a statement on their behalf on 22nd August 1945. The

company filed its reply through its solicitors Messrs. Merwanji Kola & Co., on the 29th August 1945. Thereupon the hearing of the dispute was fixed on 3rd September 1945 in the Industrial Court.

4. It was contended by Mr. Sule on behalf of the Union that on account of the particularly arduous work expected of the coolies in this factory and the peculiar hardships of coolies working near the furnaces, the present wage rate of annas 12 to males and annas 10 to females is inadequate and that a personal visit to the factory was necessary in order to appreciate their real grievances. Mr. Sule expressed his difficulty in dealing with the matter in the absence of statistics which he had called for from the company. Counsel Mr. Rege for the company thereupon produced certain statements which were available and promised to produce fuller statistical information regarding wage rates in this factory on the next date of hearing, viz. 7th September 1945. The factory was inspected by me on 5th September 1945 in the company of the Secretary, Industrial Court, the General Manager, and Mr. K. M. Munshi who represented the company. The Union was represented by Mr. Vithal Chaudhari, its General Secretary, and Mr. Sule, Advocate. We were shown round the entire factory which is situated at Sewree. The company has a steel re-rolling plant and produces mild steel bars from billets and scrap. I was told that the company has been a member of the Steel Re-rolling Mills' Association of India incorporated by the Government of India in 1942 for the purpose of fixation of rates for conversion of billets and scrap into finished sections of steel. •

5. It has to be noted that the total number of coolies on the company's roll is 473. Although the company works the furnaces in two shifts of six hours each during the day, the coolies work from 8-30 a.m. to 6-30 p.m. with an interval of one hour, the weekly average hours being 54. The mechanics and semi-skilled workers who work at the furnaces and the machinery have different hours of work. It was pointed out to me that some persons designated as coolies were employed in mechanical processes. It may be observed that those processes consist of conversion of scrap and billets into mild steel bars first by converting scrap into ingots in the electric furnace, secondly by converting ingots into billets and thirdly by re-rolling billets into bars. Skilled and semi-skilled workers were employed in those processes, although a few coolies were found attending to furnaces and rollers. The explanation was that the coolies who aspired to promotion to the process department were being tried before they could be absorbed in the semi-skilled staff and the company's advisers offered to treat those coolies as semi-skilled workers. The main work of the coolies consists of (1) dumping scrap and carrying it to the furnace, (2) removing ingots and placing them near the re-heating furnace

and (3) removing the billets to the other heating machines and thence to the cutting and despatching centres.

6. It has not been disputed that barring the exceptional cases where a few coolies have been employed in or near the furnaces, the main work allotted to coolies, as stated above, falls within their legitimate sphere. It may be noted that all male coolies without exception are paid a minimum wage of As. 12 a day and female coolies who are engaged in carrying small head-loads are paid As. 10 a day. That wage was fixed voluntarily in 1941, according to the statement in the company's reply, which is not controverted. Before then the minimum wage of male and female coolies was slightly lower, the male coolies getting As. 10 and female coolies getting As. 8 a day. The matter in dispute as formulated in the Government Notification relates exclusively to the question of the adequacy or otherwise of the minimum wage fixed by the company in 1941 for male and female coolies. Unfortunately the implication of the Government Notification was perhaps not clearly understood, when the Union's written statement was drafted. That will become increasingly clear when that statement is carefully read. It has been urged that there should be an incremental daily wage for coolies and their minimum wage fixed at Re. 1 per day irrespective of sex. The Union's case for that increase is thus adumbrated in the written statement:

"400 workers known as begaries are given a starting wage of As. 12 and although years have passed—ranging from 1 to 3 years—they have not been granted any increment whatsoever. The Union informed the management on the 9th June 1945 of this injustice and demanded at least an increase of As. 4 to begaries who have not been given anything in the past and who were quite justified in demanding this amount to be paid at least from 1st June 1945."

7. The grievance of the workers is not that the wage fixed is low but that there is no provision for an incremental rise *pari passu* with the growth of profits and the earning potential of the company. The fixation of a minimum wage is entirely different from the adoption of an incremental scale of wages for the lowest grade of industrial workers. What is generally understood by the expression "minimum wage" for a particular class of workers is a wage fixed at the lowest level so that no worker of that class could be employed on a lower wage when a minimum wage is fixed. The discussion before me was largely directed to showing, not that the present level does not attract cooly labourers, but that such workers having regard to the fixed scale of wages, have no incentive to work diligently. The gravamen of the charge against the company is that notwithstanding the prosperity of the industry, the workers have not been given a fair share in the profits and that a fixed wage after a certain length of time

becomes unjust and improper. The company was definitely opposed to raising the minimum wage. It was said that it would have an adverse effect on its economy according to the statistics supplied and that they could not commit themselves in the transitional stage from war to peace production when competitive forces were at work. They have maintained that the present wage rate is adequate, and that the only two other re-rolling mills in the Province have not been paying a higher wage. It was also pointed out that the subsidy which they had been receiving as members of the Steel Re-rolling Mills' Association of India, under the Government orders is now drastically reduced and might be still further reduced. The company has maintained that nothing has occurred since 1941 to hold that the wage fixed then requires revision. It was also said that in 1943 when a higher rate of dearness allowance was claimed no demand for increasing the minimum wage was made by the Union.

8. It has to be remembered that at no time it was suggested that the wage of As. 12 with dearness allowance for males or As. 10 with dearness allowance for females was exceptionally low. What was said was that it was low in comparison with the other occupations. Now what is relevant for the purpose of inquiry into the question of adequacy of "minimum wage" paid to a particular class of workers in an industry, would be a comparison of the figures showing the general trend of wages and wage standards in allied or kindred occupations in the country with due regard to local conditions. That, as was realised by both parties, would involve very wide survey of wages in re-rolling mills, which, I am told, number 90 in India, although there are only three working in this Province. When Mr. Chaudhari for the workers was constantly harping on the absence of prospects of a gradual rise in the wages of coolies in this factory except in the case of those capable of acquiring skill to do work in the machinery department, which few could boast to have acquired within a couple of years, I had to point out that the question of incremental scale of wages for coolies was extraneous to the reference and could not be dealt with by me. That caution was necessary as it seemed that the company was prepared to consider the question of granting increments to coolies who had put in one year's service and more. An amicable settlement of the just grievances of employees is at all times desirable, and whilst I welcomed the restoration of good relationship and harmony, I made it clear at the end of the second day's hearing that if the parties were prepared to settle on those terms they could enter into a private agreement; for, those terms did not relate to the dispute referred to me for adjudication, directly or indirectly. The parties, therefore, offered to announce the result of their deliberations at the next hearing on the 15th September 1945.

9. In the meantime Mr. Sule referred to certain instances cited by him where the minimum wage was above As. 12. At the request of the parties letters of request were issued to four companies, viz. (1) Godrej & Boyce Mfg. Co., (2) Indian Hume Pipe Co., (3) H. I. Dixon & Co., and (4) Crown Iron and Steel Works, to supply information as to the lowest wage paid to coolies in their respective factories, the type of work expected of them, and the rate of dearness allowance paid. It is not necessary to refer to the statements received from three of those companies in response to my request as they were not referred to in argument and as the differences between the parties have been privately and amicably settled. The Union has expressly stated in writing that on account of that settlement the workers' demand would be withdrawn and not pressed.

10. After hearing the gist of the settlement I clearly gave counsel to understand that I could not make it the operative part of my award, for the settlement includes matters extraneous to the dispute referred to me in the Government Order for adjudication. Both the parties fully appreciated that view of the matter after I drew their attention to the provisions of Order 23, rule 3 of the Civil Procedure Code, on the analogy of which my opinion was based. A settlement of a civil suit would only be incorporated in the decree of the Court so far as it related to the suit. But where a settlement includes other matters, it could only be recited in the decree for the purpose of reference but not made the operative part of the decree nor incorporated therein. As the workers have accepted the company's terms for terminating their differences, I direct that the settlement tendered in Court be filed in the record and its copy sent to Government for information by the Secretary, Industrial Court.

11. In view of the Union's statement not to press their demand regarding the revision of the minimum wage paid to coolies in this factory, it will be sufficient if I indicate in short the reasons for the conclusion I have reached on that demand upon the record before me. Apart from the information supplied, as to the wage of coolies prevailing in the three companies to whom letters of request were written, there is no statistical record for comparison of wage rates prevailing in re-rolling mills during the last three or four years. The only re-rolling mill which has supplied the information does not wish its statement to be published. I have indicated above what in my opinion would be a relevant and material consideration in determining minimum wage in a given industry. That kind of evidence has not been produced. I am satisfied that the work of the coolies in this factory is not particularly arduous. Comparison of wage rates in manufacturing industries is not helpful. The prosperity and size of the concern, on which much stress was laid, could not in my opinion be regarded

as a determining factor. It is also not proper to differentiate between one concern and another on these grounds for the settlement of minimum wage rate. I am, therefore, not prepared to concede the workers' demand. I, therefore, decide the question referred to me for adjudication in the negative, holding that the existing minimum wage paid to male and female coolies does not require any revision.

12. A copy of the settlement between the parties will be sent to Government for their information through the Commissioner of Labour with a separate letter by the Secretary, Industrial Court.

(Signed) K. B. WASSOODREW,
Adjudicator.

Bombay, 3rd October 1945.

(Bombay Castle 30-8-1945, No. 8831/34-1. Government Gazette 3-9-45 Part I. pp. 2259-2260).

INDIAN STANDARD METAL CO., LTD.

AND

ITS EMPLOYEES

Adjudicator—K. B. Wassoodew Esq. (Retired Judge, High Court, Bombay).

Mr. Pheroazshah H. Dalal, with Mr. A. A. Jasdanwalla, Director, and Mr. A. Schwarz, Technical Director for the Indian Standard Metal Co., Ltd.

Mr. K. N. Joglekar, Vice-President with Mr. A. B. Bhatt, Assistant Secretary of the Engineering Workers' Union, Bombay, for the employees.

A w a r d

By Government Order, Political and Services Department, No. 8831/34, dated the 11th June 1945, issued under sub-rule (1) of rule 81-A of the Defence of India Rules, read with Government of India, Department of Labour, Notification No. L. 3005, dated the 20th May 1942, I was appointed to adjudicate the dispute between the Indian Standard Metal Co., Ltd., (hereinafter referred to as "the Company") and its employees. The said Order also

directed that I was to exercise such powers as are conferred on, and follow such procedure as is prescribed for, a Board of Conciliation under the Trade Disputes Act, 1929, and the Bombay Trade Disputes Rules, 1930.

2. The matters in dispute referred to me for adjudication by the Government Order are as follows:

(1) What additional bonus, if any, should be granted on the earnings of the employees for the year 1944 and on what terms and conditions?

(2) Should the existing dearness allowance given to the workers be revised and if so how and from what date?

(3) Should any scales and grades of wages with periodical increments be introduced and if so what?

3. The usual notices to the parties directing them to file their respective written statements were issued on 18th June 1945. The Engineering Workers' Union (hereinafter called "the Union"), to which a large number of employees of this company belong, and who represented the employees before the Commissioner of Labour, Bombay, filed a written statement on behalf of the employees of the company on 10th July 1945. Separate notice was also given to all the employees of the Company who did not desire to be represented by the Union, to file a written statement of their demands, if any, before me. But no such statement was filed. The Vice-President of the Union, Mr. K. N. Joglekar, assisted by the Assistant Secretary Mr. A. B. Bhatt, appeared before me in support of the Union's demands at the time of the hearing. The company filed its reply on 1st August 1945, and it was represented at the hearing by its Advocate Mr. P. H. Dalal, the Director in charge Mr. A. A. Jasdanwalla and the Technical Director Mr. A. Schwarz. The hearing commenced on the 13th August 1945, and after discussing the first two demands the parties desired that I should see the working of the factory and the process of manufacture in the different departments so as to appreciate the nature of the third matter in dispute. Accordingly, on the next day, that is 14th August 1945, the factory was inspected by me in the company of the Director in charge, the Technical Director, Mr. K. N. Joglekar, Vice-President of the Union and Mr. K. R. Wazkar, the Secretary, Industrial Court.

4. The factory is situated at Chinchpokli and was started in or about 1937. It has now grown into a fairly large concern. It deals exclusively with non-ferrous metal products. We were shown round all the departments of the factory by Mr. Schwarz. These consist of (1) alloy department, (2) foundry department, (3) machinery department and (4) special munitions department. We also inspected the stores, the laboratory and the dispensary

where free medical aid is given to the workers. We were informed that there was no occupational disease as such in this factory. Only slight bruises and scratches have to be attended to off and on. Most of the departments engage (1) coolies, (2) semi-skilled workers and (3) skilled artificers. For instance, in the alloy department there are the coolies, pot-carriers and furnacemen. In the foundry department there are again (1) coolies who carry metal and its products from one place to another, (2) moulders or form-makers and (3) fettlars. In the machinery department there are also (1) coolies, (2) semi-skilled turners and (3) skilled turners who work on the lathes. We also inspected the work of the draughtsmen and the carpenters engaged in pattern-making. The most interesting part of the factory is the laboratory where the alloy is tested and also the degree of hardness and resistibility of the compound detected. The factory is well looked after under the management of Mr. Schwarz, the Technical Director and Mr. Jasdanwalla, Director in charge.

5. On the next day after the visit to the factory when I met in Court, I could make some suggestions to the parties for a settlement. Upon the figures supplied to me, the net profit for 1944, which is the year of the dispute, was nearly double the profit for the previous year. When the net profit in 1943 was Rs. 35,995, the amount of bonus paid was Rs. 30,846, while in 1944, when the net profit was Rs. 78,034, the amount of bonus paid was Rs. 31,637. In view of these facts the company's action in paying bonus calculated on $1\frac{1}{2}$ months' basic wages in 1944, as against the bonus equivalent to one month's wages inclusive of dearness allowance paid in the preceding year may not appear reasonable. But it has to be noted that the old management paid no dividend to the shareholders on account of loss in the business. That management has been replaced and the capital of the company has increased five times from Rs. 2,10,000 to Rs. 10,00,000 in 1944. There was also a corresponding increase in the number of employees engaged; for instance, while there were 393 employees in 1943, there were as many as 590 workers in the year of the dispute, 1944. Having regard to the increase in the capital and the consequent increased liability on that account, the company's attitude in limiting the ex-gratia payment of bonus and providing for 4 per cent. dividend on the ordinary share capital is perfectly intelligible. I have seen the statements of Accounts and the Balance Sheets supplied to me and I am satisfied that the company's distribution of profits is not inequitable and unfair. The balance carried forward is only Rs. 2,397. I, however, suggested that the company who in the past was generous in sanctioning bonus, should make some gesture to the workers and avert disappointment by increasing the period of the basic wage for calculating bonus. I am glad that both, the Director in charge Mr. A. A. Jasdanwalla and Mr.

Joglekar, have been very reasonable and conciliatory not only in settling the demand for increased bonus but also in the settlement of the second and third demands.

6. Regarding demand No. 3, the main complaint of the Union is that the coolies and those who are doing some sort of semi-skilled work, are not fairly treated by the Company. It is said that a coolie starts on As. 12 and does not get regular graded increment for several years. The complaint is not altogether justified. I noticed from the figures supplied to me that ordinarily a coolie starts on As. 12 and gets within a reasonable distance of time about Re. 1 to Rs. 1-6-0 if aptitude is shown for superior class of work such as that of pot-carrier or furnaceman or machine-cleaner. The charge against the management is that the promotion depends more or less on the whim of the manager which makes the workers' position precarious. It was suggested by the Union that there should be an incremental scale for the coolies and that after reaching the wage of Re. 1 there should be a selection grade for efficient coolies, from Re. 1 to Rs. 1-8-0 by steady annual increment, in all the departments. Both parties after considering the matter carefully have come to terms on the point. In consequence of the uncertainty of future orders, Mr. Joglekar of the Union has, with great reasonableness and sense of reality, withdrawn demand No. 2 relating to dearness allowance. The memorandum of settlement was signed in my presence on 15th August 1945 and it is annexed herewith. The settlement now arrived at represents, in my opinion, a fair compromise on all the disputed matters and I, therefore, make my award in terms of the settlement and direct that the parties do comply with those terms.

Bombay, 22nd August 1945.

(Sd.) K. B. WASSOODEW,
Adjudicator.

In the matter of the trade dispute between the Indian Standard Metal Co. Ltd., and its employees.

MEMORANDUM OF SETTLEMENT

ISSUES

No. 1. *What additional bonus, if any, should be granted on the earnings of the employees for the year 1944 and on what terms and conditions?*

TERMS OF SETTLEMENT

It is mutually agreed that $\frac{1}{8}$ of the monthly basic wage or

salary be given as an additional bonus for the year 1944. This bonus to be paid to all employees to whom the last bonus has been paid. The aforesaid additional bonus shall be paid with the salary or wages for the month of August 1945, to all employees.

No. 2. *Should be existing dearness allowance given to the workers be revised, and, if so, how and from what date?*

TERMS OF SETTLEMENT

This demand has been withdrawn by the employees.

No. 3. *Should any scales and grades of wages with periodical increments be introduced and if so what?*

TERMS OF SETTLEMENT

With reference to this demand, it is hereby agreed that the question is restricted to the determination of grades of coolies and semi-skilled workmen getting less than Rs. 1-8-0 per day. The gradation to be as under:

Coolies.—Starting wage Re. 0-12-0 per day rising to Re. 1 by an annual increment of anna one. Efficiency bar at Re. 1. If promoted the coolie will have a different designation according to the nature of employment, and will be placed in the grade of Re. 1 rising to Rs. 1-8-0 per day—annual increment to be of anna one. For the purpose of calculating increment the service period to commence from 1st January 1945. The increment will be on the wage or salary received on 1st January 1945.

The question of gradation of higher paid workmen is not pressed by the employees.

(Signed)

A. A. JASDANWALLA,
Director in charge.

A. SCHWARZ,
Tech. Director.

P. H. DALAL,
Advocate.

For and on behalf of the
Indian Standard Metal
Co., Ltd.

K. N. JOGLEKAR,
Vice-President.

A. B. BHATT,
Asst. Secretary.

For and on behalf of the
Engineering Workers'
(Union Red Flag),
Bombay.

Before me,

(Signed) K. B. WASSODEW,
Adjudicator.

(Signed) K. B. WASSODEW,

(Bombay Castle, 4-10—1945. No. 8902/34-I. Government Gazette
11-10-45, Part I. pp. 2500 to 2502).

STRUCTURAL ENGINEERING WORKS LTD.

AND

ITS EMPLOYEES

Adjudicator:—K. B. Wassoodew, Esq. (Retired Judge, High Court, Bombay).

Counsel:—Sir Jamshedji B. Kanga, with B. Narayanswamy, Advocate, instructed by Messrs. Amarchand and Mangaldas, Solicitors, and Mr. N. B. Bhagat, for Structural Engineering Works.

Mr. Shantilal H. Shah, Solicitor, with Mr. S. G. Athavle, Joint Secretary, National Engineering Workers' Union, for the employees of the Company.

A w a r d

By Government Order, Political and Services Department, No. 8902/34, dated the 11th July 1945, issued under-sub-rule (1) of the 81-A of the Defence of India Rules, read with Government of India, Department of Labour, Notification No. L. 3005, dated the 20th May 1942, I was appointed to adjudicate in the trade dispute between the Structural Engineering Works Ltd., Bombay (hereinafter referred to as "the Company") and its employees. The said Order also directed that I was to exercise such powers as are conferred on, and follow such procedure as is prescribed for, a Board of Conciliation under the Trade Disputes Act, 1929, and the Bombay Trade Disputes Rules, 1930.

2. The following matters in dispute have been referred to me for adjudication in the above Government Order:

"(1) Should any scales of wages with periodical increments be introduced and if so what?

(2) Should the employees who have not been given any increase in wages in 1945, be granted any increase and if so how much?

(3) Should any more bonus than what has already been

paid during May 1945 for the year 1944-45 be paid to employees, and if so, on what terms and conditions?

(4) Should any wages other than the compensation payable under the Workmen's Compensation Act be paid for the period of treatment for an injury suffered owing to an accident while on duty, and on what terms and conditions?

(5) Should there be any reduction in the existing hours of work, and if so, what?"

3. The usual notices to the parties to file their respective written statements were issued on 20th July 1945. On 31st July 1945, the National Engineering Workers' Union (hereinafter referred to as "the Union") filed its written statement on behalf of the employees of the Company. The Company filed its reply on the 24th August 1945. The case was then fixed for hearing on 3rd September 1945. But on that day at the request of the Company, the hearing was adjourned to 17th September 1945.

4. On the adjourned date of hearing counsel Sir Jamshedji B. Kanga, raised at the outset a preliminary objection to the continuation of these proceedings on the ground that as the Government of Bombay have issued their notification for adjudication under rule 81-A of the Defence of India Rules for "securing the efficient prosecution of the war" and not for any of the other objects mentioned in that rule, and as the war between Japan and the Allied Nations has come to an end it is neither necessary nor competent to adjudicate upon the trade dispute mentioned in the said notification, and that the reference has become futile.

5. It is conceded that the *raison d'être* of the notification at its inception was good inasmuch as active hostilities had not ceased then. But counsel has argued that the reason for the notification having ceased the notification itself must be deemed to be of no effect and should be recommended for withdrawal, for its object is to secure future industrial peace for the duration of the war. The assumption underlying the argument is that the state of war has come to an end and that nothing remains to be done to secure its efficient prosecution.

6. Much of the discussion on the subject unfortunately proceeded upon a loose mode of applying one's impressions of newspaper reports of Japan's surrender and Victory celebrations to the consideration of the existing relationship between the belligerent states. What constitutes a state of war has been well described in Hall's *Treatise on International Law*, (6th edition, p. 60), to which reference was made by Mathew J. in *Driefontein Consolidated Gold Mines, Ltd., v. Janson* (1900) 2 Q.B. 343:

"When differences between States reach a point at which both parties resort to force, or one of them does acts of violence

which the other chooses to look upon as a breach of the peace, the relation of war is set up, in which the combatants may use regulated violence against each other until one of them has been brought to accept such terms as his enemy is willing to grant."

7. Apart from the formal declaration of war to which I shall presently refer, upon the above view, there can be no question that a Court will be entitled to assume that at any rate till Japan was brought to agree to accept such terms as the Allied Nations would ultimately be willing to grant, a state of war existed between Japan and the Allied Nations. The Defence of India Rules contain a description of "war" which is not inconsistent with that view. Rule 2 clause 12 of those Rules is as follows:

" 'War' means any war in which His Majesty may for the time being be engaged."

Even according to that description a state of war did exist when the notification in question was issued by Government. The question is whether, by reason of Japan's agreeing to accept the terms which would ultimately be offered to her, and in the meantime surrendering unconditionally to the Allied Nations, a Court can assume that the state of war has ceased to exist.

8. It has been well recognized that the commencement of hostilities takes the form either of a declaration of war or of an ultimatum with a conditional declaration of war. (See the Convention agreed upon at the Hague Peace Conference of 1907, quoted in Trotter's "Law of Contract During and After War", p. 5, 4th Edition). On the 3rd September 1939, a state of war was declared to exist between His Majesty and Germany as from 11 a.m. and an announcement to the same effect was made on the same day in India by the Government of India (See the *Gazette of India*, Extraordinary, dated 3rd September 1939). Similar announcement was made in regard to the declaration of war against Japan. I am asked by Sir Jamshedji B. Kanga to presume the commencement of the state of peace by reason of the newspaper reports and public declarations to the effect that the Japanese Government have agreed to surrender unconditionally in terms of what is commonly known as the Potsdam Declaration. No authority was cited in support of that view. On the other hand Mr. Shah, for the Union, has argued that there is no state of peace yet declared and in consequence the state of war must be presumed to continue. He has relied upon the following observations of Lord Macnaghten in *Janson v. Driefontein Consolidated Mines, Limited* (1902) A.C. at p. 497:

"The law recognizes a state of peace and a state of war, but knows nothing of an intermediate state which is neither the one thing nor the other—neither peace nor war—"

There are other observations of Lord Macnaghten which may suggest that it is the province of the Government and not of the Court, to determine when war is at an end. "As war can only be commenced, so it can only be terminated by the authority of the Crown, and this is usually effected by a treaty of peace and announced to the nation by proclamation" (Halsbury's Laws of England, Vol. 6 Part V, p. 444, para. 682). It is generally understood that a war is ended by a treaty of peace between the belligerents and the day of the end of the war is the day when the ratifications of the treaty are exchanged and deposited. There is no proof produced on the record to show that anything in the nature of a proclamation of peace has been issued. When once war has been declared there cannot be said to be peace until peace has been declared. Mere cessation of hostilities or an acknowledgment of defeat by one hostile power and an agreement to surrender its arms and all the war potential does not in my opinion necessarily amount to a declaration of peace with all its attendant consequences. The phrase "efficient prosecution of the war" does not necessarily imply active fighting. It is perfectly conceivable that in order to enforce the will of the victor on the power acknowledging defeat and agreeing to surrender unconditionally the former has to maintain its armies on a war footing. That is in itself "prosecution of the war", for prosecution implies "following up and accomplishing the purpose in view." (See Webster's Dictionary). Whether that purpose has been accomplished it is for the Crown to declare and say whether a state of peace has been attained. So long as that has not been done the state of war must be presumed to continue notwithstanding the cessation of active hostilities. It is for the Government to finally decide what is necessary for "securing the efficient prosecution of the war". If Government thought it fit that pending the declaration of peace it was not necessary for securing the efficient prosecution of the war to refer the trade dispute for adjudication they were competent to either amend or annual the notification. But inasmuch as the notification has not been amended or cancelled, it is legitimate to presume that the necessity indicated in the Government notification still exists notwithstanding the fact of the unconditional surrender of Japan. I think, therefore, that the preliminary objection is not well founded.

9. Turning to the merits of the dispute, I must recognize the spirit of compromise evinced by both the parties. After discussing the demands at some length and hearing Sir Jamshedji B. Kanga's objections it became increasingly evident that the future of this industry, which is very young, the company having been incorporated in 1943, is still uncertain. The prospect of the withdrawal of the Government's support has loomed large before the Company's mind in meeting the workers' demands. Mr. Shah thought that if some relief was granted in the changed circumstances since

the strike notice, he would modulate his demands and not press any which would affect the Company's future. After discussion Sir Jamshedji B. Kanga and Mr. Shah announced that they had agreed to settle the dispute amicably. Accordingly the terms of settlement were drawn up and signed before me by the parties and their counsel. Those terms are appended to this award. All demands except demand No. 3 relating to bonus have been withdrawn. Those demands which have been withdrawn must therefore be rejected. The third demand has been settled in the manner stated in the agreement and my award shall be that the terms of that agreement be given effect to.

Bombay, 28th September 1945. (Signed) K. B. WASSOODEW,
Adjudicator.

In the matter of the trade dispute between the Structural Engineering works Ltd., Bombay, and its employees.

MEMORANDUM OF SETTLEMENT

ISSUES

- No. 1. *Should any scales of wages with periodical increments be introduced and if so what?*

TERMS OF SETTLEMENT

This demand is withdrawn by the employees.

- No. 2. *Should the employees who have not been given any increase in wages in 1945 granted any increase and if so how much?*

TERMS OF SETTLEMENT

This demand is withdrawn by the employees.

- No. 3. *Should any more bonus than what has already been paid during May 1945 for the year 1944-45 be paid to employees and if so on what terms and conditions?*

TERMS OF SETTLEMENT

This demand is settled as follows:

All workers who were on the muster roll of the Company on 31st December 1944 will be paid a bonus equivalent to $\frac{1}{8}$ th

of the total earnings, exclusive of dearness allowance and over-time. The total earnings will be calculated for the year ending 31st March 1945. In case of those who have already received the bonus paid by the Company, they will be paid the difference only between what is actually paid and what is due under the above arrangement. The bonus payable under this settlement will be paid within six weeks from 17th September 1945.

This bonus is in respect of the Company's financial year ending 30th June 1945.

- No. 4. *Should any wages other than the compensation payable under the Workmen's Compensation Act be paid for the period of treatment for an injury suffered owing to an accident while on duty and on what terms and conditions?*

TERMS OF SETTLEMENT

This demand is withdrawn by the employees.

- No. 5. *Should there be any reduction in the existing hours of work and if so what?*

TERMS OF SETTLEMENT

This demand is withdrawn by the employees.

The employees agree that they will not make the same demands within six months from 17th September 1945. They further agree that the compromise as to bonus is not to be used as a precedent.

(Signed)

N. B. BHAGAT,
Managing Director of Bhagat &
Sons Ltd.,

Managing Agents.

AMARCHAND & MANGALDAS,
Attorneys for the Company,
For and on behalf of the
Structural Engineering Works
Ltd., Bombay.

S. G. ATHAVALE,
Joint Secretary of the Union,
SHANTILAL H. SHAH,
Attorney-at-Law,

For and on behalf of the
National Engineering Workers'
Union, Bombay, for the
employees of the Company.

Before me,
(Signed) K. B. WASSOODEW,
Adjudicator.
Bombay, 17th September 1945.

(Bombay Castle 29-9-1943 No. 7332/34-1. Government Gazette 7-10-43, Part I. pp. 2255 to 2260).

MESSRS. COOPER ENGINEERING LTD., SATARA

AND

ITS EMPLOYEES

Adjudicator:—K. B. Wassoodew Esq. (Retired Judge, High Court, Bombay).

Counsel—Mr. V. F. Taraporewalla, with Mr. B. Narayanaswamy, Advocate, instructed by Mr. N. D. Cooper, Director, and Mr. A. J. Lund, Works Manager, for the employees.

Mr. V. D. Chitale, Vice-President, Cooper Engineering Ltd. Kamgar Union, for the employees.

Mr. R. V. Patwardhan, Advocate, for the Cooper Engineering Ltd. Kamgar Sangh.

A w a r d

By Government Order, Political and Services Department, No. 7332/34, dated the 26th June 1943, I was appointed Adjudicator in the dispute between Messrs. Cooper Engineering. Ltd., of Satara Road, and its employees. The venue of the inquiry was fixed by Government originally at Poona, where arrangements were made to hold the proceedings. In accordance with the subsequent amendment of those orders, the proceedings were held in Bombay. In regard to the dispute there is a division among the employees. Only the members of the Kamgar Union are interested in the settlement or determination of the dispute in these proceedings; while the remaining employees who are presumably members of the "Kamgar Sangh" have expressed their satisfaction with the present conditions of employment and are not parties to the demands which have raised the dispute under reference. The demands of the employees represented by the Kamgar Union, referred to me for adjudication, have been thus formulated in the Government Order:

(i) Every worker should be given twelve annas per day as dearness allowance, with effect from 1st of April 1943, and a scale be fixed to meet the further rise in the cost of living.

(ii) Every worker should be given an increase of twenty-five per cent. in his wages as on 27th May 1943, with effect from 1st of January 1943.

(iii) Every worker who has served for any number of days during the year 1942 should be given one-sixth of his total earnings (in the year 1942) as bonus.

(iv) Mr. G. K. Mali and 45 other workers who are victimised for the trade union activities should be reinstated forthwith unconditionally and should be given full compensation for the number of days they were kept out of work. A guarantee be given that no worker would be victimised for taking part in the trade union activities.

(v) A joint committee consisting of the representatives of the management and the workers be set up to supervise the management of the grain-shop conducted by the management.

(vi) Recognition be given by the management to the Cooper Engineering Ltd., Kamgar Union.

2. In the matter of the above adjudication I have been directed to exercise such powers as are conferred on, and follow such procedure as is prescribed for, a Board of Conciliation under the Trade Disputes Act, 1929, and the Bombay Trade Disputes Rules, 1930. Usual notices to the parties to file their respective statements were issued on the 2nd July 1943. The statement of the Cooper Engineering Ltd. Kamgar Union on behalf of the employees was received on the 15th July 1943. The Cooper Engineering Ltd. asked for extension of time to file their written statement, which was submitted on 10th August 1943. The hearing of the dispute commenced on 16th August 1943, and was continued on 17th, 18th, 19th, 20th, 24th and 25th August, 1943.

3. I may state at the outset that the parties have come to a fair and amicable settlement on demands Nos. 1 and 4. The memorandum of that settlement has been drawn up and signed by the parties before me. The said memorandum accompanies this Award. It may be noted that the dispute involved in demand No. 5 has ceased by reason of the settlement of demand No. 1, and it was, therefore, withdrawn by the employees' representative. In spite of my endeavours to bring about a settlement of the other demands it was found impossible to induce the parties to come to a fair settlement. I, therefore, proceeded to investigate the dispute and all matters affecting the merits thereof. My views on those demands are set out below.

4. DEMAND No. 2—*Re: Increase of 25 per cent. in the workers' wages as on 27th May 1943, with effect from 1st of*

January 1943.—The demand as set out in the Government Order and elaborated in the employees' statement submitted in the course of these proceedings involves the question of fixing the wage level in different classes and grades of workers in this factory. It appears to me that the true implications of the demand have not been clearly understood. The contesting employees in their statement have maintained that the wages paid in the factory are very low, ranging from As. 7 to Rs. 3 per day and "judged by all human standards, the wage is definitely inadequate and nearly amounts to starvation-wage". An arbitrary figure has been fixed with a view to provide, according to Mr. Chitale, the Vice-President of the employees' union, a reasonable standard of living. The Cooper Engineering Ltd., who for the sake of brevity shall be referred to in this Award as "the Company", have opposed that demand on the ground that their wage rates compare very favourably with rates obtainable in other engineering concerns elsewhere, that their financial position will not bear any increase, that the minimum wage paid to coolies in the last grade in the mechanical and fitting shops is between seven and eight annas a day, that workers are given a bonus of As. 6 a day for production above the average and there is no justification for any general rise in the wage levels in the different grades of workers. In view of the nature of the material placed before me, the question whether the minimum wage level is unjustifiably low is not free from difficulty. Any attempt to place an arbitrary standard of minimum wage level for different classes of workers in a factory, without reference to the economic conditions prevailing in the locality, the nature of the work done, the proficiency and skill required of the workers; the supply of skilled labour and particularly the comparative prosperity of the factory cannot be lightly encouraged. It is possible to suppose that the needs of the workers and the law of supply and demand must operate to a great extent to balance the rate of wages in an engineering factory as in any other industrial concern. A minimum wage for unskilled worker of seven annas a day, whether he works as a cooly or an apprentice-assistant under a skilled worker, without any complementary addition, might appear, in these times, unreasonably low. But one has to compare that rate with the general trend of wages and wage levels in kindred occupations round about Satara Road and in the neighbouring districts. That would necessarily involve a general survey of labour conditions prevailing in that part of the country. It was clearly realised that such a survey in these proceedings was not possible. All that could be done by the parties under the circumstances was to rely upon the figures of wages supplied by the Engineering Company at Kirloskarwadi 70 miles away and those compiled by the Textile Labour Inquiry Committee, and others available in the General Wage Census Report, 1934 (Part I, First Report—Engineering Industry), in support of their respective contentions. No workers' budgets were prepared for reference and

what is remarkable is that one of the workers examined demanded a higher wage merely on account of his growing family.

5. Before discussing the figures referred to in these proceedings, in order to be able to say whether a case for a general rise in wages is made out, I shall briefly refer to the conditions in which the workers live and work. It appears that this is the only engineering factory of its kind in Satara Road and perhaps one of the few in the Province, where machinery and machine-tools are manufactured. There is no such factory in the neighbouring districts except one run on a comparatively modest scale at Kirloskarwadi in the Aundh State. On that account the Company has in this part a monopoly of employment of persons possessing technical skill or a leaning towards mechanical work. The company employs nearly 1,200 workers and provides free quarters for nearly half of them and their families, within the factory compound. The rest of the workers live in their own houses in villages situated in the suburbs of Satara Road from where they attend the factory. Apparently most of the workers have left their fields for the factory to improve their condition and some have distinctly benefited by the change. The factory is situated in rural surroundings except for the proximity of Railway Station, for the district town of Satara is nearly ten miles away and there is no other kind of activity—either industrial or commercial—in the neighbourhood. Naturally the agricultural population from the surrounding areas gravitate to Satara Road in search of employment, and it may be said that there is no dearth of labour in this locality. Mr. Chitale on behalf of the workers has urged that notwithstanding those conditions, as wages determine almost solely the standard of living of the workers, the economic wage must have some minimum basis and that there is ample justification for raising the wages of the lowest paid categories of workers. He says that annas seven or eight is so low that it requires treatment in a special manner. He was referring to the class of miscellaneous coolies and unskilled helpers or apprentices in this factory. It is said that the total wage bill for a month being Rs. 29,000 the Company's finances can afford to raise the minimum wage level to As. 9 by granting two annas per day to the workers getting seven annas and one anna to those getting eight annas. He abandoned the original demand of 25 per cent. flat rate of increase all round and confined his claim to increase, in the case of workers getting seven or eight annas a day. According to the statement supplied by the Company the total number of coolies getting seven annas is 147 and those getting annas eight 217. According to those figures it will appear that the monthly increase in the wage bill will not exceed Rs. 840. But that involves an annual expenditure of about Rs. 10,000. This is a young company having been re-formed upon the liquidation of the old concern in or about 1941. From the Profit and Loss Account it appears that the Company made a profit of Rs. 14,351 in the year

ending June 1941 and Rs. 23,980 in the year ending June 1942, and that for the first time it was able to pay a dividend of 5 per cent. to its shareholders for 1941-1942. Having regard to these figures it is difficult to say that the degree of prosperity of the Company revealed by the accounts is a reasonable ground for allowing an increase in the minimum wage, particularly when it is remembered that the company has mulcted itself in an additional expenditure of nearly Rs. 48,000 in meeting the demand of the workers for an additional dearness allowance. It is, however, contended by Mr. Chitale that the commission paid to the General Manager of Rs. 13,942 and that to the Managing Agents of nearly Rs. 20,000 can be reduced to the extent necessary to meet this extra charge. That is a matter of contract between the company and its Manager and the Managing Agents and cannot be a good ground for sustaining the claim.

6. But apart from those considerations it seems to me that the wage level in this factory stands a fair comparison with wage levels in engineering firms of other districts not excluding Kirloskarwadi. In the General Wage Census Report, 1934 Part I—First Report, at page 86), figures are given for unskilled workers in engineering factories in Sholapur and Satara and they are useful because upon a comparison of the prevailing rates in Sholapur, Mr. Chitale based his argument. The figures referred to are as follows:

Average daily earnings of certain important categories of semi-skilled and unskilled workers. All Factories.†

Area.	Mechanics' Assistants.	Nawghanics (trained lifters)	Unskilled Men.	Workers Women.
	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.
Sholapur City ..	0 11 8	0 10 6	0 11 3	0 8 10
Sholapur and Satara .	0 7 3	0 7 11	0 7 5	0 4 0

There is disparity in the figures for the Sholapur urban area. But that fact clearly illustrates that the rate of seven annas at Satara Road is not very low. It may be noted that the term "earnings" used for the purposes of the statements in the above Report is intended to represent the actual total amount a workman receives for work done during any given period of time. They vary with the rates of pay, the time worked, and include allowances and bonuses. The obsession of the workers is that that rate is low as compared with the earnings of coolies and sweepers in textile concerns in Sholapur and reference was made to page 53 of the Final Report of the Textile Labour Inquiry

†The figures for unskilled workers are for engineering factories only.

Committee. The figures of average daily earnings in July 1937 in the Textile mills were as below:

Average daily earnings of coolies and sweepers in July 1937.

Centre.	Coolies.		Sweepers.	
	Men.	Women.	Men.	Women.
	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.
Sholapur	0 8 11	0 4 11	0 9 4	0 4 11
Tikekarwadi	0 6 2	...	0 6 2	...

It was pointed out that an increase of two and a half annas and three annas in the rupee for different categories of earnings were recommended by the Committee in their interim report and that would raise *pro tanto* the average daily rate. The rates which male coolies thus got of about As. 11 per day in the textile concern in the Sholapur City have been compared with As. 7 paid at Satara Road in support of the argument. But there is an apparent variation of rates paid to different classes of workers even according to the statements furnished in the report. In Volume II at page 10 of the report the Committee observe as follows:

"It would not be accurate to apply these increases to the general averages for particular occupations because in many cases the range of the variations between the highest and the lowest earnings is somewhat wide."

I may at once say that any comparison with the rates of wages in textile industry, which is an old industry in India and which is very prosperous, would be fallacious. It is said that the prices of essential commodities are comparatively higher in Satara Road than in Sholapur and the minimum wage should be raised in proportion to the difference. That would affect, if the increase in prices is not permanent, the question of compensation for dearness and would not justify the raising of the minimum wage level. My attention was drawn to the *Bombay Labour Gazette* of April 1943, page 543, wherein comparative rates prevalent in Sholapur and Satara for essential foodgrains are given. Now if the case of the workers was that they got the bare minimum wage and nothing more, the matter would have been entirely different in view of the rise in prices of foodgrains. But in addition to the daily wage, on account of the abnormal conditions due to war, the company has been paying a uniform rate of annas three per head as dearness allowance and providing cheap grain irrespective of cost price and market rates. On that basis, according to the statement submitted by the company, it has been bearing a loss of four and a half annas per head per day. The net gain to the worker is thus: his wage per day plus the amount of dearness allowance and the amount of loss involved in the sale of cheap grain. Under the agreement arrived at between the parties in these proceedings, the company has consented to increase the dearness allowance at

a uniform flat rate of As. 9-6 per head in lieu of the old arrangement. Thus each worker on the lowest wage of seven annas, would be getting Re. 1-0-6. It has to be remembered that although the initial pay which the worker gets upon joining the company's establishment is seven annas per day, there is a progressive rise in the wage as the worker begins to gain skill and grows in usefulness. The statement on p. 53 will show at a glance the condition of the lowest wage-earner under the arrangement.

7. In view of the above, in my opinion, no case has been made out for a further increase in the minimum wage or in other words for fixation of the lowest wage rate. As I have remarked above, the question of a general rise in minimum wage must necessarily involve a very wide sphere of inquiry. Undoubtedly there is striking variation in the wage rates in different industries and perhaps in the same industry in different parts of the country. That disparity is noted in the General Wage Census Report. Mr. Chitale himself realized the difficulty when he restricted his claim. In the circumstances I do not feel justified in conceding the first demand even as modified before me.

8. DEMAND No. 3—*Bonus to workers*.—As regards the demand for bonus the question is essentially, in my opinion, one of finance. As I have already stated, the old company failed to make any profit whatsoever, and only during the year 1941-1942 the Company was able to pay 5 per cent. dividend to the shareholders. It cannot for a moment be suggested that the dividend is inordinately high. Mr. Chitale stated that Rs. 5 or even less to each individual worker would secure peace and contentment and also increased efficiency on the part of the workers. But even so, in order to justify my allowing the claim, I must be satisfied that the company's profits justify the demand. The increase in the dearness allowance would involve an additional expenditure of Rs. 48,000 or thereabouts per year and until the company is in a position to satisfy the legitimate expectations of the shareholders for the capital invested by them no bonus can be allowed. The workers must defer their claim for bonus for more propitious times and see how the company prospers during the current year. I would not, therefore, grant the demand for bonus to the workers.

9. DEMAND No. 6—*Recognition of Workers' Union*.—There now remains the question underlying the demand No. 6 which relates to the recognition of the Workers' Union by their employer. It is to be noted that the union started its activities after its registration in November 1942, and that at the present moment it has not been able to claim its hold on the majority of the workers. I am told that the number of workers now affiliated to the union is less than 600. Another union described as Cooper Engineering Ltd. Kamgar Sangh, with a larger membership, has come into

Statement showing the total earnings of the low-paid employees of the Cooper Engineering Ltd., Satara, before and after the Adjudication proceedings.

Basic rate of wages as on 1st July 1943	Dear food allowance as per company's calculation up to 31st July 1943	Total earnings per day up to 31st July 1943. (Total of columns 1 & 2)	Dear food allowance agreed in adjudication.	Total earnings per day (Total of columns 1 and 4).	Total earnings per month of 26 days. (Column 5 × 26)	Total number of coolies on 1st August 1943.	Total number of apprentices on 1st August 1943.
Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.		
0 7 0	0 7 6	0 14 6	0 9 6	1 0 6	26 13 0	147	28
0 8 0	0 7 6	0 15 6	0 9 6	1 1 6	28 7 0	217	58

existence in January 1943, and though it may be regarded as an institution promoted by the Company it is perhaps sufficiently articulate. It appears that whilst the Company is ready to look upon with sympathy the activities of the latter organisation, their Counsel has vehemently opposed the demand for recognition of the Union—the disputant in these proceedings—principally on the ground that there is no legislative sanction behind the demand and that there is no general practice prevalent in this Province for employers to accord recognition to Trade Unions established by their employees. Whilst the importance of developing healthy Trade Union activity cannot be denied and Government themselves have declared their policy of encouragement, no legislation has been effected in the matter of recognition of Trade Unions by employers. A draft bill on that subject was circulated but the measure has not received legislative sanction. It has been urged that apart from that fact there is no objection to grant this demand of the Union on principle. The statement filed by the employees does not set out precisely what is understood by the expression "recognition of the Union". In amplification of their demand Mr. Chitale observed that by recognition he means the recognition by the employer of the right of the Union to speak and correspond on behalf of its members and the right to negotiate with him in respect of matters affecting common or individual interest of the members of the Union. He has relied on the provisions of clause 28 (g) of the Draft Bill circulated by the Government of India in 1942 to amend the Trade Unions Act (XVI of 1926). Mr. Chitale contends that recognition would not preclude individual members or other workers from seeking direct contact with the employers. The Company's opposition proceeds on the following among other grounds: that the Union has only recently been established, that it has a meagre representation and that in view of the recent strike promoted by it, it is not conducted on sound and peaceful lines. The Company claims a free choice in the matter of recognition. The attitude of the Company is perfectly intelligible, for the hostility of the employer to recognize the employees' Union proceeds from a desire to prevent its gaining in strength. So long as that hostility subsists mere recognition will not secure the desired aim in view. Recognition must necessarily postulate readiness of the employer to discuss with sympathy the grievances put forward by the Union for consideration. A formal accessibility enjoyed by the representatives of the union is not enough. There is no instance of compulsory recognition ordered in such proceedings. So long as employers are determined to oppose the Union they will stultify any direction for obligatory recognition by various devices, such as discrimination in the matter of promotion of union-men or victimising them. It may happen that the employer would thereby weaken his position in the long run. But until he realizes the benefit of fostering a healthy union or there is considerable accession of strength to the union an order for recog-

dition would be futile. The Royal Commission on Labour in India, in their Report, at page 324, has pointed out that recognition in the letter must be followed by recognition in the spirit:

“It was suggested, for example, that an employer should be compelled to recognize a registered union of his men. Recognition may mean much, but it may mean nothing. No law can secure that genuine and full recognition which we desire to see.”

Undoubtedly repression is not the proper method of eliminating unhealthy trade unions. But I do not think in the circumstances I would be justified, at this initial stage of the Union's development, in directing its recognition by the Company when I am conscious of the difficulty of enforcement of the order by real sanction.

10. In view of the above, my award would be that effect be given to the settlement arrived at between the parties on demands Nos. 1, 4 and 5 and that the other demands be rejected.

Bombay, 31st August 1943.

K. B. WASSOODEW,
Adjudicator.

In the matter of a trade dispute between Messrs. Cooper Engineering Ltd., Satara, and its employees.

MEMORANDUM OF SETTLEMENT

DEMANDS

No. 1. *Every worker should be given twelve annas per day as dearness allowance, with effect from 1st of April 1943, and a scale be fixed to meet the further rise in the cost of living.*

TERMS OF SETTLEMENT

It is agreed that in lieu of distributing cheap grain the management of the Cooper Engineering Ltd., shall sell grain at cost price, the management's calculation as to the cost price shall be final; and that the Company shall pay in cash As. 9-6 per working day per worker as dearness allowance for a period of one year beginning from 1st September 1943 to 31st August 1944. The said dearness allowance shall not be raised during the said period. The question whether the allowance should be increased or decreased must

depend on the conditions prevailing in September 1944.

The dearness allowance for the month of August 1943 shall be increased by As. 2 per working day per worker over and above the present scale of dearness allowance of As. 3 per working day per worker.

No. 4. Mr. G. K. Mali and 45 other workers who are victimised for the trade union activities should be re-instated forthwith unconditionally and should be given full compensation for the number of days they were kept out of work. A guarantee be given that no worker would be victimised for taking part in the Trade Union activities.

It is agreed that the following employees shall be reinstated before the 24th September 1943, without compensation and on the same wages as they were getting on the day of their discharge. The union undertakes that the workers will give satisfaction to the management:

1. Govind Krishna Mali.
2. Subarao Atmaram Mane.
3. Tukaram Shivram Patil.
4. Ramchandra Dattatraya Deore.
5. Vithal Shivram Walupkar.
6. Dnyanu Tikaram Phalke.
7. Shekh Maheubub Abdul.
8. Raghunath Dadoba Chavan.
9. Vithal Lalsingh Paradeshi.
10. Kisan Bala Phalke.
11. Hari Parvati Jadhav.
12. Laxman Hari Gaikwad.
13. Narayan Laxman Bhosale.
14. Jagu Daji Ramoshi.

In view of this compromise the demand for the reinstatement of the remaining workers is withdrawn. A verbal assurance is given on behalf of the Company that no worker will be victimized for Trade Union activities.

No. 5. A joint committee consisting of the representatives of the management and the workers be set up to supervise the management of the grain shop conducted by the management.

TERMS OF SETTLEMENT

In view of the settlement on demand No. 1, the Cooper Engineering Ltd. Kamgar Union withdraws the demand.

B. NARAYANSWAMY,
Advocate.

N. D. COOPER,
Director.

For and on behalf of Cooper
Engineering Ltd., Satara.

V. D. CHITALE,
Vice-President.

VISHNU GANPATI BABAR,
President.

B. K. ABHYANKAR,
(General Secretary).

For and on behalf of Cooper
Engineering Ltd.
Kamgar Union.

Before me,

K. B. WASSODEW,
Adjudicator.

Bombay, 25th August 1943.

(Bombay Castle, 11th December 1946, No. 7332/34—I. Government Gazette, dated 12th December 1946, Part I, pp. No. 3661 to 3668.)

COOPER ENGINEERING LTD., SATARA ROAD

AND

ITS EMPLOYEES

Adjudicator—Dewan Bahadur D. G. Kamerkar.

Mr. M. Narayanaswami, Advocate, with Rao Bahadur S. S. Parulkar and Mr. Kulkarni, Pleaders, for the Cooper Engineering Ltd.

Mr. C. B. Agarwal, Bar-at-Law, with Mr. N. S. Nayak, Pleader, for the Mazdoor Sangh.

No individual appearance by any employee.

A w a r d

By Government order, Political and Services Department, No. 7332/34, dated the 29th June 1946, issued under sub-rule (1)

of rule 81-A of the Defence of India Rules, read with Government of India, Department of Labour, Notification No. L. 3005, dated the 20th May 1942, I was appointed Adjudicator in this trade dispute. The order further directed me to exercise such powers as are conferred on, and to follow such procedure as is prescribed for, a Board of Conciliation under the Trade Disputes Act, 1929, and the Bombay Trade Disputes Rules, 1930.

2. The genesis of the dispute may be briefly stated as follows: The Cooper Engineering Ltd. (hereinafter referred to as "Company") is a Company manufacturing agricultural implements, oil engines, looms, machine tools, etc. It was formed in 1922 and reorganized in 1941. Its subscribed capital was Rs. 7 lacs in 1941 and it was subsequently raised to Rs. 14 lacs in 1943. Since the reorganization, the Company has been employing a large body of skilled and unskilled workmen and in 1945-46 their number was 1424. Since before 1943 the workmen had been claiming an increase and a time-scale in their wages, as also bonus, dearness allowance and other concessions. They had formed a Trade Union under the name "Kamgar Union" and some 46 of its members had been discharged by the Company in 1943 for certain trade union activities. The dispute was then settled partly by mutual agreement and partly by the award of Mr. K. B. Wassoodew in August 1943. But the main claim of the workers to an increase and to time-scale in wages was, it appears from the award, disallowed then on the ground that the employers were a "young Company having been reformed upon the liquidation of the old concern in or about 1941" and their financial position did not warrant any further concession beyond an amount of Rs. 48,000, which by mutual agreement they had agreed to allow as dearness allowance to the workers at the flat rate of 9 as. 6 p. with effect from 1st September 1943. It was also stated as a further ground for disallowing that claim that the wage level in this factory stood a fair comparison with wage levels in engineering firms of other districts not excluding Kirloskarwadi. The claim to bonus was deferred to "more propitious times".

3. But since the award was given and the terms agreed to were put into effect, the Company has had the good fortune to get extensive war orders from Government for machine tools and other equipment between 1943 and 1946. The workers were not slow to notice the strain on their energy and capacity and the consequential increase in the output and the profits of the Company. The Company raised, during that period, their dearness allowance by just one anna and allowed a month's wages as bonus every year. Between May and August 1945, the workers in the Kirloskarwadi, which is a kindred engineering concern in the neighbourhood, agitated for and obtained increases in their

wages and dearness allowance and certain other concessions, such as prosperity and attendance bonuses and 10 days' leave with pay. In July, 1945, the Company granted substantial increases in pay to 105 out of about 200 men of their staff, but to a relatively few out of the 1924 workers, and did not make a general revision of the wage level. The consequence was an upheaval. The workers formed a Union under the name "Mazdoor Sangh" and sent a memorandum of their demands direct to the Labour office in Bombay on 11th March 1946 and even stated therein that they would think of going on strike from 1st April 1946. There were some negotiations thereafter between the promoters of the "Sangh" and Mr. A. J. Lund, the Works Manager of the Company, between 29th March and 22nd April, but with no satisfactory results. The workers went on strike since the morning of the 22nd April. On the 24th, Mr. Lund put up a notice warning the workers that the strike was contrary to law and calling upon them all to resume work by 4 p.m. Likewise, he called upon 17 of the workmen who were reported to him to have organized the strike to report themselves at the office by 3-30 p.m. As none of the 17 men acted up, he put up a notice on the same day, at about 5 p.m., discharging them summarily as from that date for "taking part in organizing a strike at the works in contravention of the Defence of India Rule 81-A". On 29th April, he put up another notice calling on all the workers to resume work by the 3rd May unconditionally, on pain of their being locked out. The strike continued till the 4th July 1946, i.e. until after the order of reference to adjudication, when nearly all the workers, with the exception of the 17 who had been discharged with effect from 24th April, resumed work and were readmitted. The Company has been refusing to readmit the 17 discharged men. Evidently, and it is not contended either, the notice of the 29th April did not relate to them and they have been treated as discharged for good since the 24th April.

4. Before proceeding to hear the dispute, a notice was issued to the Mazdoor Sangh to put in a full statement of its claims in relation to the points referred to me for adjudication. Likewise, a general notice was issued to all the workers to put in their individual statements, if any. None of the workers appeared individually. The Mazdoor Sangh and the Company have put in their statements. The points formulated for adjudication substantially cover the grounds stated in the memorandum of March 11th of the Mazdoor Sangh.

5. Efforts were made in the course of the proceedings to conciliate as to the main points in dispute, but unfortunately they bore no fruit.

6. The first point for determination is whether there should be

scales of wages for all categories of workers and, if so, what. The workers insist on a time-scale being fixed providing for a minimum basic wage and the maximum, with certain stated annual increments between the two. The Company declines on the ground that it is neither feasible nor practicable to fix up any time-scale of wages as the Company is not certain as to what the future prospects of the Engineering Industry can be in the post-war period. It contends that it cannot make any financial commitments without any certain basis for ascertaining whether such additional expenditure can be borne with safety to the sound working of the concern in the years in which such increments might fall due. On a consideration of the grounds urged on either side, I answer this point in the negative. I am much impressed with the argument that in private industrial enterprises automatic promotions by stages are not advisable as such enterprises stand or fall with the efficiency of their workers and efficiency does not necessarily increase, among workers, with the amount or period of work they put in. Moreover, the workers themselves as much as the employer will see elements of discord and dissatisfaction in such a wage system. Men who do not deserve promotion automatically run the scale and a wide lee-way for favouritism is left to the superior officer even if efficiency bars are introduced at certain stages. Against the employers precedents are set up which make flexibility to meet special or deserving cases impossible. The employer, moreover, can ill afford to bind himself down to definite financial obligations without a certainty as to his profits in the future. The question is essentially one of actual and practical economics of a given concern than merely of sociology or politics. With the exception of two solitary instances, Mr. Agarwal has been unable to point his finger to any precedent wherein such a wage system has been commended for general application or acceptance, without regard to the nature of the concern, its stability and organization and its financial prospects. And Mr. E. M. Nanavatty who decided in favour of a time-scale in one out of the two instances (See *Labour Gazette*, Vol. XXII, October 1942, pages 109-110), has latterly regarded such a claim as "rather fantastic". (See *Labour Gazette*, Vol. XXIV, February 1945, pages 370-371). Not even textile concerns, wage levels in which can be considered as almost standardized, have allowed a time-scale wage. And the Kirloskarwadi workers, too, with whom the workers in this proceeding claim to be put on a level, have not succeeded in obtaining at the hands of Mr. Mavlankar any time-scale. In fact, from the award in that proceeding it does not appear that the claim in that behalf had been urged with any seriousness.

7. Having regard to this finding, the question urged before me by Mr. Agarwal as to classification of the workers in groups and grades and their basic and maximum wages in those groups

and grades does not survive for consideration. I cannot, however, fail to express to the Company the desirability of fixing up at an early date such a classification and the respective basic and maximum wages for the several groups and grades. The statement the Company has put in at Exhibit D is not one in accordance with any settled or authorised scheme already provided for and put into effect. It is admittedly prepared now for this proceeding on the lines of the classification obtaining in Kirloskarwadi. It is obvious that the workers should have before them a definite scheme of prospects when they enter service. I do not propose to advise any particular mode of classification different from the one in Exhibit D, although there is some controversy before me as to whether moulders and electricians should be classed in Group A. Job analysis and job evaluation are matters for the expert and the Company may well be in the position to determine that question with expert aid to the satisfaction of the employees. I would only point out that their Works Manager does not object to including moulders and more skilled electricians in Group A. The classification which the Company may ultimately decide upon should be shown in the standing orders, which—it is now represented to me—the Company proposes shortly to introduce, under a suitable heading as to pay and prospects of the workers. The draft of the standing orders which has been put in by the Company in this proceeding (Exhibit A 19) does not refer to this subject.

8. The next point is whether there should be immediate increase in wages as indicated below:

Up to Rs. 25	...	...	...	40 per cent.
From Rs. 25 to 50	...	...	...	35 per cent.
From Rs. 50 to 75	...	...	...	30 per cent. -
From Rs. 75 and above	...	...	...	25 per cent.

Before answering it, I will dispose of the controversy which has arisen at the hearing as to whether clerks in the employ of the Company can get the benefit of the answer. I hold that they can. In the first place, the point as formulated does not mention any particular class of employees though the other points do; and the preamble to the order of reference refers in general terms to "employees". It is immaterial that none of the clerks had joined in making the Memorandum of March 11th. And in the next place, even if the point be taken as referring to "Workers" or "Workmen", that term must be understood in the light of its definition as stated in section 2, clause (k) of the Trade Disputes Act. A clerk is expressly included by that definition in the term "Workmen". It was persistently asserted for the workmen that about a hundred clerks are members of the Mazdoor Sangh and witness Yasin has even affirmed it. Yet clerks did not appear on their individual account in answer to the general notice or at any subsequent stage and say that they had no concern in the

dispute. The Company too, on their part, did not examine any clerk to depose to that effect.

9. The Company does not accede to the demand covered by point No. 2. It urges that the rates of wages at present in force compare favourably with the rates in other engineering concerns in the district of Satara, and that the wage level, in its opinion, has reached its ceiling limit. It is pointed out on its behalf that since 1st August 1946, *i.e.*, after the strike, the Company has raised the wages of unskilled labourers and of Hammer-strikers and cupola men by 2 annas per day.

10. Considering the evidence bearing on the point, I hold that the case of the workers for an immediate increase is unanswerable, and they must be allowed an increase; though not to the full extent they have claimed. On the occasion of the award of 1943, the demand for increase in wages was disallowed on two main grounds. First, that the Company was a relatively young concern, having been reformed in 1941 on the liquidation of the earlier concern, and the degree of its prosperity as then disclosed from the Profit and Loss Account for 1941, did not warrant any further concession than the increase in dearness allowance from 3 As. 6 p. to 9 As. 6 p. per day mutually agreed to. Secondly, that the wage level in this Company stood a fair comparison with wage levels in engineering firms in other districts including Satara. Since that award was given, conditions have materially altered in their bearing on both these grounds. Moreover, it can hardly be denied by any one having knowledge of the conditions in this district during the later years of the war and subsequent to it that labour is not easily procurable and even Re. 1-1-6 per day, inclusive of dearness allowance, for the lowest wage-earner, which the Company has been paying since September 1943, is much below the average at the present day. Witness No. 2 Dadu Pandurang Phalke, examined for the workers in these proceedings, has had to pay from Re. 1 As. 8 to Re. 1 As. 14 per day as wages to his wood-cutter coolies and Re. 1 As. 8 to Re. 1 As. 10 to farm-coolies at Satara Road. As wage earners and salaried employees in Government departments and Public Utility Companies have been successfully going on strike and obtaining increases in their basic wages and salaries, there should be no plausible reason why workmen in an engineering concern must content themselves with only a temporary increase in dearness allowance. As I shall presently show, the degree of prosperity of the Company has been very much higher than even 100 per cent. in 1944-45, after the award of 1943, which had taken into account the figures in the Balance Sheet for the year 1941-42. Moreover, the workers have seen the increase in basic wages obtained by men in Kirloskarwadi in August 1945, and again recently in September 1946.

11. The Balance Sheets of the Company (Exhibits A 13 to A 17) for the five years 1940-41 to 1944-45 disclose the strong financial and working position of the Company from year to year. The subscribed and paid up capital has grown from 7 lacs in 1940-41 to 21 lacs in 1944-45. It has built up a depreciation fund of Rs. 6,53,600 and a Reserve Fund of Rs. 21,000; and it has besides got in 7 lacs by way of premium on its additional share capital issued in 1942-43. Its assets under several heads have also risen on an average to nearly 5 times the assets in 1940-41. Its operational expenses have gone up from 5.91 lacs in 1940-41 to 9.66 lacs in 1944-45. The rate of dividend has increased from 5 per cent., in 1941-42, to 7 per cent., since 1942-43; while the figures of commission to the General Manager and to the Managing Agents have risen from Rs. 2,402 and Rs. 7,268 in 1940-41 to Rs. 26,000 and Rs. 46,501 in 1943-44.

12. The figures in the following tables are eloquent in themselves:

Returns by sale of products and hire of vehicles

Year 1940-41.	1941-42.	1942-43.	1943-44.	1944-45.
Rs.	Rs.	Rs.	Rs.	Rs.
8,42,157	11,22,181	17,05,027	27,22,084	26,45,808

Depreciation Fund

Year 1940-41.	1941-42.	1942-43.	1943-44.	1944-45.
Rs.	Rs.	Rs.	Rs.	Rs.
51,067	1,28,805	2,43,611	4,43,611	6,53,611

General Manager's and Managing Agents' Commissions

Year 1940-41.	1941-42.	1942-43.	1943-44.	1944-45.
Rs.	Rs.	Rs.	Rs.	Rs.
2,402	13,942	23,715	26,060	...
7,268	20,322	32,824	46,051	Foregone.

Net profits for distribution

Year 1940-41.	1941-42.	1942-43.	1943-44.	1944-45.
Rs.	Rs.	Rs.	Rs.	Rs.
14,351	23,880	92,722	1,14,465	1,37,213

I am not much impressed with the argument that the Managing Agents have foregone their Commission in 1944-45. On behalf of the workers it is pointed out as against this that in 1943-44 the Company spent Rs. 5,05,254 on purchase of Motor Trucks (*see* Balance sheet Exhibit A 16) for purposes unconnected with the engineering concern and spent in the very next year as many as Rs. 98,811 on repairs to them. (*See* evidence of Mr. Lund and the statement Exhibit A 18).

13. Noticing these figures, I cannot bring myself to believe that the Company's finances cannot bear any additional burden in the form of even a reasonable increase in wages to their workmen or that the rates of wages in this Company have reached their ceiling limit. While the company granted meagre increments to only 297 out of 1,424 of their low-paid workmen in July 1945, they granted considerable increase to 105 out of about 200 men on their highly paid staff. Compare figures in Exhibits Nos. O, P, and Q and in Exhibit A 20. It is now almost universally acknowledged that since the increased earnings of an industrial or public utility concern are the product of its invested capital combined with the exertions and industry of its workmen, a reasonable share in such earnings ought in fairness to be allowed to the workmen. The ordinary rule of supply and demand may well operate in the initial stages of a particular industry or concern. But after it has

Comparative table showing the Company's growing position in Assets under various heads.

Year.	Lands.	Factory Buildings.	Plant and Machinery.	Motor trucks and Conveyances.	Stock in trade.	Stores on hand.	Book debts.	Cash on hand.
	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
1940-41	...	12,490	1,44,979	2,23,585	5,190	2,35,692	2,41,321	10,113
1942-43	...	56,021	2,34,194	6,79,099	27,263	6,86,052	11,68,134	1,19,191
1944-45	...	75,746	3,65,589	13,65,267	6,25,317	11,39,371	6,77,076	1,24,207

been fairly well built up by the joint exertions of labour and capital, it is conducive to the material well-being of either that wages are kept at a level high enough to secure contentment of the worker.

14. Looking to the rates of wages at present obtaining in the neighbouring concern at Kirloskarwadi, it is at once clear that the wages in this Company do not stand a fair comparison either. By the award of Mr. Mavlankar in May 1945 and the consequential investigation by the Labour Commissioner of Aundh State (*see* Exhibits F, G, and H) the workmen there have succeeded in obtaining, in addition to Attendance Bonus and Prosperity Bonus, increases in their basic wages. And latterly, the Kirloskarwadi concern has allowed, from 1st September 1946, as witness No. 1 Winayak Appaji Kulkarni has deposed, additional increment at 10 per cent. to men on wages up to Rs. 50 and $7\frac{1}{2}$ per cent. to men on wages above Rs. 50. This works out as follows:—

Basic wages.	By award.	By the subsequent grant of 1st September 1946.	Total present wages.	Approximate increase.
Rs.	Rs.	Rs. a. P.	Rs. a. p.	
15	3	1 13 0	19 13 0	$33\frac{1}{2}$ per cent.
25	3	2 13 0	30 13 0	25 „
50	3	5 5 0	58 5 0	17 „
75	4	5 10 0	84 10 0	12 „
100	4	7 13 0	111 13 0	12 „
150	5	11 10 0	166 10 0	11 „

15. The workers in the Company before me claim increases which work out as follows:

Basic wages.	Increase claimed	Rs.	Net figure.
15	40 per cent.	<i>i.e.</i> 6	21
25	40 per cent.	<i>i.e.</i> 10	35
50	35 per cent.	<i>i.e.</i> $17\frac{1}{2}$	$67\frac{1}{2}$
75	30 per cent.	<i>i.e.</i> $22\frac{1}{2}$	$97\frac{1}{2}$
100	25 per cent.	<i>i.e.</i> 25	125
150	25 per cent.	<i>i.e.</i> $37\frac{1}{2}$	$187\frac{1}{2}$

16. The question then remains what increase should be awarded by me in all fairness to the workers. Giving my earnest consideration to that question from the points of view on either side, I think it fair to strike a mean where I can bring the workmen up to the level of their fellows in Kirloskarwadi and slightly above

it and at the same time not impose a heavier financial burden on the Company than is necessary. I decide to award as follows:

Basic wages at July 1st 1945. Rs.	Increase per cent.	Net figure. Rs.
15 to 25	33½ per cent.	20 to 33½
26 to 50	25 per cent.	34 to 62½
51 to 75	12 per cent.	62½ to 84
76 to 150	12 per cent.	85 to 168
151 and over, if any	12 per cent.	

17. I have placed the figures 34 and 62½ above what would be arrived at by calculation, obviously with the view to see that men on higher wages are not put to disadvantage by calculation of this percentage increase. This principle should be observed by the Company in calculating the net figures, if my award is ordered by Government to be put into effect. And I have advisedly taken the basic wages of July 1st 1945, as the increments granted in that month to only some of the workmen and to most on the staff have been the cause for soreness. Evidently, increases granted after that date to workmen and clerks will have to be discounted. That is to say, there will be a corresponding deduction from the figure arrived at by calculation, but not so as to deprive a person of what he has already attained after that date.

18. It will at once be noticed that the increase I have proposed allows a relatively larger relief to men on wages up to Rs. 50; and the general level has been kept higher to compensate for the relatively higher cost of living at Satara Road than within Aundh State limits. The financial burden on the Company would be increased even then by approximately Rs. 68,000 per year, as I find upon calculation by reference to the figures in Exhibit J and Exhibits N, O, P and Q. I have not failed to take into account the fact that working hours have been reduced to 8 from 9 per day and the consequent decrease in production. The Company has put in a statement at Exhibit K to show the increased cost, due to reduction of working hours. For my part, I fail to see why there should be an increase in cost on account of dearness allowance, Provident Fund, bonus and repairs by reason of such reduction in working hours. The items appear to me obviously illusory. Similarly, there is no reason to suppose that there will be an appreciable increase in wages on that account. Only there will be a corresponding decrease in production, which need not necessarily be in like proportion or be evaluated by the rule of three. The increased leisure allowed to the workmen will necessarily result in a better output during the remaining hours of work. It will result in increased efficiency and better quality of work.

19. My award as to this increase in the basic rates of pay applies to the categories of workmen stated in Exhibit D and to clerks in employ on the 1st of July 1946. The increase is to be allowed with effect from 1st July 1946, *i.e.*, on wages payable for the month of July. The Company, too, on its part has granted an increase to unskilled labourers, hammer strikers and cupola men from that month. The categories of workmen stated in Exhibit D are shown in the Schedule appended to this Award.

20. Point No. 3 is whether the workers should be given holidays with pay and, if so, how many per year. In its statement the Mazdoor Sangh has claimed (a) all Gazetted holidays, (b) all Sundays, (c) all half Saturdays, and (d) all local and customary holidays. Without doubt, the demand is extraordinary and even without precedent. In statement Exhibit E the Company has shown the New Year's day, the Hindu New Year's day in Chaitra month, Ramnavami, Nagpanchami, Coconut-day and N. D. Cooper's day as holidays they have allowed with pay hitherto in the course of the year. I was told at the hearing, they also allow the Dasara and the Divali day. There appears to me no reason why the concession of holidays with pay should be extended further. No instance is shown, not even in Kirloskarwadi, wherein Sundays and Gazetted holidays or half Saturdays are allowed with pay. My finding, therefore, is that no holidays with pay more than those which the Company has been allowing should be given.

21. The fourth point is whether the workers should be given sick leave and privilege leave with pay and, if so, how much and on what terms and conditions. Since 1st August 1946, as a result of the amendment of the Factories Act, 10 days' leave with pay in a year, it is admitted on all hands, has been provided to every workman. Beyond this legislative provision, there is shown to me no precedent for allowing any sick leave or privilege leave with pay in any similar concern in Bombay or elsewhere. The Kirloskarwadi concern too does not allow any such leave. It appears to me that leave for such contingencies is a matter to be standardized by legislative provision, so that unhealthy competition in industry may be obviated. The Company has prepared a draft of standing orders which it proposes shortly to put into effect (see Exhibit A 19). Provision is made therein for leave with pay for 10 days and leave without pay for 21 days for sickness and other eventualities (*See Order Nos. 18 to 20*). The point is, therefore, answered in the negative.

22. The fifth point is whether a worker should be made permanent after a probationary period of one year. I answer it also in the negative. In fact, that is a question which depends upon the degree of efficiency attained by the worker during the proba-

tionary period and the number of vacancies available at the moment for being filled up permanently. One cannot order an industrial concern to admit or employ workmen only against permanent vacancies. It will not be practicable, either, always to anticipate permanent vacancies in advance.

23. Point No. 6 is: Should the rules of service of the staff and the workers be the same? I answer this point, likewise, in the negative. The qualifications necessary for their employment, the nature of the work they do, and the standard of life they live being widely different, it is necessary that employees included within the category of "Staff" should be placed under a different set of rules than those for workmen. No industrial concern can run with advantage at the present day if its workmen attend and leave at the hours provided for the staff and are allowed privileges in matters of leave, gratuity, etc., on a par with the staff.

24. The seventh point refers to bonus, which the workers claim should be paid to them every year as a matter of right and at the rate of a month's wages. Bonus being entirely a matter of grace and not of right and being dependent upon the amount of surplus profits available in any given year, it is unreasonable to provide for any obligation in that behalf on the employer. As it is, the Company has been granting bonus every year since 1942-43, and it is solely in the hands of the workers to put in the necessary zeal and industry in order to maintain the profit level and to deserve further bonus in the years to come by continuing harmonious relations with the Company. The grant of an annual bonus promises to be almost a recurring feature in most concerns. But claim to it cannot be recognized as of right. This point, too, has to be answered in the negative.

25. The eighth point is: Should consultation with the Mazdoor Sangh formed by the workers of the Company be necessary before a worker is dismissed? This demand is certainly unreasonable, as prevention of a threatened danger and maintenance of discipline among the operatives would be rendered impossible if it were to be conceded. Besides, such consultation would in most cases be fruitless having regard to human nature. In the draft standing orders, provision is made for opportunity to be given to an employee to show cause and to be heard before he is dismissed. See orders Nos. 28 to 32. I would impress on the notice of the Company, here, the desirability of making a suitable provision for an appeal to the Board of Directors or to a body constituted by them for that purpose. I answer the point in the negative.

26. The ninth and tenth points can be conveniently treated together. They are as follows:

- (9) Should the posts of Supervisors be filled by promotion from among the Senior workers?
- (10) Should the practice of imposing fines, if it exists, for late attendance by a few minutes etc., be abolished?

These are matters of internal administration by the Company alone and that is the only answer which can be given to these points. The Company, it is argued before me, has in fact been appointing Supervisors from among the old Senior workers, though not necessarily in the order of seniority. And the reason for this is quite obvious. Selection is the correct incentive to industry and merit of a worker. As to imposition of fines, too, the Company's Works Manager assures me that late attendance by just a few minutes is never taken notice of with any severity, but such leniency cannot be permitted to dwindle into a license. Any attempt to prescribe a rule for exonerating or exempting would, in my opinion, be fruitless.

27. The eleventh and the most keenly contested point in this reference is in the following terms: Was the termination of service of all or any of the workers whose names are mentioned in Annexure "A" justified? If not, is any order regarding their reinstatement and/or compensation necessary or desirable, and, if so, what order?

28. I proceed first to see whether the termination of service was justified. It has to be noted that the reason stated in the notice of discharge Exhibit A-1, which is dated 24th April, was that the 17 persons had taken part in organizing a strike at the works in contravention of Rule 81-A. I must first of all observe that there is hardly any evidence that the Mazdoor Sangh, of which 11 out of these 17 persons are office-bearers, had organized the strike, although it is true that the strike could not but have been organized and that it was in contravention of the order passed by the Central Government under Defence of India Rule 81-A. There is no evidence that the meeting of the 20th April in which the workmen are stated to have decided to go on strike had been summoned by the Mazdoor Sangh. Nor is there evidence that any of these 17 persons were among the promoters of that meeting. That they had joined the strike on the 22nd April and remained on strike thereafter is not necessarily evidence of the reason stated in the notice, *viz.*, that they had "organized" the strike. It is well open to doubt if acts done in instigation or in furtherance of the strike can amount to "organizing" the strike, which expression implies that the persons had been the source of inspiration to the strikers and had provided the scheme for the propagation of the strike. Therefore, when the Company attempts to prove at the hearing that these men instigated or did acts in furtherance of the strike, there appears to me a departure from its statement in the notice. But granting for argument that such

acts can amount to organizing, I find it impossible to arrive at the conclusion that these 17 or any of them had instigated or done acts in furtherance of the strike. It is sought to be proved that on the night of the 21st April, *i.e.*, the night preceding the commencement of the strike, about 20 people went round the quarters of the staff and urged witnesses Patil and Jivraj Shah to join the strike of the following morning. Witness Jivraj adds that slogans were shouted in front of his quarters that those who attended the works notwithstanding would have their feet measured for nailing " patris " (for shodding). But neither of these witnesses names any of these 17 persons, except Dandekar, as among those 20. Jivraj Shah does not say that the 20 persons who had visited his quarters to persuade him had shouted the slogans. It is further stated by witness Wagh and Mantri that on the morning of the 22nd, a crowd of about 200 workers held up the Company's bus at the Wasna bridge and threatened to pull out of the bus the members of the staff proceeding to the works as usual. Yasin (No. 1), Balu Gharge (No. 4) and Babu Mali (possibly No. 13) are named as among the persons noticed in the crowd. But it does not appear from the evidence that any of them had threatened to pull the occupants out of the bus. As the workmen had struck work, there was nothing unusual in that they were loitering about in groups on the road and the bus had perforce to stop at the Wasna bridge, which is about 30 feet wide, before the crowd could clear out of the constriction. That is evident from Mantri's statement. That the crowd did not clear out and make way is not evidence that the bus was stopped to prevent the occupants from proceeding. It is true that some members of the crowd succeeded in persuading the occupants, without any threats of molestation, not to proceed further. On the arrival of Mr. Lund to the spot within a few minutes all the occupants could quietly pass on and it is not even suggested there was any further hindrance or persuasion. The incident was relatively trivial. The Company next relies upon the letters Exhibits A-5 and I, dated respectively 27th April 1946 and 2nd May 1946, to show that the staff had been feeling embarrassed and pressure was being exerted on them not to attend. The letters are vague in themselves and one of them is not even signed. Moreover, they relate to acts subsequent to the order of discharge and must be considered irrelevant. As to the stopping of the water pump engines on the 22nd, 23rd and 24th, I have in vain looked for evidence connecting any of these 17 men with that act. On the contrary, it appears in the evidence that Mane (No. 11), Shingte (No. 12), Yasin (No. 1) and Patankar (No. 2) actually promised help to start the engines and did succeed in starting one of them on the 24th and the other, on replacing a broken part, on the morning of the 25th. Jivraj Shah even admits that one of the engines was started on the evening of the 23rd. It is next alleged that dhobis, milk-vendors and barbers were prevented from rendering services to the staff people in the

colony and that coolies and watchmen obtained for temporary work were scared away. But the evidence in that respect must be dismissed as hearsay and unconvincing and it certainly does not connect any of these 17 men with those acts. As against Nos. 5 to 9, 16 and 17 there is no evidence whatever. It appears to me plain enough that the Company has discriminated between these 17 men and the rest and that 11 out of these 17 have been victimized because of their having been office-bearers of the Mazdoor Sangh, and the remaining six without any ground whatever. The notice Exhibit Z which Mr. Lund had posted on the notice board a few hours before the notice of discharge Exhibit A-1 did not intimate to them that they were called upon to answer the charge that they had organised the strike. As they had determined to go on strike, they did not report themselves to duty at 3-30 p.m. They are discharged summarily by the notice Exhibit A, without an opportunity being given to them to know and answer the charge that was suddenly sprung upon them. In the absence of any standing orders as to conditions of employment, natural justice required such an opportunity being given to them before they could be discharged. Even as an order of discharge, as distinct from dismissal, the order was bad enough, as no compensation such as a month's wages was offered to be paid to them. I would here insist upon the notice of the Company that it has failed to notice the difference between a workman's going and remaining on strike and his organizing a strike. And not being able to substantiate the charge of organizing the strike, it has now shifted its ground and has attempted to show that 11 of these men had instigated the strikers or done acts in furtherance of the strike. The Company could well have moved the District Magistrate for process against these men under the Defence of India Rules for breach of the order passed under Rule 81-A. Sub-rule 4 of that Rule does not provide for such a penalty. Mr. Narayanaswamy relies on the analogy of the standing orders framed by the Industrial Court for operatives of Textile Mills in Bombay and he points to order Nos. 21 and 22 (1) in support of Mr. Lund's action in discharging the men. But so long as there are no standing orders framed for the operatives of the Cooper Engineering Ltd., at Satara Road, I am unable to uphold the Company's action. I find that the order terminating the services of these 17 men was not justifiable.

29. It remains to be seen whether any order regarding reinstatement with or without compensation is necessary or desirable, and if so, what should be that order. It is contended for the Company that the relationship between the employee and the workmen being founded on contract, reinstatement cannot be ordered against the Company's will and the remedy of the employee, if he is found to have been wrongfully dismissed, is to claim compensation. The measure of compensation, it is urged, is 13 days' wages

and not more. Mr. Narayanaswamy for the Company relies upon the observations of Mr. Wassoodew in paragraph 10 of his award between the Reay Paper Mills, Mundhwa, and their employees, published in the *Labour Gazette*, Vol. XXV, September 1945, page 38 (at pages 43-44). I am, of course, mindful of the weight of these observations in their application to a case where a workman is found to have been discharged or dismissed not purely for Trade Union activities but on grounds of insubordination, instigation on his part to others to break legitimate orders, habitual disorderly behaviour or the doing of acts likely to endanger his own life or the lives of others. But the case of these 17 persons before me stands entirely on a different footing. As I have already found, they have been discharged for going on and remaining on strike along with 1,400 others; and 11 out of them, have been particularly victimized because of their being office bearers of the Mazdoor Sangh. The acts done in furtherance of the strike, by strikers who have not been identified, do not, moreover, appear to be of a serious nature. No damage to property of the Company was done and no acts of violence were committed. On the contrary, there is evidence of an attitude of respect for authority and of helpfulness on the part of some of them. See, in particular, the evidence of witness Wagh, Jivraj and Doshi. There should be no victimization for a mere Trade Union activity but rather an endeavour on the part of all concerned to arrive at a proper understanding of the needs and the difficulties on either side and to promote a healthy growth of such activity. I hold that this is pre-eminently a case wherein reinstatement of all the 17 men is not only desirable but also necessary in view of their rights and their conduct. Until the 16th April, matters were proceeding apace by negotiation and mutual regard, as is clear from the letters and notifications Exs. S, T, V, W and X. Mr. Juju, pleader, was to appear on the 22nd and negotiate further with the Works Manager. All this was being done for and on behalf of the Sangh. But the strike was suddenly precipitated by the meeting of the workers held on the night of the 20th, as it appears on the evidence, irrespective of the steps the Sangh was taking on their behalf until then. It is only to be hoped that workmen in general will see the danger to which they expose their leaders by ill-advised and unauthorized action as also the damage to the employer which a hasty strike entails.

30. It is appropriate, in my opinion, that the 17 men should be reinstated with compensation, which should be equivalent to the loss of their wages from the 4th July until the date of their actual reinstatement. I disallow wages for the days between 22nd April and 3rd July as they voluntarily remained on strike during that period. It is not suggested or even argued that they had offered to rejoin on the 24th or thereafter. In their replies (Ex. A-4) of 29th April they never offered to resume duty. On the contrary,

there is indication therein of their intention to hold out without even vacating the Company's quarters during the interval. It is, therefore, only fair that the Company should not bear the cost of their wages up to 4th July. On 4th July, it is admitted on all hands, the strike ended and all the workmen with the exception of these 17 resumed duty. These 17 could not resume duty because the order of discharge had not been withdrawn. True that the lock-out notice (Ex. A-3) against the remaining workmen had also not been withdrawn. But those workmen had been allowed to rejoin, notwithstanding, on the 4th July; whereas the Company persists still in its intention not to reinstate these 17.

31. My finding, therefore, on the 11th point is that an order for reinstatement of the 17 men named in the reference is both necessary and desirable and that the Company should be ordered to pay compensation to them equivalent to the loss of their wages—I mean wages increased, if such increase is ordered by Government—from 4th July 1946 until their reinstatement.

(Signed) D. G. KAMERKAR,
Adjudicator.

Satara, 15th October 1946.

SCHEDULE I

Categories of Workmen

Pattern makers.	Moulders.	Pattern-
Skilled fitters.	Core men.	makers.
Machinists.	Cupola opera-	Engine Atten-
Draughtsmen.	tors.	dants.
Charge men.	General and	Fettlers.
Inspectors.	Simple ma-	Slay makers.
Tool room	chine fitters.	Tin smiths.
fitters.	Welders.	General coolies.
Tool room	Electricians.	Sandmill men.
machinists.	Carpenters.	Smithy ham-
Mill-wright	Blacksmiths.	mer-strikers.
fitters.	Painters.	Station coolies.
Heavy dnty		
men.		

(Bombay Castle 23-6-1943. No. 7052/34-1. Government Gazette
1-7-43 Part I. pp. 1529 to 1530.)

MESSRS, NOBLE STEEL PRODUCTS LTD., BOMBAY,

AND

ITS EMPLOYEES

Adjudicator:—E. M. Nanavutty, I.C.S., (Retired).

Counsel:—Mr. Nanubhai Desai, instructed by Mr. D. R. Vajifdar,
Manager, for the Noble Steel Products Ltd.

Mr. K. T. Sule, Advocate, instructed by Mr. V. Chaudhari, Secretary of the Bombay Iron and Steel Workers' Union (Red Flag), and Mr. S. S. Mirajkar, Chairman of the Bombay Provincial Trade Union Congress, for the employees.

A w a r d R. I

By Notification No. 7052/34, Political and Services Department, dated the 14th of April 1943, of the Government of Bombay, I was appointed Adjudicator in the trade dispute between Messrs. Noble Steel Products Ltd., Bombay, and its employees.

The matters referred to my adjudication are three in number, viz.—

- (1) 25 per cent. increase in the basic rate of wages;
- (2) dearness allowance on the sliding scale of the Millowners' Association for the cotton textile mills in Bombay; and
- (3) two months' wages as bonus for the year 1942.

2. For the purpose of adjudicating this dispute, I was authorized to exercise such powers as are conferred on, and follow such procedure as is prescribed for, a Board of Conciliation under the Trade Disputes Act of 1929, and the Bombay Trade Disputes Rules of 1930.

3. On receipt of the Government Notification, the usual notices calling upon the parties to file their respective statements were issued on the 16th April 1943. The written statement on behalf of the Bombay Iron & Steel Workers' Union, representing the employees of Messrs. Noble Steel Products Ltd., Bombay, was received in the office of the Industrial Court, Bombay, on 30th

April 1943. In reply thereto, the contesting firm filed its written statement on the 11th May 1943. The first hearing of the case was therefore fixed on the 17th May 1943, when the parties and their Counsel appeared before me in the Industrial Court. After a preliminary discussion of the case, the proceedings were adjourned to the following day to enable parties to come, if possible, to an amicable settlement. On the 18th May 1943, the parties met to explore possible avenues for a settlement of the dispute in the light of the facts and figures available to them. The next day, the 19th May 1943, accompanied by the representatives of both parties, I visited the factory of the Noble Steel Products Ltd., at Byculia, as the representatives of the employees desired that I, as Adjudicator, should carefully observe the working conditions in the factory and the scale of wages paid to the employees, having regard to the nature of the work done by them. I had previously visited the factory of my own accord on the 27th April 1943, in order to acquaint myself with the different processes employed, and the articles produced in the factory. On the 20th May 1943, I discussed with the parties, both separately and jointly, the three demands made by the workers of this factory; and owing to the good sense and friendly feelings prevailing between the manager of the firm Mr. Vajifdar and his Counsel Mr. N. Desai on the one hand, and the representatives of the employees, viz., Mr. S. S. Mirajkar and Mr. V. Chaudhari, backed by their able advocate Mr. K. T. Sule on the other, I was able to bring about a compromise between the parties in respect of two demands, viz., dearness allowance and increase in wages. A memorandum of settlement in respect of these two demands was drawn up and signed by parties in my presence on the 21st May 1943, at my private residence, as the Industrial Court was closed on that day. This memorandum of settlement will form part of my award, and in accordance with the terms of this settlement I decide the two demands relating to dearness allowance and increase in wages.

4. There now remained for decision only the demand for two months' wages by way of bonus. I fixed the next day, 22nd May 1943, for hearing arguments of both parties on this vexed question of bonus. I heard Mr. Sule on behalf of the workers and Mr. Desai on behalf of the firm on the question of bonus. I have carefully examined the balance sheets and the statements of profit and loss accounts submitted on behalf of Messrs. Noble Steel Products Ltd., and I find that "the fabulous profits" alleged to have been made by this private concern only exists in the imagination of the workers. This business was started as a private limited concern only in 1939. It started with an authorised capital of Rs. 50,000 and a subscribed capital of Rs. 26,000. Since 1939, it has borrowed loans from time to time, and these loans now amount to about four lacs of rupees. The balance sheets of this private firm during the last three years show that it is

not on a sound financial basis. As pointed out by Mr. Vajifdar in the written statement of the firm, it would be absurd and suicidal on the part of the Directors of this nascent business concern to grant bonuses to its workmen while leaving its creditors unsatisfied.

Not only is this concern a newly-started one, but it has to struggle very hard against richer and better-equipped companies competing in the same line of business.

5. In view of the concessions granted by Messrs. Noble Steel Products Ltd. to its employees under the terms of the settlement verified before me on the 21st May 1943, and in view of the straitened financial condition of this concern, as would appear from the profit and loss accounts submitted by it to me under confidential cover, I do not think that the workers in this business are entitled to any bonus. And indeed Mr. Sule frankly conceded that if the firm had made no appreciable profits during the last three years then the workers would not be entitled to any share of it by way of bonus. I therefore disallow the demand for two months' wages by way of bonus and award no bonus to the workers.

6. As regards the demand for dearness allowance and increments in wages, I make an award in terms of the settlement verified before me.

7. In conclusion I wish to place on record my appreciation of the very reasonable attitude taken up by parties and their Counsel in the settlement of this trade dispute.

(Signed) E. M. NANAVUTTY,
Adjudicator.

Bombay, 24th May 1943.

MEMORANDUM OF SETTLEMENT

The following terms have been agreed to between the Noble Steel Products Ltd., Bombay, and their employees:

TERMS

1. Dearness allowance at the rate of $\frac{4}{5}$ ths of the scale adopted by the Millowners' Association, Bombay, shall be given to all the employees, temporary or permanent, of the Noble Steel Products Ltd., Bombay, with effect from 1st April 1943.

2. The question regarding payment of Bonus is left to the decision of the Adjudicator.

3. (a) No employee shall be paid less than annas twelve per day.
 (b) Increment shall be given to all the employees except those who are covered by clauses (a) and (c) herein, according to the following schedule:

SCHEDULE

Category of Earnings.	Rate of increment.		
Annas 12 to Re. 1	...	...	2 annas per day
Re. 1-1-0 to Rs. 1-8-0	...	...	1 anna per day
Rs. 1-9-0 to Rs. 2-8-0	...	...	2 annas per day
Rs. 2-9-0 to Rs. 3-8-0	...	...	3 annas per day
Rs. 3-9-0 to Rs. 4-8-0	...	...	4 annas per day
Rs. 4-9-0 to Rs. 5-8-0	...	...	5 annas per day

and so on

- (c) The three employees who are at present paid on a monthly basis are excluded from the scope of the above schedule.
 (d) The increments referred to in clauses (a) and (b) above shall be paid with effect from 1st of May 1943.

(Signed)

MANUBHAI K. DESAI,
 D. R. VAJIFDAR,
 For and on behalf of the
 Noble Steel Products Ltd.,
 Bombay.

(Signed)

K. T. SULE,
 S. S. MIRAJKAR,
 V. CHAUDHARI,
 For and on behalf of
 Bombay Iron & Steel Workers'
 Union (Red Flag).

Before me,
 (Sd.) E. M. NANAVUTTY,
 Adjudicator.
 Bombay, 21st May 1943.

(Bombay Labour Gazette Nov. 1944, p. 177-179.)

MESSRS. NOBLE STEEL PRODUCTS LTD., BOMBAY

AND

THEIR EMPLOYEES

Adjudicator—K. B. Wassoodew, Esq., (Retired Judge, High Court, Bombay).

Counsel—Mr. Nanubhai K. Desai, instructed by Mr. D. R. Vajifdar, Director, for the Noble Steel Products Ltd.

Mr. K. T. Sule, Advocate, with Mr. T. Godiwalla, Advocate, instructed by Mr. V. Chaudhari, General Secretary, Bombay Iron and Steel Workers' Union (Red Flag), for the Company's workmen.

A w a r d

By Government Order, Political and Services Department, No. 7052/34, dated the 8th September 1944, issued under sub-rule (1) of rule 81-A of the Defence of India Rules, read with Government of India, Department of Labour, Notification No. L. 3005, dated the 20th May 1942, I was appointed to adjudicate in the trade dispute between Messrs. Noble Steel Products Ltd., Bombay (hereinafter referred to as the "Company") and the Company's workmen. The said Order also directed that I was to exercise such powers as are conferred on, and follow such procedure as is prescribed for, a Board of Conciliation under the Trade Disputes Act, 1929, and the Bombay Trade Disputes Rules, 1930.

2. The dispute referred to me for adjudication in the said Government Order is as follows :

What bonus, if any, should be granted on the earnings of the workmen during the year ending 31st December 1943 and on what terms and conditions?

3. The usual notices to the parties directing them to file their respective written statements in this dispute were issued on 15th September 1944. The Bombay Iron and Steel Workers' Union (Red Flag), Bombay, filed a written statement on behalf of the workmen of the Company on 23rd September 1944. The written statement of the Company, in reply to the written statement of

the Union, was filed on the 30th September 1944. The Company was directed to file confidentially its Profit and Loss Account Statements and Balance Sheets for the years 1939, 1940, 1941, 1942 and 1943. At the hearing on 2nd October 1944, it appeared that the parties and their counsel were anxious to amicably settle this matter. I, therefore, helped them to arrive at a fair settlement of the dispute. Proposals and counter-proposals were put forth by the parties relating to the quantum of bonus and the terms and conditions on which it should be granted. After some discussion it was possible, on account of a very conciliatory and reasonable attitude of the representatives of the parties, to arrive at a settlement of the dispute, the parties agreeing to accept certain suggestions which appeared to me to be reasonable. The memorandum of settlement arrived at was accordingly drawn up and approved and signed by the parties and their counsel in my presence on the same day. The memorandum of settlement is attached hereto as Annex "A". I, therefore, make an award endorsing the terms of the said settlement and direct that the parties do comply with the terms agreed to therein.

K. B. WASSOODEW,
Adjudicator.

Bombay, 4th October 1944.

ANNEX "A"

In the matter of the trade dispute between Messrs. Noble Steel Products Ltd., Bombay, and the Company's workmen.

MEMORANDUM OF SETTLEMENT

Messrs. Noble Steel Products Ltd., Bombay (hereinafter referred to as the "Company"), and their workmen have effected a settlement of the dispute referred to adjudication in Government Order, Political and Services Department, No. 7052/34, dated the 8th September 1944, in the following manner :

(1) That the Company shall pay one month's bonus, *i.e.*, one-twelfth of the earning of their workmen, to the latter for the year ending 31st December 1943, exclusive of dearness allowance, provided that the workmen to be entitled to the bonus shall have served the Company for 120 days in the year 1943.

(2) That the Company shall pay bonus to its workmen as may be earned by them, in one lump sum on 15th October 1944, provided that the workmen to be entitled to the bonus shall

be in the employment of the Company on the 2nd of October 1944.

(3) That the bonus to the other workmen, who are not in the employment of the Company on the 2nd of October 1944, shall be paid in two equal instalments, the first to be paid on the 15th of November 1944 and the second on the 15th of December 1944.

K. T. SULE,
V. CHAUDHARI,
General Secretary,
For and on behalf of the
Bombay Iron & Steel Workers'
Union (Red Flag),
Bombay.

NANUBHAI K. DESAI,
Advocate (O.S.).

Before me,
K. B. WASSODEW,
Adjudicator.
Bombay. 2nd October 1944. Messrs. Noble Steel Products Ltd.,
Bombay.

(Bombay Castle, 18th September 1945 No. 7052/34-I. Government Gazette 27-9-45, Part I. pp. 2386 to 2388.)

MESSRS. NOBLE STEEL PRODUCTS LTD., BOMBAY

AND

THEIR EMPLOYEES

Adjudicator—E. M. Nanavutty, I.C.S., (Retired).

Counsel—Mr. Nanubhai K. Desai, with Mr. D. R. Vajifdar, for the Noble Steel Products Ltd., Bombay.

Mr. K. T. Sule, Advocate, with Mr. V. Chaudhari, General Secretary, Bombay Iron & Steel Workers' Union, Bombay, for the employees.

A w a r d

By Government Order, Political and Services Department, No. 7052/34, dated the 19th June 1945, issued under sub-rule (1) of rule 81-A of the Defence of India Rules, read with Government of India, Department of Labour, Notification No. L. 3005, dated the 20th May 1942, I was appointed to adjudicate the dispute between the Noble Steel Products Ltd., Bombay (hereinafter referred to as "the Company") and its employees. The said Order also directed that I was to exercise such powers as are conferred on, and follow such procedure as is prescribed for, a Board of Conciliation under the Trade Disputes Act of 1929, and the Bombay Trade Disputes Rules of 1930.

2. The usual notices to the parties to file their respective written statements were issued on the 23rd June 1945. The Bombay Iron and Steel Workers' Union (hereinafter referred to as "the Union") filed the written statement on behalf of the employees of the Company on 7th July 1945. No other employees unconnected with the Union have filed any separate written statement in this case. On the 19th July 1945, the Company filed its counter written statement. The matter was fixed for hearing at 11 a.m. on the 23rd July 1945, but after some preliminary discussions the case was adjourned to 13th August 1945, to enable the Company to prepare certain statements required by the Union. Owing to my indisposition in the meanwhile, the case had to be

adjourned to 27th August 1945. On that day the parties and their counsel advanced their respective arguments in support of and against the claims of the employees. In order to enable the parties to come to a settlement, if possible, I adjourned the proceedings to 29th August 1945. On that day when the parties met me in the Court I was informed that they had discussed the matters among themselves on the previous day, *i.e.*, 28th August 1945, but that they were unable to come to any agreement on any of the issues in this case. I, therefore, heard further arguments of the parties on the merits of the case. On the next day, *i.e.*, 30th August 1945, at the desire of the parties, I visited the factory of the Company at Worli.

3. This is the third time that a trade dispute between this Company and its employees has been referred to adjudication by Government under rule 81-A of the Defence of India Rules. In the month of April 1943 a dispute between the same Company and its employees in connection with the increase in the basic wages, dearness allowance, and bonus for two months, was referred to me for adjudication. I made an award on 24th May 1943. As regards increase in wages and dearness allowance, the parties then came to a settlement and I recorded the agreed terms in a memorandum of settlement annexed to my award, published in the *Bombay Government Gazette*, Part I, dated 1st July 1943, page 1529. In the month of September 1944, a dispute regarding payment of bonus was referred by Government to the adjudication of Mr. K. B. Wassoodew, a retired Judge of the High Court of Bombay. On that occasion too the parties came to a settlement, and, by mutual agreement, the Company agreed to pay one month's bonus to its employees on certain conditions. The learned Adjudicator made an award endorsing the terms of the settlement on the 4th October 1944. (See *Bombay Government Gazette*, Part I, dated 26th October 1944, page 2478).

On the 13th of January 1945, the Union on behalf of the employees of the Company made a demand for two months' bonus for the year 1944 and for an increase in wages of certain categories of workers. Discussions and negotiations between the parties followed in the office of the Commissioner of Labour. The proceedings in the office of the Commissioner of Labour proved infructuous. In the meantime, on the 25th April 1945, the Union gave the management 14 days' notice to strike work, as required by rule 81-A of the Defence of India Rules. On the 18th May 1945, the Union also gave notice to terminate my award, dated 24th May 1943. Further negotiations were carried on in the office of the Commissioner of Labour, but no settlement could be arrived at and so the dispute was referred to adjudication.

4. The issues referred to me for adjudication this time are as follows:

(i) What bonus, if any, should be granted on the earnings of the employees for the year 1944, and on what terms and conditions?

(ii) Do the existing rates of wages of different categories of employees require any revision and if so how?

5. The Union in its written statement (Ex. 2) filed in these proceedings had asked for a bonus equal to two months' wages of the workers on the ground that the Company had flourished since 1939 and had made huge profits during the period of the War. It was also urged by the Union that the volume and intensity of work of this prosperous concern had increased so much that the management of the Company had to purchase a very large plot of land at Worli and to erect a big workshop, that, in short, the Company was doing a very large volume of work and stood today as a serious competitor to older firms like Godrej and Boyce Mfg. Co., and the Hind Tank Mfg. Co., etc. In arguing the case for bonus, Mr. Sule, who appeared on behalf of the Union in this case, stated that this concern had made large profits during this War and since the Company had granted bonus for the year 1943, the employees should also be given the bonus, which they had demanded, for the year 1944. Mr. Nanubhai K. Desai, counsel for the Company, argued that the war had now terminated, and that the Company would be losing all its war contracts within a short time. The Company had also incurred heavy liabilities and the fact that the Company had not been able to pay commission to the managing agents and the further fact that the Company had not paid dividends to its shareholders and interest on loans up to date, were good grounds for urging that the employees were not entitled to any bonus for 1944. It was further contended by him that the Company had to pay a debt of several lacs of rupees and that it would be unfair to the Company to make it pay to its employees any bonus when it could not repay the loans borrowed or even the interest thereon.

6. I have heard the arguments of both parties and carefully considered the matter. The Company had also very kindly placed before me its profit and loss accounts and the balance-sheets for the last six years. I do not think that the Company has made any huge profits which could be fairly compared with the profits made by the textile industry in this Province, but I do find that the Company has made some profits for the year 1944 as also for the year 1943. For the year 1943, according to the settlement between the Company and the Union, recorded by Mr. K. B. Wassoodew, the Company voluntarily agreed to pay a bonus equivalent to one month's wages to its employees on certain terms and conditions. Looking to the profits of the Company for the years 1943 and 1944, I do not think that the Company's position was worse in 1944 than in 1943 and since the Company agreed

to pay bonus equivalent to one month's wages for the year 1943. I see no reason why the Company should not pay some bonus for the year 1944 as well. Nevertheless, I am satisfied that the Company has to meet heavy liabilities and it is desirable that there should be sufficient reserves to meet the post-war rehabilitation. I feel, however, that a small amount of bonus paid by the Company for the year 1944, will not saddle it with a heavy burden so as to upset its financial structure during the post-war period. It is very difficult to predict what would be the financial position of the Company in the years to follow, on the materials supplied to me, as most of the war orders are liable to be terminated in the near future. No evidence was placed before me as to how the Company had planned to switch over from war-time conditions of manufacture to meeting the ordinary needs of the civil population. As a gesture of compromise it was suggested on behalf of the Union that they were willing to accept six weeks' wages as bonus and the Company on the other hand was prepared to settle this matter by an offer of 15 days' wages as bonus if the entire dispute were to be settled out of Court. The Union was not prepared to accept the offer of a bonus equivalent to 15 days' wages, and the question was left entirely to my decision. I have given careful thought and anxious consideration to this question of bonus, and I feel that, looking to all the circumstances of the case, the Company should pay to all its employees a bonus equivalent to one month's wages for the year 1944 as was done in 1943. As regards the terms and conditions on which this bonus should be paid, I award as follows:

(1) that the Company shall pay one month's bonus, i.e., 1/12th of the earnings of its employees, for the year ending 31st December 1944, exclusive of dearness allowance, provided that only such employees would be entitled to this bonus who had served the Company for not less than 120 days in the year 1944.

(2) that the Company shall pay bonus to all its employees as may be earned by them, in one lump sum, within one month of the publication of this award in the *Bombay Government Gazette*, provided that the employees entitled to the bonus shall be in the employment of the Company on the date on which this award is published by Government.

7. The second issue relates to revision of the existing rates of wages of different categories of employees. The Union contended in its written statement that the Company had refused to grant any increments to its employees, although the Company had agreed to give a starting wage of As. 12 a day and grant a proportionate increase in the wage of other employees in pursuance of the terms of settlement arrived at before me in the previous adjudication case of 1943. It was further contended that since June 1943, a majority of the workers were not granted any increments although they had

put in two years of service. When a new worker was employed he was given As. 12 a day, apparently to show that the Company was scrupulously abiding by the terms of the award of June 1943, but in reality the Company was doing blatant injustice to these workers by not adding a single anna to their daily earnings whatever length of service they may have put in, and that whatever profits the Company had made, had been derived out of the sweat of their workmen. It was further alleged that even the fitters and welders were kept rotting on As. 12 a day, although their scale of wages ought to have been higher than that of any coolie whose minimum wage was in fact fixed in the last adjudication. But the Company, it was urged, shielded itself behind the award, alleging that the scale of As. 12 as the starting wage was fixed by the award itself and hence the management was not in a position to do anything to the contrary. The Union, therefore, demanded at least an increase of As. 4 in the present daily wages of all the employees. Mr. Nanubhai K. Desai, counsel for the Company, pointed out that the above statement made by the Union in its written statement was entirely incorrect and misleading. He challenged the Union to produce a single worker who was at present in the employment of the Company and who was not paid any increment in wages since the award based on the settlement of June 1943. The Union has not produced any oral or documentary evidence in support of this contention in its written statement. On the other hand the Company has filed before me a confidential statement showing the name, designation, the date of last increment and the wages for the months of March 1943, 1944 and 1945. From a perusal of that statement I find that the Company has carefully adhered to the terms of the settlement annexed to the award dated 24th May 1943, in spite of the fact that the award has been terminated by the Union in the month of March 1945. Not only that but in several cases the increments have been very liberal. This fact was further corroborated by oral testimony of some of the workers whom I interrogated when I visited the factory on 30th August 1945. I, therefore, hold that the contentions of the Union in its written statement are entirely erroneous and no case has been made out for any increase or revision of wage rates of the various categories of employees employed in the factory of Noble Steel Products. This issue is, therefore, dismissed.

8. My award is as follows:

ISSUES

- No. 1. *That the Company shall pay one month's bonus, i.e., 1/12 th of the earnings of its employees, for the year ending 31st December 1944, exclusive of dearness allowance, provided that only such employees would be entitled to this bonus as had served the Company for not less than 120 days in the year 1944.*

(2) that the Company shall pay bonus to all its employees, as may be earned by them, in one lump sum, within one month of the publication of this award in the Bombay Government Gazette, provided that the employees entitled to the bonus shall be in the employment of the Company on the date on which this award is published by Government.

No. 2. The existing rates of wages of the different categories of employees do not require any revision for the present.

(Signed) E. M. NANAVUTTY,
Bombay, 8th September 1945. Adjudicator.

(Bombay Castle, 6-7-1943. No. 7052/34-1. Government Gazette 7-8-43. Part I., pp. 1655 to 1658).

MESSRS. GODREJ AND BOYCE MANUFACTURING CO., LTD., BOMBAY

AND

ITS EMPLOYEES

Adjudicator—E. M. Nanavutty, Esq., I.C.S., (Retired).

Mr. Nariman D. Sahukar, Manager of Messrs. Godrej & Boyce Manufacturing Co., Ltd., instructed by Mr. Khurshed J. Bardi, Accountant, and Mr. Gustad N. Pohwalla, Works Superintendent, for Godrej & Boyce Manufacturing Co., Ltd.

Mr. K. T. Sule, Advocate, instructed by Mr. V. Chaudhary, Secretary of the Bombay Iron & Steel Workers' Union (Red Flag), and Mr. S. S. Mirajkar, Chairman of the Bombay Provincial Trade Union Congress, for the employees.

Mr. K. V. Rege, Advocate, for the Godrej & Boyce Workers' Union.

A w a r d

By Government Notification, Political and Services Department, No 7052/34, dated the 14th April 1943, issued under sub-rule (1) of rule 81-A of the Defence of India Rules, read with Government of India, Department of Labour, Notification No. L. 3005, dated 20th May 1942, I was appointed to adjudicate the trade

dispute between Messrs. Godrej & Boyce Manufacturing Co., Ltd., and its employees. For the purpose of adjudicating the said trade dispute I was authorised to exercise such powers as are conferred on, and to follow such procedure as is prescribed for, a Board of Conciliation under the Trade Disputes Act of 1929 and the Bombay Trade Disputes Rules of 1930.

2. The usual notices calling upon the parties to the dispute to file their respective statements were issued on the 19th April 1943. On the 30th April 1943, the Bombay Iron & Steel Workers' Union (Red Flag) filed its written statement, and on the same day, "*mirabile dictu*", its rival, the Godrej & Boyce Workers' Union filed its own written statement flatly contradicting all the assertions made against the Company by the Bombay Iron & Steel Workers' Union (Red Flag). The written statement of the defendant Company was received on the 12th May 1943, and the first hearing of the case was therefore fixed on the 14th May 1943, when all three parties and their respective Counsel appeared before me in the Industrial Court at 11 a.m.

3. At the outset, Mr. Sahukar, Manager of Messrs. Godrej & Boyce Manufacturing Co., Ltd., raised a preliminary objection that as the majority of the employees of the firm, viz. 80 per cent., as represented by Godrej & Boyce Workers' Union, had no grievance whatsoever against the firm, there was in fact no trade dispute and that therefore this reference to adjudication was unnecessary and should be thrown out *in limine*. Mr. Rege, Counsel for Godrej & Boyce Workers' Union, vigorously supported this preliminary objection and argued that the Bombay Iron & Steel Workers' Union (Red Flag), for whom Mr. Sule, Advocate appeared, had really no "*locus standi*" in this case, as this Union had not even 20 per cent. of the employees of Messrs. Godrej & Boyce Manufacturing Co., Ltd., on its list of members. Mr. Sule, on the other hand, most indignantly protested against the intervention of Mr. Rege and the Union which he represented. The situation as it appeared to me on the first day of hearing was rather piquant and struck me as not a little Gilbertian in its absurdity.

4. The Godrej & Boyce Workers' Union is a registered Union with a membership of 1,057 employees of the firm as on 1st December 1942 (see *Labour Gazette* of February 1943, page 405), whereas the Bombay Iron & Steel Workers' Union (Red Flag) has, I understand, not yet received its registration certificate under the Trade Unions Act though it has applied for it some months ago. It, however, claims to represent at least 25 per cent. of the employees of Messrs. Godrej & Boyce Manufacturing Co., Ltd. During the preliminary inquiry held by the Assistant Commissioner of Labour before the issue of the notification appointing

me as adjudicator in this case, there was no reference to the Godrej & Boyce Workers' Union or their opposition to the demands made on behalf of certain employees by the Bombay Iron & Steel Workers' Union (Red Flag). The Godrej & Boyce Workers' Union only emerged from obscurity and appeared before me in response to a general notice which was issued in these proceedings requiring all employees of the Company who did not desire to be represented by a union to file their own independent statements.

5. I have listened with interest to the various contentions urged before me by Mr. Sahukar, Mr. Rege, and Mr. Sule. It seems to me however that the matter is concluded by the very Notification of Government appointing me as Adjudicator and declaring most emphatically that a trade-dispute does exist between Messrs. Godrej & Boyce Manufacturing Co., Ltd., and its employees. If Mr. Sahukar and Mr. Rege really thought that there was any substance in this contention of theirs, they should have raised it before Mr. Iyengar, Assistant Commissioner of Labour, when he made the preliminary investigation into this case, and if the latter thought that there was really no dispute between the Company and the majority of its employees he would have submitted his report accordingly and there would then have been no need to pass any order of adjudication.

6. For the reason given above I overrule the preliminary objection of Mr. Sahukar. To hold otherwise would be to stultify myself and the entire adjudication proceedings.

7. I now turn to discuss *seriatim* the three demands made by the employees of the Company and referred to me by Government for adjudication.

8. The first demand is in respect of a 25 per cent. increase in the basic rates of wages. Mr. Sule on behalf of the Bombay Iron & Steel Workers' Union (Red Flag) has based this demand on the sweeping allegation that the wage level in this Company is very low and that no regular increments in wages have been granted by Messrs. Godrej & Boyce Manufacturing Co., Ltd., to its employees. These accusations to my mind are not founded on solid concrete facts. The Company has filed voluminous detailed statements showing the increments in wages paid to each employee since his joining the Company. It is not easy to work out the general average wage paid by the Company. Mr. Sule argued that the average wage is much lower than the average given in the General Wage Census Report of 1934 (Part I, First Report—Engineering Industry). On the other hand, the Manager of the Company has filed a number of statements to indicate that the wage-rates paid by Messrs. Godrej & Boyce Manufacturing Co., Ltd., are higher in respect of several occupations than the wage-rates shown in the

Wage Census Report of 1934. But in another statement filed by the Company, about 687 "permanent" employees are shown as getting Re. 1-1-0 to Rs. 2 a day, and 414 permanent workers as earning annas thirteen to one rupee a day, and apprentices as getting ten annas a day or even less. No "permanent" worker gets less than fifteen annas a day. Mr. Sule contended that the bulk of the operatives get less than the average wage earned by employees in an engineering industry as shown in the General Wage Census Report. Mr. Sahukar on the other hand pointed out that the majority of his workers are not highly skilled men. During my two visits to this factory I found that it was more highly "mechanised", and the element of human effort reduced to a minimum as compared with the state of things existing in the factory of the Noble Steel Products Ltd. It is not easy to fix an average basic rate of wages in an engineering firm, nor has it been made clear to me as to why there should be an increase of 25 per cent. in this ideal of a standard basic wage. Mr. Sule ultimately gave up this demand for a 25 per cent. increase in basic wages and urged that his Union would be content if the minimum wage of every employee in this Company was fixed at not less than one rupee a day; he further demanded an all-round increase of two annas and six pies in the daily wages of every worker in Messrs. Godrej & Boyce Manufacturing Co., Ltd. Mr. Sahukar regretted his inability to accede to this demand. He pointed out that the Company had granted increments in wages in several cases. He further pointed out that the Company was prepared to pay a bonus of six weeks' wages to every employee in respect of the year 1942. He also urged that if the demand for increased wages was based upon the alleged enormous profits made by the Company, then, according to the dicta of Mr. Justice Chagla in the General Motors (India), Ltd. dispute (*Bombay Government Gazette*, Part I, dated 28th May 1942. page 1,900): "the distribution of increased profits amongst workers is better achieved by the giving of an annual bonus than by a further increase in wages. Wages must be fixed on the basis of normal conditions." Taking into account all the circumstances of this case, and after a careful examination of all the facts and figures furnished by Messrs. Godrej & Boyce Manufacturing Co., Ltd., I am not prepared to hold that there are any valid grounds for demanding that there should be a flat rate of 25 per cent. increase in the wages of all the employees in this factory.

9. The very fact that 80 per cent. of the employees of Messrs. Godrej & Boyce Manufacturing Co., Ltd., as represented by the Godrej & Boyce Workers' Union, have no grievance whatsoever and are content with the existing state of affairs in this factory, is an unanswerable proof that there is no substance in this demand for a 25 per cent. increase in basic wages. I therefore reject this demand.

10. I come next to discuss the demand for two months' wages as bonus. On behalf of Messrs. Godrej & Boyce Manufacturing Co., Ltd., Mr. Sahukar, Manager of the firm, made a very generous offer and expressed the willingness of the proprietors of the Company to pay as bonus $\frac{1}{8}$ th of the total earnings of each employee (excluding dearness allowance) during the financial year beginning with 1st April 1942 and ending 31st March 1943. I have examined the confidential papers filed by the Company showing the financial condition of the firm, and I consider that the offer made by the Company is a handsome one. Mr. Sule on behalf of the workers accepts it though somewhat reluctantly. I therefore award:

(a) that Messrs. Godrej & Boyce Manufacturing Co., Ltd., should pay to all its employees, except as hereinafter provided, a bonus equal to $\frac{1}{8}$ th of the total actual earnings of the said employees, excluding dearness allowance, during the financial year beginning with 1st April 1942 and ending on 31st March 1943 (both days inclusive),

(b) the said bonus will be paid in a lump sum on or before 31st July 1943,

(c) only such employees will be entitled to the said bonus as will have worked in the said factory for 120 days at least during the financial year 1942-43.

11. The third demand referred to me for adjudication relates to leave with pay. The leave rules of Messrs. Godrej & Boyce Manufacturing Co., Ltd., as printed in the Standing Orders of the Company, are as follows:

1. Subject to the exigencies of the Company's service, the Company's employees will be granted leave as follows:

(a) Only monthly-rated employees will be entitled to sick-leave of altogether 20 days in any one calendar year on full pay. This leave will ordinarily be subject to the production of a medical certificate, but the manager may within his discretion grant this leave if he is satisfied that an employee's absence was due to unavoidable causes.

(b) Every permanent daily-rated employee who has put in 240 days' work in the Company's factory in any one calendar year will be entitled to 15 days' leave with pay in the following calendar year. This leave may be accumulated up to a limit of 30 days at any one time. Any leave that has accumulated for more than 30 days stands lapsed.

(c) All permanent daily-rated employees of the Company shall be entitled to 45 days' leave without pay in any one calendar year in addition to the leave with pay that may be taken under clause (b) above. This leave cannot be accumulated. In the event of such leave being taken as sick-leave, such sick-leave will ordinarily be subject to the production of a medical certificate, but the manager may within his discretion grant sick-

leave if he is satisfied that an employee's absence was due to unavoidable causes.

12. For the purpose of deciding the demand made in the present case, the above extract from the Standing Orders of the Company relating to leave rules will suffice.

13. The contention on behalf of the Bombay Iron & Steel Workers' Union (Red Flag) is that this system of leave rules is unjust inasmuch as it deprives a large number of workers of their privilege of leave with pay, and it is argued that the rules relating to leave with pay should be revised so as to permit all employees who have worked for less than 240 days to get proportionate leave with pay on the following basis:

230 days' work	...	14 days' leave with full pay.
220 days' work	...	13 days' leave with full pay.
210 days' work	...	12 days' leave with full pay.
200 days' work	...	11 days' leave with full pay.
190 days' work	...	10 days' leave with full pay.
180 days' work	...	9 days' leave with full pay.
170 days' work	...	8 days' leave with full pay.
160 days' work	...	7 days' leave with full pay.
150 days' work	...	6 days' leave with full pay.

I have heard Mr. Sule on behalf of the workers represented by the Bombay Iron & Steel Workers' Union at some length. In my opinion there is really no substance in this contention of the workers. The preset leave rules framed by Messrs. Godrej & Boyce Manufacturing Co., Ltd., are very liberal, and in fact they are more generous than what the Government of India proposes to legislate on this subject. The draft bill prepared by the Government of India in accordance with the decisions arrived at by the First and Third Conferences of Labour Ministers only contemplates the grant of seven days' leave with pay.

14. It was submitted by the manager of Messrs. Godrej & Boyce Manufacturing Co., Ltd., in his written statement, "that wherever existing practice in an industrial concern confers benefits, advantages or amenities on its workers in advance of existing legislation, no Adjudicator or Arbitrator should award additional rights or advantages to the workmmen." On the other hand, Mr. Sule on behalf of the Bombay Iron & Steel Workers' Union contended that in certain cases it might well be the duty of an Adjudicator in a progressive state to point the way to sound social and labour legislation and to give effect to liberal principles in the awards that such Adjudicator makes.

15. After giving due consideration to the arguments on both

sides, it seems to me that there is great force in the contention urged before me by Mr. Sahukar, manager of Messrs. Godrej & Boyce Manufacturing Co., Ltd., and he is supported by weighty authority, by no less a personage than the former President of the British Industrial Court and Chairman of the National Wages Board for Railways in England.

In his book on "Industrial Arbitration in Great Britain" Lord Amulree, sometime President of the British Industrial Court and Chairman of the National Wages Board for Railways, apropos of the duties and function of an Adjudicator, delivered himself of the following weighty pronouncement:

"On the one hand, the very fact that recourse is had to arbitration indicates that sheer individualism has broken down and that the circumstances require something better than that each workman should make his own bargain with his employer. On the other hand, the Court has to give a decision to meet present-day requirements, and must take the world as it is. Whatever may be their political and social views, the individual members of the Court cannot, in their professional capacity, ignore existing facts or give decisions related to a state of affairs which, however much desired, is of the future and not of the present. They are concerned not with what the workers "ought" in a moral sense, to receive, but what it is proper that they should receive in view of the state of the industry, if more good than harm is to result from the Court's decision.

"The Court is indeed in a position similar to that of the Courts of Justice which administer the Common law. The Common law is organic; it undergoes change, and at any time bears a relationship to current moral and ethical opinion. *It must, however, move in the rear rather than in the van of reform.* Its function is rather to peg down and make secure gains which have been won in the march of progress and not itself to lead the advance. The judges who apply and administer the law do so consistently with this view, and however advanced and progressive may be their opinions in private, on the bench they must see that they do not go beyond the point reached by the general body of ordinary people."*

16. In view of this authoritative exposition of what constitutes the duties of an Adjudicator I must hold that the modification of the existing rules in respect of leave with pay in this Company demanded by the Bombay Iron & Steel Workers' Union cannot be granted. Mr. Sahukar's contention, supported as it is by authority, must be upheld. I accordingly reject the demand for leave with pay as made by the Bombay Iron & Steel Workers' Union on behalf of some of the employees of Messrs. Godrej & Boyce Manufacturing Co., Ltd. In respect of this demand too

*Vide "Industrial Arbitration in Great Britain"—Oxford University Press, 1929, p. 186.

I may note that 80 per cent. of the employees of this Company, as represented by Godrej & Boyce Workers' Union have no grievance of any kind whatsoever in respect of these leave rules framed by the Company and embodied in the Standing Orders of the Company. In fact, the President and Joint Honorary Secretaries of this Union in their written statement filed before me characterise this demand for leave with pay as "uncalled for". This disposes of all the demands referred to me for adjudication.

17. In conclusion, I must strongly deprecate the threat of a serious strike in the near future made by the Advocate of the Bombay Iron & Steel Workers' Union (Red Flag) against the management of Messrs. Godrej & Boyce Manufacturing Co., Ltd. Such a threat merely exposes the weakness of the contentions urged on behalf of the workmen who are members of the Bombay Iron & Steel Workers' Union. Constraint is the natural parent of resistance, and a pregnant proof that reason is not on the side of those who use it.

We all remember Lucian's pleasant story: Jupiter and a countryman were walking together, conversing with great freedom and familiarity upon the subject of heaven and earth. The countryman listened with attention and acquiescence, while Jupiter strove only to convince him; but happening to hint a doubt, Jupiter turned hastily round and threatened him with his thunder. "Ah! ah!" says the countryman, "now Jupiter, I know that you are wrong; you are always wrong when you appeal to your thunder."

This story has a deep moral for those who are members and supporters of the Bombay Iron and Steel Workers' Union; and they would be well advised if they took it to heart. Happily for Messrs. Godrej & Boyce Manufacturing Co., Ltd., 80 per cent. of its employees, as represented by Godrej and Boyce Workers' Union, are well pleased with their employers and have no grievance against them. And I feel sure that Mr. Sule himself in his calmer moments, with his kindliness of heart and broad communistic sympathies, and his keenness to see that the war-effort of the Government of India is not hampered in any way—will see to it that no strike takes place in this factory to mar the harmonious relationship that exists between the proprietors and their workmen. I need say nothing more. "*Verbum sapienti sat.*"

E. M. NANAVUTTY,
Adjudicator.

(Bombay Castle, 2-5-1945. No. 8664/34-I. Government Gazette
3-5-45 Part I. pp. 1150—1151).

INDIAN TOOL MANUFACTURERS LTD., BOMBAY

AND

ITS EMPLOYEES

Adjudicator—K. B. Wassoodew Esq., (Retired Judge, High Court, Bombay).

Counsels—Mr. Dhirajlal Bhulabhai Desai, instructed by Solicitor Mr. S. B. Kher of Messrs. Manilal Kher Ambalal & Co., Solicitors, and Mr. E. Bondy, Manager, for the Indian Tool Manufacturers Ltd., Bombay.

Mr. H. R. Pardivalla, with Mr. A. L. DeSa, representative of the employees of the Indian Tool Manufacturers Ltd., Bombay, for the employees.

A w a r d

By Government Order, Political and Services Department, No. 8664/34, dated the 26th March 1945, issued under sub-rule (1) of rule 81-A of the Defence of India Rules, read with Government of India, Department of Labour, Notification No. L. 3005, dated the 20th May 1942, I was appointed to adjudicate the dispute between the Indian Tool Manufacturers Ltd., Bombay (hereinafter referred to as "the Company") and their employees. The said Order also directed that I was to exercise such powers as are conferred on, and follow such procedure as is prescribed for, a Board of Conciliation under the Trade Disputes Act, 1929, and the Bombay Trade Dispute Rules, 1930.

2. The dispute referred to in the Government Order, relates to the following matters:

(1) Should night-shift workers be paid more than day-shift workers and if so to what extent and from what date and on what terms and conditions?

(2) What bonus, if any, should be granted on the earnings of the employees for the year 1944 and on what terms and conditions?

3. The usual notices to the parties' directing them to file their respective written statements were issued on 28th March 1945. No Trade Union of the employees of this factory has been formed, and in its absence one of the employees Mr. A. L. DeSa, who represented them before the Commissioner of Labour, Bombay, filed a written statement on their behalf on 9th April 1945. Separate notice was also given to all the employees of the company, who did not desire to be represented by the said Mr. A. L. DeSa, to appear before me. But no one except the workers represented by Mr. DeSa appeared in support of the above demands. I was told that the other employees of the company, outside the class of workers or operatives remunerated by daily wages, were not interested in the aforesaid demands, and, therefore, remained absent. The written statement of the company was received on the 14th April 1945, and under directions given by me, Profit and Loss Accounts and the Balance Sheets for the years 1939 to 1944 were submitted on its behalf. The hearing commenced on the 16th April 1945 and after discussing the matters generally the case was adjourned for hearing to 18th April 1945 for allowing the employees' counsel an opportunity to inspect the accounts submitted by the Company. The Company's factory at Sion was inspected at the request of the parties on the 17th April 1945, in the company of their counsel and the General Manager. The hardships involved in the night-shifts were inquired into from persons working in different departments. Proposals and counter-proposal were put forth and counsel agreed to consider them on the next day the 18th. When counsel met in Court on the day they asked for an adjournment as certain terms of settlement were being discussed between the workers and the representative of the Company. On the 19th April 1945, counsel stated in brief the terms on which settlement could be effected. Under those terms, which were explained by counsel, as a result of amicable settlement between the company and the operatives on daily wage, who, as I have said, are the only disputants before me and who alone are affected by this award, the dispute formulated in the first demand was proposed to be withdrawn; and the second demand of bonus was agreed to be granted for the year 1944 on certain terms and conditions. A formal draft of the terms agreed upon was approved and engrossed fair and signed by the parties and their counsel in my presence. It is gratifying to note that this dispute, which at one time seemed beyond settlement, has been amicably solved. The memorandum of settlement is attached hereto as Annex "A". I, therefore, make an award endorsing the terms of the said settlement and direct that the parties do comply with the terms agreed upon.

K. B. WASSSSOODEW,
Adjudicator.

Bombay, 25th April 1945.

ANNEX " A "

In the matter of the trade disputes between the Indian Tool Manufacturers Ltd., Bombay, and their employees.

MEMORANDUM OF SETTLEMENT

ISSUES

- No. 1. Should night-shift workers be paid more than day-shift workers and if so to what extent and from what date and on what terms and conditions?*

TERMS OF SETTLEMENT

This demand is withdrawn by the employees.

- No. 2. What bonus, if any, should be granted on the earnings of the employees for the year 1944 and on what terms and conditions?*

TERMS OF SETTLEMENT

The parties in regard to this demand have come to an amicable settlement as follows:

(i) The Company, as already announced in or about March 1945, agrees to grant as bonus to every operative engaged on daily wages in the Company's factory at Sion, one-twelfth of his earnings, excluding dearness allowance, in the calendar year commencing from 1st January 1944 and ending on 31st December 1944. The Company agrees to pay the said bonus in one instalment on or before the 15th May 1945.

(ii) Regarding future payment of bonus, if any, the Company agrees to change the yearly period for which the bonus may be computed, from the calendar year to the Company's financial year, i.e., 1st July to 30th June.

(iii) By reason of the aforesaid agreement to change the period of computation for the purpose of future payment of bonus, it is further agreed that at the end of the Company's current financial year on the 30th June 1945, the amount of bonus, if any, which may become payable till then, to the

operatives on daily wages, will be determined in the light of the then ascertained position of the Company.

(Signed)

Before me,
(Signed) K. B. WASSOODEW,
Adjudicator.
Bombay, 19th April 1945.

A. L. DESAI,
H. R. PARDIVALA,
19th April 1945.
For and on behalf of the
employees of the Indian
Tool Manufacturers Ltd.,
Bombay.

E. BONDY,
DHIRAJLAL BHULABHAI DESAI,
19th April 1945.
For and on behalf of the
Indian Tool Manufacturers.

(Bombay Castle, 11-7-1945. No. 8712/34-I. Government Gazette
17-7-47. Part I. pp. 1849—1852).

INVESTA MACHINE TOOLS AND ENGINEERING
COMPANY LTD., BOMBAY

AND

ITS EMPLOYEES

Adjudicator—E. M. Nanavutty, Esq., I.C.S., (Retired).

Counsel—Mr. H. D. Banaji, with Mr. Pheroza H. Dalal, Advocate, and Mr. S. C. Driver, General Manager, for the Investa Machine Tools and Engineering Co., Ltd., Bombay.

Mr. H. R. Pardiwalla, with Mr. G. G. Parikh, General Secretary, Investa Workers' Union, for the employees.

A w a r d

By Government Order, Political and Services Department, No. 8712/34, dated the 16th April 1945, issued under sub-rule (1) of rule 81-A of the Defence of India Rules, read with Government of India, Department of Labour, Notification No. L. 3005, dated the 20th May 1942, I was appointed to adjudicate in the trade

dispute between the Investa Machine Tools and Engineering Co., Ltd., Bombay, (hereinafter referred to as "the Company") and its employees. The said Order also directed that I was to exercise such powers as are conferred on, and follow such procedure as is prescribed for, a Board of Conciliation, under the Trade Disputes Act of 1929 and the Bombay Trade Disputes Rules of 1930.

2. The dispute referred to me for adjudication raises only one issue:

"What bonus, if any, should be granted on the earnings of the employees for the year 1944 and on what terms and conditions?"

It would appear that on or about 8th January 1945, the Secretary of the Investa Workers' Union on behalf of the employees of the Company made certain demands about leave with pay, dearness allowance, bonus, etc., and represented their case to the management of the company. As the management could not accede to these demands, the parties sought the intervention of the Commissioner of Labour. On the 17th March 1945, the Union gave 14 days' notice to strike work. Both the parties agreed before the Commissioner of Labour that the demand relating to bonus alone should be referred to adjudication, as there were prospects of settlement on other issues. The case was, therefore, referred to me by Government for adjudication as stated above.

3. The usual notices to the parties to file their respective written statements were issued by the Secretary of the Industrial Court, Bombay, on 21st April 1945. On the 28th April 1945, I visited the factory of the Company on Clerk Road, Jacob Circle, with a view to observing for myself the work turned out by the employees of this Company and the state of the machinery. This Company was formerly run by Messrs. Vithal Purshottam & Sons, and Messrs. Tata & Sons purchased it from them about two years ago. It manufactures punching machines, lathes and different types of tools.

4. The Investa Workers' Union filed its written statement in this dispute in the office of the Industrial Court on 30th April 1945. The Company did not file any detailed written statement in reply, but, in a letter dated 9th May 1945, addressed to the Secretary of the Industrial Court, has given its own views of the issue framed in this dispute. The hearing of this case was provisionally fixed at 3 p.m. on the 29th May 1945, but as it did not suit one of the parties, it was adjourned to 10th June 1945. On the latter date the preliminaries in this case were discussed, and since the parties wanted time to prepare additional statements and to explore possible avenues for a compromise, the hearing of the case was adjourned to 22nd June 1945. On that day parties informed the Court that the matter could not be settled by a compromise

between them; and thereupon further arguments in support of each party's contentions were resumed and the hearing of the case was concluded that very day.

5. On behalf of the employees of the Company, their learned counsel Mr. Pardiwalla laid down as axiomatic the broad proposition that if the amount of wages and the sums paid by way of dearness allowance were in the opinion of the workers not sufficient in themselves, then they were entitled to ask for bonus out of the profits made by their Company.

6. The second contention advanced by the learned counsel for the employees in this case was that when the workers of other companies were enjoying better financial prospects than those of the Company in the present case then with a view to maintaining cordial and harmonious relationship between the employers and the employees, it was desirable and expedient that the workers of this Company should also get similar financial benefits and be equally well off. In support of this contention the learned counsel cited the examples of two firms, viz., the Indian Tool Manufacturers Ltd., Bombay, and Richardson & Crudas, Bombay. These two firms are alleged to be doing the same kind of work as the Company in the present dispute, and both these concerns, it is triumphantly pointed out, have paid bonuses to their employees in the past.

7. A third line of argument advanced by the learned counsel for the workers of this Company is based upon an examination of the Profit and Loss Accounts of the Company for the years 1943 and 1944. The statement of Profit and Loss Account for the year 1943 shows that the Company had made a profit in this financial year of Rs. 1,55,657. Mr. Pardiwalla has contended that out of this amount the Company has unnecessarily and quite gratuitously allotted the large sum of Rs. 1,30,000 towards the depreciation fund, and another sum of Rs. 16,719 has been written off as preliminary expenses, leaving a net balance of only Rs. 8,938 as clear profit.

8. Similarly, for the financial year 1944, although the Company made a profit of Rs. 1,62,620, Mr. Pardiwalla complained that the Company set apart a sum of Rs. 1,20,000 towards the depreciation fund, leaving only Rs. 51,558 as net profit for that year. Mr. Pardiwalla's contention in this connection was that if the Company desired to make provision towards the depreciation fund, it should have done so by allotting a sum equivalent to 4 per cent. on capital value, which is the maximum amount fixed by the Income-tax authorities of the Government of India. In support of this argument he further cited the practice prevalent in the textile mills of Bombay where usually 4 per cent., of the capital

value is set aside as contribution towards the depreciation fund. Following this line of reasoning it was argued by counsel that the Company could have provided Rs. 44,800 for depreciation calculated at 4 per cent. on the block of Rs. 11,20,000 for the year 1944, and it would then still have been left with a profit of Rs. 1,17,820. Out of this, Mr. Pardiwalla was even prepared to concede that the Company might give away a sum of Rs. 33,730 by way of dividend at $4\frac{1}{2}$ per cent. on preference shares of Rs. 7,50,000 and another sum of Rs. 30,000 by way of dividend at 3 per cent. on ordinary shares of Rs. 10,00,000. Even then he contended that the Company would have been left with a net profit of Rs. 54,000 (*vide* Ex. 8). Similarly, Mr. Pardiwalla argued that if the Company had provided for 4 per cent. depreciation in the accounts for the year 1943 and given $4\frac{1}{2}$ per cent. dividend on preference shares, and 3 per cent. on ordinary shares, the Company would have been left with a net profit of Rs. 50,000 for the year 1943 (see Ex. 7).

Mr. Pardiwalla, therefore, contended that these profits were large enough for the workers to justify them in demanding bonus at least for the financial year 1944.

The above sums up in brief the arguments advanced before me by the learned counsel for the Investa Workers' Union.

9. On the other hand, Mr. Banaji, the learned counsel for the Company, has repudiated the contention advanced by the workmen of this Company in their written statement that "they claim bonus as a matter of right" and that "the workers' right to become partner in the industry" is recognized by all right-thinking persons. Mr. Banaji further pointed out that the machinery in use by this Company was more than two decades old and was not of the same type as that used in the textile mills of Bombay. As the wear and tear of machinery in this Company was rapid, a large sum as contribution towards the depreciation fund had to be set aside. He also observed that the Income-tax authorities had, when the accounts were submitted to their scrutiny, in fact raised no objection to the large amounts allotted towards the depreciation fund; so it is clear that in their opinion such sums had not been assigned towards the depreciation fund merely with a view to reducing the amount of profits of the Company upon which Income-tax and Excess Profits Tax could be levied. He further argued that had the Company allowed only 4 per cent. for depreciation, as contended for by Mr. Pardiwalla, then it (the Company) would have been liable to pay to Government an additional sum of Rs. 61,000 by way of Income-tax and Excess Profits Tax, and as a result the net profits of the Company would have been considerably reduced.

10. Finally, Mr. Banaji emphasized the fact that Messrs. Tata & Sons who are the Managing Agents for this Company are well-

known for their profit-sharing scheme in their Iron and Steel Industry and for their generous and sympathetic treatment of all their workmen in different concerns. He further assured the workmen of this Company that if the Investa Machine Tools and Engineering Co., Ltd., made substantial profits in future in any particular year, the management would have no hesitation on their part in granting a bonus for that year to the workmen of the Company.

11. In this connection Mr. Banaji invited my attention to two statements filed by him; one is Ex. 5 showing the rate of basic salary and dearness allowance paid to the workers of the foundry department on 16th October 1942, the day when the present Company took over charge of the works from Messrs. Vithal Purshotam & Sons, and on 31st March 1945. The other statement is Ex. 6 showing the rate of basic salary and dearness allowance paid to the workers of the machine-shop department on 16th October 1942, the day when this Company took over charge from Messrs. Vithal Purshottam & Sons, and on 31st March 1945. These two statements, exhibits 5 and 6, show very clearly how much within the last two years the workmen of the Company have benefited in the matter of wages and dearness allowance, and fully justify the reputation of Messrs. Tata & Sons as regards their generous and sympathetic treatment of their workers.

12. In view of all these considerable benefits so generously granted to the workers by the management of the Company, of their own free will, it seems rather unreasonable, to put it mildly, for the workers to demand bonus as well, when even the shareholders of the Company have been paid no dividend. These two statements, exhibits 5 and 6, have been filed by the Company with the express purpose of showing how untenable is the contention of Mr. Pardiwalla that if the amount of wages and the sums paid as dearness allowance by the Company are insufficient, then the workers are entitled to ask for bonus. These statements clearly show what considerable increases in wages and dearness allowance the present Company has, during the last two years, granted to its workmen so as to leave no ground for their workmen to assert with any show of reason that their wages and their grant of dearness allowance are inadequate. The question of bonus, however, rests primarily upon the financial prosperity of the Company and the amount of profits made by it in any given year.

13. At the close of his argument Mr. Banaji pointed out that not only were the employees of this Company much better off than others doing similar work in other concerns but they were also granted each year fifteen days' leave on full pay including full dearness allowance.

The above sums up the arguments urged on behalf of the Company by its learned counsel.

14. I have duly weighed the contentions advanced on both sides, and it seems to me that the case of the Company is on a much sounder footing than that of its workmen. I do not think that the Company has set aside for depreciation an excessive sum of money. In this connection I cannot do better than cite the authoritative remarks of the Textile Labour Inquiry Committee on the question of allowance for depreciation. At the top of page 233 of the Report of the Textile Labour Inquiry Committee, Volume II—Final Report—occur the following pregnant observations:

“ The earning capacity of an industrial undertaking depends largely on the condition of its capital equipment. As, owing to age and to constant use, and sometimes because of their getting obsolete, the machinery and plant which represent the fixed assets of the undertaking, continuously get diminished in value, it is financially unsound not to maintain unimpaired their capital value and their profit-earning capacity.”

Further on, at the bottom of page 234 of the same Report, the Committee observe as follows:

“ The scale prescribed by the Income-tax authorities represents merely the maximum reduction that they allow from the assessable profits. *It does not constitute any statutory obligation*, and, as observed above, *the directors have full discretion in deciding about the actual provision to be made from year to year*. The provision made by them is determined by various factors, such as the extent of the profits, the need or otherwise for granting some dividend, the state of the machinery, the provision for depreciation made in the past, the strength of other reserves, and the obsolescence of particular parts of the plant. It is after consideration of such factors, that provision for depreciation is decided upon.”

In the light of these observations it is clear that the arguments advanced by Mr. Pardiwalla in this connection have got no force whatsoever.

15. Equally unsound is the contention of the workers of this Company that they claim bonus as a matter of right, and that their right to become partners in this concern is recognized by all right-thinking persons. I have in my three awards in the trade-disputes between the Standard Vacuum Oil Company and its employees (published in *Bombay Government Gazettes*, Part I, dated 22nd October 1942, 21st January 1943, 18th November 1943 and 24th August 1944) discussed at some length the true nature of bonus. In this case, however, I need not discuss this matter afresh, since

the Company is itself quite prepared to grant bonus if, in any future year, it is lucky enough to make a substantial amount of profit. The contention that the workmen of this Company by that very fact have a right to become partners in the business of this Company has not been argued before me by their learned counsel Mr. Pardiwalla. No doubt, if a workman by dint of sheer industry and careful husbanding of his resources is able to become a shareholder by buying a share of the Company, then to that extent he is a partner in the business of the Company in which he works as an employee, but this profit-sharing is something very different from the demand for a free gift by way of bonus out of the profits of the Company. I need not labour this point at all. In view of the meagre profits made by the Company during the last two years, I do not think that the workmen of the Company have made out any case for the grant of bonus to them.

16. In my opinion, upon the facts established in this case, the demand of the employees for bonus for the year 1944 cannot be sustained. I, therefore, decide the sole issue in this case in favour of the Company and against its employees, and I make my award accordingly.

Bombay, 7th July 1945.

(Signed) E. M. NANAVUTTY,
Adjudicator.

(Bombay Castle, 2-11-1942. No. 6343/34. Government Gazette
5-11-42. Part I, p. 8864)

MESSRS. E. EYRES & Co., BOMBAY

AND

THEIR EMPLOYEES

Adjudicator — A. Latifi, Esq., C.I.E., O.B.E., M.A., LL.D., Bar-at-Law, I.C.S., (Retired).

A w a r d

I was appointed to adjudicate in this dispute by Government Notification, Political and Services Department, No. 6344/34, dated the 1st October 1942. In response to the usual notices the parties forwarded copies of correspondence, showing that they had settled their dispute. The formal Memorandum of Settlement

annexed to this Award has been signed by the parties in my presence today, Monday, the 26th October 1942, in the Industrial Court, Bombay.

A. LATIFI,
Adjudicator

Industrial Court,
Bombay, 26th October 1942.

ANNEX

MEMORANDUM OF SETTLEMENT

1. It has been agreed to pay a Dearness Allowance at a flat rate of As. 6 per day to all employees commencing from August 1942.

2. Bonus of 1/15th of the total earnings of a worker during the year commencing from 1st April 1941, will be paid to all those who are at present in our employment.

3. A minimum rate of As. 12 will be paid to all apprentices and coolies from September 1942.

All other types of workmen who are newly engaged will be started on a minimum rate of Re. 1 per day, from September 1942.

(Signed)

D. D. HUGHES, Proprietor,
For and on behalf of E. Eyres
& Co.

AMBIKA BEHERE,
For and on behalf of The
Engineering Workers'
Union (Red Flag).

(Signed) A. LATIFI,
Adjudicator.

Bombay, 26th October 1942.

(Bombay Castle 8-1-1944. No. 6343/34-1. Government Gazette
13-1-44. Part I, pp. 4447).

MESSRS. E. EYRES & CO., BOMBAY

AND

THEIR EMPLOYEES

Adjudicator—E. M. Nanavutty, Esq., I.C.S., (Retired).

Mr. Tapidas B. Mody, Proprietor, and Mr. M. P. Parikh, Manager, for Messrs. E. Eyres & Co.

Mr. V. V. Desai, Advocate, with Mrs. Ambika, Behere (Joglekar), General Secretary, Engineering Workers' Union (Red Flag), Bombay, for the employees.

A w a r d

This dispute between Messrs. E. Eyres & Co., of Bombay, and its employees was referred to me for adjudication by Government Order, Political and Services Department, No. 6343/34, dated the 12th November 1943, issued under rule 81-A of the Defence of India Rules, read with Government of India, Department of Labour, Notification No. L. 3005, dated the 20th May 1942. The said Order also directed that for the purpose of adjudicating the said dispute I was to exercise such powers as are conferred on, and follow such procedure as is prescribed for, a Board of Conciliation under the Trade Disputes Act of 1929, and the Bombay Trade Disputes Rules of 1930. The Order specifically mentioned that I was to adjudicate on the following demands:

(a) Dearness allowance at the full sliding scale of the Mill-owners' Association of Bombay, with effect from 1st October 1943.

(b) Two months' wages as bonus for the period from 1st January 1943 to 31st December 1943.

(c) Eight-hour day:

(d) One month's leave with pay, and

(e) Reinstatement of certain workers.

2. Although Messrs. E. Eyres & Co., is an old business concern of several years' standing, recently it has changed hands more than once. It was originally started by one Mr. E. Eyres who

carried on the business till 1931. On his death his son Mr. Norman Eyres succeeded him. In 1937 this concern was sold to Mr. W. D. Hughes who in turn sold it to Mr. Nagindas P. Patel in March 1943. In October 1943, it came into the hands of Mr. Tapidas B. Mody, the present proprietor. A dispute regarding dearness allowance, bonus and other matters arose between this Company and its employees in October 1942. It was referred for adjudication to Mr. A. Latifi. That dispute was settled by the parties themselves, and the Adjudicator made a formal award in terms of the settlement. The award together with the memorandum of settlement was published in the *Bombay Government Gazette*, Part I, dated 5th November 1942, page 3864. It was then, "inter alia", agreed that the employees would be paid dearness allowance at the flat rate of annas six a day, besides a bonus equivalent to 1/15th of the total earnings of each worker during the financial year 1941-42.

3. The present dispute arose in October 1943. On or about the 11th October 1943, the Bombay Engineering Workers' Union (Red Flag), gave notice of a strike under rule 81-A of the Defence of India Rules. Negotiations between the parties were carried on in the office of the Commissioner of Labour, with the object of settling the dispute, but proved unsuccessful. The employees ultimately downed tools on 9th November 1943. The strike was, however, called off on 11th November, when the workers were assured that their dispute was being referred to Adjudication. On 12th November 1943, the Government issued the abovementioned Order referring the dispute to me for adjudication.

4. The usual notices to the parties calling upon them to file their respective statements were issued on 16th November 1943. In the meantime, on 20th November 1943, I visited the factory of Messrs. E. Eyres & Co., in order to see the various kinds of work and goods manufactured. Mr. G. B. Constantine, Commissioner of Labour, and Mr. A. S. Iyengar, Assistant Commissioner of Labour, accompanied me throughout my inspection. The written statement on behalf of the employees was filed by the General Secretary, Engineering Workers' Union (Red Flag), Bombay, on 26th November 1943, and the Company filed its reply on 8th December 1943. The hearing commenced on 13th December 1943 at 11 a.m. in the Industrial Court. After hearing the parties and counsel for the employees of the factory on all the issues, I discussed the points in dispute separately and jointly with them in chamber in order to explore possible avenues for a compromise between the parties. After some discussion the proceedings were adjourned to the next day to enable parties to come to terms. On the 14th December 1943 it appeared that a settlement was possible on most of the demands made by the employees. On the 15th December 1943, the parties again appeared before

me and informed me that after all they could settle only demands (a) and (e) and desired to leave the other demands to be adjudicated upon by me. A memorandum of settlement was then drawn up and signed by parties in Court in my presence. It is attached herewith and I make my award in terms thereof, in respect of demands (a) and (e) as set forth at the commencement of this award.

5. I will now discuss demand (b) which relates to two months' wages as bonus for the period from 1st January 1943 to 31st December 1943. At the commencement of the hearing of this case I allowed counsel engaged for the workers of this factory to argue at considerable length on this question of bonus demanded by the employees of this firm. It was conceded by the learned counsel that bonus could only be demanded by the workers if the proprietor of the factory had made considerable profits during the current year while the war was going on. In view of this admission, rightly made by the learned counsel for the employees, this demand for bonus becomes wholly untenable. In the first place, Mr. Tapidas B. Mody, the present proprietor of this factory, purchased it only on the 5th October 1943, and he cannot be legitimately made liable for any profits earned by the former proprietors of this firm.

6. In the second place, the present proprietor has submitted to me under confidential cover a statement showing the financial condition of this factory from the time he purchased it up to the 14th December 1943. This statement shows that the factory is at present being run at a dead loss. It is clear, therefore, that the present proprietor is in no position to pay any bonus to his workmen. Indeed, it seems to me that the demand for bonus in the present case is entirely misconceived and cannot for a moment be entertained, and I would, therefore, reject it unhesitatingly.

7. At the instance of Mrs. Ambika Behere (Joglekar), General Secretary of the Engineering Workers' Union (Red Flag), her learned counsel earnestly requested me to move the Government of India to pass an Ordinance, under the Defence of India Rules, prohibiting proprietors of business-concerns and factories from selling their property and thereby indirectly preventing their workers from earning their annual bonuses. I am afraid this is a matter outside my jurisdiction, and I fancy the Executive Government may find some difficulty in grasping the idea underlying this suggestion and in giving practical effect to it. Be that as it may, for the purpose of this adjudication, I decide that the workmen of Messrs. E. Eyres & Co., are not entitled to any bonus whatsoever from the present proprietor of that firm.

8. I come next to discuss demand (c). In respect of this demand the workers of this factory contend that they should not be made to work for more than eight hours a day as they have been all along doing for the last thirty years and more. On the other hand, the present proprietor points out that all other firms and factories in Bombay manufacturing surgical instruments and doing the same kind of work as his own factory, make their employees work for nine hours a day and that he could not for a moment successfully compete against these rival Bombay firms if the employees in his firm only worked for eight hours a day. He further pointed out that the Factories Act (No. XXV of 1934) permitted the workmen in any factory to work for nine hours a day, and that he was not infringing any provision of the Factories Act by asking his employees to work for nine hours a day in his factory. I tried hard to bring about a compromise between the parties in respect of this demand (c); and at one time it seemed that the workers would willingly accept the offer made by the proprietor that he would pay each employee of his an extra $\frac{1}{3}$ th of his daily wage-rate for the additional 9th hour that he would work, and in addition over-time would be paid to those who chose to work beyond nine hours a day. This seemed to me a generous gesture on the part of the present proprietor of the factory, but Mrs. Ambika Behere (Joglekar), General Secretary of the Engineering Workers' Union (Red Flag), turned down this offer. I have, therefore, to give my decision on this issue.

9. To grant this demand of the employees of Messrs. E. Eyres & Co., is tantamount practically to closing down this factory for good and all. Already this factory is run at a loss. In his written statement, Mr. Tapidas B. Mody, the proprietor of the firm, has complained bitterly of the very keen competition of the Punjab firms of Lahore and Sialkot against which Bombay firms have had to contend. On top of that, if the employees of this firm were allowed to work for eight hours a day only, whilst its rivals in Bombay made their workmen labour for nine hours a day, then bankruptcy would stare in the face of its present proprietor. In my opinion this demand for an eight-hour day, championed by the General Secretary of the Engineering Workers' Union (Red Flag), is very foolish and short-sighted. It is to the interest of these very employees of Messrs. E. Eyres & Co., that their firm should flourish so that more work and better wages and the prospect of an annual bonus would in the course of time be within their grasp. The ruin of the present proprietor would not serve to better in any way the prospects of the employees of this factory. It is this fundamental and outstanding fact which the General Secretary of the Engineering Workers' Union—an educated and intelligent lady—failed to grasp.

10. For the reasons given above, it would be most inequitable and unjust on my part to grant this demand (c). I, therefore, reject this demand for an eight-hour day.

11. I turn now to decide demand (d), which relates to each employee getting a month's leave with full pay. No factory or firm in Bombay dealing with the manufacture and sale of surgical instruments is known to grant such leave with pay. The demand appears to be based upon some pre-conceived notion of the General Secretary of the Engineering Works' Union (Red Flag). Her learned counsel argued that even if no business firm or factory in Bombay granted such leave with pay to its employees, still it was the duty of an Adjudicator in a progressive city like Bombay to point the way to sound social and labour legislation and to give effect to liberal principles in the awards that such Adjudicator made. In my award in re: Godrej & Boyce Manufacturing Co., Ltd., published in the *Bombay Government Gazette* of July 8th, 1943, Part I, at page 1656, I had occasion to cite at length certain pertinent observations of Lord Amulree, some time President of the British Industrial Court and Chairman of the National Wages Board for Railways in England, *apropos* of the duties of an adjudicator (*vide* "Industrial Arbitration in Great Britain" by Lord Amulree—Oxford University Press, 1929, p. 186). I need not quote once more the passage in question. I will only say here that Lord Amulree emphatically laid down that the Court of an Adjudicator "must move in the rear rather than in the van of reform". The Government of India have not chosen to legislate about employees in business concerns getting leave with pay, although from the *Labour Gazette* of June 1942 it would appear that a bill further to amend the Factories Act of 1934 for the purpose of securing holidays with pay for workers in non-seasonal factories is under consideration by the Central Legislature; nor has any business-firm in Bombay doing the same kind of work as Messrs. E. Eyres & Co., granted its employees leave with pay. I cannot, therefore, without doing gross injustice to the present proprietor of Messrs. E. Eyres & Co., compel him to grant to each employee in his firm a month's leave with pay. Were I to grant this demand of the workers, it would inevitably spell the ruin of the proprietor of the firm; and as an Adjudicator it is my duty to safeguard the legitimate interests of the proprietor equally with those of his employees. For the reason given above, I am constrained to reject this demand (d) for one month's leave with pay.

12. To sum up, I award dearness allowance to the employees of Messrs. E. Eyres & Co., in terms of the agreement filed by the

parties before me which will form part of this award. I disallow demands (b), (c) and (d) relating respectively to two months' wages as bonus, an eight-hour day and one month's leave with pay. The last demand for re-instatement of certain workers has been withdrawn by the General Secretary of the Engineering Workers' Union (Red Flag); and indeed it was admitted before me that the present proprietor had in fact dismissed no worker from his factory since he became owner of it.

E. M. NANAVUTTY,
 Adjudicator.

Bombay, 21st December 1943.

MEMORANDUM OF SETTLEMENT

DEMAND

TERMS OF SETTLEMENT

(a) Dearness allowance at the full sliding scale of the Millowners' Association, Bombay, with effect from 1st October 1943.

It is agreed that the employees of Messrs. E. Eyres & Co., Bombay, will be paid dearness allowance of two-thirds of the sliding scale adopted by the Millowners' Association, Bombay, with effect from 5th October 1943. The dearness allowance for the months of October, November and December 1943 will be paid along with the wages for the month of December 1943, on or about 7th January 1944.

(e) Reinstatement of certain workers.

This demand is not pressed for by the employees.

(b) Two months' wages as bonus for the period from 1st January to 31st December 1943.

(c) Eight-hour day.

(d) One month's leave with pay.

} These demands are left to the decision of the Adjudicator.

TAPIDAS B. MODY,

M. P. PARIKH,

For and on behalf of Messrs.

E. Eyres & Co., Bombay.

(Mrs.) AMBIKA BEHERE (JOGLEKAR),

Gen. Secretary, Engineering

Workers' Union Bombay.

For and on behalf of the

Eyres & Co., Bombay.

Before me,

E. M. NANAVUTTY,

Bombay, 15th December 1943.

(Bombay Castle, 1-12-1942. No. 6343/34 Government Gazette
Part I, pp. 4127—4129).

BOMBAY SURGICAL WORKS, MAHALAXMI, BOMBAY

AND

ITS EMPLOYEES

Adjudicator:—A. Latifi, Esq., C.I.E., O.B.E., M.A., LL.D., BAR-AT-LAW, I.C.S., (Retired).

Mr. J. Anandrao, Manager, for the Bombay Surgical Works.

Mr. K. T. Sule, Advocate, for the employees.

Mr. N. A. Mehrban, M.B.E., Assistant Commissioner of Labour was also present.

A w a r d

I was appointed to adjudicate in this dispute by Government Notification, Political and Services Department, No. 6343/34, dated the 23rd September 1942. In response to the usual notices the parties submitted their respective statements and appeared before me for a preliminary hearing on 30th October 1942. After hearing the parties I adjourned the case to 5th November 1942, to enable Mr. Mehrban, Assistant Commissioner of Labour, to conciliate in this matter. I am very glad to note that the dispute has been settled on all points on the terms signed in my presence. The Memorandum of Settlement is, therefore, recorded and annexed to this Award as an integral part thereof.

I have to record my appreciation of the assistance given by Mr. Mehrban, Assistant Commissioner of Labour, in this case. It is due to his efforts that the case has been settled.

Bombay, 5th November 1942.

(Sd.) A. LATIFI,
Adjudicator.

MEMORANDUM OF SETTLEMENT

I. It has been agreed that Dearness Allowance will be paid to all the workmen (including apprentices) employed in the Bombay Surgical Works on the following scale:

(a) All employees recruited prior to 1st January 1941 will be paid dearness allowance either at the rate of three annas in the rupee of earnings or at the rate of two-thirds of the amount due according to the sliding scale adopted by the Millowners' Association, Bombay, which is operative in any month during the period of the War, whichever is greater in amount.

(b) All employees recruited on or after the 1st day of January 1941 will be paid dearness allowance on the basis of the sliding scale adopted by the Millowners' Association, Bombay, which is operative in any month during the period of the War.

2. Dearness allowance at the rates provided for in the first clause of this settlement will be paid with effect from 1st September 1942.

3. In view of this settlement, the employees of the Bombay Surgical Works withdraw their demand for a bonus for the Company's financial year ending 30th September 1942.

(Sd.) J. ANANDRAO,
Manager, Bombay Surgical Works.

(Sd.)

(Sd.)

(Sd.)

(Sd.)

(Sd.)

Representatives of Employers.

(Sd.) N. A. MEHRBAN,
Conciliator at the request of
Mr. Alma Latifi, C.I.E., O.B.E.,
I.C.S., (Retd.), Adjudicator in
the matter of the trade dispute
between the Bombay Surgical
Works and its employees.

(Sd.) K. T. SULE,
Counsel for Representatives of
Employees.

Dated Bombay, the 5th day of November 1942.

(Bombay Castle, 7-3-1944, No. 7709/34-I. Government Gazette Part I, pp. 473 to 481).

MESSRS. POWELLS LTD., BOMBAY

AND

ITS EMPLOYEES

Adjudicator:—E. M. Nanavutty, Esq., I.C.S., (Retired).

Counsel—Mr. P. P. Khambatta with Mr. V. H. Kamat, Advocate, instructed by Mr. Y. R. Vaidya, Secretary, and Mr. L. M. Joshi, Superintendent, for Messrs. Powells Ltd.

Mr. K. T. Sule, Advocate, with Mr. T. Godiwalla, Advocate, instructed by Mr. V. Chaudhari, General Secretary, Surgical Workers' Union (Red Flag), Bombay, for the employees.

A w a r d

The dispute between Messrs. Powells Ltd., Bombay, and its employees was referred to me for adjudication by Government Order, Political and Services Department, No. 7709/34, dated the 27th December 1943, issued under rule 81-A of the Defence of India Rules, read with Government of India, Department of Labour, Notification No. L. 3005, dated the 20th May 1942. The said Order also directed that I was to exercise such powers as are conferred on, and follow such procedure as is prescribed for, a Board of Conciliation under the Trade Disputes Act of 1929 and the Bombay Trade Disputes Rules of 1930.

2. The issues referred to me by the abovementioned Government Order are as follows:

- (1) what increase, if any, should be granted in wages?
- (2) what dearness allowance, if any, should be given to the workers?
- (3) what bonus, if any, should be granted, and if so on what terms and conditions?
- (4) what standing orders, if any, should be framed for regulating the relations between the management and the employees regarding attendance, leave, discharge, dismissal, suspension, etc.?

(5) whether the dismissals of Chandrakant and Shama Shetty were justified. If not whether any order regarding re-instatement or compensation is necessary or desirable, and if so what order?

(6) whether it is necessary or desirable to make provision against discharges or dismissals made owing to this trade dispute, and if so what provision?

3. The present dispute has arisen out of the following circumstances: A dispute regarding dearness allowance and bonus between the Bombay Surgical Works and its employees was decided by a compromise between parties upon which an order of adjudication was passed in the month of November 1942. Soon afterwards the Surgical Workers' Union (Red Flag), Bombay, made certain demands on behalf of the employees of Powells Ltd. to the management of the Company. The demands related to bonus and dearness allowance. Efforts were made by the Labour Office at Bombay, to bring about a settlement of that dispute. Although no settlement between parties was actually recorded, yet upon the suggestion of Mr. N. A. Mehrban, M.B.E., F.S.S., J.P., the then Assistant Commissioner of Labour, the Company agreed to pay firstly dearness allowance at two-thirds of the sliding scale adopted by the Millowners' Association of Bombay, to all workers who joined the Company's service prior to January 1941, and at the full rate of the same scale to all those workers who joined the Company's service after that date; secondly, a bonus equivalent to 1/26th of the total earnings (excluding dearness allowance) of the workers for a period of 13 months ending 30th June 1942 was paid to those workers who were in employment on the 30th June 1942 and who continued to be in the employment of the Company as on 1st November 1942. It appears that the employees were then fully satisfied with this arrangement.

In April 1943, the Surgical Workers' Union (Red Flag), Bombay, made a fresh demand for increase in wages. In July and August 1943, there was discontent among the workers and allegations of maltreatment were made against Mr. Joshi, the Works Superintendent, by the Union. Although increments to some of the employees were granted in August 1943, a few workers were discharged on the ground of misconduct. On the 2nd of September 1943, the Union submitted to the management a fresh list of urgent demands, namely, a general increase of 25 per cent. in wages, full dearness allowance on the scale prescribed by the Millowners' Association of Bombay, an annual increment of four annas, settlement of Standing Orders and rules of service, recognition of the Union and the removal of Mr. Joshi, the Superintendent of the factory, from his post. The Union also demanded in the same month re-instatement of certain workers who had been discharged by the Company. In the month of November 1943, an incident occurred in the surgical department of the Company's factory.

One of the apprentices named Chandrakant is alleged to have been assaulted on 29th November 1943 and was subsequently dismissed by Mr. Bala Saheb, the Manager, on 1st December 1943. On 2nd December 1943, the Union wrote to the management asking for a bonus of three months' wages in addition to the previous demands. The Company refused to grant any of these demands. Ultimately on the 11th December 1943, the Union gave a notice under Rule 81-A of the Defence of India Rules to strike work. In the said notice most of the old demands were reiterated and some were modified. The efforts of the Commissioner of Labour to bring about a settlement of this dispute proved unsuccessful. The dispute was, therefore, referred to me for adjudication on 27th December 1943, as stated above.

4. The usual notices to the parties to file their written statements were issued on 30th December 1943. The Union filed its written statement on 10th January 1944, and the Company filed its reply on 15th January 1944. In the meantime, on the 12th January 1944, I visited the chemical laboratory, the orthopaedic department and the surgical department at Byculla in order to acquaint myself with various manufacturing processes and the nature of the work done in the factory. The hearing of this case in Court commenced on 17th January 1944 and continued on 18th, 20th, 21st, 24th, 25th, 26th, 27th and 28th January 1944 and 1st, 2nd, 3rd February 1944 and concluded on 4th February 1944. On the 19th of January 1944, on the request of the parties and their counsel I paid a second visit to the factory as counsel wanted me to observe in detail the various occupations and the work turned out by each employee. On this occasion I also visited the Head Office of the Company at the junction of Sandhurst Road and Lamington Road. I may, however, note here that there were no operatives or workers employed at the Head Office now.

5. I endeavoured to bring about a settlement of this dispute in respect of some, if not all, of the demands made by the Union, but my attempts proved abortive, as the demands of the workers, as represented by the Secretary of the Union, were pitched on too extravagant a scale. The inquiry was prolonged for about three weeks as eight witnesses on behalf of the employees and two on behalf of the Company were examined and cross-examined at great length. I will now proceed to discuss the demands of the Union as embodied in the issues framed by the Government of Bombay in its Order appointing me as Adjudicator in this case.

ISSUE No. 1. What increase, if any, should be granted in wages?

6. In arguing on this demand for a 25 per cent. increase in the present wages of the employees of Powells Ltd., the learned

Advocate for the Union, Mr. K. T. Sule, laid stress upon certain findings contained in the General Wages Census Report of May 1934, Part I, First Report, published under the authority of the Government of Bombay. Mr. Sule is, in my opinion, not quite fair to the Company when he classifies the surgical factory of Powells Ltd., as an engineering concern. This surgical department of the Company cannot be said to be a full-fledged engineering factory and cannot legitimately be compared with larger engineering concerns such as Railway and Tramway Workshops, ship-repairers like the Mazagon Dock or the R. I. N. Dockyard, or even second grade engineering concerns such as Godrej & Boyce Co., or Noble Steel Products. Much less can it be compared with a business concern like the Mukund Iron & Steel Works (rolling mills). It is true that out of a total of about 200 workers affected by the present dispute, about 85 are employed in the surgical department of the Company, still the factory as a whole cannot be properly deemed to be an engineering concern; for there are other departments of the Company as well, viz., the pharmaceutical, the orthopaedic, the printing press, the laboratory, etc.

7. On page 17 of the General Wage Census Report, Part I (First Report), there is Table A which sets forth the distribution of 221 engineering concerns in 1934 according to various types of factories. From this Table A it would appear that 4.33 per cent. of the factories are metal ware factories. Even in the textile mills there are engineering and electrical occupations. On page 57 of the Textile Labour Inquiry Committee's Final Report, Vol. II, Table 29 shows that in 1937 out of 107,600 operatives in Bombay about 10,457 were classed as engineering operatives and 97,143 as process operatives. It would, therefore, in my opinion be incorrect to classify Powells Ltd., as a first class engineering concern. It follows from this that the average wage in an engineering concern as such cannot rightly be compared with the average wage in the surgical department of Powells Ltd.

8. I am therefore clearly of opinion that the contention of the learned Advocate for the Surgical Workers' Union (Red Flag) that the wages in the Company of Powells Ltd., are low as compared with certain figures of average wages of workers in engineering concerns given in the General Wage Census Report of 1934 is not sound. As a matter of fact, my inquiry in the present case goes to show that the wages and dearness allowance paid by the Company of Powells Ltd., compare very favourably with those granted by several other factories in Bombay carrying on the same kind of business as the Company in the present dispute. Even an unskilled and uneducated apprentice, like the dismissed Chandrakant (whose case I will later on discuss separately and at length), used to earn in Powells Ltd., Rs. 50 a month—a sum of money which even a graduate of the University of Bombay

finds it hard to earn in these abnormal times. Even the Secretary of the Surgical Workers' Union (Red Flag), Bombay, who has in the present dispute championed the cause of the employees of Powells Ltd., and who is an M.Sc. of the Benares Hindu University, only gets a wage of Rs. 25 a month from the Communist Party. It cannot, therefore, be said that the workers of Powells Ltd., are not getting a wage sufficient to afford a man "an adequate and decent livelihood" which may be regarded as a first charge on the industry.

9. In this connection I would like to cite certain pertinent observations of the learned Adjudicator in his award in the dispute between Messrs. Cooper Engineering Ltd., Satara, and its employees (published in the *Bombay Government Gazette* of 7th October 1943, Part I, page 2255):

"Any attempt to place an arbitrary standard of minimum wage level for different classes of workers in a factory without reference to the economic conditions prevailing in the locality, the nature of the work done, the proficiency and skill required of the workers, the supply of skilled labour and particularly the comparative prosperity of the factory cannot be lightly encouraged."

The considerations set forth in the above quotation need to be carefully examined before any increase in the wages of the employees of the Company in the present dispute can be legitimately sanctioned.

10. The wages at present enjoyed by the workmen of Powells Ltd., cannot be said to be "a minimum wage" that is to say a rate of remuneration which must be observed at all costs even though it should result in some disturbance of the existing organisation of the industry.

11. It is a mistake to describe these wages as "basic wages". These wages have in fact been increased from time to time, and cannot be looked upon or treated as "basic wages". In spite of these increases, however, the workers of Powells Ltd., through their Union, have demanded a 25 per cent. increase in their present wages, following the example of the mill-hands in the textile mills of Bombay, who I understand had given notices of change under the Bombay Industrial Disputes Act. But so far as my knowledge goes, there has not been a general increase of 25 per cent. in the wages of the textile workers in Bombay. The only increase that was given to the textile workers was about 12½ per cent. in their wages in 1938. The conditions prevailing in the mill industry of Bombay are totally different from those existing in Powells Ltd., and in other factories carrying on the same kind

of business in Bombay. The various factories in Bombay carrying on the manufacture of surgical instruments are all competing with one another, whereas the owners of various textile mills in Bombay have formed themselves into an Association, and they can, therefore, have a uniform rate of wages for different classes of workers in different mills which do not compete against one another.

12. Moreover, the wages enjoyed by the workers in Powells Ltd., compare favourably with those granted by Eyres & Co., and other rival companies carrying on the same kind of business as the Company in the present dispute, especially, when these wages are taken in conjunction with the exceptionally high rate of dearness allowance given to workers in Powells Ltd.

13. Finally, it must never be forgotten that the surgical department of the factory of Powells Ltd. is run at a great loss. That being the case, it is quite out of the question for me to accede to the demand of the workers for an all-round increase of 25 per cent. in the wages of all the workers of this Company.

14. Indeed, realising in his own mind the extravagant nature of this demand for a 25 per cent. increase in the present wages of all the workers in Powells Ltd., the learned Advocate on behalf of the Surgical Workers' Union gave up his demand for a 25 per cent. increase in wages, and in lieu thereof contented himself by asking that the wages of all apprentices in Powells Ltd. be raised to a rupee a day. He supported his contention by referring to the award of Mr. Justice Divatia in the dispute between Messrs. Lever Bros. (India) Ltd. and its employees (See Appendix A of the final Award published in the *Bombay Labour Gazette* of April 1942, page 846).

15. In this connection I would myself quote one observation of the learned Judge which seems to me to be peculiarly appropriate to the facts of the present dispute. It runs as follows:

“.....To my mind the Company has adopted a generous and liberal policy with regard to the subject of wages which it should pay. For it to adopt a still more liberal standard would depend not only on its own capacity to pay, but also on the levels of wages paid by its competitors.” (See *Bombay Labour Gazette* of September 1941, page 74).

16. As regards the capacity of the Company in the present dispute to pay increased wages to its workmen, I need only point to the cardinal fact that this Company has lost heavily over the contracts which it entered into with the military authorities; and as regards the levels of wages paid by its competitors, all I need

say is that this Company is in fact paying higher wages and dearness allowance to its workmen than its rivals in Bombay carrying on the same kind of business of manufacturing surgical instruments.

17. As late as November 1942, Powells Ltd. granted full dearness allowance according to the sliding scale adopted by the Millowners' Association of Bombay to two-thirds of its employees and whilst raising the wages of some of its employees granted them two-thirds of the dearness allowance according to the scale sanctioned by the Millowners' Association of Bombay. The Secretary of the Surgical Workers' Union (Red Flag) at that time accepted these concessions in full satisfaction of the demands made through him by the employees of Powells Ltd. Now, only a year after the grant of these concessions the latter are asking for a 25 per cent. increase in the wages paid at present, three months' wages by way of bonus, and full dearness allowance to all workers in the Company.

18. In this connection I cannot but recall the grave and dignified warning given to the workers of the Bombay Electric Supply & Tramways Co., Ltd., by Sir Govind Madgaokar in paragraph 26 of his report in the dispute between the B. E. S. & T. Co. Ltd. and their employees (*vide Bombay Government Gazette*, Part IV-A, Extraordinary, dated 8th April 1940, page 659). I will quote only one sentence from it which seems to me to be fully applicable to the conduct of the workers of Powells Ltd. in the present case:

".....if each concession on the part of the employer is to be received as a trifle and simply as a mere matter of right due to the employee and is to be only the stepping-stone to further never-ending demands until the employee becomes the master and the employer the servant—if such communist spirit and philosophy are to prevail among the workers of Bombay and are to be encouraged by other classes and by leaders, then the latter must take the responsibility for the inevitable end."

19. The Secretary of the Surgical Workers' Union (Red Flag), Bombay, and his learned Advocates Mr. Sule and Mr. Godiwala are all avowed Communists, but even they must find it hard to reconcile with their consciences these extravagant demands for a 25 per cent. increase in the present wages of all the workmen in Powells Ltd., three months' wages by way of bonus and full dearness allowance to all workmen in the Company according to the sliding scale adopted by the Millowners' Association of Bombay, and that too in respect of a factory which is proved to be running at a dead loss.

20. The ground upon which these fantastic demands are based

is as flimsy and unreal as the demands themselves are extravagant. In their written statement the employees of Powells Ltd. through the Secretary of the Surgical Workers' Union (Red Flag), Bombay, expatiate at length upon their great love for increasing production during war-time, upon "their extraordinary patience and forbearance" under grave provocation and vindictive measures adopted by the management of Powells Ltd., and upon the "patriotic consciousness of every worker under our trade-union influence." This praiseworthy devotion to duty and the patriotic efforts of the workers in Powells Ltd., to increase production "entitle them" (to use their own phrase) emphatically to demand increased wages, dearness allowance and bonus.

21. Three witnesses have been examined on behalf of the Surgical Workers' Union (Red Flag) to prove that, thanks to the efforts of the employees in Powells Ltd., production in their factory had increased. These witnesses are Narayan Tukaram Teli (witness No. 4), Yellappa Pappayya (witness No. 5) and M. C. Achari (witness No. 8). The evidence of these three witnesses as regards increased production in the factory is not worth the paper upon which it is recorded. Save for their bare assertion that they increased production in accordance with the policy of the Communists in India during war time, these witnesses have adduced not a single concrete fact in support of their assertion that by their efforts they had increased production in the factory. On the contrary, there is irrefragible documentary and oral evidence on the record to prove that production in the surgical department of the factory of Powells Ltd. had fallen owing to the recalcitrant and hostile attitude of the workers in the factory.

22. Lt. K. D. Moos, I.A.O.C., attached to the Control Officer, Heat Treatment, Bombay, has deposed on oath as follows: "The Director of Production (Lt. Col. Macdonald) had come down from Delhi to Bombay and had seen Major Wolff and had visited the factory and he had therefore knowledge that production had fallen." Further on Lt. Moos deposed: "When Major Wolff inquired from Mr. Joshi why the work had not been completed in time, then Mr. Joshi told him that the workmen were not putting their heart into the work and that they were working below their capacity." Again Lt. Moos stated that "The normal capacity of Powells for the production of forceps during a month would be about 1,500 instruments." At no time during the months of August 1942 to December 1943 have the workers of this Company reached this normal figure fixed by Lt. Moos. Exhibit 35 is a statement prepared from the registers of the Company and proved by the evidence of Mr. Joshi, Superintendent of the Company. It is a statement showing the average number of instruments produced in a month and the number of workers employed for that work. This statement shows that, in March 1943, 40 workers manufac-

tured only 161 instruments in the nature of forceps for that month, while in June 1943, 44 workers only produced 55 instruments for that month. These figures fully justify the complaint of the Superintendent of the factory to Major Wolff that the factory hands were working below their capacity.

23. The figures in this Exhibit 35 also support the allegations made by the Company in their various letters to the Deputy Controller of Purchase, New Delhi, and to the Director General of the Indian Medical Service at New Delhi, in explanation of the delay in fulfilling the contracts entered into by the Company with these officers. A letter of the Company dated 12th May 1943 (Marked 11-A in the bundle collectively marked Exhibit 31), addressed to the Director General of the Indian Medical Service at New Delhi is most illuminating. In it the Company complains bitterly that it has received no practical help from any Government department in solving its difficulties and makes the following accusation against its employees:

"The Union people are backing the workers and putting forward all silly demands. The workers have become stubborn and are not putting in even one-fourth of the work they used to do before, in spite of getting fat salaries and high dearness allowance."

This complaint is made long before there was any idea of referring the dispute to adjudication.

24. The hollowness of the plea of increased production upon which the workers of this Company base their demands for higher wages and increased dearness allowance and for three months' wages by way of bonus is thus fully exposed.

25. Not only have the workers of Powells Ltd. failed to prove their contention that they had stepped-up production, but their scandalous allegation that the management of the Company had themselves deliberately and foolishly preferred to incur loss over the contracts entered into by the Company with the Army Authorities by doing work connected with the orders of private individuals—is proved to be absolutely false by the unimpeachable testimony of Lt. Moos. Lt. Moos has deposed on this point as follows:—"Major Wolff and I used to inspect the factory daily once or twice. We used to walk into the factory unannounced, and there was no fixed time for our visits, and it was not possible for the management or for the workers to conceal any private work done by the employees of Powells. For some time a civilian Gazetted Officer on our staff used to stay at Powells, to watch production." Later on Lt. Moos has deposed: "Mr. Bhattacharji, Junior Scientific Officer, used to stay at Powells factory

to supervise production.....Major Wolff spoke to Mr. Joshi about production having fallen upon the verbal reports made to him by Mr. Bhattacharji."

26. The conduct and attitude of the workers, as revealed from the evidence in this case, show how little they cared for increased production and what scant homage they paid to the ideals of the Communist Party in India. As witness No. 8 Mr. Achari has frankly deposed in cross-examination: "My interest in the Red Flag Union is purely monetary, inasmuch as it concerns increase in wages, increase in dearness allowance and increase in the grant of bonus"—So much for "the patriotic consciousness of every worker under our Trade Union influence."

27. For the reasons given above I have no hesitation in deciding issue No. (1) in favour of the Company. I hold that the workmen employed by Powells Ltd., are not entitled to any increase in their wages.

ISSUE No. 2. What dearness allowance, if any, should be given to the workers?

28. I decide issue No. 2 also in favour of the Company for the reasons I have set forth above. I may add that Powells Ltd. pay a larger sum in dearness allowance to most of its employees than any other surgical factory in Bombay. Figures showing the dearness allowances given by various firms and business concerns in Bombay to its employees have been supplied to me. These go to prove that the workmen in Powells Ltd. are far better off in this respect than the employees of these various other concerns. I need not quote facts and figures lest in so doing I inadvertently and innocently start fresh trade-disputes in those firms.

29. The contention on behalf of the workers of Powells Ltd. that as cost of living in Bombay since December 1942 has risen, so the workers must also now get full dearness allowance according to the Millowners' scale in order to prevent a cut in their real wages has to my mind no real force since the amount of dearness allowance now paid has also increased proportionately with the rise in the index figure of the cost of living.

30. I, therefore, hold that no increase in dearness allowance over and above what they enjoy at present should be given to the workers of Powells Ltd. and I decide issue No. 2 accordingly.

ISSUE No. 3. runs as follows: What bonus, if any, should be granted, and if so on what terms and conditions?

31. This issue was not seriously pressed before me by the

learned advocate appearing on behalf of the Surgical Workers' Union (Red Flag).

32. In 1942 Powells Ltd. paid a bonus of half a month's wages and in 1943 it paid a bonus of a month's wages out of the profits made by the firm from the sale of foreign drugs and of surgical instruments imported from Europe and America. This bonus of a month's wages was granted by Powells Ltd. to its workmen in spite of the heavy losses incurred by it over the first and second batches of contracts entered into by the Company with the Army Department of the Government of India as proved by the evidence of Mr. Joshi, the Superintendent of the surgical department of the factory. Exhibit 6 is the annual Block Account of the factory of Powells Ltd., from July 1942 to June 1943, and it shows a deficit of Rs. 13,265-1-11. The annual Block Account of the Pharmaceutical laboratory for the same period—July 1942 to June 1943—shows a surplus of Rs. 12,164,0-11. The Block Account of the Printing Press for the same period shows a deficit of Rs. 934-4-7. The annual Block Account of the Orthopædic Department for the same period shows a deficit of Rs. 8,232-11-7. The total loss, after deducting the surplus in the Pharmaceutical laboratory comes to Rs. 10,268-10-2. It is clear, therefore, that the workmen of Powells Ltd., far from being entitled to three months' wages by way of bonus ought not to have got even a month's wages by way of bonus, seeing that their factory was run at a loss of Rs. 10,000 odd; but out of sheer goodness of heart and in order to encourage the workers in the surgical department of the factory to put heart and soul into their work and to induce them to finish the contracts entered into with the Army authorities in time, this bonus of a month's wage was granted to their employees by the Directors of Powells Ltd. This payment of bonus in 1943 was made possible by the profits from the sale of foreign goods as is clear from the audited accounts of the Company for that year.

I see no reason why the workers of a factory run at a dead loss should be granted an extra sum of two months' wages by way of additional bonus, over and above a month's wages already granted to them as bonus. I decide issue No. 3 also in favour of the Company and hold that no further bonus should be granted to the employees of Powells Ltd.

ISSUE No. 4. is as follows: *What standing orders, if any, should be framed for regulating the relations between the management and the employees regarding attendance, leave, discharge, dismissal, suspension, etc?*

This issue is linked up with issue No. (6) which runs thus:—*Whether it is necessary or desirable to make provision against discharges or dismissals made owing to this trade dispute, and if so what provision?*

33. At first, counsel of parties were willing to file a compromise in respect of these two issues, but ultimately, owing to the strained feelings that exist between the Company and the Secretary of the Surgical Workers' Union representing the workmen of the Company, no compromise was arrived at, and it was left to me to adjudicate upon these two issues. I have scrutinised the Standing Orders of the Company already in force and the draft of Standing Orders proposed by the Surgical Workers' Union in lieu thereof. The main points of difference between the parties were two, viz., what should be the length of period during which a worker may be treated as an apprentice and what amount of leave with pay should be granted to a worker in a year. In my opinion a worker who has been in service for a whole year should cease to be treated as a mere apprentice, and a permanent worker should be entitled to at least seven days' leave with pay in addition to a month's leave without pay.

34. These provisions have been included in the draft of the Standing Orders of this Company approved by me and appended to my award as Annex. A. The Surgical Workers' Union (Red Flag), Bombay, wanted that the Standing Orders to be enforced in Powells Ltd. should be on the lines of the Standing Orders sanctioned in the trade-dispute between James Connell Ltd., Bombay, and its employees. I have, in preparing the Standing Orders for Powells Ltd. taken into consideration the wishes of the Surgical Workers' Union (Red Flag) in this matter in so far as they do not prejudice the rights of the proprietors of the Company. In accordance with the wishes of the Surgical Workers' Union, provision has been made in the Standing Order No. 24, whereby the right of a worker to take legal proceedings in a Court of Law or to move an authority competent to take such action as may be necessary to right an alleged wrong, has been specifically reserved.

35. I decide issues Nos. 4 and 6 accordingly and direct that parties do comply with the provisions of the Standing Orders mentioned in Annex. A attached to my award in this trade-dispute.

Finally, I come to issue No. (5) which is as under:—*Whether the dismissals of Chandrakant and Shama Shetty were justified? If not whether any order regarding reinstatement or compensation is necessary or desirable and if so, what order?*

36. At the outset, it was admitted by the learned advocate who appeared on behalf of the Surgical Workers' Union (Red Flag), that the name "Shama Shetty" appearing in the order of the Government of Bombay sanctioning adjudication was a mistake for Madha Shetty. He further stated that as Madha Shetty had left Bombay for his native village and as his whereabouts were not known to the Union, the claims in respect of the alleged wrongful

dismissal of Madha Shetty and in respect of his re-instatement to his former post and for compensation for the loss of the said post were unreservedly withdrawn.

37. I will, therefore, confine *issue* No. (5) solely to the claims made on behalf of Chandrakant. Two witnesses have been examined on behalf of Chandrakant in respect of his claims for compensation for wrongful dismissal and for his re-instatement to his old post. They are (1) Chandrakant himself, and (2) Ramchandra. So far as the question of wrongful dismissal is concerned, the evidence of these two witnesses stands un rebutted and has, therefore, to be accepted as true, in spite of several crude exaggerations on the part of these witnesses. The counter-story set up in the written statement of Powells Ltd. that Chandrakant was going about the Surgical Department of the Company in a suspicious manner, and that when accosted by the Manager of the Company he answered the latter in "filthy and arrogant language" has not been supported by any evidence adduced before me. The Manager of the Company, Mr. Bala Saheb, would have been the best witness in support of this story. He has, however, refrained from coming into the witness box to substantiate his version of the occurrence that took place on the morning of the 29th November 1943. The evidence of Mr. Joshi, Superintendent of the factory, so far as the incident relating to Chandrakant is concerned, is pure hearsay. He was admittedly not in the factory when the incident is said to have taken place; and there is no other evidence to corroborate the story set up on behalf of Powells Ltd. Exhibit 30 is the office copy of a notice in form M dated 1st December 1943, sent to the Chairman of the National Service Labour Tribunal, Bombay, in connection with the dismissal of Chandrakant. Since Chandrakant was dismissed from his post, and the word "discharge" in form M has been deliberately struck off, it follows therefore that Standing Order No. 22, prescribed by the Company itself and already in force before this dispute, must necessarily apply to the case of Chandrakant. This Standing Order No. 22 has been completely violated by the Manager of Powells Ltd. by his summary dismissal of Chandrakant. No written order of the Manager dismissing Chandrakant has been produced before me; no notice in writing appears to have been served upon Chandrakant calling upon him to show cause why he should not be dismissed from his post for misbehaviour and insubordination and for using "filthy and abusive language" to the Manager. These were necessary preliminary measures which the Manager of the Company had to take under Standing Order No. 22 before he could pass an order of dismissal against Chandrakant.

38. The failure to comply with the provisions of this Standing Order renders the dismissal of Chandrakant by the Manager quite unjustifiable.

39. The learned counsel for Powells Ltd. relied upon Standing Order No. 19 (b) framed by the Company prior to the genesis of the present dispute; that order relates only to the discharge of an employee and not to his dismissal by the Company. It is admitted even in the written statement of the Company that Chandrakant was "dismissed" from his post for misbehaviour. It is not necessary to prove or even to allege misconduct when an employee has to be discharged from his post. In Exhibit 30, copy of the notice in form M, the word "discharge" is deliberately struck off. It is now too late for the Company to convert the dismissal of Chandrakant into a mere discharge of an apprentice. I therefore, hold that Chandrakant has been wrongfully dismissed from his post and his dismissal is not justified.

40. Chandrakant has got employment in another firm and he does not want to be reinstated in his old post. In view of the circumstances of this case I do not think it would be wise or expedient on my part to order the reinstatement of Chandrakant to his old post. On general grounds of policy it is not advisable for a worker to go back to a factory where he alleges he has been assaulted. The learned advocate for the Union also does not press for reinstatement of Chandrakant to his former post. I, therefore, do not grant this relief to Chandrakant.

41. Coming now to the question of compensation for wrongful dismissal, I hold that the award of a month's wages to Chandrakant following the Common Law practice in such cases would fully compensate him. There were 27 working days in the month of December 1943, and the dearness allowance for 27 days, according to the scale of the Millowners' Association of Bombay, comes to Rs. 34-15-0. The wages due to Chandrakant for 27 days amount to $27 \times 10 = 270$ annas = Rs. 16-14-0 at the rate of ten annas a day, the rate at which Chandrakant was being paid per diem at the time of his wrongful dismissal.

42. The total compensation due to Chandrakant, therefore, amounts to Rs. 16-14-0 wages and Rs. 34-15-0 dearness allowance, or in all Rs. 51-13-0, say Rs. 52 in round figure.

43. For the reasons given above I decide issue No. (5) in favour of Chandrakant and award him a sum of Rs. 52 by way of compensation for wrongful dismissal. I direct that Powells Ltd. should pay this sum of Rs. 52 to Chandrakant within a fortnight after this award has been published by the Government of Bombay in the *Bombay Government Gazette*.

44. To sum up, I decide issues Nos. (1), (2) and (3) in favour of Powells Ltd. and dismiss the claim of the employees of that Company in respect of increase in wages, increase in dearness

allowance, and two months' wages as bonus over and above the bonus of a month's wages already granted to them. I decide issues Nos. (4) and (6) in terms of the Standing Orders appended to this award as Annex. A. I decide issue No. (5) in favour of the Surgical Workers' Union (Red Flag), Bombay, and award Chandrakant a sum of Rs. 52 as compensation for wrongful dismissal, to be paid by Powells Ltd. within a fortnight of the publication of this award by the Government of Bombay.

E. M. NANAVUTTY,
Adjudicator.

Bombay, 17th February 1944

ANNEX A

POWELLS SURGICAL AND PHARMACEUTICAL WORKS

Standing Orders

1. These Orders shall come into force on and from 1st April 1944 and shall replace all other Standing Orders enforced from time to time heretofore.

2. In these Orders, unless there is anything repugnant in the subject or context:

(a) "Workers" means all work-people, male or female, employed in the Company, whose names and pass numbers are included in the departmental Roll-call registers and includes Muccadams, Mistries, Watch and Ward Staff, Motor Vehicles Staff and Cartmen.

(b) "The Company" means Powells Surgical and Pharmaceutical Works.

(c) "The Manager" means the Company's Manager or Acting Manager for the time being.

(d) The masculine includes feminine.

3. Workers shall be classed as (1) permanent, (2) temporary, and (3) apprentices.

A "permanent" worker is one whose name has been entered in the Roll and who has been given a permanent pass and has completed a period of three months in the service of the Company.

A "temporary" worker is one who is engaged for work which is of an essentially temporary character or who is employed for the time being in place of a permanent worker who is temporarily absent.

An "apprentice" is a learner who is given a nominal allowance during the period of his training which may ordinarily extend to a period of one year.

4. Every permanent, temporary or apprentice worker, without exception, shall be provided with a departmental pass showing his number, daily or monthly wage rate as the case may be, overtime hours and the time of daily attendance; and on attendance each day he shall deliver up the pass at the place provided when entering the Company and shall take it away when leaving.

5. The periods and hours of work shall be posted up on a notice-board in the time-keeper's office.

6. Notices specifying (a) the days observed by the Company as holidays and (b) pay days, shall be posted as required by the Factories Act and the Payment of Wages Act respectively.

7. Notices specifying the rates of wages payable by the Company to all classes of workers and for all classes of work shall be displayed in a conspicuous position in the time-keeper's office.

8. Any wages due to a worker but not paid on the usual pay day on account of their being unclaimed shall be paid by the Company on such unclaimed wage pay day in each week as may be notified to the workers and following the date on which a substantiated claim was presented by the worker or on his behalf by his legal representative, provided that such claim is submitted within three years from the date on which the wages become due to the worker.

9. Shift working shall be regulated in accordance with the Factories Act. More than one shift may be worked in a department or departments or any section of a department at the discretion of the Company. If more than one shift is worked in the Company, workers shall be liable to be transferred from one shift to another. Shift working may be discontinued after putting up a notice in the time-keeper's office. Notice of one month of discontinuance of any shift shall be given provided, however, that it shall not be necessary to give one month's notice if as a result of the discontinuance of the shift no permanent worker is discharged. If as a result of discontinuance of shift working any permanent workers are likely to be discharged, they shall be discharged having regard to the length of their service in the Company, those with the shortest term of service being discharged first. If the shift is restarted a week's notice thereof shall be given by posting a notice at the Company's premises and the workers discharged as a result of discontinuance of shift shall, if they present themselves at the time of restarting of the shift, have preference in being re-employed,

having regard to the length of their previous service in the Company, those with the longest term of service being re-employed first.

10. All workers shall be at work punctually in the Company at the time fixed and notified to them. Those attending late in any shift shall be liable to be shut out and treated as absent.

Any worker who, after presenting his pass, is found absent from his proper place or places of work during working hours without permission or without any sufficient reason, shall be liable to be treated as absent for the period of his absence.

If, however, he is so absent from the Company's premises during working hours without permission, he shall be liable to be treated as absent for the whole day, in case his absence commences before the recess period, and for half a day in case his absence commences after the recess period.

11. (a) Service for a total period of 12 months in the Company shall qualify a permanent worker for (i) a total period of one month's leave without pay and (ii) 7 days' leave with pay. Grant of such leave shall depend on the exigencies of the Company and shall be at the discretion of the Company.

(b) Any worker who desires to obtain leave of absence shall apply to an officer or officers appointed for the purpose by the Company. It shall be the duty of such officer or officers to obtain the orders, on such application, of the authority appointed by the Company on two days in a week fixed for the purpose.

(c) If the leave applied for is of an urgent nature, that is, to commence on the day of the application or within three days thereof, the orders of the authority empowered to grant leave shall be obtained without any delay.

(d) If the leave asked for is granted, a leave pass shall be issued to the worker. If, however, the leave is refused or postponed, the fact of such refusal or postponement and the reasons thereof shall be recorded in writing in a register to be maintained for the purpose, and if the worker so desires a copy of such entry in the register shall be supplied to him.

(e) If the worker after proceeding on leave desires an extension thereof he shall make an application for the purpose to the authority granting leave either in writing or orally or through any other person.

(f) In any case, a written reply either of the grant or refusal of the extension of leave shall be sent to the worker if his address is available and if such reply is likely to reach him before the expiry of the leave originally granted to him.

(g) If the worker remains absent beyond the period of leave originally granted or subsequently extended, he shall lose his lien on his appointment unless he returns within eight days of the expiry of the leave and gives explanation to the satisfaction

of the authority granting leave of his inability to return before the expiry of leave. In case the worker loses his lien on the appointment, he shall be entitled to be kept in the "temporary" list.

(h) Subject to the provisions in clauses (a) to (g) of this Standing Order, leave is not cumulative and no compensation shall be paid to any worker for leave not taken.

12. A worker may be granted casual leave of absence without pay not exceeding 10 days in the aggregate in a calendar year. Such leave shall not be for more than three days at a time except in case of sickness. Such leave is intended to meet special circumstances which cannot be foreseen. Ordinarily the previous permission of the Head of the Department shall be obtained before such leave is taken, but when this is not possible, the Manager shall, as soon as practicable, be informed in writing of the absence from work and of the probable duration of such absence.

13. The number of holidays to be granted to the workers and the days which shall be observed as holidays by the Company shall be regulated in accordance with the Factories Act and the custom or usage of the Company.

14. No worker shall enter or leave the Company premises except by the gate or gates appointed for the purpose.

15. All male workers shall be liable on leaving the Company premises to be searched by the gateman and all female workers shall be liable to be detained by the gateman for search by the female searcher, if acting without malice he suspects that any worker who is so detained is in wrongful possession of the property belonging to the Company; provided that no search shall be made except in the presence of two other persons of the same sex as the suspected worker.

16. The Company may at any time or times in the event of fire, catastrophe, breakdown of machinery, or stoppage of the power supply, epidemic, civil commotion or other cause, beyond the control of the Company, stop any machine or machines or department or departments, wholly or partially for any period or periods, without notice and without compensation in lieu of notice.

In the event of a stoppage of any machine or department under this Order during working hours, the workers affected shall be notified by notices put upon notice-boards in the time-keeper's office as soon as practicable, as to when work will be resumed and whether they are to remain or leave the factory of the Company. The period of detention in the Company shall not ordinarily exceed one hour after the commencement of the stoppage. If the

period of detention does not exceed one hour, workers so detained shall not be paid for the period of detention. If the period of detention in the Company exceeds one hour, workers so detained shall be entitled to receive wages for the whole of the time during which they are detained by the Company as a result of the stoppage. In the case of pieceworkers, the average daily earnings for the previous month shall be taken to be the daily wages.

17. Any worker played off under Order No. 16 shall not be considered as dismissed from service, but as temporarily unemployed and shall not be entitled to wages during such unemployment except to the extent mentioned in Order No. 16. Whenever practicable in case of breakdown any worker may be engaged in any other department if found suitable for the necessary period and whenever practicable a reasonable notice shall be given of resumption of normal work and all workers played off under Order No. 16, who present themselves for work, when the normal working is resumed, shall have prior right of reinstatement.

18. The Company may in the event of a strike affecting either wholly or partially, any one or more departments of the Company, close down either wholly or partially such department or departments or any other department or departments affected by such closing down, and for any period or periods. The fact of such closure shall be notified by notice put upon the notice-board in the time-keeper's office as soon as practicable. The workers concerned shall also be notified by a general notice prior to the resumption of work, as to when work will be resumed.

19. (a) The employment of any permanent operative may be terminated by fourteen days' notice or by payment of thirteen days' wages in lieu of notice. If he draws wages on a piece-rate basis, the thirteen days' wages shall be computed on the average daily earnings of such worker for the days actually worked during the previous wage period. The reasons for the termination of the service shall be recorded in writing and shall be communicated to the worker at the time of discharge, unless such communication, in the opinion of the Manager, may directly or indirectly lay the Company and the Manager or the person signing the communication open to criminal or civil proceedings at the instance of the worker.

(b) Temporary workers and apprentices may leave, or be discharged from service, without notice, by the Manager.

(c) Where the employment of any person is terminated by or on behalf of the Company, the wages earned by him shall be paid before the expiry of the second working day from the day on which his employment was terminated.

20. Any permanent worker desirous of leaving the Company's

service shall give fourteen days' notice to the Manager. The wages due to such a worker must, if possible, be paid on the day the notice expires and in any case within two days after the expiry of the notice.

If any permanent worker leaves service without notice he shall be liable to be sued for damages.

21. The following acts or omissions shall be treated as misconduct:

(a) Wilful insubordination or disobedience whether alone or in combination with another or others of any lawful and reasonable order of a superior.

(b) Declaring an illegal strike without giving proper and reasonable notice to the Company.

(c) Inciting other workers to go on an illegal strike without giving proper and reasonable notice to the Company.

(d) Theft, fraud or dishonesty in connection with the Company's business or property.

(e) Taking or giving bribes or any illegal gratification whatsoever.

(f) Habitual absence without leave, or absence without leave for more than ten consecutive days.

(g) Habitual late attendance.

(h) Habitual breach of any Standing Orders.

(i) Collection of any moneys within the Company premises for purposes not sanctioned by the Manager.

(j) Engaging in trade within the Company premises.

(k) Riotous or disorderly behaviour during working hours on Company premises or any act subversive of discipline.

(l) Habitual negligence or neglect of work.

(m) Habitual breach of any rules, or instructions for the maintenance and running of any department, or the maintenance of the cleanliness of any portion of the Company premises or Company compound.

(n) Frequent repetition of any act of omission for which a fine may be imposed under the Payment of Wages Act.

22. (i) A worker may be suspended for a period not exceeding four days or dismissed without notice or any compensation in lieu of notice if he is found to be guilty of misconduct. The Order of suspension shall be in writing and may take effect immediately on communication thereof to the worker. Such order shall set out in detail the alleged misconduct and the worker shall be given an opportunity to explain the circumstances alleged against him. If on inquiry the order is confirmed or modified, the worker shall be deemed to be absent from duty for the period of suspension and shall not be entitled to any remuneration for such period. If, however, the order is rescinded, the worker shall be deemed to be on duty during the full period of suspension and shall be entitled to

the same wages as he would have received if he had not been suspended.

No order of dismissal shall be made unless the worker concerned is informed in writing of the alleged misconduct and is given an opportunity to explain the circumstances alleged against him.

In awarding punishment under this Standing Order the Manager shall take into account the gravity of the misconduct, the previous record, if any, of the worker and any other extenuating or aggravating circumstances that may exist.

(ii) A copy of the order made by the Manager shall be supplied to the worker concerned.

23. All complaints arising out of his employment including those relating to unfair treatment or wrongful exaction on the part of the employer or his agent or servant shall be submitted by a worker to the Manager or such officer or officers as he may appoint. The Manager or such officer shall personally investigate the complaint at such times and places as he may fix and the complainant worker shall have the right to be present at such investigation. Where the complainant alleges unfair treatment or wrongful exaction on the part of his employer or his agent or servant, a copy of the order finally made shall be supplied to the complainant if he asks for one. In other cases the decision of the investigating officer and the action, if any, taken by him shall be intimated to the complainant.

Provided that complaints relating to—

(1) assault or abuse by any person holding a supervisory position; or

(2) refusal of an application for urgent leave shall be inquired into without avoidable delay by the Manager or such other officer or officers as he may appoint.

24. The decision of the Manager upon any question arising out of, in connection with, or incidental to these orders, shall be final, subject, however, to appeal to the Managing Agents and without prejudice to any right of a worker aggrieved by his or their decision to resort to legal proceedings in a Court of Law or to move a competent authority for taking such action as may be necessary.

25. When any permanent worker is summarily dismissed, suspended, or discharged, or leaves the services of the Company, or is granted leave of absence, he shall, except in cases of general retrenchment, closing down of departments, strike or lock-out, be given a written order in the form prescribed by the Company from time to time.

Every permanent worker shall be entitled to a service certificate at the time of leaving service, dismissal or discharge.

26. Each Supervisor, Muccadam or Mistry of a department shall be held responsible for the proper and faithful observance of the

Standing Orders and of the special rules made under the Factories Act and posted on the notice-board of the Company, particularly regarding the employment and working of women and children under him.

27. A copy of these orders in English and also in the principal regional language of the local area in which the Company is situated shall be posted in the time-keeper's office and in all departments or in such other places in the Company premises as the Company may decide and shall be kept in a legible condition;

provided that where more than 20 per cent. of the total number of workers employed speak any other than the regional language such Standing Orders shall be printed also in that language.

Bombay, 17th February, 1944. E. M. NANAVUTTY,
Adjudicator.

(Bombay Castle, 10-5-1943, No. 6858/34. Government Gazette Part I., pp. 967 to 969)

BOLE BROTHERS' FACTORY, BOMBAY

AND

ITS EMPLOYEES

Adjudicator—K. B. Wassoodew, Esq., (Retired Judge, High Court, Bombay).

Counsel—Mr. Y. B. Rege, with Messrs. Thakordas & Madgaonkar, Solicitors, instructed by Mr. Tricumji Govindji Bole, for the Bole Brothers' Factory.

Mr. K. T. Sule, Advocate, with Mr. V. Chaudhari and Mr. S. S. Mirajkar, for the Surgical Workers' Union (Red Flag), Bombay.

A w a r d

I was appointed by Government Order, Political and Services Department, No. 6858/34, dated the 18th February 1943, to adjudicate the trade dispute regarding dearness allowance and opening of a cheap grain shop, between the Bole Brothers' Factory, Bombay, and its employees. Usual notices were issued to the

parties concerned, on 22nd February 1943, and tentatively 15th March 1943 was fixed for first hearing of the dispute. As Bole Brothers were not prepared with their written statement on that date the date of hearing was postponed to 20th March 1943. On that day I heard the parties and formulated the points of difference between them. The difference was principally in regard to the quantum of dearness allowance and the date from which it should be paid. I examined a representative of the workers who was himself a turner in the factory and it was evident from his statement that the employers had recognized long ago that the daily wage should be supplemented by dearness allowance and that in fact an agreement in regard to the rate of such allowance was entered into between the workers and the employers on 9th May 1942. For some reason or other, which it was not necessary to ascertain, the employers did not carry out their part of the agreement and in August 1942 upon a threat of direct action the employers consented to pay dearness allowance to their workers as from 4th September 1942, at a flat rate of Rs. 7-8-0 per month. That allowance is still being paid to the workers. The latter were not satisfied with what they got and began to agitate for an enhanced rate in terms of the agreement which promised a rate according to the scale recommended by the Bombay Millowners' Association.

2. After some discussion on the first day, a settlement seemed possible with regard to the dispute regarding the opening of a cheap grain shop but both parties pushed their differences to the extreme limit. The hearing was adjourned to 29th March as Bole Brothers wanted time to submit a statement of profit and loss accounts since 1936. That statement was furnished by them on the adjourned date. After examination of the representative and partner in the firm of Bole Brothers, certain tentative proposals were put forward on behalf of the workers' Union. After considerable discussion and upon the intervention of counsel appearing on both sides those proposals were ultimately accepted late in the day with certain modifications. I am glad to say that both sides exhibited great sense of reality and reasonableness in moderating what seemed at one time an uncompromising attitude. The memorandum of the settlement arrived at has been drawn up and signed by the parties in my presence. The settlement which has been recorded is annexed herewith and my award is in terms of that settlement.

3. I am deeply indebted to the representatives of the workers' Union and Counsel for bringing about the settlement and restoring harmony between the employers and their workers.

(Signed) K. B. Wassoodew,

Adjudicator.

Bombay, 31st March, 1943.

MEMORANDUM OF SETTLEMENT

1. It has been agreed that dearness allowance will be paid to all the workmen (including apprentices) employed in Messrs. Bole Brothers' Factory on the following scale:

(a) All employees described as above will be paid dearness allowance at the rate of Rs. 15 per month of 26 working days.

(b) The said dearness allowance is to be paid from the 1st of December 1942, to all the workers who were in employment on that date or since then.

(c) The arrears of dearness allowance from December 1942 to March 1943 shall be paid to the employees now in employment on the 7th of May 1943. Those who are not employed at present will be paid on or before the 15th of April 1943.

It is also agreed as follows that:

(1) A Committee of five workers will be elected by the workers themselves to co-operate with the management in conducting a grain shop and arranging proper and smooth distribution;

(2) Workers will register their orders of required food-stuffs and other articles between 21st and 24th of previous month;

(3) Supplies will be strictly in proportion of the orders registered;

(4) All rationed articles are to be supplied at controlled prices according to the quota received from the Government;

(5) All other articles will be sold to the workers at Government rates; and

(6) Following articles will be stocked in the shop if available and the same will be sold to the workers according to their requirements:

- (a) Rice (of available quality)
- (b) Wheat
- (c) Jowari
- (d) Bajri
- (e) Pulses (Tur, Chana, Mug, and Masur)
- (f) Chawli
- (g) Vatana
- (h) Gram
- (i) Mug
- (j) Tea
- (k) Sugar
- (l) Oil (cocoanut, sesame and ground-nut)

(Signed) Tricumji Govindji Bole;

(Signed) Y. B. Rege,

For and on behalf of
Bole Brothers' Factory.

(Signed) S. M. Mirajkar,

(Signed) K. T. Sule,

For and on behalf of the
Surgical Workers' Union.
(Red Flag),
Bombay.

Before me,
(Signed) K. B. Wassoodew,
Adjudicator.

Bombay, 29th March, 1943.

(Bombay Castle, 19-5-1942, No. 5907/34. Government Gazette
Part I. pp. 1752 to 1755).

MAZGAON DOCK LIMITED

AND

ITS EMPLOYEES

Adjudicator—The Honourable Mr. Justice M. C. Chagla.

Mr. Jamnadas Mehta, instructed by Mr. N. N. Menon, General Secretary, and Mr. George Lobo, Secretary, Dockyard Labour Union, for the Dockyard Labour Union.

Mr. Y. B. Rege, instructed by Messrs. Craigie, Blunt and Caroe, with Mr. A. K. Brown and Mr. A. A. Wilson, for the Mazgaon Dock, Limited.

Dated 5th May 1942.

ORDER

By a Notification No. 5907/34, dated 8th April 1942, I was appointed Adjudicator by the Government of Bombay to adjudicate upon the trade dispute between the Mazgaon Dock, Limited, and its employees.

I called upon the employees to submit to me their grievances, and by their letter of the 20th of April 1942 the General Secretary of the Dockyard Labour Union forwarded to me six demands which were included in the notice of the strike given by the Union to the Managing Agents of the Mazgaon Dock Limited by its letter dated the 24th of March 1942. The General Secretary of the Union also submitted to me certain other matters in dispute between the employees and the Company which have been pending between them for the past few years. These other matters are eleven in all. I had some doubt as to whether I was called upon to adjudicate upon anything more than the actual grievances of the employees in respect of which they gave a strike notice; for it seemed to me that whatever the matters in dispute between the

parties might have been in the past, they were crystallised by the Union's letter of the 24th of March 1942. In any event those were the only demands of the employees which they thought worth while to press and they were prepared if necessary to strike in the event of any of these demands being refused by the Company. Both the parties, however, were anxious that I should adjudicate upon all the matters in dispute between them, so that the relations between the employers and the employees should be as harmonious as possible in future.

Mr. Jamnadas Mehta who appeared for the Union pointed out to me that if I only adjudicated upon the strike demands, the other demands of the employees would still constitute a dispute between the parties and would be a source of constant friction between them. Under these circumstances, and especially as the parties have agreed to submit all these matters to my adjudication, I have adjudicated upon all the matters in dispute between the parties.

The Mazgaon Dock Limited submitted a written reply to the statement of claims of the employees. There were three hearings before me on the 27th and 29th April and 1st of May when Mr. Jamnadas Mehta on behalf of the Union adduced evidence, and I heard arguments advanced by both sides.

I must mention at the very outset that the Mazgaon Dock Limited have throughout the proceedings adopted a very fair, reasonable and accommodating attitude and have given careful consideration to every suggestion that fell from me and in most cases have agreed to accept it. It is because of this exemplary spirit shown by the Company that an agreement was arrived at between the parties with regard to most of the points in dispute between them, and very few of them were left for my adjudication.

With regard to the employees' demands for bonus and *batta* allowance, being demands Nos. 1, 2 and 3 of the strike demands, the parties have arrived at an agreement.

With regard to the fourth demand, *viz.*, the restoration of wage cuts effected some years back, the position is this. These wage cuts were enforced by the Company in 1933-34. According to Mr. Jamnadas Mehta, the cut was justified for a period of two years after 1934. After that, it seems that the Company went on restoring the wage cuts whenever its attention was drawn to individual cases. A meeting of the employees was held on the 25th of June 1939 when a demand was made for the restoration of the wage cut, but nothing tangible seems to have been done after that till the 17th of October 1940 when there was a meeting before the Registrar of Trade Unions when Mr. Jamnadas Mehta, who represented the Union, was satisfied with the assurances given by Mr. Wilson, who represented the Company, that if any employee had not had his cut restored Mr. Wilson would take up his case. Even after that, no cases were submitted to Mr. Wilson for his consideration. It was only about the middle of April of this year, a week before I commenced these proceedings, that the

Union submitted to the Company a list of over 70 persons whose wages had been cut and which had not been restored. The Company is quite willing that the cut should be restored in the case of all those who were in service prior to the imposition of the cut and who still continue to be in the service of the Company. But the parties are not agreed as to the date from which the cut should be restored. Mr. Jamnadas Mehta wants me to give retrospective effect to the restoration of the cut by making it applicable from June 1939 when the demand for it was made at the meeting of the employees as I have already stated. On the other hand the Company contends that in the case of their other employees where they have already restored the cut they have done so from the date when their attention was drawn to the fact that the cut had not been restored. I do not think it is the fault of the Company that their attention was not drawn to the cases of these 70 employees whose cuts still remained unrestored. At all times they were willing to do so as soon as the individual cases were submitted to them. If I am to give retrospective effect to the restoration of the cut, then it will create dissatisfaction among the other employees of the Company whose cuts had already been restored as from the date when they asked for such a restoration. In my opinion, therefore, the cut should be restored from the 1st of April 1942 in the case of all those whose names have been submitted by the Union to the Company if the Company is satisfied that the demand of the Union is justified. If there are any other cases, the Union would submit them to the Company by the 31st of May 1942. In their cases also the cut should be restored as from the 1st of April 1942. If further cases are submitted after the 31st of May 1942, the restoration in those cases will be as from the date when their claim is submitted by the Union to the Company.

Demands Nos. 5 and 6 of the strike demands deal with the question of hours of work of bargemen and launchmen and whether any overtime allowance should be given to bargemen. The position with regard to bargemen is this. They are permanent employees of the Company and they are paid a monthly salary. They are expected to be on duty all the time. Mr. Jamnadas Mehta has eloquently pleaded for their cause and has contended that not only have these men to be on duty for all the 24 hours but they are very hard-worked and they have no time which they can call their own, and there is no period during the whole time of their service when they can be off duty and can go and be in their own home or with their own family. As a matter of fact Mr. Jamnadas Mehta points out that it is because of these conditions of service that these bargemen are compelled to keep their family out of Bombay. If their lot was improved, they would very much like to keep their family in Bombay so that they could see them from time to time. In support of his contention Mr. Jamnadas Mehta has called before me one Mr. Abdulla Fakir,

a Tindal of a barge and who is in the employ of the Company. He is also a member of the Committee of the Union. Although he came into the witness-box to support a definite cause and gave his evidence from that point of view it is clear from what he stated before me that the lot of the bargemen is not as hard as Mr. Jamnadas Mehta would have me believe. Although it is true that the bargemen have to be strictly on duty all the 24 hours, there is very little work which they have to do during these hours, and by mutual arrangement members of the crew can and do go on shore for varying intervals of time. The main work that a bargeman has got to do is to take coal from the shore and then to go alongside the ship in which the coal has got to be loaded. The barge is towed to the ship by a launch. The ship may be either in one of the Docks or in the stream. While the barge is being loaded on the shore, the bargeman has very little to do except to see that the ropes of the barge are in order and that no water gets into it. When the barge is alongside the ship and the coal is being transferred to it, then also the bargeman has hardly anything to do. When the ship is in one of the Docks, sometimes the barge has got to wait till the gates of the Dock are opened. During that period also the bargeman has no work to attend to. The Company has 22 barges. Only six barges can be loaded at a time in the Mazgaon Dock. While six barges are being loaded the others except those which are alongside the ships are idle, having nothing to do. Usually the barge returns to the Dock at about 6 p.m. or 7 p.m. and orders are given to it for the next morning. Of course there are instances when a barge has got to remain for a longer period alongside the ship, and since the War broke out, the bargemen have had more work to do than before the War. Mr. Abdulla Fakir admitted before me that before the War he had no grievances at all.

In the case of launches their men have not such an easy life as the bargemen and, therefore, the Company has fixed the hours of duty. They are from 6 a.m. to 7 p.m. every day except Sundays. If they are made to work after 7 p.m. on week days or any time during Sundays, they are given overtime allowance according to the hours they work on the basis of an eight-hour day. The only grievance which Mr. Jamnadas Mehta has with regard to launchmen is that their hours of work are too long and that I should not countenance any Company making its employees work for thirteen hours a day. He says that this is opposed to the underlying spirit of all modern labour legislation. I should have readily agreed to Mr. Jamnadas Mehta's contention if I felt that the launchmen were made to work for thirteen hours a day; but that is not the case. It is true that the launchmen are on duty for thirteen hours a day, but the actual hours of work are much less. The nature of their work is such that it is impossible to arrange for a shift system. It is impossible for the Company to know beforehand when and for what period a launch might be required.

In my opinion, therefore, the demand of the Union to arrange for a shift system in the case of launches and to reduce the number of hours on which their men are on duty is not justified.

With regard to bargemen, although they have very little work to do, as I have pointed out, I still feel that they should be given some time every week when they can be off-duty and during which they can consider themselves as their own masters. It is not enough that they should be able to slip away to the shore at such times as the barge is lying idle or when two or three men of the crew can be spared from the barge. At my suggestion the Company has agreed to give one day in the week off to the Tindal and each member of the crew of its barges. The members of the crew should enjoy this privilege in consultation with the Tindal so that the work of the barge should not be unduly interfered with. If a member of the crew finds that he is not being fairly dealt with by his Tindal with regard to this privilege of his, he will have a right of appeal to the Company.

With regard to demands Nos. 1, 2 and 3 of the other demands of the Union, the parties have arrived at an agreement.

Demand No. 4 deals with the question of leave with pay. The present position is that only the chargemen in the employ of the Company are given half a month's leave yearly on full pay. Although the launchmen and bargemen are also in the permanent employ of the Company, they do not get any leave with pay at all. I don't see any principle that justifies this distinction between launchmen and bargemen on the one hand and chargemen on the other. The former are as much permanent employees of the Company as the latter. In my opinion launchmen and bargemen should be put in the same position as chargemen, and they should be given half a month's leave yearly on full pay.

Then there are other employees of the Company who are not their permanent employees but who work on a system which is known as the Palli system. This system is introduced in order to distribute equitably available work to the regular employees of the Company. All men desiring work present themselves in the office of the Company. Work is then distributed among these persons. If there is not enough work for all, those who have not been employed for the day are sent away but their names are registered in the Muster Rolls of the Company as persons who have attended for work. Those who are thus sent away are supposed to be on Palli. These Palli men have to attend regularly whether they get work or not. If a man absents himself for four days in succession without permission, his name is removed from the Muster Roll. With the permission of the Company these Palli men may obtain leave to absent themselves for a longer period. It will, therefore, be seen that these Palli workers are daily workers who are given work as and when the Company has enough work to distribute. Although they are daily workers, their wages are paid monthly—they being paid whatever they have earned in the course of the

month. The Company has succeeded in giving to this system of service a certain amount of permanency and stability by this Palli method. Mr. Jamnadas Mehta has contended that these men also should be given leave with pay. The Company does not see its way to acceding to this demand of the Union. Undoubtedly there is a considerable difference between the position of the chargemen, launchmen and bargemen and the position of these Palli workers. The former are permanent employees of the Company receiving a monthly wage. The latter strictly are daily casual workers whom the Company may or may not employ. But these Palli workers have got to be in Bombay and attend at the office of the Company if their names are to remain on the Muster Rolls of the Company and to have the advantages of the Palli system. To that extent they may be deemed to be in the service of the Company and tied down to the Company although they are not paid for it. The tendency of modern labour legislation is to provide as far as possible for leave to all employees with pay. In my opinion, therefore, some mode should be devised whereby these Palli employees will obtain some leave with pay.

My attention has been drawn to the fact that in the Bombay Port Trust where a similar system prevails workers are given fourteen days' leave annually with pay. The Company tells me that the Palli system in the Bombay Port Trust is not exactly the same as the system operating in the Mazgaon Dock Limited. It would not be proper to allow a worker to have leave with pay if in fact he has not worked at all and has merely given his attendance and has had his name registered in the Muster Roll.

I, therefore, think that the fairest solution would be to give these Palli workers thirteen days' leave with pay for every 300 days of work they have put in. They would be entitled to this privilege only after they have been on the Muster Rolls of the Company for a period of not less than three years. The pay to be calculated by taking the highest daily rate of pay during the last year of the man's employment. The employee could enjoy this facility either in one consecutive period consisting of thirteen days, or he could claim it for casual absences totalling thirteen days. He should be allowed to accumulate this leave for twenty-six days.

With regard to the fifth demand, it seems that up to the 25th of March 1932 the employees of the Company were given four Public Holidays, viz., Christmas, New Year, Good Friday and King's Birthday, and the Union wishes this practice to be restored. Mr. Jamnadas Mehta told me that he would not press this demand unless he could satisfy me that these four Public Holidays were given to the workers at any time during the last ten years. As the system had been discontinued for over ten years, I do not think that this demand of the employees is justified.

The sixth demand is the same as demand No. 4 of the strike demands.

Demands Nos. 7 and 8 deal with pension and provident fund. The Company has been giving pension to all its employees after a certain number of years of service. This is true not only of their permanent employees but also of their Palli workers. But the payment of pension to Palli workers is entirely discretionary with the Directors of the Company. At my suggestion the Company has given the following assurance to the Union:

"As they have been doing in the past so also in future they will, so long as their finances permit, give a reasonable pension to all those who have been regularly employed by them on the Palli system and who have been continuously on their Muster Rolls for the last twenty years and more. The employers consider as a reasonable pension a pension of 15 per cent. of the last month's salary if the employee has been in employment for less than 25 years, 20 per cent. if he has been in employment for less than 30 years and 25 per cent. if he has been in employment for 30 years and more. The last month's pay is to be calculated by taking the highest daily rate of pay during the last year of the man's employment and multiplying it by 26."

Mr. Jamnadas Mehta is satisfied with the assurance, but he does not think that the rate of pension is adequate. It must be remembered that the Company is prepared to give pension to employees who are not really their permanent employees. I do not think it would be right on my part to throw a greater burden upon the Company than the one which it has willingly agreed to take upon itself.

Mr. Jamnadas Mehta has pressed me to consider a scheme of provident fund for the Palli workers. He says that all the employees may not be in a position to avail themselves of the pension and some method should be devised for those unfortunate ones who may not be in a position to serve the Company for the minimum period necessary to earn a pension. At present the Company has no scheme for provident fund for any of its employees at all. I have been told—and I think rightly—that it would be almost impossible to devise a scheme for Palli workers whose numbers fluctuate from time to time and very often the fluctuation is quite abnormal. The Company has already agreed to give bonus and pension to those Palli workers. I have also adjudicated that the Company should give them leave with full pay. I do not think that I could justifiably ask the Company to do anything more for the Palli workers. I do not think that the Palli workers have any more legitimate claim upon the Company.

There is an agreement with regard to demands Nos. 9 and 11 and with regard to demand No. 10, it is the same as strike demands Nos. 5 and 6.

5th May 1942.

(Signed) M. C. CHAGLA.

(Bombay Castle, 1-5-1943, No. 6431/34 (i) Government Gazette Part I, pp. 893 to 914).

(i) MAZAGAON DOCK LIMITED, (ii) ALCOCK ASHDOWN AND CO., LTD., (iii) BOMBAY STEAM NAVIGATION CO., LTD.

AND

THEIR EMPLOYEES

Adjudicator:—A Latifi, Esq., C.I.E., O.B.E., M.A., LL.M., (Cantab.) LL.D. (Dub.), Bar-at-Law, I.C.S., (Retired).

Counsel—Mr. V. F. Taraporevala with Mr. M. G. R. Aitken, of Messrs. Crawford Bayley & Co., Solicitors, instructed by Mr. A. A. Wilson, Manager, Mazagaon Dock Ltd., and Messrs. A. Kirkwood Brown and S. C. Driver, Joint Secretaries, Bombay Ship Repairs Panel for the Mazagaon Dock Ltd.

Counsel—Mr. S. C. Joshi with Mr. George Lobo, Secretary of the Joint Committee of the Dockyard Labour Union, Alcock Ashdown Workers' Union and the B. S. N. Workers' Union, for the employees.

Mr. Jamnadas M. Mehta, Chairman of the Dockyard Labour Union, appeared for them at the preliminary hearing. He also assisted on one or two subsequent occasions.

Mr. S. V. Joshi, Assistant Commissioner of Labour, Bombay, and Mr. W. H. Phillips, Senior Inspector of Factories, were also present.

I n t e r i m A w a r d

By Government Notification, Political and Services Department, No. 6431-34-A, dated the 26th October 1942, I was appointed under the 81-A of the Defence of India Rules, to adjudicate in the trade dispute between Mazagaon Dock Ltd., and its employees. Trade disputes also arose between Alcock Ashdown & Co., Ltd., and the Bombay Steam Navigation Co., Ltd., respectively, and their employees. By separate Notifications, Political and Services Department, Nos. 6431-34-B and 6431-34-C, dated the 26th October 1942, I was appointed to adjudicate in them also. The orders directed that I should, as far as may be, exercise the powers and follow the procedure of a Board of Conciliation under the Trade Disputes Act, 1929, and the Bombay Trade Disputes Rules, 1930.

2. As desired by the parties the three disputes have been heard together, but I am recording a separate self-contained interim award in each case. Here I deal with the dispute of Mazagaon Dock Ltd. The history of this dispute, as also the proceedings and steps taken up to date for ascertaining the facts and circumstances relating to it and bringing about a settlement are recorded in Annex I, which together with Annexes II and III is an integral part of this interim award.

3. Before considering the individual demands it is necessary, in view of discussions that have taken place during the hearing, to explain the function of an Adjudicator in such cases; and I cannot do this better than by quoting Lord Amulree, some time President of the British Industrial Court and Chairman of the National Wages Board for Railways:

“.....The Court has to give a decision to meet present-day requirements, and must take the world as it is. Whatever may be their political and social views, the individual members of the Court cannot, in their professional capacity, ignore existing facts or give decisions related to a state of affairs which, however much desired, is of the future and not of the present. They are concerned not with what the workers ‘ought’ in a moral sense, to receive, but what it is proper that they should receive in view of the state of the industry, if more good than harm is to result from the Court’s decision.

“The Court is indeed in a position similar to that of the Courts of Justice which administer the Common law. The Common law is organic; it undergoes change, and at any time bears a relationship to current moral and ethical opinion. It must, however, move in the rear rather than in the van of reform. Its function is rather to peg down and make secure gains which have been won in the march of progress and not itself to lead the advance. The judges who apply and administer the law do so consistently with this view, and however advanced and progressive may be their opinions in private, on the bench they must see that they do not go beyond the point reached by the general body of ordinary people.”*

4. General demands 3, 7, 8, 11, 13, 14 and 15 and specific demands 3, 4 and 6 in this dispute have been settled in the manner recorded in the Memorandum, which, duly signed by the parties, is attached as Annex II. I now proceed to record an interim award on general demands 1, 4, 5, 6, 9, 10 and 12 and specific demand 1. General demand 2 “that the wages of every class of worker be graded, with annual increments” involves wider issues, and is kept on one side for separate consideration.

*“Industrial Arbitration in Great Britain” (London, 1929), page 186.

5. General demand 1 is for a 25 per cent. flat increase in the wages of every class of workers whether daily or monthly-rated, who have served for 8 years or more, those with less than 8 years' service to be given a proportionately smaller increase. The demand is based on two grounds. Firstly, a large number of workers have for many years remained in service without any increase in their emoluments. The mere length of their service has, irrespective of anything else, added to their efficiency. This increased efficiency has meant greater output and consequently greater profit, all creamed off by the employers without any return to the workers. Secondly, for the last three and half years the company have been making abnormal profits and so, just as they made a general cut in 1933 because of the depression, they should now give a general increase in wages out of their abundance.

6. In reply the Company point out that the question of an increase in wages because of mere length of service is one to be dealt with under general demand 2. At the same time they have given evidence (Ex. N read with Ex. Z/24) to show that the charge of stagnation is not correct in respect of such workers as, in the Company's view, deserved promotion on the score of merit. They have also produced evidence (Ex. M and Z/27) which has not yet been rebutted, to show that the wages they pay compare favourably with those in other engineering concerns including the Railways. Regarding H. M. I. Dockyards, whose rates are also quoted (Ex. X), I am satisfied from what I saw of their work (paragraph 4 of Annex I) that their standards of workmanship and their system generally are so different that their rates are practically of no help in this dispute.

As for the second ground, the figures the Company were able to show me confidentially do not make it clear—the management themselves are not in a position to say—what their profits really have been, after deducting the heavy taxes, particularly the Excess Profits Tax they will doubtless have to pay. But whether the profits be great or small “the distribution of increased profits among workers is better achieved by the giving of an annual bonus than by a further increase in wages. Wages must be fixed on the basis of normal conditions”.* Conditions now are admittedly abnormal, and the Company have already paid one month's net wages as bonus for the year ending 31st March 1942, representing an addition of about 8½ per cent. to the wages, and “obviously the same facts cannot be taken into account twice over”.†

*Mr. Justice M. C. Chagla, in the General Motors (India), Ltd., dispute, Bombay Government Gazette, Part I, dated 28th May 1942, page 1900.

†Mr. Justice Broomfield, in the Bombay Electric Supply and Tramways Co., Ltd., dispute, Bombay Government Gazette, Part I, Extraordinary, dated 10th July 1942, page 2531, paragraph 17.

The wage cut of 1933 is not I think of practical interest. Mr. Jamnadas M. Mehta, who represented the workers in the first Mazagaon Dock dispute, admitted that the cut was justified for two years. Subsequently it was restored from time to time. In any event the award in the first Mazagaon dispute has relegated this question to past history.

7. Finally, the Company point out that in pre-war days work as well as the demand for labour was fluctuating, but now workers get steady employment and also earn reasonable overtime, thus (Ex. Z/21):

1 *Monthly-rated employees—*

August 1939—

		Rs.	a.	p.
357 men drew wages amounting to ...	16,075	0	0	
Average earnings per head ...	45	0	0	

November 1942—

		Rs.	a.	p.
392 men drew wages (including dearness allowance) amounting to ...	29,322	0	0	
Average earnings per head ...	75	0	0	

2 *Daily-rated employees—*

August 1939—

3,196 men drew wages (including overtime) amounting to ...	1,19,616	0	0	
Average earnings per head ...	37	3	0	

November 1942—

7,240 men drew wages (including overtime and dearness allowance) amounting to ...	5,15,899	0	0	
Average earnings per head ...	71	7	0	

In addition, one must reckon, apart from the bonus mentioned above, the new leave and pension (or provident fund) rights which have added substantially to emoluments.

In the circumstances I hold that the demand for a flat increase in wages is not reasonable. It is bad to kill the goose that lays the eggs—even if not golden.

8. General demands 4, 5 and 6 are that:—

“ 4 (a) In the Mazagaon Dock Ltd., the existing pension scale be increased as follows:

- for service of 20 to 25 years from 15 per cent. to 30 per cent.;
- for service of 25 to 30 years from 20 per cent. to 40 per cent.;
- for service above 30 years from 25 per cent. to 50 per cent.

When the provident fund scheme is introduced the present employees should be given the option of electing either the provident fund or the pension scheme.

(b) * * * *

“ 5 (a) The provident fund schemes have been introduced in the Bombay Steam Navigation Co., Ltd., and the Alcock Ashdown & Co., Ltd., and the Unions submit that the contribution from each worker should be 16 pies per Rupee instead of 9 pies per Rupee as at present.

(b) The company should contribute an amount equal to the worker's contribution. This amount should be paid in full with interest on both contributions when the worker is leaving employment.

(c) The Provident fund should be made retrospective on the lines of the provident fund schemes of the Bombay Municipality and the Bombay Port Trust, i.e., the Company should contribute an amount equal to half a month's wages for each year of service prior to the introduction of the provident fund scheme.

(d) In the Mazagaon Dock Ltd., the Unions ask for a provident fund scheme on the same basis as claimed for the Bombay Steam Navigation Co. Ltd., and Alcock Ashdown & Co. Ltd. This scheme should also be made retrospective in effect as suggested above.

“ 6 (a) Gratuity should be paid over and above the pension or provident fund and it should be on the lines of the gratuity paid in the Railways, i.e., for employees with more than 10 years service a gratuity equal to half month's wages for every year of service.

(b) Gratuity should be paid to the wives or minor children of employees who die in service and the amount to be paid as gratuity should be the whole of that payable to the employee himself.

(c) Gratuity should also be paid to employees who are retrenched or discharged for any reason other than their own negligence or fault.

There was an animated discussion on these demands, but in the end the Company submitted the scheme detailed in Annex III. The concession is what one expects of the broad vision of the great corporations that control Mazagaon Dock, Ltd., and Mr. Joshi accepted it with the following reservations:

(a) The contribution from the Company as also the operative should be 16 pies in the Rupee and not 9 pies as offered;

(b) The gratuity for the wife or dependants of a deceased operative should be the whole amount as payable to the operative and not three quarters as proposed.

Mr. Joshi cites in support the provident fund rules of the H. M. I. Dockyard and the Bombay Electric Supply & Tramways Co., Ltd. These precedents do not help, if for no other reason because there can be no comparison here between a Government department or a monopolist public utility corporation and the Mazagaon Dock Ltd., a private commercial concern that has to fight competition not only in Bombay but also from other ports on and beyond the Indian seas. I have no hesitation in accepting the whole scheme in Annex III as fair and beneficial to all concerned. I understand that the company will make suitable provision for the widows and dependants of operatives who do not retire after electing the pension under clause 5 of Annex III but die in service.

9. General demands 9 and 10 are in two parts; the first being that:

“ The present system of payment for overtime to workers governed by the Factories Act should be modified on the following lines:

(i) All overtime worked on week days in excess of $8\frac{1}{2}$ hours should be paid at the rate of $1\frac{1}{4}$ times ordinary rate per hour up to 10 hours, and $1\frac{1}{2}$ times ordinary rate per hour in excess of 10 hours.

(ii) All overtime worked on Saturdays in excess of 6 hours but up to 10 hours should be paid at the rate of $1\frac{1}{4}$ times ordinary rate per hour, and above 10 hours at the rate of $1\frac{1}{2}$ times ordinary rate per hour.

(iii) All overtime worked in excess of $48\frac{1}{2}$ hours per week but up to 60 hours per week should be paid at the rate of $1\frac{1}{4}$ times ordinary rate per hour, and in excess of 60 hours per week, at the rate of $1\frac{1}{2}$ times ordinary rate per hour.”

This demand is based on the allegation, which has not been supported by any evidence, that this was the Company's practice before the war; and that it was only after the war began, that they began to pay for overtime strictly in accordance with the Factories Act, 1934. The Company, who keep elaborate records, deny this

allegation. They say that they came into existence in 1936 and have ever since followed the provisions of the Factories Act, 1934, in this regard without modification.

I must dispose of this part of the demands by citing Mr. Justice Divatia's sound remarks in his award in the Lever Bros. (India), Ltd., dispute: "I think that it will be agreed that in all cases where State legislation secures certain advantages to certain sections of the Community and imposes burdens on other sections of the community, an improvement in the conditions or the advantages already gained should be secured through further amending legislation so that such advantages may be obtained equally by all those who are entitled to them and that the burdens which the granting of such advantages places on others may also be equally imposed on all of such persons. There is, of course, no objection to any particular employer granting greater or more generous concessions than those imposed upon him by legislation provided that he does so of his own free will, but the burden of granting such additional concessions cannot be imposed upon him by his employees or by any third party."*

10. The second part of general demands 9 and 10 relates to certain categories of workers who either do not come at all under the Factories Act, 1934, or are exempted by Rule 77 of the Bombay Factories Rules, 1935, read with section 43 of the Act. The demand is that wherever the three shift system is possible it should be introduced and overtime stopped for the following categories. Where, however, this is not possible, overtime should be paid for as follows at $1\frac{1}{4}$ of the basic rates:

A. *Launchmen and Bargemen*.—For all work after 10 hours of work.

B. *Charge Hands*.—For all work put in after 9 hours of work; or a consolidated overtime like the Railways.

C. *Gate Sepoys*.—For all work after 10 hours of work.

D. *Drivers (Lorry and Car)*.—For all work after 10 hours of work.

10-A. As for launchmen and bargemen apart from what has been stated above there is a further specific demand 8 which is as follows:

"(a) The Company should provide a reasonable number of Bhandaries for the launches. Bhandaries are provided on the launches of the Bombay Steam Navigation Co., Ltd., and the Bombay Port Trust.

(b) The Company should also provide additional tindals and lascars for the barges so as to enable the bargemen to enjoy the

*Messrs. Lever Brothers (India), Ltd., dispute, Labour Gazette, September 1941, page 82, paragraph 33.

privilege of weekly off without undue hardship and over-work to the bargemen on duty."

As pointed out by the Company the whole question was disposed of by Mr. Justice Chagla as Adjudicator in the first Mazagaon Dock dispute thus: " Demands Nos. 5 and 6 of the strike demands deal with the question of hours of work of bargemen and launchmen and whether any overtime allowance should be given to bargemen. The position with regard to bargemen is this. They are permanent employees of the Company and they are paid a monthly salary. They are expected to be on duty all the time. Mr. Jamnadas Mehta has eloquently pleaded for their cause and has contended that not only have these men to be on duty for all the 24 hours but they are very hard-worked and they have no time which they can call their own, and there is no period during the whole time of their service when they can be off duty and can go and be in their own home or with their own family. As a matter of fact Mr. Jamnadas Mehta points out that it is because of these conditions of service that these bargemen are compelled to keep their family out of Bombay.

If their lot was improved, they would very much like to keep their family in Bombay so that they could see them from time to time. In support of his contention Mr. Jamnadas Mehta has called before me one Mr. Abdulla Fakir, a Tindal of a barge and who is in the employ of the Company. He is also a member of the committee of the Union. Although he came into the witness-box to support a definite cause and gave his evidence from that point of view, it is clear from what he stated before me that the lot of the bargemen is not as hard as Mr. Jamnadas Mehta would have me believe. Although it is true that the bargemen have to be strictly on duty all the 24 hours, there is very little work which they have to do during these hours, and by mutual arrangement members of the crew can and do go on shore for varying intervals of time. The main work that a bargeman has got to do is to take coal from the shore and then to go alongside the ship in which the coal has got to be loaded. The barge is towed to the ship by a launch. The ship may be either in one of the Docks or in the stream. While the barge is being loaded on the shore, the bargeman has very little to do except to see that the ropes of the barge are in order and that no water gets into it. When the barge is alongside the ship and the coal is being transferred to it, then also the bargeman has hardly anything to do. When the ship is in one of the Docks, sometimes the barge has got to wait till the gates of the Dock are opened. During that period also the bargeman has no work to attend to. The Company has 22 barges. Only six barges can be loaded at a time in the Mazagaon Dock. While six barges are being loaded the others except those which are alongside the ships are idle having nothing to do. Usually the barge returns to the Dock at about 6 p.m. or 7 p.m. and orders are given to it for the next morning. Of course there are instances

when a barge has got to remain for a longer period alongside the ship, and since the War broke out, the bargemen have had more work to do than before the War. Mr. Abdulla Fakir admitted before me that before the War he had no grievances at all.

"In the case of launches their men have not such an easy life as the bargemen and, therefore, the company has fixed the hours of duty. They are from 6 a.m. to 7 p.m. every day except Sundays. If they are made to work after 7 p.m. on week days or any time during Sundays, they are given overtime allowance according to the hours they work on the basis of an eight-hour day. The only grievance which Mr. Jamnadas Mehta has with regard to launchmen is that their hours of work are too long and that I should not countenance any Company making its employees work for thirteen hours a day. He says that this is opposed to the underlying spirit of all modern labour legislation. I should have readily agreed to Mr. Jamnadas Mehta's contention if I felt that the launchmen were made to work for thirteen hours a day; but that is not the case. It is true that the launchmen are on duty for thirteen hours a day, but the actual hours of work are much less. The nature of their work is such that it is impossible to arrange for a shift system. It is impossible for the Company to know beforehand when and for what period a launch might be required. In my opinion, therefore, the demand of the Union to arrange for a shift system in the case of launches and to reduce the number of hours on which their men are on duty is not justified.

"With regard to bargemen, although they have very little work to do as I have pointed out, I still feel that they should be given some time every week when they can be off-duty and during which they can consider themselves as their own masters. It is not enough that they should be able to slip away to the shore at such times as the barge is lying idle or when two or three men of the crew can be spared from the barge. At my suggestion the Company has agreed to give one day in the week off to the Tindal and each member of the crew of its barges. The members of the crew should enjoy this privilege in consultation with the Tindal so that the work of the barge should not be unduly interfered with. If a member of the crew finds that he is not being fairly dealt with by his Tindal with regard to this privilege of his, he will have a right of appeal to the Company."*

There used to be 23 tindals before the Chagla award and in order to give effect to that award the Company engaged 4 new men so that there are altogether 27 tindals now. No extra work has been thrown on the launchmen and bargemen by this award. They used to go away on leave before that award and the only thing that the award did was to systematize the leave. The Company say that no bargeman has so far appealed against his

*Mazagaon Dock Ltd., dispute, Bombay Government Gazette, Part I, dated 21st May 1942, pages 1753-54.

tindal. Mr Joshi was unable to urge anything that was not represented to Mr. Justice Chagla. There is no case for interference.

10-B. As for the charge hands (only the monthly-rated are in question: daily-rated get overtime) Mr. Joshi began with asking that they should be paid at one and a quarter hours for work in excess of 10 hours. As an alternative he asked for a consolidated monthly overtime allowance on the lines of section 508 of the State Railway Establishment Code, Vol. I, which provides that "in lieu of payments for actual overtime worked, staff such as chargemen may, at the discretion of the General Manager, be granted a consolidated monthly allowance, if due to the nature of their duties, they are generally required to work overtime for the greater part of the month and the calculation of actual overtime worked is either inconvenient or undesirable."

Mr. Joshi urged that the chargehands' wages were made monthly rated between the year 1936 and 1939 and that overtime worked by them is much greater now because of the war. No increase in wages had been given expressly as compensation for this increase. The increments of Rs. 5 and Rs. 10 given after the consolidation were, with one exception, given as late as September 1942; which shows that war overtime was not taken into consideration at all in the fixing of the chargehands' wages. Mr. Wilson denied that chargehands put in more overtime now than they did before the war. He submitted a very detailed statement (Ex. Z/23) which I think proves that monthly rates were fixed after taking careful account of average wages and overtime. It appears that when these chargehands were daily-rated they had to stay in overtime to earn extra wages, but now, as a matter of practice, they are allowed to go home, when not actually required for work. Mr. Wilson pointed out that monthly rated chargehands get also 15 days' leave with pay in every year against 13 days which they got for 300 days' work when daily rated. Besides they have a better position as regards dearness allowance and pension. After a study of facts and figures Mr. Joshi had to agree at the final hearing that the chargehands have no cause for grievance.

10-C. Gate sepoys or Chowkidars have to see that no unauthorised person enters the gates. Some make rounds of the yard to keep an eye on the Company's property. Mr. Joshi urged that before the war there was practically no night shift—only very occasionally. Nowadays the double shift is almost a normal feature. The gate sepoys now work for 66½ to 70 hours per week, less meal time, in the day, and something like 94 to 98 hours in the night shift. The demand is that they should either be paid for overtime beyond 60 hours at 1½ or be made to work in three shifts.

The company reply that in January 1939 they had 17 gate sepoys against 45 in January 1943; and since then more have been recruit-

ed. Their working hours are from 8 a.m. to 5-30 p.m. and 5-30 p.m. to 8-30 a.m., the longer night hours being fixed in consultation with senior hands who preferred that way of working. They change over every fortnight or month. The Company deny that the gate sepoys do more work individually than before the war. They are paid at monthly rates fixed with due consideration of these duties and hours which do not involve sustained attention or activity, and are no more onerous than those of chowkidars generally employed in Bombay. In addition to wages and other emoluments, some of these gate sepoys have free quarters. They are allowed a day off in the week by mutual arrangement among themselves provided the work does not suffer. The Company now agree to regularize this practice and allow a gate-sepoy the right of appeal to the Company if he is not fairly dealt with in this regard. I do not think anything more is needed.

10D. As for motor lorry and car drivers the Unions urge that their demand is "in consonance with the spirit of the conventions of the International Labour Conferences"; no such conventions were, however, specifically cited. The Company say (Ex. Z/26) that their motor lorry drivers work:

Day Shift—

From 8 a.m. to noon	} Monday to Friday.
1 p.m. to 6-30 p.m.	
8 a.m. to 2 p.m.	Saturday.

Overtime is paid after these hours.

Sundays—They are paid for the actual hours worked from 8 a.m.

Night Shift—

From 6-30 p.m. to 9-30 p.m.

10-30 p.m. to 3-00 a.m.

Hours worked after 3 a.m. overtime.

There are two large motor lorries which in December 1942 were operated by three drivers, who drove on an average two hours and covered 18 miles a day. For the remainder of their duty they were standing by. There are eight other motor trucks operated by 10 drivers who on an average drove $1\frac{1}{2}$ hours a day and covered 23 miles.

As for motor car drivers they are on a monthly pay that was fixed with due reference to the overtime, etc., expected of them. For every 6 days' continuous work they get one day off. Their hours of work are ordinarily from 8 a.m. to 6 p.m. There are eight cars operated by 12 drivers and of these two change over for night work from 6 p.m. till 6 or 7 a.m. There is practically no night work except on an emergency. They do not clean the cars or do any mechanical repairs. In December 1942 these 12 drivers drove on an average one hour and covered 22 miles a

day. The rest of the time they were standing by. Their minimum monthly pay is Rs. 50 plus Rs. 23-8-0 (dearness allowance in December 1942) plus pension (provident fund) and leave rights. They also got a month's wages as bonus for the year ending 31st March 1942.

Even if "they also serve who only stand and wait", I hold that these drivers are well off.

11. General demand 12 is that night work should be paid at not less than one and a quarter of the basic rate, on the ground that the greater strain involved affects the workers' health and well-being generally. Mr. Joshi cited pp. 162-179 of the Report of the Textile Labour Inquiry Committee (Vol. II, final report). He also referred to the practice of the Bombay Steam Navigation Co., who gave higher wages for night work. He offered to drop the demand provided the reforms suggested by the Textile Labour Inquiry Committee were effected, and he would in particular have the work stopped after midnight, with a reasonable change-over.

The Company replied that the extra payment claimed, which would make a heavy addition to its wage-bill, is almost without precedent not only in India, but elsewhere in the world. As for the Bombay Steam Navigation Co., the extra wage was extorted when there was pressure of very urgent war work. Since then the Bombay Steam Navigation Co., has set up additional plant and stopped night work as a system. Mazagaon Dock say that formerly night work was only occasional, and it is only the war that has made it necessary in some departments for a percentage—not a large one—of the workers. The Company do not like night shifts because, among other things, supervision is then slack and outturn low. They do not expect to continue night work as a practice after the war. As for the remedies, there is force in the Company's contention that it is not feasible to stop work at midnight in this industry because so much time goes in merely taking a proportion of the workers to the ships and bringing them back. The workers themselves object to the mid-night limit which would curtail their overtime; if they must work at night they say, they might as well work the whole night. Further, the Company say—from what I have seen of it (paragraph 4 of Annex I), I think correctly—that night work in the docks is not altogether as irksome as it is said to be in some departments of the textile industry. All that can be done in reason is that the Company should tune up their existing system of change-overs with the advice where necessary of the Chief Inspector of Factories.

12. Specific demands 1 and 2 relate to leave rights, particularly those given as follows to palli workers by the Chagla award dated 5th May 1942:

"I, therefore, think that the fairest solution would be to give

*these palli workers thirteen days' leave with pay for every 300 days of work they have put in. They would be entitled to this privilege only after they have been on the Muster Rolls of the Company for a period of not less than three years. The pay to be calculated by taking the highest daily rate of pay during the last year of the man's employment. The employee could enjoy this facility either in one consecutive period consisting of thirteen days, or he could claim it for casual absences totalling thirteen days. He should be allowed to accumulate this leave for twenty-six days."**

The Mazagaon Dock, Ltd., who state (Ex. Z/17) that they " have given effect to the order in all respects ", issued on 16th September 1942 the following notice :

" Operatives are hereby informed that those whose names have been on the Muster Rolls of the Company for a period of not less than three years are entitled to 13 days' leave with pay for every 300 days worked. Operatives can enjoy this facility either in one consecutive period consisting of 13 days, or they can claim it for casual absences totalling 13 days. This leave can also be accumulated for 26 days. This privilege is also extended to Palli workers. The period of accumulation of 300 days will commence from the date of the Adjudication."

12-A. The demands as originally submitted overlooked the peculiar status of the Palli worker, described in the Chagla award. He is on a different footing from the workman of Alcock Ashdown & Co., and the Bombay Steam Navigation Co. At the hearing Mr. Joshi wisely dropped everything save that days of work up to a maximum of 300 put in by an operative before 5th May 1942 should be reckoned for leave in the same way as those put in after that date. The issue arises in the following illustrations:

A gets on the roll on 5th May 1941, and in the two years 5th May 1942 till 5th May 1944 puts in 600 days of work. Has he earned 26 days' leave on 5th May 1944?

B gets on the roll on 5th May 1941, and till 5th May 1942 put in 100 days of work; thereafter till 5th May 1944, he puts in 500 more days of work. Has he earned 26 days' leave on 5th May 1944?

C gets on the roll on 5th May 1936, and in the six years till 5th May 1942, has put in 1,200 days of work. Has he earned 13 days' leave on 5th May 1942?

12-B. Mr. Taraporevala argues (Ex. Y/15) that " the two conditions, viz., being on the rolls for three years, and putting

*Mr. Justice M. C. Chagla, in the Mazagaon Dock, Ltd., dispute, Bombay Government Gazette, Part I, dated 21st May 1942, page 1755.

in 300 days of work are distinct conditions. The first is necessary to entitle the worker to leave with pay. The second is necessary before he can claim to have 13 days' leave, and the second condition comes into operation only after the date of the award'. I take it, therefore, the Company agree that *A* has earned 26 days' leave on 5th May 1944, but that they would give *B* only 13 days' on 5th May 1944, and to *C* nothing. Mr. Joshi claims 26 days for *B* and 13 for *C*.

The Company's notice of 16th September 1942, accepts the first condition as coming into operation before 5th May 1942, the date of the "Adjudication"; and it is not denied that after 5th May 1942, both conditions run concurrently as in the case of *A* above. The only argument Mr. Taraporevala adduces for the difference in retroactivity of the two conditions is that the second is on the footing not of the first condition, but on the footing of the right to accumulate two periods of leave, which he says Mr. Joshi gave up as being not retroactive. I cannot accept the argument. I make no doubt that because of practical difficulties in the way the right to accumulate leave was deliberately placed on a different footing by the use of the coloured—future¹ form *should* in the last sentence of paragraph 12 above. It is a right of the future and not of the past. On the other hand, Mr. Taraporevala has not even attempted to explain why in the underlined sentence in the same paragraph the learned Adjudicator wrote "they *have* put in"—words from which retroactivity can necessarily be implied—if only "they *will* put in" was meant.

I hold that operatives are entitled to reckon for leave, up to a maximum of 300, the days of work they have put in before 5th May 1942. In the illustrations, therefore, *B* gets 26 days on 5th May 1944 and *C* 13 on 5th May 1942.

12-C. There remains the implementing of this finding. The Company, who have acted in good faith, may find their war-effort seriously hampered if these workers all apply for leave, in a body. But there is the well-known rule, to which Mr. Joshi assents, that the grant of leave is at the discretion of the management, and depends on the exigencies of the concern. This is also the rule settled for cotton textile operatives.² Further, although I agree that "the substitution of leave pay for leave with pay is obviously very unsatisfactory; a little extra pay is really no equivalent for a periodical rest and holiday",³ yet, in view of the exigencies of the war, and particularly because the palli workers were often getting in past years more "rest and holiday" than they wanted,

¹Cfr. Fowler and Fowler, "The King's English" (Oxford, 1919), page 137.

²Standing orders (No. 11) settled by the Industrial Court for Cotton textile operatives in Bombay.

³Mr. Justice Robert Broomfield, in the Bombay Electric Supply and Tramways Co., Ltd., dispute. Bombay Government Gazette, Part I, extraordinary, dated 10th July 1942, page 2533, paragraph 26.

I would, as an exceptional measure, give the Company discretion to grant leave pay instead of leave for work they have put in before 5th May 1942.

12-D. Specific demand 5 is that "the system of giving work on contract while the workers of the Company are available must be stopped."

Mr. Joshi contends that the contract system is on principle unhealthy and uneconomic and should be abolished, or at any rate minimum conditions should be prescribed for the men who work under the contractor. Otherwise the employers will give sweated wages and not keep to humane conditions of work.

In support I have been referred to the discussion at page 429 and following of the Report of the Royal Commission on Labour in India and at page 365 and following of the Report of the Textile Labour Inquiry Committee, Vol. II.

I think this demand has been put forward on a misunderstanding of the facts. Mr. Wilson states in his evidence that the Company's "contract work is ordinarily for boiler cleaning, tank cleaning and dry dock cleaning, scaling and painting of ships. That work is very intermittent. There are a number of contractors working in the docks who keep labour for no other purpose. We do not normally keep that labour. We keep a small number of men for the cast iron foundry. These men work on contract wages." I see no objection to all this.

12-E. Specific demand 7 is that "the Union wants that in the case of the Launchmen and Bargemen who overstayed their leave not knowing of the Memorandum of Settlement, and about whom the Union corresponded with the Company, the break in service by reason of the overstay should be condoned and the service should be considered as continuous for the purpose of leave, gratuity, pension or provident fund, etc."

Mr. Joshi says that this demand really refers only to the ten persons mentioned in the Company's letter No. 1333, dated the 15th May 1942 (Ex. Z/19). The Company say that in dismissing them it did no more than exercise its rights under the Memorandum of Settlement (demand No. 3) in the first Mazagaon Dock dispute. I do not think that the mere fact that these ten persons took French leave in alleged ignorance of the penalties they were incurring entitles them to any special consideration. In any case this is now a matter purely of internal discipline which should be left to the company without outside interference.

13. Before I conclude, I must record my best thanks to Messrs. S. V. Joshi, Assistant Commissioner of Labour, and W. H. Phillips, Senior Inspector of Factories and Technical Inspector with the National Service Labour Tribunal, who were present at several hearings and gave valuable help. Thanks are due also

to Mr. A. T. S. Sheffer, Constructor Commander, and the late Mr. W. O. A. Young, Deputy Director of Ship Repairs and Ship Construction, for kindly going with us on our visits to the various workshops on the 19th and 20th January (paragraph 4 of Annex I). Captain Superintendent W. R. Shewring of H. M. I. Dockyard was all courtesy.

14. Finally, the representatives of the parties to this dispute, counsel as well laymen, have co-operated with the Adjudicator's efforts to reach a fair decision in a friendly and judicial atmosphere.

15. I conclude with recommending that (a) the parties do comply with the terms of settlement (Annex II); (b) the Company do overhaul its existing system of change-overs with the advice where necessary of the Chief Inspector of Factories, and (c) the days of work up to a maximum of 300, put in by an operative before 5th May 1942, should be reckoned for leave with pay as far as may be in the same way as those put in after that date; the Company having discretion to give leave pay instead of leave so earned before 5th May 1942.

Bombay, 2nd April 1943

A. LATIFI,
Adjudicator.

ANNEX I

1. The history of this dispute is that on 24th March 1942, the Dockyard Labour Union which claims to represent the employees of Mazagaon Dock Ltd., Bombay, formulated certain demands and gave notice of strike to Messrs. Mackinnon Mackenzie and Co., Agents for the Company. On 8th April, 1942, the Government appointed the Honourable Mr. Justice Chagla, as Adjudicator, and he gave an award, which was published in the *Bombay Government Gazette*, Part I, dated 21st May, 1942, at page 1752. This will be referred to hereinafter as the first trade dispute between Mazagaon Dock Ltd., and its employees. On the 5th October, 1942, the Alcock Ashdown Workers' Union and the Bombay Steam Navigation Workers' Union formulated their demands and sent them to the respective companies. The Dockyard Labour Union followed with a set of demands which they sent on 19th October, 1942, to Mazagaon Dock Ltd. The notifications cited in the first paragraph followed.

2. On 29th October, 1942, the usual notices were issued calling upon the Dockyard Labour Union, the Alcock Ashdown Workers' Union, the B. S. N. Workers' Union and such other workers as did not desire to be represented by those Unions to file their statements of demands and the employers their replies thereto. On

7th November the three Unions formed a Joint Committee, which submitted their demands in detail on 28th November. These demands were later revised (Ex. Z/16). No other workers made any submission. The three companies submitted their replies jointly in so far as they were common, and separately in respect of the specific demands made on them. It appears that the six engineering firms in the City of Bombay directly connected with ship repairs, including the three here concerned, have formed an organisation called "The Bombay Ship Repairs Panel". The other three firms in the panel, viz., Scindia Shipyard, H. I. Dixon & Co., Ltd., and Larsen & Toubro, applied to join in this adjudication, but I was unable to accede under the rules as they now stand.

3. The parties recorded at the head of this award appeared before me on 17th December, 1942, but no worker outside the Dockyard Labour Union came. Procedure and other preliminary matters were settled on that day. At the next hearing, 6th January 1943, Mr. S. C. Joshi asked for an adjournment because he had just taken over the brief from Mr. Jamnadas M. Mehta, and wanted time for preparation. After a further discussion on procedure the cases were, therefore, adjourned to be resumed on the 11th, 12th, 13th and 14th January. They were again adjourned to enable the parties to prepare statements of the wage rates of the three concerns. There was a brief hearing on 21st January 1943, when the parties again asked for time to prepare more documentary evidence on general demand 2. The proceedings were resumed on 1st February, and at the parties' request this demand was referred to Messrs. S. V. Joshi and W. H. Phillips. These gentlemen were to call the parties together and after considering what they had to say, and consulting if necessary Commander Sheffer and the late Mr. W. O. A. Young, to submit a detailed scheme of maximum and minimum rates with incremental scales for the various classes of workers in the three companies. Messrs. S. V. Joshi and Phillips conferred with the parties on 3rd February 1943, and all seem to have agreed that this was not a matter that could thus be decided. At the hearing on 4th February Mr. S. V. Joshi stated that before proceeding in this matter he wished to consult the Labour Office. Having done so he suggested on 8th February that for the time being the demand be kept on one side for separate consideration. This was agreed to and the other items of the dispute were accordingly taken up on 8th, 9th, 10th, 12th, 15th, 16th, 19th, 22nd, 23rd and 24th February. At Mr. S. C. Joshi's request, the other side agreeing, the hearing was then adjourned to 5th March and concluded on 8th March. Mr. Taraporevala's final reply on behalf of the Company was submitted on 18th March, and at the Company's request there was a final chamber hearing on 30th March 1943.

4. Accompanied by the parties and others mentioned at the head of the award I visited the works of Mazagaon Dock Ltd., Alcock Ashdown & Co., and Bombay Steam Navigation Co., on 19th January 1943, and the H. M. I. Dockyard on 20th January 1943. Constructor Commander Sheffer and the late Mr. W. O. A. Young, Deputy Director, Ship Repairs, also came and kindly gave us the benefit of their expert knowledge in reply to questions. Again on 27th February between the hours of 3-30 a.m. and 4 a.m. I visited, in company with Mr. W. H. Phillips, the workshops of Mazagaon Dock Ltd., and Alcock Ashdown & Co., Ltd., in order to watch the various classes of employees on night shifts.

5. On 12th March, 1943, I had a talk in chambers with Mr. A. S. Tait of Messrs. Ferguson & Co., the Company's auditors, on certain figures relative to the working of the Company that had been given to me confidentially. These papers have not been kept on the record but returned to Mr. Aitken.

ANNEX II

In the matter of the trade dispute between the Mazagaon Dock. Ltd., and its employees.

MEMORANDUM OF SETTLEMENT

COMMON DEMANDS

(Ex. I).

No. 3. The minimum dear-ness allowance for any employee must be Rs. 10-8 per month on the present price level, or on the basis given by the Companies at present, whichever is higher

No. 7. Accumulation of leave with pay up to every 4 years of service must be permitted.

No. 8. Sick leave on half pay must be granted on production of medical certificate.

No. 11. Those workers who work on Sundays and Public

TERMS OF SETTLEMENT

1. As Alcock Ashdown & Co., Ltd., already has introduced two alternative scales of dearness allowance and the Bombay Steam Navigation Co., Ltd., and the Mazagaon Dock Ltd., have followed this precedent, this demand is withdrawn.
2. This demand is withdrawn.
3. This demand is withdrawn.
4. In view of the Company's reply, viz.

Holidays must be paid double their ordinary rates of pay.

" In regard to overtime for men working on Sundays and public holidays, this is paid according to the Factory Act, plus the concession which was recently provided voluntarily by the Panel firms, which is $\frac{1}{2}$ hour's bonus for every hour worked on Sundays."

" Although the Panel does not accept the principle of double time for Sunday work it should be noted that in practice if a man puts in 6 days of 10 hours' service, all Sunday time is paid under the Factory Act, which is at time and half, and this plus the bonus, which the Panel has conceded, is double time", this demand is withdrawn.

No. 13. The Companies must open a grain shop and canteens within their factory premises for the benefit of the workers and guarantee to the workers adequate supply of their needs. The Union must be permitted to inspect these arrangements and to suggest ways and means to improvement.

No. 14. Union Officials must be allowed to collect subscriptions and interview workers within the factory premises.

No. 15. An A. R. P. Committee must be set up consisting of equal number of representatives of the management, the Union and the A. R. P. authorities. The committee shall con-

5. This demand is withdrawn.

6. This demand is withdrawn.

7. This demand is withdrawn.

trol all A. R. P. arrangements within the factory premises.

SPECIFIC DEMANDS

(Ex. J).

No. 3. One month's leave without pay must be allowed every year in addition to the leave with pay and may be taken by the employees together with the leave with pay.

No. 4. Any worker who puts in less than eight and half hours' work on any day not because of his inability to work, but because of the Company not giving him sufficient work for the day, must be paid full day's wages.

No. 6. The last bonus must be paid to all those who are in service today and to whom it was denied due to overstay of leave, etc.

8. This demand is withdrawn.

9. This demand is withdrawn. The Company state that it is their established practice to pay 8½ hours' wages even if work is done for less than 8½ hours, provided the worker commences his work at the starting hour in the morning as notified on the Notice Board.

10. This demand is withdrawn.

A. LATIFI,
Adjudicator.
Bombay, 2nd April 1943.

For and on behalf of Mazagaon
Dock Ltd.,
MACKINNON MACKENZIE & CO.,
Managing Agents,
Mazagaon Dock Ltd.
For and on behalf of the
Dockyard Labour Union,
GEORGE LOBO.

ANNEX III

MAZAGAON DOCK LIMITED

OPERATIVES' PROVIDENT FUND AND INTERIM GRATUITY SCHEME

1. A Provident Fund in lieu of the Company's Pension Scheme will be introduced as from 1st April 1943 for operatives employed by the Company.

2. "Operative" means all workers male or female employed by the Company including Chargemen, Tug Masters and Chief Engineers, Launch Drivers and Serangs, Launchmen, Bargehands, Gatekeepers, Watchmen, Malis and Coolies on monthly rates of wages and all Chargemen Mistries, skilled and semi-skilled Tradesmen and Unskilled workers on daily rates of wages.

3. Every Operative in the service of the Company shall be eligible for membership of the Fund provided that he has worked for the Company on not less than 200 days in the period of one year or for 300 days in the period of two years immediately prior to the date he applies for membership of the Fund.

4. Every Operative desiring to join the Provident Fund, shall make application to the Provident Fund Officer and on obtaining a copy of the Rules and Regulations of the Mazagaon Dock Ltd. Operatives Provident Fund sign a Declaration undertaking to be bound by these Rules and Regulations.

Rules governing Pensions

5. All those Operatives who have completed 20 or more years of service as at 1st April 1943 as laid down in Rule 12 and have thus become eligible for a Pension at the Company's scale shall have the option of joining the Provident Fund or of claiming a Pension at the Company's scale on retiring from service. No employee can claim both a Pension and Membership of the Provident Fund.

6. All employees who believe that they have completed 20 years' service or more should apply immediately to the Provident Fund Officer in order to have their period of service confirmed without delay.

7. No employee who has completed as at 1st April 1943 less than 20 years' service as laid down in Rule 12 shall be entitled to any Pension and the right to a Pension for all employees other than as provided for in Rule 5 shall terminate as from 1st April 1943.

Rules Governing Interim Gratuities

8. All those Operatives who have completed 20 years' service and who elect under Rule 5 to join the Provident Fund shall forfeit all right to a Pension for their years of service prior to joining the Provident Fund but they will be paid, on retiring from service owing to old age, illness or retrenchment, a gratuity in lieu of a

Pension for their years of service prior to joining the Provident Fund equivalent to half a month's pay for every year's service as laid down in Rule 12 based on the average monthly substantive wages drawn during the last three years of service. Substantive wages shall exclude all overtime earnings, dearness or other allowances.

9. All those Operatives who have completed as at 1st April 1943 less than 20 years' service as laid down in Rule 12 will be paid on retiring owing to old age, illness or retrenchment provided they have completed ten years' service either prior to 1st April 1943 as laid down in Rule 12 or subsequent to 1st April 1943 as laid down in Rule 13 a gratuity equivalent to half a month's pay for every year's service prior to 1st April 1943 calculated in the same manner as is laid down in Rule 8.

No Gratuity whatever will be paid for any service subsequent to the introduction of the Provident Fund on 1st April 1943.

10. The widow or dependants of a deceased Operative will be paid a Gratuity equivalent to three-fourths of the gratuity which would have been payable to the deceased operative had he survived and retired from the Company's service on the date of his death.

The widow or dependants of an operative who has elected under Rule 5 to claim a Pension will be paid after deduction of all Payments made on account of Pension three-fourths of the gratuity which would have been payable to the deceased operative under Rule 8 had he elected to join the Provident Fund.

Rules for Determining Period of Service.

11. No employee whose name does not appear on the Company's Muster Books during the 12 months from 1st April 1922 to 31st March 1923 shall be deemed to have completed 20 years' service with the Company.

12. No employee whose name is missing from the Company's Muster Books for any continuous period exceeding 6 calendar months at any one time shall be deemed to have completed 20 years' service with the Company.

13. For the purpose of Gratuities and Pensions on account of service prior to 1st April 1943 one year of service shall be deemed to consist of 200 days. All Operatives whether employed on monthly wages or on daily wages who have presented themselves for work, whether employed or sent away on Palli, on an average

of 200 days in any 12 months of past service shall be deemed to have completed one year of service.

14. For all future purposes as from 1st April 1943 one year of service shall be deemed to consist of those numbers of working days as shall be laid down from time to time in the Company's Standing Orders.

Note.—The above offer is made on the understanding that the maximum contributions from both the Company and the operative, will not exceed 9 pies in the Rupee.

Mackinnon Mackenzie & Co.,
Managing Agents,
Mazagaon Dock, Ltd.

ALCOCK ASHDOWN & CO., LTD.,

AND

ITS EMPLOYEES

Counsel—Mr. V. F. Taraporevala with Mr. M. G. R. Aitken, of Messrs. Crawford Bayley & Co., Solicitors, instructed by Mr. D. D. Carcary, Manager, Alcock Ashdown & Co., Ltd. and Messrs. A. Kirkwood Brown and S. C. Driver, Joint Secretaries, Bombay Ship Repairs Panel for Alcock Ashdown & Co., Ltd.

Counsel—Mr. S. C. Joshi, with Mr. George Lobo, Secretary of the Joint Committee of the Dockyard Labour Union, Alcock Ashdown Workers' Union and the B. S. N. Workers' Union for the employees.

Mr. Jamnadas M. Mehta, Chairman of the Dockyard Labour Union, appeared for them at the preliminary hearing. He also assisted on one or two subsequent occasions.

Mr. S. V. Joshi, Assistant Commissioner of Labour, Bombay, and Mr. W. H. Phillips, Senior Inspector of Factories, were also present.

Interim Award

By Government Notification, Political and Services Department, No. 6431/34-B, dated the 26th October 1942, I was appointed under rule 81-A of the Defence of India Rules to adjudicate in

the trade dispute between Alcock Ashdown & Co., Ltd. and its employees. Trade disputes also arose between Mazagaon Dock Ltd., and Bombay Steam Navigation Co., Ltd., respectively, and their employees. By separate Notifications, Political and Services Department, Nos. 6431/34-A and 6431/34-C, dated the 26th October 1942, I was appointed to adjudicate in them also. The orders directed that I should as far as may be, exercise the powers, and follow the procedure of a Board of Conciliation with the Trade Disputes Act, 1929, and the Bombay Trade Disputes Rules, 1930.

2. As desired by the parties the three disputes have been heard together, but I am recording a separate self-contained interim award in each case. Here I deal with the dispute of the Alcock Ashdown & Co., Ltd. The history of this dispute, as also the proceedings and steps taken up to date for ascertaining the facts and circumstances relating to it and bringing about a settlement are recorded in Annex I, which together with Annex II is an integral part of this interim award.

3. Before considering the individual demands it is necessary, in view of discussions that have taken place during the hearing, to explain the function of an Adjudicator in such cases; and I cannot do this better than by quoting Lord Amulree, some time President of the British Industrial Court and Chairman of the National Wages Board for Railways:

“ The Court has to give a decision to meet present-day requirements, and must take the world as it is. Whatever may be their political and social views, the individual members of the Court cannot, in their professional capacity, ignore existing facts or give decisions related to a state of affairs which, however much desired, is of the future and not of the present. They are concerned not with what the workers ‘ ought ’ in a moral sense, to receive, but what it is proper that they should receive, in view of the state of the industry, if more good than harm is to result from the Court’s decision.

“ The Court is indeed in a position similar to that of the Courts of Justice which administer the Common law. The Common law is organic; it undergoes change, and at any time bears a relationship to current moral and ethical opinion. It must, however, move in the rear rather than in the van of reform. Its function is rather to peg down and make secure gains which have been won in the march of progress and not itself to lead the advance. The judges who apply and administer the law do so consistently with this view, and however advanced and progressive may be their opinions in private, on

the bench they must see that they do not go beyond the point reached by the general body of ordinary people.”*

4. General demands 3, 7, 8, 11, 13, 14 and 15 and specific demands 2 and 3 in this dispute have been settled in the manner recorded in the Memorandum which, duly signed by the parties, is attached as Annex II. I now proceed to record an interim award on general demands 1, 4, 5, 6, 9, 10 and 12 and specific demand 1. General demand 2 “that the wages of every class of workers be graded with annual increments” involves wider issues, and is, therefore, kept on one side for separate consideration.

5. General demand 1 is for a 25 per cent. flat increase in the wages of every class of workers whether daily or monthly-rated who have served for 8 years or more, those with less than 8 years’ service to be given a proportionately smaller increase. The demand is based on two grounds. Firstly, a large number of workers have for many years remained in service without any increase in their emoluments. The mere length of their service has, irrespective of anything else, added to their efficiency. This increased efficiency has meant greater output and consequently greater profit, all creamed off by the employers without any return to the workers. Secondly, for the last three and half years the company have been making abnormal profits out of which the workers should have a share.

6. In reply the Company point out that the question of an increase in wages because of mere length of service is one to be dealt with under general demand 2. At the same time they have given evidence (Ex. Z/9, read with Ex. Z/28 and Ex. Y/1) to show that the charge of stagnation is not correct in respect of such workers as, in the Company’s view, deserved promotion on the score of merit. They have also produced evidence (Ex. M and Z/27) which has not yet been rebutted, to show that the wages they pay compare favourably with those in other engineering concerns not excluding the Railways. Regarding H. M. I. Dockyards, whose rates are also quoted (Ex. X), I am satisfied from what I saw of their work (paragraph 4 of Annex I) that their standards of workmanship and their system generally are so different that their rates are practically of no help in this dispute.

As for the second ground, the Company are debarred from publishing their accounts by rule 45-B of the Defence of India Rules, but they have confidentially shown me figures from which it is clear that far from making “abnormal profits” they suffered losses for 15 or 16 years running prior to 1937. They were living on the interest of the large reserve fund they got as a legacy of the first world war and often they were even eating into this capital.

*Industrial Arbitration in Great Britain” (London), 1929), page 186.

They have been doing well since 1937; but I would not call their profits "abnormal". Besides, "the distribution of increased profits among workers is better achieved by the giving of an annual bonus than by a further increase in wages. Wages must be fixed on the basis of normal conditions".† Conditions now are admittedly abnormal, and the Company have already paid one month's net wages as bonus for the year ending 31st March 1942, representing an addition of about 8½ per cent. to the wages, and "obviously the same facts cannot be taken into account twice over".‡

7. Finally, the Company point out that in pre-war days work as well as the demand for labour was fluctuating, but now workers get steady employment and also earn reasonable overtime, thus (Ex. Y/13):

1. *Skilled and Semi-skilled workmen—*

		Rs.	a.	p.
August 1939—				
497 men drew wages (including overtime) amounting to	...	15,696	0	0
Average earnings per head ...	...	31	9	0
November 1942—				
1,290 men drew wages (including overtime and dearness allowance) amounting to ...	...	81,404	0	0
Average earnings per head ...	...	63	1	0
2. <i>Unskilled workmen</i> (coolies and apprentices).				
August 1939—				
341 men drew wages (including overtime) amounting to ...	...	6,875	0	0
Average earnings per head ...	...	20	3	0
November 1942—				
1,009 men drew wages (including overtime and dearness allowance) amounting to	...	47,102	0	0
Average earnings per head ...	...	46	2	0

In addition, one must reckon, apart from the bonus mentioned above, the new leave and provident fund rights which have added substantially to emoluments. These benefits were voluntarily given to the workers in spite of the fact that for many years before the war the Company was running at a loss and living on its capital and reserves.

In the circumstances I hold that the demand for a flat increase

†Mr. Justice M. C. Chagla, in the General Motors (India), Ltd., dispute, *Bombay Government Gazette*, Part I, dated 28th May 1942, page 1900.

‡Mr. Justice Broomfield, in the Bombay Electric Supply and Tramways Company, Ltd., disputes, *Bombay Government Gazette*, Part I, Extraordinary, dated 10th July 1942, page 2531, paragraph 17.

in wages is not reasonable. It is bad to kill the goose that lays the eggs—even if not golden.

8. General demands 4, 5 and 6 are that:

“4 (a) In the Mazagaon Dock Ltd., the existing pension scale be increased as follows:

for service of 20 to 25 years from 15 per cent. to 30 per cent.

for service of 25 to 30 years from 20 per cent. to 40 per cent.

for service above 30 years from 25 per cent. to 50 per cent.

When the provident fund scheme is introduced the present employees should be given the option of electing either the provident fund or the pension scheme.

(b) In the case of the Bombay Steam Navigation Co., Ltd., and Alcock Ashdown & Co. Ltd., the Unions want that the pension scheme should be introduced for the benefit of the old workers who will not really benefit by the provident fund scheme which has been introduced recently. In the alternative the provident fund scheme should be made retrospective in effect as specified in the next demand.

“5 (a) The provident fund schemes have been introduced in the Bombay Steam Navigation Co. Ltd., and the Alcock Ashdown & Co. Ltd., and the Unions submit that the contribution from each worker should be 16 pies per Rupee instead of 9 pies per Rupee as at present.

(b) The Company should contribute an amount equal to the worker's contribution. This amount should be paid in full with interest on both contributions when the worker is leaving employment.

(c) The provident fund should be made retrospective on the lines of the provident fund schemes of the Bombay Municipality and the Bombay Port Trust, i.e., the Company should contribute an amount equal to half a month's wages for each year of service prior to the introduction of the provident fund scheme.

(d) * * * *

“6 (a) Gratuity should be paid over and above the pension or provident fund and it should be on the lines of the gratuity paid in the Railways, i.e., for employees with more than 10 years service a gratuity equal to half month's wages for every year of service.

(b) Gratuity should be paid to the wives or minor children

of employees who die in service and the amount to be paid as gratuity should be the whole of that payable to the employee himself.

(c) Gratuity should also be paid to employees who are retrenched or discharged for any reason other than their own negligence or fault."

After an animated discussion Mr. Joshi boiled down the above demands to the following:

(a) The contribution from the Company and the operative should be 16 pies per Rupee and not 9 pies as given.

(b) The gratuity for the wife or dependants of a deceased operative should be the whole amount as payable to the operatives and not three quarters as proposed.

Mr. Joshi cites in support the provident fund rules of the H. M. I. Dockyard and the Bombay Electric Supply & Tramways Co., Ltd. These precedents do not help, if for no other reason because there can be no comparison here between a Government department or a monopolist public utility corporation and the Alcock Ashdown & Co., a private commercial concern that has to fight competition not only in Bombay but also from other ports on and beyond the India seas. The Company's claim that "it has always prided itself on the close and friendly relations between employers and employees" has not been challenged. It introduced its provident fund scheme early in 1940, like its generous leave scheme, of its own free will.

In the circumstances it would not be fair to interfere.

9. General demands 9 and 10 are in two parts; the first being that:

"The present system of payment for overtime to workers governed by the Factories Act should be modified on the following lines:

(i) All overtime worked on week days in excess of $8\frac{1}{2}$ hours should be paid at the rate of $1\frac{1}{4}$ times ordinary rate per hour up to 10 hours, and $1\frac{1}{2}$ times ordinary rate per hour in excess of 10 hours

(ii) All overtime worked on Saturdays in excess of 6 hours but up to 10 hours should be paid at the rate of $1\frac{1}{4}$ times ordinary rate per hour, and above 10 hours at the rate of $1\frac{1}{2}$ times ordinary rate per hour.

(iii) All overtime worked in excess of $48\frac{1}{2}$ hours per week but up to 60 hours per week should be paid at the rate of $1\frac{1}{4}$ times ordinary rate per hour, and in excess of 60 hours per week, at the rate of $1\frac{1}{2}$ times ordinary rate per hour."

This demand is based on the allegation, which has not been supported by any evidence, that this was the Company's practice

before the war; and that it was only after the war began, that the Company began to pay for overtime strictly in accordance with the Factories Act, 1934. The Company, who keep elaborate records deny this allegation. They say that they have always followed the provisions of the Factories Act, 1934, in this regard without modification.

I must dispose of this part of the demands by citing Mr. Justice Divatia's sound remarks in his award in the Lever Bros. (India) Ltd., dispute:

"I think that it will be agreed that in all cases where State legislation secures certain advantages to certain sections of the community and imposes burdens on other sections of the community, an improvement in the conditions or the advantages already gained should be secured through further amending legislation so that such advantages may be obtained equally by all those who are entitled to them and that the burdens which the granting of such advantages places on others may also be equally imposed on all of such persons. There is, of course, no objection to any particular employer granting greater or more generous concessions than those imposed upon him by legislation provided that he does so of his own free will, but the burden of granting such additional concessions cannot be imposed upon him by his employees or by any third party."*

10. The second part of general demands 9 and 10 relates to certain categories of workers who either do not come at all under the Factories Act, 1934, or are exempted by Rule 77 of the Bombay Factories Rules, 1935, read with section 43 of the Act. The demand is that wherever the three shift system is possible it should be introduced and overtime stopped for the following categories. Where, however, this is not possible, overtime should be paid for as follows at $1\frac{1}{4}$ of the basic rates:

A. *Launchmen and Bargemen*.—For all work after 10 hours of work.

B. *Charge Hands*.—For all work put in after 9 hours of work; or a consolidated overtime like the Railways.

C. *Gate sepoys*.—For all work after 10 hours of work.

D. *Drivers (lorry and car)*.—For all work after 10 hours of work.

10-A. Alcock Ashdown & Co., employ neither launchmen nor bargemen, so the question does not arise.

10-B. As for the charge hands (only the monthly-rated are

*Messrs. Lever Brothers (India), Ltd., dispute, Labour Gazette, September 1941, page 82, paragraph 33.

in question; daily-rated get overtime) Mr. Joshi began with asking that they should be paid at one and a quarter hours for work in excess of 10 hours. As an alternative he asked for a consolidated monthly overtime allowance on the lines of section 508 of the State Railway Establishment Code, Vol. I, which provides that "in lieu of payments for actual overtime worked, staff such as chargemen may, at the discretion of the General Manager, be granted a consolidated monthly allowance, if, due to the nature of their duties, they are generally required to work overtime for the greater part of the month and the calculation of actual overtime worked is either inconvenient or undesirable."

Mr. Carcary gave evidence that when daily-rated charge hands were placed on a monthly basis (Ex. Y/1) their average earnings for overtime were included, in fact in some cases they were allowed something extra. After a study of facts and figures Mr. Joshi had to agree at the final hearing that the charge hands have no cause for grievance.

10-C. Gate Sepoys or Chowkidars have to see that no unauthorised person enters the gates. Some make rounds of the yard to keep an eye on the company's property. Mr. Joshi urged that before the war there was practically no night shift—only very occasionally. Now-a-days the double shift is almost a normal feature. The gate sepoys now work for 66½ to 70 hours per week, less meal time, in the day, and something like 94 to 98 hours in the night shift. The demand is that they should either be paid for overtime beyond 60 ours at 1½ or be made to work in three shifts.

The company reply that in January 1939 there were 4 gate sepoys against 28 in January 1943. They deny that gate sepoys do more work individually than before the war. They are paid at monthly rates fixed with due consideration of these duties and hours, which do not involve sustained attention or activity, and are no more onerous than those of chowkidars generally employed in Bombay. In addition to wages and other emoluments they all get free quarters.

I do not consider all this to be unsatisfactory. And the company will, I take it, regularise their present system of days of rest on the lines agreed to by Mazagaon Dock, Ltd., under which the gate sepoys would be allowed a day off in the week by mutual arrangement among themselves, provided they do not let the work suffer. A gate sepoy should have the right of appeal to the company if he is not fairly dealt with in this regard. I do not think anything more is needed.

10-D. As for motor lorry and car-drivers, the Unions urge that their demand is "in consonance with the spirit of the conventions of the International Labour Conferences"; no such conventions were, however, specifically cited. The company say (Ex. Y/2)

that they now have 19 drivers for their lorries and cars and of these 4 work at night by turn. They are paid monthly on the understanding that their pay includes reasonable overtime. For every six day's continuous work they are given a day off. The day workers begin at 8-30 a.m. and end at 6 p.m. The men working at night begin at 8-30 p.m. and end at 6 a.m. They do not clean the cars nor do any mechanical repairs. On an average they cover about 30-35 miles a day and the drivers on night shift do much less work than the drivers on day shift. Their minimum monthly pay is Rs. 50 (plus dearness allowance) plus provident fund and leave rights. They also got a month's wages as bonus for the year ending 31st March 1942.

Even if "they also serve who only stand and wait", I hold that these drivers are well off.

11. General demand 12 is that night work should be paid at not less than one and a quarter of the basic rate, on the ground that the greater strain involved affects the workers' health and well-being generally. Mr. Joshi cited pp. 162-179 of the Report of the Textile Labour Inquiry Committee (Vol. II, final report). He also referred to the practice of the Bombay Steam Navigation Co., Ltd., who gave higher wages for night work. He offered to drop the demand provided the reforms suggested by the Textile Labour Inquiry Committee were effected, and he would in particular have the work stopped after midnight with a reasonable changeover.

The company replied that the extra payment claimed, which would make a heavy addition to its wage-bill, is almost without precedent not only in India, but elsewhere in the world. As for the Bombay Steam Navigation Co., Ltd., the extra wage was extorted when there was pressure of very urgent war work. Since then the Bombay Steam Navigation Co. Ltd., has set up additional plant and stopped night work as a system. Alcock Ashdown & Co., say that formerly night work was only occasional and it is only the war that has made it necessary in some departments for a percentage—not a large one—of the workers. The company do not like night shifts, because among other things, supervision is then slack and out-turn low. They do not expect to continue night work as a practice after the war. As for the remedies, there is force in the company's contention that for various reasons it is not feasible to stop work at midnight in this industry. The workers themselves object to the mid-night limit which would curtail their overtime; if they must work at night they say, they might as well work the whole night. Further the company say—from what I have seen of it (paragraph 4 of Annex I), I think correctly—that night work in the docks is not altogether as irksome as it is said to be in some departments of the textile industry. All that can be done in reason is for the company to tune up

their existing system of change overs with the advice, where necessary, of the Chief Inspector of Factories.

12. Specific demand 1 is that "the 13 days' leave with pay which the company have already agreed to give to their workers should be made available immediately and not after completion of one year's service as required by them". The company reply that this concession, like the provident fund, was given of their own free will and in excess of what is proposed by the Central Government. Clause 49B of the draft bill on page 1015 of the *Bombay Labour Gazette* of June 1942, prescribes only 7 days against the company's 13 days. The company consulted the Commissioner of Labour and adopted all his suggestions before issuing the rules, which are of course subject to any future legislation.

It is not good to look a gift-horse too closely in the mouth—even in labour disputes. I do not think any action is necessary.

13. Before I conclude I must record my best thanks to Messrs. S. V. Joshi, Assistant Commissioner of Labour, and W. H. Phillips, Senior Inspector of Factories and Technical Inspector with the National Service Labour Tribunal, who were present at several hearings and gave valuable help. Thanks are due also to Mr. A. T. S. Sheffer, Construction Commander, and the late Mr. W. O. A. Young, Deputy Director of Ship Repairs and Ship Construction, for kindly going with us on our visits to the various workshops on the 19th and 20th January (paragraph 4 of Annex I) and giving us the benefit of their expert advice. Captain Superintendent W. R. Shewring of H. M. I. Dockyard was all courtesy.

14. Finally, the representatives of the parties to this dispute, counsel as well laymen, have co-operated with the Adjudicator's efforts to reach a fair decision in a friendly and judicial atmosphere.

15. I conclude with recommending that (a) the parties do comply with the terms of settlement (Annex II); and (b) the Company do overhaul its existing system of change-overs with the advice, where necessary of the Chief Inspector of Factories.

Bombay, 7th April 1943.

A. LATIFI,
Adjudicator.

ANNEX I

1. The history of this dispute is that on 24th March, 1942, the Dockyard Labour Union which claims to represent the employees of Mazgaon Dock Ltd., Bombay, formulated certain demands and gave notice of strike to Messrs. Mackinnon Mackenzie & Co., Agents for the Company. On 8th April, 1942, the Government

appointed the Honourable Mr. Justice Chagla as Adjudicator, and he gave an award, which was published in the *Bombay Government Gazette*, Part I, dated 21st May, 1942, at page 1752. This will be referred to hereinafter as the first trade dispute between Mazgaon Dock Ltd., and its employees. On the 5th October, 1942, the Alcock Ashdown Workers' Union and the Bombay Steam Navigation Workers' Union formulated their demands and sent them to the respective companies. The Dockyard Labour Union followed, with a set of demands which they sent on 19th October, 1942, to Mazgaon Dock Ltd. The notifications cited in the first paragraph followed.

2. On 29th October, 1942, the usual notices were issued calling upon the Alcock Ashdown Workers' Union the Dockyard Labour Union, the B. S. N. Workers' Union and such other workers as did not desire to be represented by those Unions to file their statements of demands and the employers their replies thereto. On 7th November the three Unions formed a Joint Committee, which submitted their demands in detail on 28th November. These demands were later revised (Ex. Z/16). No other workers made any submission. The three companies submitted their replies jointly in so far as they were common, and separately in respect of the specific demands made on them. It appears that the six engineering firms in the City of Bombay directly connected with ship repairs, including the three here concerned, have formed an organization called "The Bombay Ship Repairs Panel". The other three firms in the panel, viz. Scindia Shipyard, H. I. Dixon & Co., Ltd., and Larsen & Toubro applied to join in this adjudication, but I was unable to accede under the rules as they now stand.

3. The parties recorded at the head of this award appeared before me on 17th December, 1942, but no worker outside the Alcock Ashdown Workers' Union came. Procedure and other preliminary matters were settled on that day. At the next hearing, 6th January, 1943, Mr. S. C. Joshi asked for an adjournment because he had just taken over the brief from Mr. Jamnadas M. Mehta and wanted time for preparation. After a further discussion on procedure the cases were, therefore, adjourned, to be resumed on the 11th, 12th, 13th, and 14th January. They were again adjourned, to enable the parties to prepare statements of the wage rates of the three concerns. There was a brief hearing on 21st January, 1943, when the parties again asked for time to prepare more documentary evidence on general demand 2. The proceedings were resumed on 1st February, and at the parties' request this demand was referred to Messrs. S. V. Joshi and W. H. Phillips. These gentlemen were to call the parties together and after considering what they had to say, and consulting if necessary, Commander Sheffer and the late Mr. W. O. A. Young, to submit a detailed scheme of maximum and minimum rates with incremental

scales for the various classes of workers in the three companies. Messrs. S. V. Joshi and Phillips conferred with the parties on 3rd February, 1943, and all seem to have agreed that this was not a matter that could thus be decided. At the hearing on 4th February Mr. S. V. Joshi stated that before proceeding in this matter he wished to consult the Labour Office. Having done so he suggested on 8th February that for the time being the demand be kept on one side for separate consideration. This was agreed to and the other items of the dispute were accordingly taken up on 8th, 9th, 10th, 12th, 15th, 16th, 19th, 22nd, 23rd and 24th February. At Mr. S. C. Joshi's request, the other side agreeing, the hearing was then adjourned to 5th March and concluded on 8th March. Mr. Taraporevala's final reply on behalf of the Company was submitted on the 18th March after which there was a final chamber hearing on 30th March 1943 at the request of the Company.

4. Accompanied by the parties and others mentioned at the head of the award I visited the works of Mazgaon Dock Ltd., Alcock Ashdown & Co., and Bombay Steam Navigation Co., on 19th January, 1943, and the H. M. I. Dockyard on 20th January 1943. Constructor Commander Sheffer and the late Mr. W. O. A. Young, Deputy Director, Ship Repairs, also came and kindly gave us the benefit of their expert knowledge in reply to questions. Again on 27th February between the hours of 3-30 a.m. and 4 a.m. I visited in company with Mr. W. H. Phillips, the workshops of Mazgaon Dock Ltd., and Alcock Ashdown & Co., Ltd., in order to watch the various classes of employees on night shifts.

5. On 15th March, 1943, I had a talk in chambers with Mr. B. S. B. Billimoria of Messrs. S. B. Billimoria & Co., the Company's auditors, on certain figures relative to the working of the Company that had been given to me confidentially. These papers have not been kept on the record but returned to Mr. Aitken.

ANNEX II

In the matter of the trade dispute between the Alcock Ashdown & Co. Ltd., and its employees.

MEMORANDUM OF SETTLEMENT

COMMON DEMANDS (Ex. I)

No. 3. The minimum dearness allowance for any employee must be Rs. 10-8-0 per month on the present price level, or on

TERMS OF SETTLEMENT

"1. Alcock Ashdown & Co., Ltd., have had in existence two scales of dearness allowance for some time before the

the basis given by the companies at present whichever is higher.

dispute arose leading to the adjudication. These scales give the employees an amount substantially above that asked for by the Union. The demand is therefore withdrawn by the Union, as it is not applicable to this Company. The demand is also withdrawn in so far as the Bombay Steam Navigation Co., Ltd., and Messrs. Mazgaon Dock, Ltd., are concerned, as they have since followed the arrangement of dearness allowance paid by Messrs. Alcock Ashdown & Co., Ltd."

No. 7. Accumulation of leave with pay up to every 4 years of service must be permitted.

2. This demand is withdrawn.

No. 8. Sick leave on half pay must be granted on production of medical certificate.

3. This demand is withdrawn.

No. 11. Those workers who work on Sundays and Public Holidays must be paid double their ordinary rates of pay.

4. In view of the Company's reply, viz.—

"In regard to over-time for men working on Sundays and Public Holidays, this is paid according to the Factory Act, plus the concession which was recently provided voluntarily by the Panel firms, which is $\frac{1}{2}$ hour's bonus for every hour worked on Sundays. Although the Panel does not accept the principle of a double time for Sunday work it should be noted that in practice if a man put in 6 days of 10 hours' service, all Sunday time is paid under the Factory Act, which is at time and half, and this plus the bonus, which the Panel has conceded, is

double time" this demand is withdrawn.

No. 13. The Companies must open a grain shop and canteens within their factory premises for the benefit of the workers and a guarantee to the workers of adequate supply of their needs. The Union must be permitted to inspect these arrangements and to suggest ways and means to improvement.

5. This demand is withdrawn.

No. 14. Union officials must be allowed to collect subscriptions and interview workers within the factory premises.

6. This demand is withdrawn.

No. 15. An A. R. P. Committee must be set up consisting of equal number of representatives of the management, the Union and the A. R. P. authorities. The committee shall control all A. R. P. arrangements within the factory premises.

7. This demand is withdrawn.

SPECIFIC DEMANDS (Ex. K)

TERMS OF SETTLEMENT

No. 2. Any worker who puts in less than eight and half hours of work on any day not because of his inability to work but because of the Company not giving him sufficient work for the day, must be paid full day's wages.

8. This demand is withdrawn in view of the Company's reply, viz.—

"It has always been their practice to pay their workmen a full day of $8\frac{1}{2}$ hours. To not be sufficient work to keep the employee employed for a full day of $8\frac{1}{2}$ hours. To make this matter clear the Company have added a clause to their Standing orders which reads as follows:—

"In the event of a workman Commencing work and it is later found that there is insufficient

SPECIFIC DEMANDS
(Ex. K).

No. 3. The deduction of annas four per month towards doctor's expenses must be stopped, and all medical aid must be given free of charge.

A. LATIFI,
Adjudicator.
Bombay, 7th April 1943.

TERMS OF SETTLEMENT

work to keep him employed for a full day he may be sent home, but he will be paid full day's wages for that day."

9. This demand is withdrawn in view of the Company's reply, viz.—

"As the men do not desire to pay 4 annas per month towards medical attendance this is being discontinued and no deduction will be made in future. Arrangements will however be made, as by other companies, for a first aid room with a qualified attendant. This brings the Company in line with other members of the Panel.

For and on behalf of—
Turner Morrison & Co., Ltd.,
(Illegible)
Director.

Managing Agents,
Alcock Ashdown & Co., Ltd.,
For and on behalf of the
Alcock, Ashdown & Co., Ltd.

GEORGE LOBO,
For and on behalf of the
Alcock Ashdown Workers' Union

BOMBAY STEAM NAVIGATION CO., LTD.

AND

ITS EMPLOYEES

Counsel Mr. V. F. Taraporevala with Mr. M. G. R. Aitken, of Messrs. Crawford Bayley & Co., Solicitors, instructed by Mr. J. D. Barclay, Manager, Bombay Steam Navigation Co., Ltd., and Messrs. A. Kirkwood Brown and S. C. Driver, Joint Secretaries, Bombay Ship

Repairs Panel for the Bombay Steam Navigation Co., Ltd.

Counsel Mr. S. C. Joshi, with Mr. George Lobo, Secretary of the Joint Committee of the Dockyard Labour Union, Alcock Ashdown Workers' Union and the B. S. N. Workers' Union, for the employees.

Mr. Jamnadas M. Mehta, Chairman of the Dockyard Labour Union, appeared for them at the preliminary hearing. He also assisted on one or two subsequent occasions.

Mr. S. V. Joshi, Assistant Commissioner of Labour, Bombay, and Mr. W. H. Phillips, Senior Inspector of Factories, were also present.

I n t e r i m A w a r d

By Government Notification, Political and Services Department, No. 6431/34-C, dated the 26th October 1942, I was appointed under Rule 81-A of the Defence of India Rules, to adjudicate in the trade dispute between Bombay Steam Navigation Co., Ltd., and its employees. Trade disputes also arose between Mazgaon Dock, Ltd., and Alcock Ashdown & Co. Ltd., respectively, and their employees. By separate Notifications, Political and Services Department, Nos. 6431/34-A and 6431/34-B, dated the 26th October 1942, I was appointed to adjudicate in them also. The orders directed that I should, as far as may be, exercise the powers and follow the procedure of a Board of Conciliation under the Trade Disputes Act, 1929, and the Bombay Trade Disputes Rules, 1930.

2. As desired by the parties the three disputes have been heard together, but I am recording a separate self-contained interim award in each case. Here I deal with the dispute of the Bombay Steam Navigation Co., Ltd. The history of this dispute, as also the proceedings and steps taken up to date for ascertaining the facts and circumstances relating to it and bringing about a settlement are recorded in Annex I, which together with Annex II is an integral part of this interim award.

3. Before considering the individual demands it is necessary, in view of discussions that have taken place during the hearing, to explain the function of an Adjudicator in such cases: and I cannot do this better than by quoting Lord Amulree, some time President of the British Industrial Court and Chairman of the National Wages Board for Railways:

“.....The Court has to give a decision to meet present-day

requirements, and must take the world as it is. Whatever may be their political and social views, the individual members of the Court cannot, in their professional capacity, ignore existing facts or give decisions related to a state of affairs which, however much desired, is of the future and not of the present. They are concerned not with what the workers 'ought' in a moral sense, to receive, but what it is proper that they should receive in view of the state of the industry, if more good than harm is to result from the Court's decision.

"The Court is indeed in a position similar to that of the Courts of Justice which administer the Common law. The Common law is organic; it undergoes change, and at any time bears a relationship to current moral and ethical opinion. It must, however, move in the rear rather than in the van of reform. Its function is rather to peg down and make secure gains which have been won in the march of progress and not itself to lead the advance. The judges who apply and administer the law do so consistently with this view, and however advanced and progressive may be their opinions in private, on the bench they must see that they do not go beyond the point reached by the general body of ordinary people."

4. General demands 3, 7, 8, 11, 13, 14 and 15 and specific demands 2 and 3 in this dispute have been settled in the manner recorded in the Memorandum, which, duly signed by the parties, is attached as Annex II. I now proceed to record an interim award on general demands 1, 4, 5, 6, 9, 10 and 12 and specific demand 1. General demand 2 "that the wages of every class of workers be graded with annual increments" involves wider issues, and is, therefore, kept on one side for separate consideration.

5. General demand 1 is for a 25 per cent. flat increase in the wages of every class of workers, whether daily or monthly rated, who have served for 8 years or more, those with less than 8 years' service to be given a proportionately smaller increase. The demand is based on two grounds. Firstly, a large number of workers have for many years remained in service without any increase in their emoluments. The mere length of their service has, irrespective of anything else, added to their efficiency. This increased efficiency has meant greater output and consequently greater profit, all creamed off by the employers without any return to the workers. Secondly, for the last three and half years the company have been making abnormal profits out of which the workers should have a share.

6. In reply the Company point out that the question of an increase in wages because of mere length of service is one to be

¹ "Industrial Arbitration in Great Britain" (London, 1929) page 186.

dealt with under General demand 2. At the same time they have given evidence (Ex. Y/4) to show that the charge of stagnation is not correct in respect of such workers as in the Company's view deserved promotion on the score of merit. They state that before the war this workshop merely looked after their own ships employing only some 100 technicians and an equal number of other workers. It was only in 1941 that they began outside work as part of their war-effort. The majority of their present workers have, therefore, been recruited at the prevailing high rates, without much choice of trained or experienced hands. They have also produced evidence (Exs. M and Z/27) which has not yet been rebutted, to show that the wages they pay compare favourably with those in other engineering concerns not excluding the Railways. Regarding H. M. I. Dockyards, whose rates are also quoted (Ex. X), I am satisfied from what I saw of their work (paragraph 4 of Annex I) that their standards of workmanship and their system generally are so different that their rates are practically of no help in this dispute.

As for the second ground the Company are debarred from publishing their accounts by Rule 45B of the Defence of India Rules, but they have confidentially shown me figures from which it is clear that their profits from the workshop have so far been very moderate. Besides, "the distribution of increased profits among workers is better achieved by the giving of an annual bonus than by a further increase in wages. Wages must be fixed on the basis of normal conditions."¹ Conditions now are quite abnormal and the company have already paid one month's net wages as bonus for the year ending 31st March 1942, representing an addition of about 8½ per cent to the wages, and "obviously the same facts cannot be taken into account twice over."²

7. Finally, the Company point out that in prewar days work as well as the demand for labour was fluctuating, but now workers get steady employment and also earn reasonable overtime, thus (Exs. Y/5 and 6):—

Rs. A. P.

I. *Skilled and semi-skilled workmen—*

August 1939—

383 men drew wages (including over-			
time) amounting to	...	...	18,331 0 0
Average earnings per head	...	...	47 13 9

¹ Mr. Justice M. C. Chagla, in the General Motors (India), Ltd., dispute. *Bombay Government Gazette*, Part I, dated 28th May 1942, page 1900.

² Mr. Justice Broomfield, in the Bombay Electric Supply and Tramways Company, Ltd., dispute. *Bombay Government Gazette*, Part I, Extraordinary, dated 10th July 1942, page 2531, paragraph 17.

November 1942—

971 men drew wages (including overtime and dearness allowance) amounting to	70,628	0	0
Average earnings per head ...	71	11	9

2. *Unskilled workmen* (coolies and apprentices)—

August 1939—

115 men drew wages (including overtime) amounting to	...	...	2,500	0	0
Average earnings per head ...	...	...	21	11	10

November 1942—

447 men drew wages (including overtime and dearness allowance) amounting to	18,385	0	0
Average earnings per head ...	41	2	0

In addition, one must reckon, apart from the bonus mentioned above, the new leave and provident fund rights which have added substantially to emoluments.

In the circumstances I hold that the demand for a flat increase in wages is not reasonable. It is bad to kill the goose that lays the eggs—even if not golden.

8. General demands 4, 5 and 6 are that:

“4. (a) In the Mazgaon Dock Ltd., the existing pension scale be increased as follows:

for service of 20 to 25 years from 15 per cent. to 30 per cent.
for service of 25 to 30 years from 20 per cent. to 40 per cent.
for service above 30 years from 25 per cent. to 50 per cent.

When the provident fund scheme is introduced the present employees should be given the option of electing either the provident fund or the pension scheme.

(b) In the case of the Bombay Steam Navigation Co., Ltd., and Alcock Ashdown & Co., Ltd., the Unions want that the pension scheme should be introduced for the benefit of the old workers who will not really benefit by the provident fund scheme which has been introduced recently. In the alternative the provident fund scheme should be made retrospective in effect as specified in the next demand.

“5. (a) The provident fund schemes have been introduced in the Bombay Steam Navigation Co., Ltd., and the Alcock Ashdown & Co., Ltd., and the Unions submit that the contribution from each worker should be 16 pies per Rupee instead of 9 pies per Rupee as at present.

(b) The Company should contribute an amount equal to the worker's contribution. This amount should be paid in full with interest on both contributions when the worker is leaving employment.

(c) The provident fund should be made retrospective on the lines of the provident fund schemes of the Bombay Municipality

(d) * * * *

(i) All overtime worked on week days in excess of 8½ hours

should be paid at the rate of $1\frac{1}{2}$ times ordinary rate per hour up to 10 hours, and $1\frac{1}{2}$ times ordinary rate per hour in excess of 10 hours.

(ii) 'All overtime worked on Saturdays in excess of 6 hours but up to 10 hours should be paid at the rate of $1\frac{1}{2}$ ordinary rate per hour, and above 10 hours at the rate of $1\frac{1}{2}$ times ordinary rate per hour.

(iii) All overtime worked in excess of $48\frac{1}{2}$ hours per week but up to 60 hours per week should be paid at the rate of $1\frac{1}{2}$ times ordinary rate per hour, and in excess of 60 hours per week, at the rate of $1\frac{1}{2}$ times ordinary rate per hour."

This demand is based on the allegation, which has not been supported by any evidence, that this was the Company's practice before the war; and that it was only after the war began, that the Company began to pay for overtime strictly in accordance with the Factories Act, 1934. The company, who keep elaborate records, deny this allegation. They say that they have always followed the provisions of the Factories Act, 1934, in this regard.

I must dispose of this part of the demands by citing Mr. Justice Divatia's sound remarks in his award in the Lever Bros. (India) Ltd. dispute:—"I think that it will be agreed that in all cases where State legislation secures certain advantages to certain sections of the community and imposes burdens on other sections of the community, an improvement in the conditions or the advantages already gained should be secured through further amending legislation so that such advantages may be obtained equally by all those who are entitled to them and that the burdens which the granting of such advantages places on others may also be equally imposed on all of such persons. There is, of course, no objection to any particular employer granting greater or more generous concessions than those imposed upon him by legislation provided that he does so of his own free will, but the burden of granting such additional concessions cannot be imposed upon him by his employees or by any third party."¹

10. The second part of general demands 9 and 10 relates to certain categories of workers who either do not come at all under the Factories Act, 1934, or are exempted by Rule 77 of the Bombay Factories Rules, 1935, read with section 43 of the Act. The demand is that wherever the three shift system is possible it should be introduced and overtime stopped for the following categories. Where, however, this is not possible, overtime should be paid for as follows at $1\frac{1}{2}$ of the basic rates:—

A. *Launchmen and Bargemen*.—For all work after 10 hours of work.

B. *Charge Hands*.—For all work put in after 9 hours of

¹ Messrs. Lever Brother (India) Ltd. dispute, *Labour Gazette*, September 1941, page 82, paragraph 33.

work; or a consolidated overtime like the Railways.

C. *Gate Sepoys*.—For all work after 10 hours of work.

D. *Drivers (Motor and Lorry)*.—For all work after 10 hours of work.

10-A. The company state that only two launches of their fleet are attached to the workshop and no barges. After discussion Mr. Joshi dropped the demand in this regard.

10-B. As for the charge hands (only the monthly-rated are in question; daily-rated get overtime) Mr. Joshi began with asking that they should be paid at one and a quarter hours for work in excess of 10 hours. As an alternative he asked for a consolidated monthly overtime allowance on the lines of section 508 of the State Railway Establishment Code, Vol. I, which provides that "in lieu of payment for actual overtime worked, staff such as chargemen may, at the discretion of the General Manager, be granted a consolidated monthly allowance, if, due to the nature of their duties, they are generally required to work overtime for the greater part of the month and the calculation of actual overtime worked is either inconvenient or undesirable."

Mr. Barclay gave evidence that when daily-rated charge hands were placed on a monthly basis their average earnings for overtime were included (Ex. Y/7). After a study of facts and figures Mr. Joshi had to agree at the final hearing that the charge hands have no cause for grievance.

10-C. Gate Sepoys or Chowkidars have to see that no unauthorised person enters the gate. Some make rounds of the yard to keep an eye on the company's property. Mr. Joshi urged that before the war there was practically no night shift—only very occasionally. Now a days the double shift is almost a normal feature. The gate sepoys now work for 66½ to 70 hours per week, less meal time, in the day, and something like 94 to 98 hours in the night shift. The demand is that they should either be paid for overtime beyond 60 hours at 1½ or be made to work in three shifts.

The company reply that before the war there were 6 gate sepoys against 11 now. They deny that gate sepoys do more work individually than before the war. Out of these 11 gate sepoys 7 work during day from 6 a.m. to 6 p.m. and 4 in the night from 6 p.m. to 6 a.m. They are paid at monthly rates fixed with due consideration of these duties and hours, which do not involve sustained attention or activity, and are no more onerous than those of chowkidars generally employed in Bombay. In addition to wages and other emoluments they are paid a house rent allowance of Rs. 2-8-0 per mensem.

I do not consider all this to be unsatisfactory. And the company will now, I take it, adopt a system of days of rest on the lines agreed to by Mazgaon Dock Ltd., under which the gate

sepoys would be allowed a day off in the week by mutual arrangement among themselves, provided they do not let the work suffer. A gate sepoy should have the right of appeal to the company if he is not fairly dealt with in this regard. I do not think anything more is needed.

10-D. As for motor lorry and car drivers the Unions urge that their demand is "in consonance with the spirit of the conventions of the International Labour Conferences"; no such conventions were, however, specifically cited. The company say (Exs. Y/8 and Y/14) that they now have 13 drivers for their lorries and cars. They are paid monthly on the understanding that their pay includes reasonable overtime. For every six days' continuous work they are given a day off. The day workers begin at 8 a.m. and end at 5-30 p.m. The men working at night begin at 7-30 p.m. and end at 4 a.m. They do not clean the cars nor do any mechanical repairs. On an average they drive about $1\frac{1}{2}$ hours, covering about 30-35 miles a day. Their pay ranges from Rs. 60 to Rs. 90 per mensem (plus dearness allowance), plus provident fund and leave rights. They also got a month's wages as bonus for the year ending 31st March, 1942.

Even if "they also serve who only stand and wait", I hold that these drivers are very well off.

11. General demand 12 is that night work should be paid at not less than one and a quarter of the basic rate, on the ground that the greater strain involved affects the workers' health and well-being generally. Mr. Joshi cited pp. 162-179 of the Report of the Textile Labour Inquiry Committee (Vol. II, final report). He particularly referred to the practice of the Bombay Steam Navigation Co. itself, who already gave higher wages for night work. He offered to drop the demand provided the reforms suggested by the Textile Labour Inquiry Committee were effected, and he would in particular have the work stopped after midnight with a reasonable change-over.

The company replied that the right claimed is practically without precedent not only in India, but elsewhere in the world. As for the company's own practice Mr. Barclay's evidence is that in June 1942 he had some very urgent work. As the day workers were reluctant to do night work, he had perforce to give a night shift allowance as an inducement. The Company have stoppped night shifts from 20th February 1943, after installing more machines for work during day. They do not like night shift because, among other things, supervision is then slack and out-turn low. They do not expect to do any more night work.

No action appears to be called for.

12. Specific demand 1 is that "the 13 days' leave with pay which the company have already agreed to give to their workers

should be made available immediately and not after completion of one year's service as required by them''. The company reply that this concession, like the provident fund, was given of their own free will and in excess of what is proposed by the Central Government. Clause 49-B of the draft bill on page 1015 of the *Bombay Labour Gazette* of June 1942 prescribes only 7 days against the company's 13. The company consulted the Commissioner of Labour and adopted all his suggestions before issuing the rules, which are of course subject to any future legislation.

It is not good to look a gift-horse too closely in the mouth—even in labour disputes. I do not think any action is necessary.

13. Before I conclude I must record my best thanks to Messrs. S. V. Joshi, Assistant Commissioner of Labour, and W. H. Philips, Senior Inspector of Factories and technical Inspector with the National Service Labour Tribunal, who were present at several hearings and gave valuable help. Thanks are due also to Mr. A. T. S. Sheffer, Constructor Commander, and the late Mr. W. O. A. Young, Deputy Director of Ship Repairs and Ship Construction, for kindly going with us on our visits to the various workshops on the 19th and 20th January (paragraph 4 of Annex I). Captain Superintendent W. R. Shewring of H. M. I. Dockyard was all courtesy.

14. Finally, the representatives of the parties to this dispute, counsel as well laymen, have co-operated with the Adjudicator's efforts to reach a fair decision in a friendly and judicial atmosphere.

15. I conclude with recommending that the parties do comply with the terms of settlement (Annex II).

Bombay, 2nd April 1943.

A. LATIFI,
Adjudicator.

ANNEX I

1. The history of this dispute is that on 24th March 1942, the Dockyard Labour Union which claims to represent the employees of Mazgaon Dock Ltd., Bombay, formulated certain demands and gave notice of strike to Messrs. Mackinnon Mackenzie & Co., Agents for the Company. On 8th April 1942, the Government appointed the Hon'ble Mr. Justice Chagla as Adjudicator and he gave an award, which was published in the *Bombay Government Gazette*, Part I, dated 21st May 1942, at page 1752. This will be referred to hereinafter as the first trade dispute between Mazgaon Dock Ltd. and its employees. On the 5th October 1942, the Alcock Ashdown Workers' Union and the Bombay Steam Navigation Workers' Union formulated their demands and sent them to

the respective companies. The Dockyard Labour Union followed with a set of demands which they sent on 19th October 1942 to Mazgaon Dock Ltd. The notifications cited in the first paragraph followed.

2. On 29th October 1942, the usual notices were issued calling upon the B. S. N. Workers' Union, the Dockyard Labour Union, the Alcock Ashdown Workers' Union and such other workers as did not desire to be represented by those Unions to file their statements of demands and the employers their replies thereto. On 7th November the three Unions formed a Joint Committee, which submitted their demands in detail on 28th November. These demands were later revised (Ex. Z-16). No other workers made any submission. The three companies submitted their replies jointly in so far as they were common, and separately in respect of the specific demands made on them. It appears that the six engineering firms in the City of Bombay directly connected with ship repairs, including the three here concerned, have formed an organisation called "The Bombay Ship Repairs Panel". The other three firms in the panel, *viz.*, Scindia Shipyard, H. I. Dixon & Co. Ltd., and Larsen & Toubro applied to join in this adjudication, but I was unable to accede under the rules as they now stand.

3. The parties recorded at the head of this award appeared before me on 17th December 1942, but no worker outside the Bombay Steam Navigation Workers' Union came. Procedure and other preliminary matters were settled on that day. At the next hearing, 6th January 1943, Mr. S. C. Joshi asked for an adjournment because he had just taken over the brief from Mr. Jamnadas M. Mehta and wanted time for preparation. After a further discussion on procedure the cases were, therefore, adjourned to be resumed on the 11th, 12th, 13th and 14th January. They were again adjourned to enable the parties to prepare statements of the wage rates of the three concerns. There was a brief hearing on 21st January 1943, when the parties again asked for time to prepare more documentary evidence on general demand 2. The proceedings were resumed on 1st February, and at the parties request this demand was referred to Messrs. S. V. Joshi and W. H. Phillips. These gentlemen were to call the parties together and after considering what they had to say, and consulting if necessary, Commander Sheffer and the late Mr. W. O. A. Young, to submit a detailed scheme of maximum and minimum rates with incremental scales for the various classes of workers in the three companies. Messrs. S. V. Joshi and Phillips conferred with the parties on 3rd February 1943, and all seem to have agreed that this was not a matter that could thus be decided. At the hearing on 4th February Mr. S. V. Joshi stated that before proceeding in this matter he wished to consult the Labour Office. Having done so he suggested on 8th February that for the time being the demand

be kept on one side for separate consideration. This was agreed to and the other items of the dispute were accordingly taken up on 8th, 9th, 10th, 12th, 15th, 16th, 19th, 22nd, 23rd and 24th February. At Mr. S. C. Joshi's request, the other side agreeing, the hearing was then adjourned to 5th March and concluded on 8th March. Mr. Taraporevala's final reply on behalf of the company was submitted on the 18th March, after which there was a final chamber hearing on 30th March 1943, at the request of the company.

4. Accompanied by the parties and others mentioned at the head of the award I visited the works of Mazgaon Dock Ltd., Alcock Ashdown & Co., and Bombay Steam Navigation Co. on 19th January 1943, and the H. M. I. Dockyard on 20th January 1943. Constructor Commander Sheffer and the late Mr. W. O. A. Young, Deputy Director, Ship Repairs also came and kindly gave us the benefit of their expert knowledge in reply to questions.

5. On 15th March 1943, I had a talk in chambers with Mr. Arjun K. S. Aiyar of Messrs. K. S. Aiyar & Co., the company's auditors, on certain figures relative to the working of the company that had been given to me confidentially. These papers have not been kept on the record but returned to Mr. Aitken.

ANNEX II

In the matter of the trade dispute between the Bombay Steam Navigation Co. Ltd., and its employees.

MEMORANDUM OF SETTLEMENT

COMMON DEMANDS. (Ex. I).

No. 3. The minimum dearness allowance for any employee must be Rs. 10-8-0 per month on the present price level, or on the basis given by the companies at present whichever is higher.

No. 7. Accumulation of leave with pay up to every 4 years of service must be permitted.

TERMS OF SETTLEMENT

1. As Alcock Ashdown & Co. Ltd., already has introduced two alternative scales of dearness allowance and the Bombay Steam Navigation Co., Ltd., and the Mazgaon Dock Ltd., have followed this precedent, this demand is withdrawn.

2. This demand is withdrawn.

No. 8. Sick leave on half pay must be granted on production of medical certificate.

No. 11. Those workers who work on Sundays and Public Holidays must be paid double their ordinary rates of pay.

3. This demand is withdrawn.

4. In view of the company's reply, *viz.*—

“In regard to overtime for men working on Sundays and Public Holidays, this is paid according to the Factory Act, plus the concession which was recently provided voluntarily by the Panel firms, which is $\frac{1}{2}$ hour's bonus for every hour worked on Sundays.”

“Although the Panel does not accept the principle of double time for Sunday work it should be noted that, in practice if a man puts in 6 days of 10 hours' service, all Sunday time is paid under the Factory Act, which is at time and half, and this plus the bonus, which the Panel has conceded, is double time”, this demand is withdrawn.

No. 13. The companies must open a grain shop and canteens within their factory premises for the benefit of the workers and a guarantee to the workers of adequate supply of their needs. The Union must be permitted to inspect these arrangements and to suggest ways and means to improvement.

5. This demand is withdrawn.

No. 14. Union officials must be allowed to collect subscriptions and interview workers within the factory premises.

6. This demand is withdrawn.

No. 15. An A. R. P. Committee must be set up consisting of equal number of representatives of the management, the Union and the A. R. P. authorities. The committee shall control all A. R. P. arrangements within the factory premises.

7. This demand is withdrawn.

SPECIFIC DEMANDS. (Ex. L).

TERMS OF SETTLEMENT

No. 2. Bonus must be paid to all launchmen and those employees who did not receive it when it was paid to the Workshop employees in July last.

8. This demand is withdrawn.

No. 3. The free Pass at present given to employees must be made available to all employees who have completed a year of service.

9. This demand is withdrawn.

A. LATIFI,
Adjudicator.
Bombay, 2nd April 1943.

For the Bombay Steam
Navigation Co. Ltd.,
Per Pro The Scindia Steam
Navigation Co. Ltd.,
(Illegible),
Managing Agents,
For and on behalf of the B.S.N
Workers' Union,
GEORGE LOBO.

(*Bombay Castle, 11-10-1943, No. 6431/34, Government Gazette Part 1, p. 2295*)

(I) MAZGAON DOCK LIMITED, (II) ALCOCK ASHDOWN & CO. LTD.,
(III) BOMBAY STEAM NAVIGATION CO. LTD.

AND

THEIR EMPLOYEES

Adjudicator :—A Latifi, Esq., C.I.E., O.B.E., M.A., LL.M.
(Cantab.), LL.D. (Dub.), Bar-at-Law, I.C.S., (Retired).

Mr. M. G. R. Aitken, of Messrs. Crawford Bayley & Co.,
Solicitors, instructed by Mr. A. Kirkwood Brown,
Chairman, Bombay Ship Repairs Panel for the Mazgaon
Dock Ltd.;

Mr. George Lobo, Secretary, Joint Committee of the
Dockyard Labour Union, Alcock Ashdown Workers'
Union and the B. S. N. Workers' Union, for the
employees.

Final Award

My interim award in this dispute which was published in *Bombay Government Gazette* Extraordinary, Part I, dated 3rd May 1943, at page 893, should be read with this. In the fourth paragraph of that award I noted that I kept on one side for separate consideration Demand No. 2, viz., that there should be "Gradation of the wages and salaries of all workers with automatic increment until the maximum of each grade is reached. The grades are to be fixed in consultation with the Union."

2. To meet the convenience of the parties I did not resume the proceedings till 10th July, when I explained to them that it was proposed to employ experts to advise on the technical and other problems involved in the demand now under investigation and I invited their suggestions. Both sides asked for time to think this over. At the next hearing, on 29th July, Mr. Lobo filed the attached application (marked Annex II-A to fit it with the annexes of the interim award). In view of this application, I recommend that no demand regarding the gradation of the wages and salaries of the workers with automatic increments be raised by the employees during such period as Government may direct.

Bombay, 31st July 1943.

A. LATIFI,
Adjudicator.

ANNEX II-A

BEFORE A. LATIFI, ESQUIRE, C.I.E., O.B.E., M.A.,
LLM. (CANTAB.), LL.D. (DUB.), BAR-AT-LAW, I.C.S.,
(RETIRED), ADJUDICATOR.

In the matter of the trade dispute between Messrs. Mazgaon Dock Ltd., and its employees.

The General Demand No. 2.—" Gradation of the wages and salaries of all workers with automatic annual increment until the maximum of each grade is reached. The grades are to be fixed in consultation with the Union."

This demand is withdrawn unconditionally without prejudice to the right of the employees to any action they may be lawfully entitled to take in this connection in the future.

Before me,

(Signed) A. LATIFI,
Adjudicator.

Bombay, 29th July 1943.

(Signed) GEORGE LOBO,
For and on behalf of the
Dockyard Labour Union.

BOMBAY STEAM NAVIGATION CO. LTD.,

AND

ITS EMPLOYEES

Mr. M. G. R. Aitken, of Messrs. Crawford Bayley & Co.,
Solicitors, instructed by Mr. A. Kirkwood Brown,
Chairman, Bombay Ship Repairs Panel for the Bombay
Steam Navigation Co. Ltd.,

Mr. George Lobo, Secretary, Joint Committee of the
Dockyard Labour Union, Alcock Ashdown Workers'
Union and the B. S. N. Workers' Union, for the
employees.

Final Award

My interim award in this dispute which was published in *Bombay Government Gazette* Extraordinary, Part I, dated 3rd May 1943, at page 907, should be read with this. In the fourth paragraph of that award I noted that I kept on one side for separate consideration Demand No. 2, viz., that there should be

"Gradation of the wages and salaries of all workers with automatic increment until the maximum of each grade is reached. The grades are to be fixed in consultation with the Union."

2. To meet the convenience of the parties I did not resume the proceedings till 10th July, when I explained to them that it was proposed to employ experts to advise on the technical and other problems involved in the demand now under investigation and I invited their suggestions. Both sides asked for time to think this over. At the next hearing, on 29th July, Mr. Lobo filed the attached application (marked Annex II-A to fit it with the annexes of the interim award). In view of this application, I recommend that no demand regarding the gradation of the wages and salaries of the workers with automatic increments be raised by the employees during such period as Government may direct.

A. LATIFI,
Adjudicator.

Bombay, 31st July 1943.

ANNEX II-A

BEFORE A. LATIFI, ESQUIRE, C.I.E., O.B.E., M.A., LL.M.
(CANTAB.), LL.D. (DUB.), BAR-AT-LAW, I.C.S., (RE-
TIRED), ADJUDICATOR.

In the matter of the trade dispute between Bombay Steam Navigation Co., Ltd., and its employees.

The General Demand No. 2.—"Gradation of the wages and salaries of all workers with automatic annual increment until the maximum of each grade is reached. The grades are to be fixed in consultation with the Union."

This demand is withdrawn unconditionally without prejudice to the right of the employees to any action they may be lawfully entitled to take in this connection in the future.

Before me,
(Signed) A. LATIFI,
Adjudicator.
Bombay, 29th July 1943.

(Signed) GEORGE LOBO,
For and on behalf of the B.S.N.
Workers' Union.

ALCOCK ASHDOWN & Co. LTD.,

AND

ITS EMPLOYEES

Mr. M. G. R. Aitken, of Messrs. Crawford Bayley & Co., Solicitors, instructed by Mr. A. Kirkwood Brown, Chairman, Bombay Ship Repairs Panel for the Alcock Ashdown & Co. Ltd.;

Mr. George Lobo, Secretary, Joint Committee of the Dockyard Labour Union, Alcock Ashdown Workers' Union and the B. S. N. Workers' Union, for the employees.

Final Award

My interim award in this dispute which was published in *Bombay Government Gazette* Extraordinary, Part I, dated 3rd May 1943, at page 901, should be read with this. In the fourth paragraph of that award I noted that I kept on one side for separate consideration Demand No. 2, viz., that there should be "Gradation of the wages and salaries of all workers with automatic increment until the maximum of each grade is reached. The grades are to be fixed in consultation with the Union."

2. To meet the convenience of the parties I did not resume the proceedings till 10th July, when I explained to them that it was proposed to employ experts to advise on the technical and other problems involved in the demand now under investigation and I invited their suggestions. Both sides asked for time to think this over. At the next hearing, on 29th July, Mr. Lobo filed the attached application (marked Annex II-A to fit it with the annexes of the interim award). In view of this application, I recommend that no demand regarding the gradation of the wages and salaries of the workers with automatic increments be raised by the employees during such period as Government may direct.

Bombay, 31st July 1943.

A. LATIFI,
Adjudicator.

ANNEX II-A

BEFORE A. LATIFI, ESQUIRE, C.I.E., O.B.E., M.A.,
LL.M. (CANTAB.), LL.D. (DUB.), BAR-AT-LAW, I.C.S.,
(RETIRED), ADJUDICATOR.

In the matter of the trade dispute between Alcock Ashdown & Co., Ltd., and its employees.

The General Demand No. 2.—"Gradation of the wages and salaries of all workers, with automatic annual increment until the maximum of each grade is reached. The grades are to be fixed in consultation with the Union."

This demand is withdrawn, unconditionally without prejudice to the right of the employees to any action they may be lawfully entitled to take in this connection in the future.

Before me,
(Signed) A. LATIFI,
Adjudicator.
Bombay, 29th July 1943.

(Signed) GEORGE LOBO,
For and on behalf of the Alcock
Ashdown Workers' Union.

(Bombay Castle, 14-5-1946, No. 9426/34-I. Government Gazettee Part I. pp. 1721 to 1732).

MAZGAON DOCK LIMITED

AND

ITS EMPLOYEES

Adjudicator:—K. B. Wassoodew, Esq., (Retired Judge, High Court, Bombay).

Counsel:—Sir Jamshedji B. Kanga, with Mr. W. F. Fairbairn, General Manager, Mr. J. B. Craig and Mr. C. N. Caroe of Messrs. Craigie Blunt & Caroe, Solicitors, for the Mazgaon Dock Ltd.

Counsel:—Mr. H. R. Pardiwalla, with Mr. A. M. Mirza, President, Dockyard Labour Union, and Mr. K. K. Khadilkar, Secretary, for the employees of the Company.

A w a r d

By the Order of the Government of Bombay, No. 9426/34, dated the 29th December 1945, in the Political and Services Department, issued under subrule (1) of rule 81-A of the Defence of India Rules, read with Government of India, Department of Labour, Notification No. L. 3005, dated the 20th May 1942, I was appointed Adjudicator in the trade dispute between the Mazgaon Dock Ltd. (hereinafter referred to as "the Company") and its employees. By the same Order I was directed, as far as may be, to exercise

such powers as are conferred on, and follow such procedure as is prescribed for a Board of Conciliation under the Trade Disputes Act, 1929, and the Bombay Trade Disputes Rules, 1930.

2. The matters referred to me for adjudication by the aforesaid Government Order are as follows:—

- “ (1) Should the present practice of putting the workers on *pali* be so regulated as to guarantee a certain minimum number of days' work in a month to every worker and if so what should be the minimum number of days' work per worker per month?
- (2) Should bonus, if any, be granted on the workers' earnings for the year ending 31st March 1946 and if so on what terms and conditions?
- (3) Should any scales of wages with annual rates of increment be introduced for different categories of workers and if so what should be the scales and increments?
- (4) Should the workers who have either been retrenched or discharged or who have left service of their own accord be granted proportionate wages in lieu of leave with pay earned but not enjoyed?
- (5) Should the workers be granted any sick leave with pay every year at the rate of 10 days for every 250 days of work?
- (6) Should the workers be given 14 days' wages in lieu of notice of discharge while terminating service?
- (7) What medical facilities, if any, should be provided by the Company to the workers?
- (8) Should workers in the Gunners Labour Department, if required to commence work after midnight, be paid for the whole night?

3. The usual notices to the parties calling upon them to file their respective written statements were issued on 4th January 1946. The Dockyard Labour Union (hereinafter described as “the Union”), representing the employees, filed its written statement on 23rd January 1946, setting out the basis for each demand and its nature. The Company submitted its reply on 11th February 1946. Including the preliminary meeting held on 25th February 1946, there were eight meetings held in the Industrial Court, between 25th February and 3rd April 1946. On the 29th March 1946, at the request of the parties, I visited the factory of the Company.

4. It may be stated at the outset that in the course of the last four years this is the third reference to adjudication of the disputes between the parties, which in several respects are similar in nature although not identical. The first dispute was referred to the adjudication of Mr. Justice Chagla in April 1942, the second to

Mr. A. Latifi in October 1942, and the third is the subject matter of this award. There will be sympathy with workers who have a reasonable complaint to make of unfair treatment by their employer or a grievance against the conditions of service. But that it should be necessary that such complaints and grievances should have to be brought to the notice of the authorities with frequency is at any time a misfortune. That the disputes should have been raised between the parties herein not long after the last adjudication is not easy to explain. Perhaps the progressive rise in the cost of living which since the cessation of international warfare has shown no tendency to fall, the high expectations of labour of amelioration of their condition by the advent of peace, and the general outbreak of hostilities between capital and labour on a world wide scale may have contributed in some measure to the dissatisfaction among the employees of the Company.

5. The Company possesses a very extensive factory, a dry dock and an excellent ship-repairing equipment of its own on the eastern harbour site known as the Mazgaon Dock. It carried on essentially ship-repairing work. For that purpose it has to maintain in addition to a dry dock, different workshops for the purpose of repairing every component part of a ship from a nut to a boiler not excluding electric wiring, fans, lights, furniture and the like. I was shown a ship building department where small launches and yachts are built. This is not the only Company which is doing ship-repairing work in Bombay. There are two other private companies who do similar work in competition and have in the neighbourhood their docks and workshops. There is also the H. M. I. Dockyard and the Port Trust Dock and Workshop. Until the war the former could, within its resources, cope with all the Government requirements, but owing to heavy demand on its workshops during the war some part of Government work was transferred to private companies including the Mazgaon Dock Ltd. I was told that the pre-war normal personnel of the Company of 2,000 workers rose to about 10,000 in the busy war period. The payment received from Government was on cost plus profit basis. The conditions are now reverting to normal and the private companies are preparing to meet business competition. Notwithstanding the earnest desire on the part of their General Manager Mr. Fairbairn, signified in the course of these proceedings, to improve the lot of their workers as far as it was practicable, the probable diversion of custom, upon the improvement of wage rates and other amenities, not only to the other local companies in competition but also to other ports of India such as Karachi, Calcutta and Madras, is the main impediment to the implementing of the desire to improve the material condition of the employees. It was complained on the other hand that whilst this Company has been singled out by its employees to concede higher wages, the other companies, which were co-disputants along with this

Company on the occasion of the second adjudication, have been left out so that the effect of any general rise in wage rates must prejudicially affect the Company. On the other hand Mr. Pardiwalla for the employees has stated that being the foremost and the largest Company it must set an example before the other companies could be made to fall in line. His main point is that ability to pay is one of the facts relevant to an increase in wages. These are considerations not without weight from the respective point of view of both the employer and the employee.

6. Before the war the Company's normal activities were limited to the effecting of repairs of their own ships and other passenger and cargo steamers, big and small, which required urgent attention either due to casualties or periodical overhauling. At that time as I have said the average number of employees on the roll did not exceed 2,000. In the course of the war the complement had risen five times that number, and, since the termination of hostilities, there has been a gradual reduction in the staff which now stands at nearly 8,000. I am told there is every prospect of further reduction in due course of time.

7. There was a great deal of conciliatory and compromising spirit shown by both sides during the proceedings which have contributed to the satisfactory settlement of some of the points in controversy. After much discussion, persuasion and argument the parties under the guidance of Sir Jamshedji Kanga and Mr. Pardiwalla have arrived at an amicable settlement on the first, second, fourth and eighth matter in dispute. An imposed solution on the first matter in dispute, namely, the *pali* system, could hardly have conduced to the preservation of harmonious relations between the Company and its employees. The latter fully realised that there was no satisfactory alternative to the *palli* system. That system has been described in Mr. Justice Chagla's award and is the result of the casual nature of the ship-repairing work. Under that system the employees on the permanent muster roll of the Company are selected for work every day by rotation, if there is no sufficient work for all, and, those who are sent back are said to be on "*pali*," or, in other words, on the "waiting list". It would be very hard to devise any system in replacement thereof which would keep all the employees continuously occupied. That system alone, could under the circumstances preserve a large number of employees on the muster roll and at the same time secure as far as practicable reasonably sufficient and equal work in a month to almost every worker. I am, therefore, glad that the parties themselves have found it possible to arrive at a satisfactory settlement which will, in my opinion, remove further cause of discontent in that respect. The settlement arrived at has been recorded in writing and signed by the parties and their representa-

tives in my presence. It has been marked "A" and appended hereto.

8. There then remain four other matters in dispute which the parties desire should be left for my adjudication. The most complicated and difficult is matter No. 3 in dispute relating to the introduction of an incremental scale of wages. In that connection the Company has submitted a mass of statistics showing the prevailing rates of wages in other concerns of a similar nature as also some engineering establishments in Bombay and a comparative statement of the rates in other important ports in India. I propose to deal with that question last. In the meantime I shall proceed to dispose of the three other matters in dispute referred to in questions Nos. 5, 6 and 7 in the Government Order.

9. Dealing with demand No. 5, the employees claim sick leave with pay every year on the scale of 10 days for every 250 days' of work. The basis for that demand is that some reasonable consideration should be shown to workers if and when they fall ill during working days. It has been complained that there were no definite rules regarding the grant of leave with pay until the new standing orders were introduced recently, that all leave was discretionary and could not be claimed as of right until the amendment to the Factories Act No. III of 1945, dealing with Holidays with Pay, came into force, that no casual leave with pay was ever given during an unforeseen emergency, and, that this involved additional hardship under the *pali* system which enforced unemployment in spite of fitness for work. The demand is in the nature of insurance against illness. The Company has objected to this demand for the reason that there is no such leave granted by the other companies in Bombay or elsewhere, to their knowledge, except perhaps in the Bombay Port Trust which is a public corporation. The evils of conceding sick leave with pay have been stressed by Sir Jamshedji Kanga. He says that it would be very difficult to verify the nature of illness complained of, and that the provision in that respect would be abused. Speaking entirely for myself I think it is just and proper that a concession in this respect should be made in favour of the workers during illness in the peculiar work conditions in this Company. Malingering can be prevented if provision were made for production of a medical certificate either from the Company's doctor, if he is available or from a resigned medical practitioner. That would be, in my opinion, a sufficient safeguard to prevent the abuse of the privilege. I, however, think that 10 days' leave is not a reasonable period under this concession. I would reduce that period to 7 days for every 250 days of work and that the pay for that period should be half the average daily wage rate fixed on the basis of average daily wage in the month preceding the month in which the leave is demanded. The other conditions shall be that sick leave would

not be allowed to be tacked to privilege leave or leave with or without pay.

10. The next matter in dispute No. 6 relates to the question whether the workers should be given 14 days' wages in lieu of notice for terminating their service. Mr. Pardiwalla for the employees has stated that although normally the services of industrial workers in textile mills are terminated by a 14 days' notice or 13 days' pay in lieu of notice, in view of the *pali* system the person who is a victim of notice may have to remain in *pali*, that is without work, during the entire notice period or greater part or it, and that the object of notice would thus be frustrated. He, therefore, suggests that a worker should be given at least 14 days' work or 14 days' pay during the notice period. He has also drawn my attention to the fact that when a worker is given notice on account of retrenchment he is generally victimized after notice and does not get his turn of work in strict rotation while those who are expected to continue in service receive favoured treatment. In view of the system in vogue and which is accepted by the workers in this concern as part of their service tenure, I do not think it fair to enlarge the period of notice nor is it possible to ensure work during the entire period of notice. I am assured by Sir Jamshedji Kanga that no discrimination is made between those under notice to quit and others so far as the distribution of work is concerned. No instances of differential treatment have been brought to notice. I am, therefore, not inclined to support the demand that the workers should be given 14 days' wages in lieu of notice while terminating their service. I think that the assurance given by the General Manager, that there will be no discrimination and victimisation, is a sufficient guarantee that, as far as practicable, the worker under notice will get as much work during the period of notice as he would have got, if no notice had been given, upon a fair and equitable distribution of work under the *pali* system in terms of the settlement under demand No. 1.

11. Then there is the seventh demand relating to medical facilities to be provided by the Company to the workers. At present there is a registered medical practitioner in charge of the dispensary in the factory where first aid is rendered to workers of this Company. It is a neat and well maintained dispensary. The first desideratum is a fully qualified and full time medical practitioner in attendance at the dispensary for the benefit of the workers. The dispensary should also be more completely and fully equipped. The Company has promised to engage a fully qualified medical practitioner from April 1946. But Mr. Pardiwalla claims that the benefit of free medical aid should be extended to the workers' families and that the doctor should give them home treatment whenever necessary. With regard to the medical treatment of family members it does not arise upon the demand as formulated.

The Company has, however, seriously objected to the treatment of the workers' families and home visits by the doctor. I do not think it is fair and reasonable to direct the Company to send the doctor to treat the workers at home if his usefulness in the dispensary is not to be impaired. If the worker suffers on account of accident or occupational disease and is unable to move or attend the dispensary, the Company arranges to send him to the hospital and so far there has been no instance when hospital arrangement has been found wanting; nor has there been any case of accident refused by the local hospitals. In the circumstances my award on this point will be that a whole time qualified medical practitioner, possessing an University medical degree should be appointed by the Company to attend to the workers during illness in the dispensary whether that illness is due to their occupation or to any other cause and that they should be supplied free medicines at the Company's expenses and that the dispensary for that purpose shall be kept fully equipped on modern lines.

12. Then there remains for decision the third question which has been thus formulated in the Government Order:—

“Should any scales of wages with annual rates of increment be introduced for different categories of workers and if so what should be the scales and increments?”

The complaint of the workers is that there is no clear service chart promising any chances of improvement in their condition and that there is no gradation or scales of wages guaranteeing regular course of promotion in each occupation upon approved service. What the workers now demand is that there should be a classification of occupations in the different workshops, the fixation of higher starting rates of wages in each occupation, regular time-scale of promotion with a fixed rate of annual increment, a reasonable maximum pay that can be reached in a given period of time, and a few upper graded posts for special promotion. The underlying grievance is that under the present arrangement a worker's promotion depends upon the whim and mercy of his superiors, and that the Company has given no promotion to a large number of workers after several years of approved service. Mr. Pardiwalla, therefore, has insisted that the workers will not be content with an increase in wages as an emergency relief, under the present day conditions. He had a list prepared of several workers who have not received any increment for over 20 years. He says that the few, who are fortunate in getting promotion, have been selected for promotion in an arbitrary and unfair manner.

13. It was suggested that there should be standardized wages in this industry as far as possible in all the different grades with minimum and maximum rates of pay for each class of workers.

The difficulty of standardizing wages in an engineering industry, and applying them to a single unit of ship-repairing industry, is obvious in a summary inquiry of this nature on account of the varying conditions existing in the different parts of the country and also in the allied engineering industry in Bombay itself. Standardization could perhaps be considered upon a general census of local wage rates of similar classes and grades of labour. The difficulty assumes formidable proportions, as I shall presently point out, owing to the striking disparity in the local wages rates in the same kind of industry. I am satisfied that it is impossible to evolve a system for adoption of common standards of payment for similar class of work, with the material available to me and the limited scope of my investigation. Standardization could under the existing circumstances be achieved only if the persons interested in the ship-repairing and engineering industry were to adopt by agreement between themselves and their workers common standards of pay and work. My observations in this award should be understood to have a limited application to the conditions of labour prevailing in this Company as revealed in this summary and not too thorough an inquiry.

*14. It has been pointed out by the Company that in 1943 at the time of adjudication before Mr. Latifi, the Bombay Ship Repairs Panel welcomed a proposal for gradation of wages, but, they were definitely of the opinion that it should be applied to the industry as a whole on an all-India basis, and, that Government should set up a Committee to explore the matter. Government did not agree with the view of the Panel and the matter was dropped at that stage, the Union's demand for gradation of pay having been withdrawn at the time. It is stated that the scheme then proposed has been forwarded to the Indian Engineers' Association and they are at present examining the question on an all-India basis in relation to the engineering industry. The Company's main objection to accept the gradation of wage scales on the basis of the demand of the workers is that it would be unfair to them in view of their competition with other like concerns in Bombay and other parts in India. It has been stated that the Company has been suffering already from the disadvantage due to their present rates of wages and dearness allowance, which are higher than those paid in Calcutta, Madras and Karachi. The Company's case is that the granting of increments according to present practice in recognition of merit and length of service has been found by experience to be satisfactory.

15. The advantage of having a well graded time-scale with efficiency bar after certain wage levels have been reached, cannot be denied. That conduces to better efficiency and higher standard of work, and there is greater incentive to gain skill for obtaining promotion. An automatic rise in wage rates on a pure time-scale

basis after a certain period is, in my opinion, harmful both to the employer and the employee. Mr. Pardiwalla would not, on any account, have an efficiency test attached to a time-scale wage gradation, because, according to him, the object of raising the question is to get rid of favouritism and corruption in this factory. I fail to understand how any time-scale in the higher grades could be worked successfully without efficiency tests.

16. Mr. Pardiwalla has stressed another grievance which was also forcibly pressed on my attention when I visited the factory. He says that hundreds of persons have not received any wage increase for 6 to 10 years and some not even after 20 to 25 years of service and perhaps more. That is truly a deplorable state of things, in view of the fact that a large mass of these employees is on the permanent schedule under a precarious system of employment. That they are only daily rated and that there are no prospects of continuous and steady employment for all and that the workers are provided with other amenities such as leave pay, gratuity and provident fund, is no satisfactory condonation of the present state of things. According to the statement furnished to me by the Company (Exhibit 33) the total number of workers who have not received promotion during the last 6 to 10 years is not less than 1,885. Amongst them there are several who have not received any increment during 25 years of their service. Of course that figure includes lascars, stevedors, bargemen, launchmen, coolies and unskilled labour employed in what is known as the Gunners' Labour Department, most of whom get a fixed monthly pay.

17. It is impossible to underrate the difficulties of suggesting a fair solution of the question adumbrated in the workers' demands. My inquiry is limited to the conditions in this factory and the first question is whether any scales of wages should be introduced in this Company, and amongst what class of workers. The Union's demand is clear and on account of the difficulty pointed out above, I tried my utmost to bring about a settlement. The Company was willing to accept the principle of wage gradation of daily rated and trained workers over a limited number of years if made applicable to all ship-repairing concerns. That condition is not in my power to satisfy. Ultimately, Mr. Fairbairn on behalf of the Company was willing to abide by the scale of wage rates which I was told was got ready at the time of the adjudication before Mr. Latifi in 1943 (Annexure B), with the qualification that the scale should not be introduced till October 1946. I thought upon that statement. There was possibility of reaching a compromise. But Mr. Pardiwalla would not accept any modification of the scale proposed by the Union. What has, however, emerged from the discussion with the parties, is that there is no dispute that scales of wages are desirable and could be introduced in this

Company and I entirely agree that this should be done.

18. The question is to what workers scales of wages should apply, and, what scales are suitable for application to the workers in this factory. In a summary inquiry of this character the only way of approach to the problem would be to examine the conditions of employment in the other ship-repairing concerns in the locality. As I have already said there are two main ship-repairing concerns which are privately owned. There are two others which are either doing entirely Government work and are under Government supervision or under the supervision and the management of the Local Authority—the Bombay Port Trust. Before I refer to the existing grades of wage rates and the demands of the workers showing in what respects they should be modified, I must admit the impracticability of laying down minimum wage rates in the different classes of occupations in this industry, without a thorough and elaborate inquiry into the wage rates paid by other similar or allied concerns and the amenities provided by them. With a limited information at my disposal any arbitrary levels of lowest wage rates reached by me without regard to the prevailing rates in similar industry in the locality or the economic structure of the industry in general, must necessarily be detrimental to the interests of the workers and the industry itself. There is no such thing as collective agreement in fixing lowest wage rates in this industry so far as I am aware. In the absence of sufficient and comprehensive material and any rate-fixing machinery like the one now adopted in America under the Fair Labor Standard Act of 1938, much of the argument was based on vague and general grounds to show that the wages in India are exceptionally low and that the standard of living of the workers has not increased in comparison with western and other foreign standards where, it is said, in the course of the war the living standard has arisen very high while there is progressive deterioration of the workers' living standard in India. The proper way of dealing with this question, in my opinion, is to compare the general trend of wages and wage rates in kindred occupations in the country or at least in the locality itself.

19. I have in the absence of fuller and more satisfactory information in the above respect endeavoured to satisfy myself from the material that is available whether the lowest wage rates in the different occupations in the Company's factory are generally speaking unreasonable and unfair. The existing wages paid in all the three ship-repairing concerns in Bombay were submitted for my information by the Company, and although it would not be prudent, without the express permission of those concerns to publish them, I may say at once that the Company's starting wage rates in most occupations are not inferior to any and bear a fair comparison with them. Before dealing with the question of fixing

graduated scales of wages in the different occupations; it would be proper to compare the existing wage rates paid by the Company and the demands of the Union for an increase in those rates as adumbrated in Exhibit 24 and shown in the third column of Annexure C appended hereto. Now turning to one important department of the Company "The Machine and Fitting Shop" the subjoined statement will show the wage rates in the four categories of skilled and semi-skilled workers employed in that shop excluding the supervisory staff, paid at present by the Company and the demands of the workers against the corresponding wage rates:

Rates of wages existing in Mazgaon Dock (Exhibit 20).					Occupation gradation of scales of Wages as suggested by the Dockyard Labour Union (Exhibit 12).						
Category.		Mini- mum.		Maxi- mum.	Occupation.	Starting rate.		Maxi- mum.	Yearly incre- ment.		
		Rs.	a.	Rs. a.		Rs. a.	Rs. a.	Rs. a.			
Fitter	...	1	12	3 14	Fitter	...	2 2 4	12	0	4	
Turner	...	1	12	4 6	Turner	...	2 2 4	8	0	4	
Mochi	...	1	4	1 8	Mochi	..	1 6 2	4	0	2	
Oilman	...	1	2	1 8	Oilman	...	1 8 2	8	0	2	

20. In view of the great disparity between the existing rates and those demanded by the workers the question of fixing the minimum and maximum is not free from difficulty. As I have already stated, the Company is willing to concede subject to certain conditions, a graded scale of wages to the men working in the different departments according to the appended statement (Exhibit 21), Annexure B. The minimum starting wage proposed by the Company for certain skilled workers according to that statement, which, I am told, was once approved by the Ship Repairing Panel, is Rs. 1-12-0 which is the existing wage rate paid by the Company to most of their skilled workers. On the other hand the lowest wage proposed by the Union is Rs. 2-2-0 per day for skilled workmen corresponding to Rs. 1-12-0 proposed in Annexure B. The question, therefore, is what rate should be adopted as the minimum starting wage for that class of workers. According to the Calcutta rates the starting daily wage for the corresponding workers is Re. 1 while Madras pays between 8 to 10 annas. As against this there are higher rates at Karachi between Rs. 1-6-0 and Rs. 2 and even higher for bricklayers and welders. Disparity in wages connotes disparity in living conditions, and it would be foolish to venture a comparison unless statistics are collected to show with some degree of accuracy what reasonable standard of wage should be fixed for different parts of the country. There is, however, some reliable material nearer home which consists of a statement of wages paid to their workers by Alcock Ashdown Company and the Bombay Steam Navigation Company—both

ship-repairing companies. Neither of them has paid any higher wage to the corresponding workers in their own workshops. That I think affords a guide for fixing the starting wage rate.

21. On a careful consideration of the evidence before me I find it difficult to say that the starting wage rate paid by the Company for different classes of workers is inadequate or unreasonable except in a few cases which I shall indicate later. In fact it compares very favourably with that paid in similar concerns with whom the Company is in competition. It is natural, therefore, that the Company should maintain that they should not be singled out for setting an example of higher wage rates without the general concurrence of the industry itself or the imposition of standard rates by a special machinery created by Government for the purpose. That is a consideration which must be kept in view having regard to the nature of the work done by the ship-repairing companies. Most of their work consists of outside custom which will go to the cheapest dock repairer unless prevented by emergency or casualty. Except a few wage rates in one motor industry and the B. E. S. T. Company no evidence has been led to show that the initial wage rates are low. It seems that the Panel's proposals were based on a consideration of all circumstances connected with this industry and must be given due weight. In the absence of more convincing evidence I am not inclined to think that any revision in the starting wage rates paid by the Company in the Machine and Fitting Shop is required. I think they are on the whole fair and just.

22. With regard to the other branches of the factory such as smith's shop, coppersmith's shop, brass foundry, welding department, electric shop, structural shop and the shipwright department, the Company's wage rates in column 2 of Annexure C show that they are not unreasonable or inadequate in comparison with those paid by other ship-repairing concerns which I have examined. Perhaps in view of the difficulty of deciding the question in a summary inquiry, or, supplying the material necessary to demonstrate the unfairness of the wages paid, the workers' Union withdrew this demand in the last dispute. I, however, tried to see if it was possible to make use of other material available to find out if a general rise in the starting wage was necessary. For that purpose I perused the Wage Census Report of the Labour Department relating to engineering industries. But that Census relates to the year 1934 and the information is rather antiquated and not suitable for comparison.

23. But Mr. Pardiwalla has urged that apart from any other proof the statement of the Textile Labour Inquiry Committee (Textile Labour Inquiry Committee Report, Volume II—Final Report, page 78) as to the minimum wage rates, which an indus-

trial worker ought to receive to maintain himself and his family, would be sufficient for his purpose. He says according to that statement, a minimum living wage should be at least Rs. 55 monthly per each worker, and, that, having regard to the statement given by the Company (Exhibit 13), the average wage falls far below that standard. That argument has been previously urged and refuted, for the figure given by the Textile Labour Inquiry Committee represents an ideal to be aimed at, and, it may be hoped, that in course of time with a high degree of skill, equipment and expert management the industry will be able to reach it. It is sufficient to say that this Company cannot reasonably be made to adopt the ideal standard at the risk of losing its financial equilibrium. After careful consideration I have reached the conclusion that the starting rates of wages for different classes of workers in this Company are generally speaking not inadequate or unsatisfactory except in a few cases hereafter indicated.

24. While I have no doubt that the lowest wage now paid to the different classes of workers by the Company should be maintained, except in those cases where I have thought fit to modify the same, the refusal of the Company in the past to give promotion of any kind to numerous workers for several years has given just cause for discontentment and unrest among its staff. That a worker after 6 to 10 years or more of service should, under a precarious service tenure, neither receive promotion to a superior post nor receive any higher stipend, shows either that the worker has not given satisfaction to the Company and is, therefore, unfit to be continued in service or that the Company, having regard to the economic laws of demand and supply, feels that it can complacently refuse to give any incentive to its seasoned workers. In either event some kind of relief, as far as practicable, must be granted, at least to some of the employees who are being continued in service and are being brought on the time scale. In fact the Ship Repairs Panel itself was alive to the necessity of relief in that respect when they suggested graded promotion to the factory staff according to the scale set out in Exhibit 21 and which, as I have stated, Mr. Fairbrian, the General Manager of the Company, has expressed his willingness to accept, with the reservation, that the incremental scale should be brought into force after October 1946 in order that suitable provision can be made for meeting the additional expenditure. I propose to deal with the case of those who have received no promotion for several years in its proper place.

25. Having cleared the ground regarding the necessity of adopting a scale of wages and having indicated my conclusion on the question of the lowest starting wage to be paid for the different classes of workers, the next important question is what should be the maximum wage in each class to which the worker should

automatically expect to rise in the time scale, and, what should be the rate of his increment. In the consideration of that question I have throughout borne in mind that the Company is a commercial concern working in competition with other similar concerns, and the several amenities which it has provided for its workers. It would not in my opinion be fair to compare the wage rates of the Company with the scales of wages in force in the Bombay Electric Supply & Tramways Co. Ltd., which in a sense holds a monopolistic position, nor with motor companies which, I have observed, have to engage highly technical staff for assembling parts. I have had no opportunity of examining the basis on which their wages are fixed, and, to compare the conditions of service and other amenities provided by those Companies. Besides supplying me with the figures of rates paid, no evidence has been led before me for the purpose of such comparison. I was asked to compare the prevailing rates both in the H. M. I. Dockyard and the Bombay Port Trust. They are in no sense commercial concerns. For some classes of workers in the foundry, electric and structural departments of the H. M. I. Dockyard, the starting rates are slightly higher being Rs. 2-2-0 as against Rs. 1-12-0 paid by the Company. But the rates paid by the Port Trust, according to the statement supplied to me by the Company (Exhibit 24), are slightly lower. I appreciate the view, that in considering the application of a time-scale the maximum wage rates for different categories of workers at a certain stage should compare favourably with those provided in other commercial concerns, and that after a worker has acquired a certain degree of specialised skill he should not stagnate on the lowest wage for several years without any prospect of promotion. According to the Panel's proposal which has been adopted by the Company, there are two steps or scales of promotion. The first is based on the length of service, and the maximum fixed in that scale will be within the reach of all. And the second step, which is higher than the first, is dependant on merit and length of service to which a worker could be selected for special promotion. The maximum pay in the first step is, for skilled workers, Rs. 2-2-0, except in few instances and the maximum in the second scale is Rs. 3-2-0 although there are a few men who are paid even more. As against these rates the Union has proposed varying maximum rates for different occupations between Rs. 3-8-0 and Rs. 4-12-0 and it is suggested that they should automatically be given yearly increments to reach the maximum, the annual proposed increments being between 2 and 4 annas. Except for certain classes of workers in H. M. I. Dockyard and in Karachi, it will be observed from the statement (Exhibit 24) that the maximum wage rates are much higher in this Company in several categories than those paid in other engineering concerns such as Garlick & Co., and even in General Motors. Unless a survey of wage rates and conditions of supply of labour in Bombay and other parts of India were undertaken

it will be difficult, as I repeatedly pointed out to Mr. Pardiwalla, to venture an opinion as to the unreasonableness of the prevalent maximum rates in the Company. The Company's wage rates have been fixed with due regard to the conditions in the ship-repairing industry with the inevitable *Pali* system and before I could justifiably interfere with them, I must be in possession of reliable material showing that the rates are unfair and unjust. After anxious consideration I have come to the conclusion that the Panel's proposals (Exhibit 21) regarding graduated scale of wages based on length of service and merit and the fixation of periods for earning increments and also the incremental rates in different occupations for daily rated employees, are the most satisfactory and should be adopted for skilled, semi-skilled and unskilled workers except in a few cases among the skilled workers to which I shall presently refer.

26. I tried to find out for myself the reason for giving different skilled workers doing practically the same kind of work. For instance I did not see any reason why in the copper, iron and brass foundry departments the pattern-makers, moulders and coremakers should get a starting daily wage of Rs. 1-6-0 and Rs. 1-8-0, i.e., less than Rs. 1-12-0 paid to skilled workers. So also why a cutter in the welding department should get Rs. 1-8-0 and the rivetter in the structural shop should get less than the minimum paid to similar skilled workers, viz., Rs. 1-12-0. In my opinion, those workers specially mentioned above should also get the starting wage of Rs. 1-12-0. With that modification which I have incorporated in brackets against the workers named by me, below the Company's proposed scale, I have adopted the scale proposed in Exhibit 21 (Annexure B) for the purpose of my award. I also adopt the Rules governing apprenticeship and the granting of increments appended to that statement. They are very suitable and fair.

27. However desirable it may be to have a scale of wage rates applicable universally to all the Company's employees, I do not propose to extend the application of the time-scale of wages to the superior and monthly-rated staff such as chargemen in the different departments. I have no material before me to say that the pay given to chargemen is low. In other concerns there are perhaps no corresponding appointments, or information as to their pay has been withheld. No serious complaints were received by me from chargemen. Chargemen who are promoted to that appointment from the ranks receive varying rates of pay between Rs. 80 to Rs. 235 in the different departments. Those rates in my opinion are liberal enough, considering their status and position in the staff. They are in fact assistants to the foremen in charge of their respective sections. According to the figures supplied to me (Exhibit 24) the chargemen's initial pay is not less than Rs. 110

except in the structural shop, shipwright shop and Gunners Labour Department. The chargemen in these departments receive between Rs. 80 and Rs. 90 as starting pay with prospects of increase to Rs. 185. Although there is no graded scale they have been receiving promotion for proved merit. I do not think, in the present circumstances, it will be proper to interfere with the existing arrangements as to their pay and promotion.

28. With regard to mistrys the case is different. Their initial daily pay, in the departments in which they are employed, ranges between Rs. 2 to Rs. 3-4-0. They are promoted from the ranks and hope to be chargemen if they possess special adaptability, direction and supervision. I had not the means of comparing the pay of such supervising staff in the other concerns, whose figures in regard to their pay were not supplied to me, and, I do not think, in the absence of those figures, it is possible to make any comparison. The mistrys are very few in number and they were not included in the Panel's proposed scales of wages for the general body of workers. In my opinion the pay of the mistrys should be at the initial stage slightly higher than the maximum pay which a worker under him may receive on merit. I think the mistrys should start on an initial daily wage of Rs. 3-4-0 and should rise to Rs. 4 by an annual increment of annas 2.

29. I have carefully considered the conditions of pay of the launch and barge crew, and, I do not think under present conditions their pay requires revision. They are mostly monthly-rated, and, the lowest wage rate of *sukanis* and *lascars* is between Rs. 30 and Rs. 33. The higher personnel such as *sarangs* receive between Rs. 53 and Rs. 80 a month. There is a slightly higher scale for drivers of big motor launches, but, the permanent *lascars* and *tindals* receive between Rs. 33 and Rs. 39. A statement of wage rates in other concerns has been supplied to me (Exhibit 29) for comparison of the wages paid by the Company. It will be seen that the Bombay Steam Navigation Company pays slightly higher monthly-rate for drivers of steam and motor launches, but I am not in a position to say whether the dearness allowance fixed at Rs. 20 with 15 per cent. war allowance would not in the end bring down the total earnings to the level of those in the Company. The scales of pay in the Bombay Port Trust are lesser in some respects than those paid by the Company but it provides for 17½ per cent. dearness allowance subject to a minimum of Rs. 22 and a fixed amount as cheap grain shop concession. I do not think under the circumstances a graded scale of wages should be made applicable to the barge and launch crew.

30. There then remains the consideration of the grievance of the daily-rated workers who have not received any promotion, beyond the starting pay of Rs. 1-12-0 or less since they joined the

Company's service, for over 6 years. That grievance is just and must be remedied forthwith, particularly as most of them are on the *pali* tenure of service and are not quite as well off as the monthly-rated employees. The latter, in my opinion, do not suffer from the same hardships as the workers serving under the *pali* system, both skilled and unskilled. The mere application of a graded time-scale of wages to them will not give effective immediate relief. All such men who are being brought on the time-scale should, in my opinion, on the application of the said scale to them, receive in that scale the first increment of either anna 1 or annas 2 as the case may be forthwith, and, for that purpose, should be deemed to have completed the period of service for earning the first increment in the time-scale when it is brought into force.

31. The financial effect of granting the above increments has been roughly considered by me upon the figures available. There are 1,885 employees according to the statement (Exhibit 33) supplied to me by the Company, who have not received promotion for six years or more since they joined the service of this Company. That number includes about 250 to 300 men who are monthly-rated and to whom I have not applied the time-scale under the present state of things. At an average increased rate of As. $1\frac{1}{2}$ per day (the incremental scale is 2 annas and 1 anna) the daily increase in wages for about 1,640 men would be about Rs. 155. Calculating the monthly average of 22 working days under the *Pali* system according to the statement attached to the Company's written reply, the monthly additional expenditure according to my calculation would be roughly Rs. 3,410 and the annual expenditure will be about Rs. 41,000. This I think the Company can well afford to pay for the current year, without much disturbance of its economy. The Company must consider the feasibility of arranging its quotations in future to meet the growing expenditure.

32. In view of the above, my award on the third matter in dispute (Issue No. 3) is that scales of wages with periodical increments should be introduced for different categories of daily-rated workers as incorporated in Annexure B with such modifications in certain cases named above as are shown in brackets below the original figures supplied in the Company's statement (Exhibit 21) relating to the starting wage, the period of increment and the maximum daily rates on service, that is, in columns 3, 4, 5 and 7 only and that the scales of increment should be applicable to the categories of workers stated therein. The mistrys who are not included in that statement should get the scale of wages of Rs. 3-4-0 rising to Rs. 4 with an annual increment of annas 2. With regard to chargemen and barge and launch crew no time-scale should be applied to them, and their existing rates of pay and promotion shall be maintained. The time-scale shall be brought

into force within one month from the publication of the award and also the rules governing apprenticeship and the granting of increments appended to Annexure B. Those daily rated workers to whom the time-scale is made applicable, and who have not received any promotion since joining service, for the last six years and more, should upon the application of the time-scale to them be deemed to have completed one period of qualifying service for the purpose of receiving first increment as stated above. My award on Issues Nos. 5, 6 and 7 is as follows:

ISSUE No. 5.—The workers should be given sick leave for 7 days, for every 250 days of work, with half average daily wage rate fixed upon the earnings for the month preceding the month in which the leave is demanded.

ISSUE No. 6.—This demand is rejected.

ISSUE No. 7.—A whole time qualified medical practitioner possessing an University medical degree should be appointed by the Company to attend to all the workers during illness in the dispensary, whether that illness is due to their occupation or to any other cause and that the workers should be supplied free medicines at the Company's expense. The dispensary for that purpose shall be kept fully equipped on modern lines.

On demands Nos. 1, 2, 4 and 8 the terms agreed upon as evidenced by the settlement (Annexure A) shall be given effect to.

(Signed) K. B. WASSODEW,
Adjudicator.

Bombay, 5th May 1946.

ANNEXURE A

In the matter of the trade dispute between the Mazgaon Dock Ltd., Bombay and its employees.

MEMORANDUM OF SETTLEMENT

ISSUE

No. 1.—Should the present practice of putting the workers on *pali* be so regulated as to guarantee a certain minimum number of days' work in a month to every worker and if so what should be the minimum number of days work per worker per month?

TERMS OF SETTLEMENT

This issue is settled in the following manner:

(a) It is agreed that the 637 workers as per list (Exhibit 7) furnished to the Union by the Company shall be considered as essential men and these men would be given 26 days' work in each month. These men will not be governed by clause (b) hereof regulaing the *pali* system.

(b) With regard to the remaining workers (*i.e.*, other than the essential men referred to in clause (a)), who would be required to be sent on *pali*, the *pali* system will be operated in such a way as to ensure that at the end of the month, all workers in each department will get uniform number of working days and uniform number of *pali* days, as far as practicable.

(c) The system at present in vogue in the Boiler-maker department of giving coloured tokens bearing ticket numbers to men on *pali* will be followed in all other departments and in addition, each worker will be given a monthly record ticket on which his presence, *pali*, leave and absence will be marked every day.

(d) No work which is of the kind ordinarily done by the Company and which can be carried out by the workmen in the employ of the Company shall be sent out to any outside agency, unless special circumstances necessitate the Company to act otherwise.

(e) If any worker who is offered work is unable to work on any day on account of any reasonable personal excuse he shall not lose his turn on the next day.

ISSUE

No. 2.—Should bonus, if any, be granted on the workers' earnings for the year ending 31st March 1946 and if so on what terms and conditions?

TERMS OF SETTLEMENT

This issue is settled in the following manner:

In view of the fact that the Company's Profit and Loss Accounts and Balance Sheets for the financial years ending 31st March 1944, 1945 and 1946 are not yet ready, it is agreed that—

(a) The Company shall pay on or before the 10th of June 1946, to each of their workers including those retrenched or discharged except for gross misconduct, who are or were on the Company's muster roll during the year 1945-46, a bonus equal to 1/12th of his total basic earnings during the year ending 31st March 1946, in accordance with previous practice;

(b) The Company shall furnish to the Dockyard Labour Union copies of the above balance-sheets as soon as they are ready and audited; and

(c) The Dockyard Labour Union on behalf of the employees of the Company, reserves the right, if so advised, to make a claim for a further supplementary bonus after inspecting the said balance-sheets.

ISSUE

No. 4.—Should the workers who have either been retrenched or discharged or who have left service of their own accord be granted proportionate wages in lieu of leave with pay earned but not enjoyed?

TERMS OF SETTLEMENT

This issue is settled in the following manner:

(a) The Company agrees to pay to those workers, who have been retrenched or discharged, except for gross misconduct, proportionate wages for leave earned by them but not enjoyed prior to their retrenchment or discharge, provided that the qualifying period for such leave shall be calculated on the basis of the Company's Leave Rules in force at the time of their retrenchment or discharge, and provided further that where the Leave Rules require the qualifying period to be of 300 days, the said 300 days shall include days on *pali*;

(b) For future calculation of leave the 300 days of work will include *pali* days.

(c) The following table of proportionate leave with pay to be granted to daily-rated operatives, after the first 300 days of work (including *pali* days), will be adopted.

No. of days worked.					Leave with pay to be granted.
300 to 360	...	...	...	...	10
361 to 420	...	...	...	...	12
421 to 480	...	...	...	...	14
481 to 540	...	...	...	...	16
541 to 599	...	...	...	...	18
Over 600	...	...	...	...	20

In other respects the Leave Rules of the Company now in force shall be followed.

No. 8.—Should workers in the Gunners Labour Department, if required to commence work after midnight, be paid for the whole night?

This issue is settled in the following manner:

(a) Workers of the Gunners Labour Department shall have the option to refuse work to commence after midnight and shall not be victimised or punished for such refusal; and

(b) As far as possible the Company will endeavour to give work to those workers who have been on *pali* during the day preceding the night, but no penalty of any kind whatsoever shall be imposed on them for refusing midnight work.

(Signed) W. F. FAIRBAIRN,

(Signed) K. B. WASSOODEW,

(Signed) CRAIGIE BLUNT & CAROE,
Bombay, 3rd April 1946.

for and on behalf of the
Mazgaon Dock Ltd.,
Bombay.

(Signed) K. K. KHADILKAR,
General Secretary,

for and on behalf of the
Dockyard Labour Union,
Bombay, for the employees
of the Mazgaon Dock Ltd.,
Bombay.

Before me,
General Manager.
Adjudicator,
Solicitors,



ANNEXURE B

(Exhibit 21)

PROPOSED

SCHEDULE OF SCALES OF PAY

AND

RULES GOVERNING APPRENTICESHIP AND

THE GRANTING OF INCREMENTS

RATES OF PAY

Schedule of Rates of Pay—

Column 1 is the classifications for all workmen usually employed by the Company.

Column 2 is the number of years apprenticeship with a recognised Company required in the case of certain classifications to qualify for the minimum rate in Column 3. The rates of pay during such apprenticeship are shown at the end of the Schedule.

Column 3 is the minimum daily rate that will be paid to a workman in each classification provided where a qualifying period of apprenticeship is required this apprenticeship has been served with a recognised Company for the full period shown in column 2.

Column 4 is the increments which a workman in each classification will receive on length of service only. Each figure represents a year of service—the first figure representing the first year of service—and is the increment, if any, which he will receive on the first day of each year of service, e.g., a coolie will receive a service increment of 1 anna on the first day of his fourth and seventh year of service.

Column 5 is the period between each service increment shown in column 4.

Column 6 is the longest period it will take a workman who starts on the minimum rate in column 3 to reach the maximum daily rate that will be paid on length of service only.

Column 7 is the maximum daily rate which will be paid and to which a workman can become entitled on length of service.

Column 8 is the maximum daily rate for each classification that will be paid to any workman both on merit and length of service except in the case of those workmen whose exceptional ability merits promotion to the status of Leading Hand or Assistant Chargeman. For such specialised hands there can be no gradation

of wages. The rates for chargemen and mistries will be fixed from time to time according to ability.

RULES GOVERNING RATES OF PAY

Trade Apprenticeship—

1. No workman will become eligible or be entitled to or receive the minimum rate in column 3 for any of the classifications for which a qualifying period of apprenticeship is required unless he has served an apprenticeship with a recognised Company for the full period laid down in column 2.

2. Apprentices will in no circumstances be given merit increments during their apprenticeship and will be paid only in accordance with the scale laid down for trade apprentices in the schedule.

3. If, as will be allowed only under very special circumstances, an apprentice joins the Company after having served not less than one year of his apprenticeship with not more than one other recognised Company, he will, on production of a certificate to that effect, be rated and receive service increments as though he had served such part of his apprenticeship with the Company.

4. If an apprentice joins the Company after having served part of his apprenticeship with another Company which is not recognised or is unable to produce a certificate covering his previous period of apprenticeship with a recognised Company or has served less than one year's apprenticeship with another recognised Company or has served his previous period of apprenticeship with more than one other recognised Company, he will be rated solely at the discretion of the Company and will in all cases, subject to a minimum rate of eight annas per day, lose one year in seniority than if he had served such part of his apprenticeship with the Company. In such cases for the purpose of service increments the first figure in column 4 of the schedule will represent the first year of service with the Company.

5. The number of apprentices employed for each trade where a qualifying period of apprenticeship is required will at all times be limited by the Company to not more than half the number of workmen employed in that trade.

6. No apprentice shall during his apprenticeship join, or take part in any activities of, any labour or trade union.

Minimum Daily Rate of Pay—

1. On joining the Company, provided he has completed with a recognised Company the full period of apprenticeship with a

certificate to that effect in the case of classifications for which a qualifying period of apprenticeship is required, a workman may at the sole discretion of the Company be started on a rate higher than the minimum daily rate laid down for his classification.

Service Increments—

1. If a workman is promoted from one classification to another bearing a higher scale of pay whether or not the rate of pay at which he commences in the new classification is the same or higher than the minimum but less than the maximum service rate for the new classification, or if a workman on joining the Company is started on a rate of pay higher than the minimum but less than the maximum service rate for his classification, the first figure in column 4 will represent his first year of service in the classification to which he is promoted or in which he is started and he will receive from the date of his promotion or starting service increments in accordance with the scale laid down for that classification until such time as he is being paid the maximum service rate for that classification.

2. If a merit increment (s) is given to a workman before he has reached the maximum service rate for his classification he will, until such time as he reaches the maximum service rate for his classification, continue to receive service increments in the same manner as he would have done had a merit increment(s) not been given.

3. Service increments will be given from the first day of the month following the date on which they become due.

Merit Increments—

1. Merit increments can, except in the case of apprentices be given at any time during the period of a workman's service.

2. Merit increments will be given solely at the discretion of the Company and no workman can under any circumstances claim that he is entitled to a merit increment.

Maximum Rates of Pay—

1. No workman who has reached for his classification the maximum rate of pay on service in column 7 of the schedule will be entitled to or receive any further increment except on merit and at the sole discretion of the Company.

2. No workman on daily rate of pay will be paid more than the maximum rate of pay on merit and service for his classification in column 8 of the schedule.

Previous service—

1. Service with another Company and within the limits laid down in these rules will only be considered in the case of an apprentice who has served not less than one year of his previous apprenticeship with not more than one other recognised Company and produces a certificate to that effect or in the case of a workman who is taken on in a classification for which a qualifying period of apprenticeship is required and who produces a certificate showing that he has served with another recognised Company the full qualifying period of apprenticeship for that classification.

2. Recognition of previous service in the case of an apprentice who has served part of his apprenticeship with another Company has been dealt with under "Trade Apprenticeship".

3. The starting rate of pay of a workman, provided he produces a certificate showing that he has served with another recognised Company the full qualifying period of apprenticeship for the classification in which he is taken on, if that classification requires a qualifying period of apprenticeship, will not be less than the minimum rate of pay for that classification and may at the sole discretion of the Company be more.

4. The starting rate of pay of a workman who is unable to produce a certificate of previous service with a recognised Company will in no case be more than the minimum rate of pay for the classification in which he is taken on, and may be less if for that classification a qualifying period of apprenticeship with a recognised Company is required and in the opinion of the Company he is considered not to have reached the standard of workmanship generally expected of an apprentice who has served the full period of apprenticeship.

Service with the Company—

1. For the purpose of these rules a year of service will be twelve calendar months.

2. For the purpose of promotion or service increments a year of service will be deemed to have been completed if during the twelve months following his joining the Company or last service increment a workman has been absent due to any cause not more than thirty days.

3. In the event of a workman being absent due to any cause, except an accident for which he has received compensation under the Workmen's Compensation Act, more than thirty days during the twelve months following his joining the Company or last service increment, he will be required to work two days for every

one day he has been absent over the thirty days before he will be deemed to have completed that year of service.

Present Status—

1. The present rate of pay of any workman will not be reduced if in excess of the scale of rates laid down in the schedule.

2. A workman, who is at present in a classification or as an assistant to that classification for which a qualifying period of apprenticeship is required, is unable to produce evidence of having served the full qualifying period of apprenticeship with a recognised Company in that classification and is being paid less than the minimum daily rate for that classification, will be re-classified as a trade apprentice and will be entitled to service increments on the scale laid down for trade apprentices based on his length of service only with the Company.

3. A workman, who is at present receiving a rate of pay equal to or more than the minimum but less than the maximum service rate of pay for his classification will be entitled to service increments on the scale laid down for that classification and for this purpose, regardless of his length of service, the first figure in column 4 of the schedule will represent his first year of service from the date of introduction of the schedule.

SCHEDULE OF RATES OF PAY

Classification.	Qualifying period of trade apprenticeship.	Minimum daily rate.	Scale of service increments.	Period between service increments.	Period required to reach maximum service rate.	Maximum daily rate	
						only.	on service and merit.
		Rs. a. p.	Annas.	Years.	Years.	Rs. a. p.	Rs. a. p.
1		3	4	5	6	7	8
<i>Machine and Fitting Shop—</i>							
Fitter	...	1 12 0	0-0-2-0-2-0-2	2	6	2 2 0	3 2 0
Turner	...	1 12 0	0-0-2-0-2-0-2	2	6	2 2 0	3 2 0
Marker	...	1 12 0	0-0-2-0-1-0-2	2	6	2 2 0	3 2 0
Planer	...	1 12 0	0-0-0-2-0-0-2	3	6	2 0 0	2 12 0
Miller	...	1 12 0	0-0-0-2-0-0-2	3	6	2 0 0	2 12 0
Shaper	...	1 12 0	0-0-0-2-0-0-2	3	6	2 0 0	2 12 0
Slotter	...	1 12 0	0-0-0-2-0-0-2	3	6	2 0 0	2 12 0
Driller	...	1 12 0	0-0-0-2-0-0-2	3	6	2 0 0	2 12 0
Mochi	...	1 4 0	0-0-0-1-0-0-1	3	6	1 6 0	1 8 0
Oilman	...	1 2 0	0-0-0-1-0-0-1	3	6	1 4 0	1 4 0
<i>Smith Shop—</i>							
Blacksmith	...	1 12 0	0-0-2-0-2-0-2	2	6	2 2 0	3 2 0
Die Sinker	...	1 12 0	0-0-2-0-2-0-2	2	6	2 2 0	3 2 0
Fitter	...	1 12 0	0-0-2-0-2-0-2	2	6	2 2 0	3 2 0
Steam Hammerman	...	1 2 0	0-0-0-1-0-0-1	3	6	1 4 0	1 6 0
Striker	...	1 0 0	0-0-0-1-0-0-1	3	6	1 2 0	1 4 0
<i>Coppersmiths—</i>							
Coppersmith	...	1 12 0	0-0-2-0-2-0-2	2	6	2 2 0	3 2 0
Plumber	...	1 12 0	0-0-2-0-2-0-2	3	6	2 0 0	2 12 0
Tinsmith	...	1 12 0	0-0-0-2-0-0-2	3	6	2 0 0	2 12 0
Brass Finisher	...	1 12 0	0-0-0-2-0-0-2	3	6	2 0 0	2 8 0
<i>C. I. and Brass Foundry—</i>							
Patternmaker	...	1 8 0 (1 12 0)	0-0-2-0-2-0-2 (0-0-2-0-0-2)	2 (3)	6 (3)	1 14 0 (2 0 0)	3 2 0

SCALES OF PAY

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Classification.	Qualifying period of trade appren- ticeship.	Minimum daily rate.	Scale of service increments.	Period between incre- ments.	Period required to reach maximum service rate.	Maximum daily rate on service only.	Maximum daily rate on merit.
	2	3	4	5	6	7	8
	Years.	Rs. a. p.	Annas.	Years.	Years.	Rs. a. p.	Rs. a. p.
<i>Machine and Fitting Shop—</i>							
Moulder ...	...	...	...	...	...	...	...
Coremaker ...	...	...	...	...	...	...	...
Chipper (Hand) ...	...	...	...	...	...	...	...
Cupolaman ...	...	...	...	...	...	...	...
Moulding M/c Operator ...	...	...	...	...	...	...	...
Moulding M/c Boy ...	...	...	...	...	...	...	...
<i>Welding Department (Oxy-Acetylene and Electric)—</i>							
Welder (Steel Work) ...	...	...	...	...	...	...	...
Cutter (Steel Work) ...	...	...	...	...	...	...	...
<i>Welder Learner (Steel Work)</i>							
<i>Electric Shop—</i>							
Electrician (Maintenance) ...	...	...	...	...	...	...	...
Electric Fitter ...	...	...	...	...	...	...	...
Armature Winder ...	...	...	...	...	...	...	...
Wiremen ...	...	...	...	...	...	...	...
Electric Turner ...	...	...	...	...	...	...	...
Telephoneman ...	...	...	...	...	...	...	...
Craneman ...	...	...	...	...	...	...	...
<i>Automobile—</i>							
Motor Mechanic ...	...	...	...	...	...	...	...

SCHEDULE OF RATES OF PAY

Classification.	Qualifying period of trade apprenticeship.	Years.	Minimum daily rate.	Scale of service increments.	Period between service increments.	Period required to reach maximum service rate.	Maximum daily rate on service only.	Maximum daily rate on service and merit
1	2	3	4	5	6	7	8	
		Rs. a. p.	Annas.	Years.	Years.	Rs. a. p.	Rs. a. p.	
Cleaner	...	0 15 0	0-0-0-1-0-0-1	3	6	1 1 0	1 1 0	
<i>Structural Shop—</i>								
Template Maker	...	1 12 0	0-0-2-0-2-0-2	2	6	2 2 0	3 2 0	
Boilermaker (Ship)	...	1 12 0	0-0-2-0-2-0-2	2	6	2 2 0	3 2 0	
Plater	...	1 12 0	0-0-0-2-0-0-2	3	6	2 0 0	2 8 0	
Riveter	...	1 8 0	0-0-0-2-0-0-2	3	6	1 12 0	2 2 0	
	...	(1 12 0)				(2 0 0)		
Machineman	...	1 4 0	0-0-0-2-0-0-2	3	6	1 8 0	1 12 0	
Holder-Up	...	1 4 0	0-0-0-1-0-0-1	3	6	1 6 0	1 8 0	
Assembler	...	1 2 0	0-0-2-0-2-0-2	2	6	1 8 0	2 0 0	
Marker	...	1 2 0	0-0-2-0-2-0-2	2	6	1 8 0	2 0 0	
Driller	...	1 2 0	0-0-2-0-2-0-2	2	6	1 8 0	2 0 0	
Rivet Boy	...	0 14 0	0-0-1-0-1-0-1	2	6	1 5 0	1 8 0	
Boy Learner	...	0 12 0	0-1-1-1	1	3	1 1 0	1 2 0	
<i>Shipwright—</i>								
Carpenter (1st Grade)	...	1 12 0	0-1-1-1	1	3	0 15 0	1 0 0	
Carpenter (2nd Grade)	...	1 12 0	0-0-0-2-0-0-2	3	6	2 0 0	2 8 0	
Boat Builder	...	1 4 0	0-0-0-1-0-0-1	3	6	1 6 0	1 8 0	
Mason	...	1 12 0	0-0-0-2-0-0-2	3	6	2 0 0	2 8 0	
Machineman	...	1 12 0	0-0-0-2-0-0-2	3	6	2 0 0	2 8 0	
Bricklayer	...	1 8 0	0-0-0-2-0-0-2	3	6	1 12 0	2 4 0	
<i>Paint Shop—</i>								
Polisher	...	1 4 0	0-0-0-1-0-0-1	3	6	1 6 0	1 10 0	
Letter Painter (Despatch)	...	1 8 0	0-0-0-2-0-0-2	3	6	1 12 0	2 2 0	
	...	1 6 0	0-0-0-1-0-0-1	3	6	1 8 0	1 8 0	

SCALES OF PAY

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Classification.	Qualifying period of trade apprenticeship.	Minimum daily rate.	Scale of service increments.	Period between increments.	Period required to reach maximum service rate.	Maximum daily rate on service only.	Maximum daily rate on merit.
1	2	3	4	5	6	7	8
	Years.	Rs. a. p.	Annas.	Years.	Years.	Rs. a. p.	Rs. a. p.
Paint (Ship Decorator)	...	1 4 0	0-0-0-2-0-0-2	3	6	1 8 0	2 0 0
Painter (Steel Work)	...	1 0 0	0-0-0-1-0-0-1	3	6	1 2 0	1 4 0
Sail Loft—							
Sailmaker	...	1 8 0	0-0-0-2-0-0-2	3	6	1 12 0	2 8 0
Gunners Labour (Lascars)—							
Tindal	...	1 9 0	0-0-0-2-0-0-2	3	6	1 15 0	2 0 0
Lascar	...	1 2 0	0-0-1-0-1-0-1	2	6	1 5 0	1 8 0
Boy Lascar	...	0 8 0	0-2-2-2	1	3	0 14 0	1 0 0
Gunners Labour—							
Tindal	...	1 4 0	0-0-0-2-0-0-2	3	6	1 8 0	1 12 0
Stevadore	...	0 15 0	0-0-0-1-0-0-1	3	6	1 1 0	1 4 0
Lascar Coolie	...	0 15 0	0-0-0-0-0-0-1	6	6	1 0 0	1 0 0
General—							
Muccadam	...	1 4 0	0-0-0-1-0-0-1	3	6	1 6 0	1 8 0
Coolie	...	0 15 0	0-0-0-1-0-0-1	3	6	1 1 0	1 1 0
Trade Apprentice (5 years)—							
Trade Apprentice (4 years)	...	0 8 0	0-4-4-4-4	1	4	1 8 0	1 8 0
	...	0 8 0	0-4-4-4	1	3	1 4 0	1 4 0

Note.—Under the Award the figures in brackets should be substituted for the figures on the top, in the case of (1) patternmakers, (2) moulders, (3) coremakers, (4) cutters and (5) riveters.

ANNEXURE C

Comparative statement showing the wage rates in the Mazgaon Dock Ltd., and those proposed by the Dockyard Labour Union.
(Extract from Exhibit 24)

Category.	The Mazgaon Dock Ltd.		The Dockyard Labour Union.	
	Minimum.	Maximum.	Minimum.	Maximum.
<i>Machine Shop and Fitting Shop—</i>				
	Rs. a.	Rs. a.	Rs. a.	Rs. a.
Chargeman	120 0	220 0	150 0	350 0
Mistry	3 0	3 0	3 8	6 0
Fitter	1 12	3 14	2 2	4 12
Turner	1 12	4 6	2 2	4 8
Driller	...	...	...	...
Mochi	1 4	1 8	1 6	2 4
Oilman	1 2	1 8	1 8	2 8
<i>Smith Shop—</i>				
Chargeman	120 0	120 0	100 0	200 0
Mistry	2 12	2 14	3 0	5 0
Blacksmith	1 12	2 14	2 2	3 8
Hammerman	1 2	1 10	1 6	2 4
<i>Coppersmith Shop—</i>				
Chargeman	110 0	140 0	100 0	200 0
Mistry	2 10	3 0	2 8	4 0
Coppersmith	1 12	2 8	1 12	4 0
Plumber	1 12	2 4	1 12	3 4
Tinsmith	1 12	2 0	2 0	3 8
Brass Finisher	1 12	2 4	1 12	3 4
Locksmith	1 12	2 4	2 0	3 8
<i>C. I. and Brass Foundry—</i>				
Chargeman	120 0	150 0	100 0	200 0
Mistry	3 0	3 4	...	...
Patternmaker	1 12	3 3	2 2	4 0
Moulder	1 8	3 0	2 2	4 0
Core-maker	...	...	1 8	3 0
Chipper (Hand)	1 2	1 8	1 6	2 0
Furnaceman	1 12	2 8	1 12	3 4
<i>Welding Department (Oxy-Acetylene and Electric)—</i>				
Chargeman	150 0	250 0	100 0	200 0
Mistry	3 0	3 0	3 0	5 0
Welder (Steel Work)	2 0	4 8	2 2	5 0
Cutter (Steel Work)	1 8	2 8	1 12	3 8
<i>Electric Shop—</i>				
Chargeman	235 0	235 0	150 0	350 0
Mistry	2 4	4 0	3 8	6 0
Electric Fitter	1 12	2 8	2 2	4 12
Armature Winder	1 12	3 0	2 2	4 12
Wireman	1 12	2 8	2 2	3 4

SCALES OF PAY

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Category.	The Mazgaon Dock Ltd.		The Dockyard Labour Union.	
	Minimum.	Maximum.	Minimum.	Maximum.
	Rs. a.	Rs. a.	Rs. a.	Rs. a.
Electric Turner ...	1 12	2 0	2 2	4 0
Telephoneman ...	1 12	2 12	2 2	3 6
Craneman ...	1 4	1 12	2 0	3 4
<i>Automobile—</i>				
Chargeman ...	190 0	190 0	150 0	350 0
Motor Mechanic ...	1 12	3 4	2 2	4 12
Cleaner ...	0 15	1 8	1 6	2 8
<i>Structural Shop (Boilermaker)—</i>				
Chargeman ...	80 0	186 0	150 0	350 0
Mistry ...	2 0	2 4	3 0	5 0
Plater ...	1 12	3 0	2 2	4 0
Boilermaker ...	1 12	2 12	2 2	4 8
Riveter ...	1 8	2 12	1 12	3 0
Machineman ...	1 8	2 0	...	.
Holderup ...	1 4	2 0	1 6	2 4
Caulker ...	1 10	2 0	1 12	2 12
<i>Shipwright Shop—</i>				
Chargeman ...	90 0	180 0	100 0	250 0
Mistry ...	.	...	3 0	5 0
Carpenter I (Rough) ...	1 4	1 10	1 12	3 0
Carpenter II (Joiners) ...	1 12	3 2	2 2	5 0
Boat Builder ...	1 12	2 8	2 2	3 8
Machineman ...	1 8	2 14	2 2	4 0
Bricklayer ...	1 4	1 14	1 12	3 0
Mason ...	...	...	...	...
<i>Paint Shop—</i>				
Chargeman ...	100 0	140 0	100 0	200 0
Mistry ...	.	...	3 0	5 0
Polisher ...	1 8	2 0	1 12	3 0
Letter Painter (Despatch) ...	1 5	1 8	2 2	4 0
Painter (Ship Decoration) ...	1 4	2 8	1 8	3 0
Painter (Steel Work) ...	1 0	1 4	1 8	2 8
<i>Sail Loft—</i>				
Chargeman ...	120 0	120 0	...	...
Mistry ...	...	...	3 0	5 0
Sailmaker ...	1 8	2 2	1 12	3 0
Upholster ...	2 4	3 0	1 12	3 0
<i>Gunners Labour—</i>				
Chargeman ...	85 0	135 0	100 0	200 0
Tindal (Lascar) ...	1 9	2 7	1 12	3 8
Lascar ...	1 2	1 12	1 8	2 4
Lascar Coolies ...	0 15	0 15	1 4	2 4
Tindal (Stevedore) ...	1 4	1 14	1 12	3 8
Stevedore ...	0 15	1 4	1 4	2 4
<i>General—</i>				
Chief Muccadam ...	75 0	75 0	...	...
Muccadam ...	1 4	1 10	...	...
Coolies ...	0 15	1 7	1 4	2 2

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BOMBAY ELECTRIC SUPPLY AND TRAMWAYS CO., LTD.

AND

ITS EMPLOYEES

Adjudicator:—The Honourable Mr. Justice Broomfield, Kt.
Mr. S. C. Joshi, Miss Shantabai Bhalerao and Mr. H. Rasool for the B. E. S. T. Traffic Union.
Messrs. Purshottam Tricumdas, N. T. Shroff and M. Haris for the B. E. S. T. Workers' Union.
Messrs. V. H. Joshi, Gopal Rajaram and Baburao Laxman for the B. E. S. T. Tramwaymen's Union.
Messrs. F. M. Bharucha and S. Mhatre for certain non-union men.
Sir Jamshedji Kanga and Messrs. A. S. Trollip and F. Aulton for the Company.

Report

1. I was appointed to adjudicate in this dispute by an order of the Government of Bombay under sub-rule (1) of rule 81-A of the Defence of India Rules, dated 29th May 1942. The order directed that I should as far as possible exercise the powers and follow the procedure of a Board of Conciliation under the Trade Disputes Act, 1929, and the Bombay Trade Disputes Rules, 1930. It will be convenient to begin my report by stating the circumstances leading to the crisis which necessitated the appointment of an Adjudicator.

CIRCUMSTANCES LEADING TO THE APPOINTMENT OF AN ADJUDICATOR

2. In consequence of events in the far east, after the entry of Japan into the war, there was a certain amount of panic in Bombay by which the employees of the Bombay Electric Supply and Tramways Company, among others, were affected. Government issued notifications under the Essential Services Ordinance declaring the Bombay Electric Supply and Tramways Company an essential service and empowering the officers of the Company to order employees not to leave Bombay. At the end of February 1942 the Chairman of the Company, Sir Purshottamdas Thakurdas,

conferred with Mr. Purshottam Tricumdas, President of the B. E. S. T. Workers' Union, which is the largest of the three Unions to which the Company's employees belong, as to the best means of meeting the situation. Pursuant to this conference on the 16th of March 1942 the Company announced a special emergency bonus of one and a half month's pay. This was in addition to the ordinary bonus of half a month's pay due in May 1942 on account of the previous year and was made payable by instalments in August and November 1942 and February 1943. (That is the effect of the Company's circular attached as Exhibit 1 to the Company's reply according to Sir Jamshedji Kanga. The circular merely announces the payment of four bonuses of half a month's pay in May, August and November 1942 and February 1943 subject to their being earned by regular attendance. The Company also agreed to give compensation for war injuries in addition to that payable under the War Injuries Ordinance. About the same time Mr. V. H. Joshi of the B. E. S. T. Tramwaymen's Union representing the Workshops and Engineering Department of the Company put forward a claim for loans to assist the evacuation of workers' families and the Company agreed to grant loans for this purpose repayable after the war.

3. On the 3rd of April 1942 a general meeting of the B. E. S. T. Traffic Union, to which most of the bus drivers and conductors and some tramway men belong, passed twelve resolutions formulating grievances and demanding their redress. On the 4th of May a meeting took place between representatives of the Unions and the Company. The Company took the view, for which there was certainly some justification, that the pressing of all these demands at such a time, and particularly after the grant of the special bonuses, was unreasonable, and the result of the conference was unsatisfactory to the workers. On the 7th of May another general meeting of the Union resolved that unless three of the original twelve demands viz., (1) restoration of old grades of pay and *buxis*, (2) one month's leave with pay every year and (3) double wages for duty on weekly off-days, were immediately granted, notice of strike would be given. A notice embodying these three demands and threatening a strike after the 28th May unless they were conceded was sent to the General Manager of the Company on the 14th of May. The Company on the 22nd May intimated its inability to comply.

4. In the meanwhile on the 16th of May, two days after the strike notice, the Workers' Union submitted seven demands for the consideration of the Company and requested a reply within a week. These demands were the same as those put forward in my Inquiry. On the 18th May the Managing Committee of the Tramwaymen's Union passed resolutions asking for a revision of the scales of dearness allowance and for an emergency evacuation allowance.

These two resolutions were communicated to the Company on the 21st May. The Company's reply to these two Unions was that the question of dearness allowance was under negotiation but that the other demands could not be granted.

5. On the 22nd May the Commissioner of Labour put forward a suggestion that the demands of the Unions should be referred to an Arbitrator to be appointed by Government. This proposal was accepted by the Company but was not found acceptable either by the Traffic Union or the Workers' Union. The strike notice expired on the 28th May and most of the bus drivers and conductors and some of the tramway men struck work. There was no strike in the workshops. The Company made arrangements to carry on a restricted service with the aid of volunteers. On the 29th May the order appointing me as Adjudicator was issued and on the 1st June it was decided at a meeting of the strikers to call off the strike. The men returned to work on the following day.

PRELIMINARY MEETING AND PROCEDURE

6. I had an informal meeting with representatives of the Unions and the Company on the 2nd of June to settle the procedure. It was arranged that the Unions should formulate the demands on which they proposed to insist and furnish a copy to the Company. The Company was directed to draw up a reply and furnish a copy of it to the Unions. It was agreed that after the exchange of these documents the representatives of the Unions should meet the representatives of the Company and endeavour to come to an agreement on as many points as possible. (This meeting duly took place but proved to be entirely abortive). The first hearing of the Inquiry was fixed for the 11th June and notices were put up on the Company's notice boards intimating that employees not belonging to any Union might, if they chose, send representatives to take part in the Inquiry. Two representatives of non-union men appeared in reply to the notice, Messrs. F. M. Bharucha and S. Mhatre, representing the Car-Shed Department and Sub-Station Department respectively. The latter authorised Mr. V. H. Joshi of the Tramwaymen's Union to speak for him.

7. The Inquiry was held on the 11th, 12th, 16th, 17th and 18th June. There was a short final session on the 19th for clearing up certain points on which I required further information. The atmosphere of the proceedings was quite amicable. There was even a certain amount of give and take on some points. Mr. Purshottam for the Workers' Union made considerable modifications in the demand for sick leave with pay. The Company made a voluntary offer of increased pay for work on off-days. But generally speaking the representatives of the employees showed so little disposition to abate their extreme demands that a settlement

by agreement never appeared to be within the bounds of possibility. I have therefore had to adjudicate on all the points which in my view were within the scope of my appointment. (Most of the very numerous demands put forward by Mr. V. H. Joshi on behalf of the Tramwaymen's Union appeared to me to have no real connection with "the trade dispute" on which I was appointed to adjudicate. My reasons for declining to consider these demands are given more fully in a later paragraph.)

GENERAL PRINCIPLES APPLICABLE TO PUBLIC UTILITY COMPANIES

8. The position of the employees in the Bombay Electric Supply and Tramways Company has been quite recently the subject of judicial investigation. Early in 1940 Sir Govind Madgavkar held an Inquiry under the Trade Disputes Act into the claim for dearness allowance then put forward. That was the only point with which he was directly concerned but his report contains important observations on the general principles applicable to public utility services. These I propose to quote not because these principles have been openly or consciously challenged in this Inquiry, but because it appears to me that they have been overlooked in many of the demands now put forward on behalf of the employees:

"Government, the Municipality and the public of Bombay have a right to efficient service at the hands of the Company without dislocation or interruption or accidents. With the internal management of the Company including the wages of the employees they are not directly concerned. Nor is it clear that the employees of the Company, because it is a public utility Company, can claim any higher rights than the employees of any other company. But the conditions of their employment including hours and wages must be such as to ensure the safety of the public and its convenience."

"The direction, financial and technical, of public utility companies must remain with the Board and its officers, who must function as its brain and must have the necessary powers. Under no system can these powers be delegated to the Unions or the employees who, from the highest paid to the lowest, are and must continue to be servants and not masters of the Company and its shareholders, by reason of their employment. But subject to the discipline and obedience necessarily involved in such service, the safety and the interests of the public, no less than the interests of the Company, demand that the hours and the wages of the employees should be such as to produce an efficient and contented body of men, who can be trusted with the transport and lighting of a City of the importance of Bombay."

Sir Govind followed up these later observations by pointing out

the disastrous consequences which may ensue "if each concession on the part of the employer is to be received as a trifle and simply as a mere matter of right due to the employee and is to be only the stepping-stone to further never ending demands, until the employee becomes the master and the employer the servant."

9. Sir Govind Madgavkar's conclusion, the soundness of which I think can hardly be questioned, was that the amount of relief which the Company can be expected to give in order to ease the hardships of its employees and to maintain their efficiency and contentment must depend first and foremost "on grounds neither of morality or politics or law but rather on grounds of finance and practical working of the business of the Bombay Electric Supply and Tramways Company". The demand made in 1940 which Sir Govind held to be out of the question, in view of the financial history of the Company from 1929, would have cost Rs. 11,00,000 a year. The estimated cost of the present demands is more than Rs. 24,00,000. Details of the calculation are given in the Company's written reply. There may perhaps be a certain amount of overlapping in one or two of the items and the cost of the demand for sick leave with pay as finally modified would be a good deal less than as stated. But the fact remains that the cost of granting anything like the totality of these demands would be prohibitive, even on the assumption that the annual net profits earned by the Company maintain the same average level of over Rs. 40,00,000 as in the period 1931 to 1941. I may mention that the total wages bill in 1941 was roughly Rs. 55,00,000 and the bill for the transportation branch, which would chiefly benefit from the demands, was roughly Rs. 43,00,000.

DEMANDS OF THE TRAFFIC UNION

10. The demands of the Traffic Union are (1) restoration of the old, i.e., pre-1932 or 1934 scales of wages, (2) consolidation of the war allowance of 1918, (3) increase of the maximum from Rs. 40 to Rs. 50 in the case of bus conductors and tram drivers and tram conductors, (4) leave with pay for one month in a year, (5) double wages for work on weekly rest days, (6) increase in the dearness allowance. The first, fourth and fifth of these demands were mentioned in the strike notice.

DEMANDS OF THE WORKERS' UNION

11. The demands of the Workers' Union are (1) restoration of the old grade in force prior to 1934, (2) raising of the maximum limit of pay from Rs. 40 to Rs. 50, (3) the practice of good attendance *buxis* of Rs. 5 to be extended to all workers employed either before or after 1934, (4) one month's bonus every year, (5) one month's leave with pay every year, (6) in case of illness

half the pay during such period of illness not exceeding three months, (7) dearness allowance on the basis of the scheme recommended for mill workers plus one-third. These demands are the same as those put forward in the Union's letter of the 16th May.

DEMANDS FOR HIGHER WAGES

12. The demands for "restoration" of former rates of wages and for the increase of the maximum wage in the case of the tramway men may be considered together as practically the same considerations apply to them. In order to understand the matter it will be necessary first to state the facts about the different scales of wages which are not quite accurately set out in the written statements of the Unions. The running of motor buses by the Company was introduced in 1926 and the starting pay for bus drivers was then Rs. 68-12-0, made up of basic pay Rs. 50, war allowance Rs. 12-8-0 and *buxis* Rs. 6-4-0. After three months there was an increase of Rs. 5 in the basic pay and there were biennial increases of Rs. 5 up to the tenth year, by which time the total amounted to Rs. 106-2-0. This scale was abolished in 1st May 1932 and for a time the Company adopted the system of payment by the day. On 1st January 1934 a new scale of wages was introduced with two grades. The starting pay was the same in both grades, basic pay Rs. 44 and war allowance Rs. 11. But whereas in grade (1) there is an increment of Rs. 5 after six months with annual increments of Rs. 5 until the maximum of Rs. 90 is reached after six years, in grade (2) the increments are biennial and the maximum of Rs. 80 is reached only after ten years. But I am informed that all efficient men are promptly promoted to grade (1) and very few remain for any length of time in grade (2), as the inefficient either leave the service or are dismissed. The fact that at the present time there are only 36 bus drivers in grade (2), of whom only 11 have over one year's service, as against 265 in grade (1) shows that this must be so. Grade (1) therefore, not grade (2) must be regarded as the normal scale of pay at present.

13. Prior to 1st January 1934 bus and tram conductors started on Rs. 40, made up of basic pay Rs. 27, war allowance Rs. 6-12-0 and *buxis* Rs. 6-4-0. There was an increase of Rs. 3 in the basic pay after two years and of Rs. 10 after three years with corresponding increases in war allowance. That meant that in the fourth year the maximum of Rs. 56-4-0 was reached. Tram drivers started with basic pay of Rs. 26 but reached the same maximum of Rs. 56-4-0 after three years. On the 1st January 1934 *buxis* was abolished. Bus and tram conductors and tram drivers were all put on the same scale and increments were made biennial and spread out, so that the maximum of Rs. 50 (basic Rs. 40 war allowance Rs. 10) was not reached till after the tenth year. But

from the 1st February 1938 two grades were introduced for conductors and tram drivers as in the case of bus drivers. Grade (2) is the same as the scale of 1934, grade (1) is a great improvement on it as there are annual increments and the maximum of Rs. 50 (Rs. 40 plus Rs. 10) is reached after five years. The same considerations apply here as in the case of the bus drivers. All new men start in grade (2) but are promoted as soon as efficient. The number remaining in grade (2) after one year's service is very small. (The full details on these points are given in the Company's statements Exs. H, I and J).

14. It is plain and has been admitted that the demand for a "restoration" of old rates of pay is a misnomer. The rates of pay, subject to which the claimants entered the service of the Company, have not been reduced. Except in the case of bus drivers there has been a definite improvement since 1938. Although the Company provides amenities and makes concessions which were not in the contract of service, nothing which was in the contract of service has been taken away. The claim put forward therefore is not really for "restoration" of anything but for an increase in the rates of pay which these new entrants agreed to accept. The argument in support of this increase has ranged over a wide field, but the point on which most stress has been laid is the alleged changes in the nature of the duties which the traffic men have to perform and the conditions in which they have to work. Before discussing that, however, I will mention briefly the other points urged.

15. It was suggested that there ought to be a uniform scale of wages for all men doing the same work. The point was not very clearly formulated and it would be difficult to do so without falling into absurdity. Wages cannot be fixed permanently; there must be revisions as circumstances change. This is not disputed. The essential question underlying these particular demands is whether the scales of wages now in force are reasonable having regard to all the relevant circumstances. The fact that higher wages were paid formerly and are still being received by some of the workers is to my mind not a very important factor, especially as these better paid workers are nearing the end of the normal period of service and in the course of a few years must disappear altogether.

16. Then it has been contended that 1932 was a time of industrial depression and acute unemployment, that the Company took advantage of this to introduce reduced scales of pay and that an unfairly low wage level has been maintained permanently in spite of the fact that the conditions prevailing at that time have not remained the same. The fact that concessions have been given in some respect in the case of some of the workers is pointed to as an admission that the 1934 scales were inadequate. I can see no

justification for this contention. Leaving aside for a moment the case of the bus drivers, the reduction of wages in the case of the others is almost entirely accounted for by the abolition of *buxis*, which, as I have explained elsewhere, cannot properly be treated as part of wages. Apart from that the only difference between the old scale and the new scale [grade (1)] now in force is that the maximum is reached after five years instead of after three years. In the case of the bus drivers no doubt there has been a reduction of basic pay both in respect of starting pay and in the maximum. But the Company says, and the statement is I think in accordance with common knowledge, that in 1926 when the bus service was started and for some years after that motor drivers commanded very much higher rates of pay than have been customary in recent years. I can see no reason to believe that the present scales of wages have been pitched unduly low owing to economic depression.

17. The fact that the Company has been consistently making large profits and has been able to pay its shareholders dividends of 12 per cent. on the ordinary shares and 7 per cent. on the preference shares has been relied upon as an argument justifying higher rates of pay. The same argument has been used to support the demand for higher bonuses. But obviously the same facts cannot be taken into account twice over. As Mr. Justice Chagla said recently in his award in the General Motors Limited dispute, "the distribution of increased profits among workers is better achieved by the giving of an annual bonus than by a further increase in wages."

18. Coming now to the principal argument in support of the demand for higher pay, it has been contended that the work of the employees in the traffic branch has become more responsible, difficult and onerous owing to the great development of the bus and tram service in recent years. Owing to the increase in the number of passengers carried the bus and tram drivers, it is alleged, have to drive faster and make more trips, covering a greater mileage. This has added to the work of the conductors also. Conditions have deteriorated owing to increased traffic in the streets and latterly owing to the black-out. The strict discipline enforced by the Company's officers and the cuts in pay for breaches of the code of offences have also been mentioned, though it is difficult to see what that has to do with the adequacy of the scales of pay. Considering one thing and another, the conditions of employment are said to have become so hard that after 15 years' service the men become physical wrecks and have to retire.

19. I think this is a greatly exaggerated picture. It is perfectly true that the omnibus service has been developed and the tramway system extended to meet the growing needs of Bombay and much of this development has taken place since 1934. This is clear from

the Company's annual reports and from the statements produced in this Inquiry. The number of passengers carried has increased enormously, but there has also been an increase in the number and carrying capacity of the vehicles and in the number of drivers and conductors employed. (The number of passengers carried on the tramways rose from just under 95 million in 1934 to well over 105 million in 1941. But the number of passenger trams in service in the same period rose from 169 to 212). The statements put in by the Company contradict the assertion that there has been a speeding up on the tramways or a material increase in the number of trips worked either in the case of the trams or buses. That the work is hard is not denied. It may in some ways be rather more onerous than it was, but it is work which those seeking employment in a service of this kind in a City like Bombay undertake to do and must expect to have to do. The salient point seems to me to be that the hours of work have not been extended.

20. It appears to be a fact that a large proportion of the employees retire after 15 years' service. The explanation of this given by the Company is that the rules of the provident fund provide for the payment of the maximum retiring gratuity after this period, so that a bus driver may expect to draw from the fund altogether about Rs. 4,000 and the others about Rs. 2,300. After 15 years the provident fund amount increases but the gratuity does not. I dare say this may have something to do with the matter, but I think probably a more important factor in the situation is one which is suggested by the report of the Royal Commission on Labour in India, Chapter II, section 3, viz., that a very large proportion of these employees in the traffic department come from the north of India and other places more or less remote from Bombay. They are of the agricultural class and do not form part of a permanent industrial population. They retain contact with their villages to which sooner or later they intend to return. The fact that many of them return home after 15 years' work if able to do so is no proof therefore that work in the service of this Company is uncongenial. The phenomenon is not peculiar to this Company. Mr. V. H. Joshi at any rate stated that the same thing happens in the railway service. It is asserted by the Company and not denied by the Unions that service with the Company is attractive. There is no difficulty in obtaining recruits and those who retire are usually anxious that some other member of their family should be taken in their stead. I am not prepared to believe that physical exhaustion is the explanation of these somewhat early retirements in any considerable number of cases. It may be pointed out that there are at present on the Company's books 98 tram drivers and 227 tram conductors who have over 15 years' service. As for the bus drivers few if any of them can yet have reached that stage.

21. Figures have been produced by the Company showing that the wages of bus men and tramway men are definitely lower both in Calcutta and Madras. I do not lay great stress on this because I have no means of knowing whether the conditions of work are strictly comparable. But obviously the case for the workers would have been much strengthened if they had been able to show that men doing the same or similar work in other great Cities received better pay or better treatment generally. In estimating the adequacy of the workers' remuneration there are other things to be considered besides the amount and paid directly as wages. This Company spends large sums of money in providing the amenities and facilities enumerated in paragraph 34 of the written reply. The assertion which it makes that considering all the circumstances its employees are well paid and well treated in comparison with those in any other similar undertaking is not shown to be unfounded. In my view therefore no case for an increase in the scales of pay has been made out.

22. The same applies to the demand for an increase in the maximum for conductors and tram drivers. It is obviously part of the same question. The only special argument put forward in this connection was that these men have no prospects outside their own grade. I suppose what was meant was that in this respect they are worse off than bus drivers. But the latter generally speaking are men of a better class. They have to obtain a driving license before they are employed whereas conductors and tram drivers are entirely trained by the Company. Moreover it appears to be incorrect to say that there are no prospects. I am informed that there are many cases of promotions to higher posts in the out-door staff.

23. Before leaving this part of the subject I should say a few words on the question of *buxis*. Men employed before 1934 were paid Rs. 5 a month (proportionately increased by the war allowance) as a reward for regular attendance. Absence with permission did not disqualify for this unless the period of absence exceeded seven days a month. The Company's case is that the payment of *buxis* failed in its object because the men got into the way of remaining absent for the full permissible period. Consequently the system was discontinued. As absenteeism is undoubtedly very prevalent and must be a serious inconvenience to the Company it is perhaps worth considering whether some reward for regular attendance subject to stricter conditions (subject say, to attendance on every day except the regular off-days) might not be a paying proposition. But that is a matter for the Company to decide. No claim can be made by the employees to receive a voluntary payment of this kind which since 1934 has never been held out as an inducement to join the service.

DEMAND FOR CONSOLIDATION OF THE WAR ALLOWANCE
WITH BASIC PAY

24. The war allowance has been paid since October 1918. From the 1st of January 1919 the rates have been 25 per cent, on pay up to Rs. 75, 17½ per cent. on pay from Rs. 76 to 125 and 10 per cent. in other cases with which we are not concerned. The allowance was originally granted to compensate for the increased cost of living which resulted from the last war, but it has been continued ever since without reference to changes in the cost of living index. In the Madgavkar Inquiry the Company itself appears to have treated it as a permanent addition to pay and there is no doubt that to all intents and purposes it is. The demand of the Unions is that it should be treated as part of pay for the purpose of the provident fund and gratuities and also in the calculation of bonuses. In principle this claim is perfectly reasonable but there are difficulties in its application. It is contended on behalf of the Company that the rules of the provident fund in respect of the Company's contribution and the payment of gratuities on retirement are more liberal than they would have been if the calculation had been based on pay plus war allowance. In other words the exclusion of the allowance from pay is said to have been compensated for in other ways. This may perhaps be so. But a much more serious difficulty arises from the fact that the fund is vested in trustees and the rules, which have been duly approved by the Commissioner of Income-tax, contain a proviso (see rule 30) that no alteration shall be made affecting the amount of the Company's contribution. It would be futile therefore to recommend consolidation of the war allowance with basic pay for the purpose of provident fund and gratuity.

25. No such objection arises, however, in the case of bonuses. It is the usual practice when bonuses are paid to the employees of a Company out of profits to pay them in terms of the monthly wages, half a month's, one month's, two month's wages, as the case may be. If any considerable item of wages is excluded from the calculation the bonus is clearly something less than what it purports to be and than what it is usually. It may not be possible to reopen the question of bonuses already settled, nor I think do the unions expect this. But the claim that in future war allowance should be treated as part of wages in the calculation of bonuses is in my opinion a reasonable one and should be conceded.

DEMANDS FOR LEAVE WITH PAY FOR ONE MONTH ANNUALLY

26. According to the standing orders of the Company all non-scheduled employees (which term includes all those concerned in this dispute) are entitled to 15 days' leave pay a year but not to leave with pay. In spite of this the practice is said to be that

15 days' leave with pay is admissible and frequently taken, except in the case of the employees in the workshops. According to the Company's representatives, the option of receiving leave pay instead of leave was granted at the request of the employees themselves. However that may be, the practice of substituting or allowing the substitution of leave pay for leave with pay is obviously very unsatisfactory. A little extra pay is no real equivalent for a periodical rest and holiday. The Company's attitude in this respect is perfectly reasonable. It has no objection to the grant of 15 days' leave with pay to all the employees in the transportation department, including those in the workshops. It has no objection also to this leave being accumulated for three years. (Leave has not been accumulated in practice so far because those who did not take their leave at the end of the year have taken the money instead.)

27. But the Unions' demand is for one month's leave with pay a year and the question is whether there is any case for that. I was informed that some other concerns, Tata's for instance, give this concession. On the other hand it is well known that most industrial workers do not so far get leave with pay at all, and the legislation which is said to be contemplated would go no further than seven days a year. The main argument adduced in favour of the longer period in the case of this Company is that so many of the employees have their homes at a long distance from Bombay and therefore have to spend a long time on the journey. But there are obvious difficulties in the way of making the leave rules dependent upon considerations of that kind. The right to accumulate leave and also the grant of half pay leave which I am recommending in connection with work on off-days should do something to remove this disadvantage of the up-country workers. If this does not meet the case some additional leave without pay seems to be the only solution. I see no sufficient grounds on which I can recommend that more than 15 days' leave with pay should be granted.

SICK LEAVE WITH PAY

28. It will be convenient to deal with this demand next. It is put forward only on behalf of the workers' Union and Mr. Purshottam, evidently realising that half pay for any period of illness up to three months was too much to ask for (it was estimated to cost over Rs. 5,00,000 a year), modified the claim by suggesting that this privilege should only be given to men with three years' or even five years' service. The best method of providing for sickness and the extent to which employers of labour can be expected to bear the burden are difficult and complicated questions, as pointed out by the Royal Commission on Labour in India in Chapter XIV of their Report. There is a good deal of force in the Company's argument that the grant of any

such privilege as that now demanded would increase the evil of absenteeism. In his Award in the Lever Brothers dispute in 1941 Mr. Justice Divatia rejected as "unwarranted and unreasonable" a demand for even seven days' sick leave with pay in addition to 13 days' leave of absence with pay. That no doubt was in consideration of the fact that Messrs. Lever Brothers had adopted a very forward policy in the matter of the welfare of their employees. But in this respect the Bombay Electric Supply and Tramways Company Ltd., is entitled certainly to equal credit. Among the many facilities provided are free medical attention (five doctors are employed) and free medicines. I am not prepared to make any recommendation under this head.

DOUBLE PAY FOR OFF-DAYS

29. The Company allows its employees in the traffic branch one day "off" in each week on pay provided they have not been absent without leave. In practice, however, the full number of off-days is not enjoyed and the men are called up for duty on at least one, and sometimes two, off-days in a month on an average. The explanation of what is undoubtedly an unsatisfactory state of affairs is mainly absenteeism. The Company maintains an extra staff varying from 30 to 41 per cent. in the different categories and it might have been expected that, that would be sufficient to provide for men absent from duty and also for the off-days. But the percentage of men absent varies from 20 to 25 per cent. an unduly high proportion being absent without leave. (Detailed figures are given in the statement Exhibit U.) The result is that there are not enough men available for duty on the off-days without calling up some of those who have earned a holiday.

30. Those who are called up are paid a day's wages in addition to what they get for the day as an off-day. Therefore they get double pay already and the demand now put forward is really for treble and not double pay. During the course of the Inquiry Sir Jamshedji Kanga on behalf of the Company made an offer that if an employee has to work on his scheduled off-day, time and a quarter will be paid for the time worked on that day, provided he is not away from duty during that calendar week. This proviso is necessary because in some cases the off-day has to be given in advance, i.e., at the beginning of the week, in which case it is conditional on its being earned afterwards. I consider this offer a fair one so far as it goes. But it does not meet what is in my opinion the main defect of the present state of affairs. It is a matter of the greatest importance, not only from the point of view of the workers themselves but also in the interests of the Company and the public, that there should be recognised intervals for rest and recuperation. Additional pay is no real substitute for this.

31. I therefore put forward the suggestion that it would be reasonable to have some system of allowing leave on half pay to compensate for the loss of off-days. The financial cost of the Unions' demand for double (really treble) pay for these days is estimated to be Rs. 3,30,000 a year. The Company's offer plainly recognises the need for some increased expenditure in this direction. It amounts to an offer to pay for the off-days at the rate of two and one-fourth, since a day's wage is already given for the day as a rest day. If payment were to be made at the present rate and in addition one day's leave on half pay were to be given for each off-day worked, the effect would be that payment would be made at the rate of two and a half. But the point is that this expenditure would to a large extent promote the object which ought to be held in view.

32. This suggestion of mine appeared to meet the views of the representatives of the Unions and was not opposed by the Company. It was urged, however, that work for less than a full day's duty (seven hours or over) should not qualify for a day's leave. I think this is reasonable, but of course work for shorter periods should be covered by the Company's offer of time and a quarter. The Company also says that the new concessions should only operate in the case of off-days which are duly earned. That is also perfectly reasonable.

DEMAND FOR INCREASE IN DEARNESS ALLOWANCE

33. I have already referred to the Inquiry into the question of dearness allowance held by Sir Govind Madgavkar in 1940. He recommended a flat rate of Rs. 4 per month, but the Company declined to accept this and paid at the rate Rs. 3 only. Towards the end of 1941 the matter was further considered by the Company in consultation with some representatives of the employees, and a compromise was arrived at by which dearness allowance was to be paid according to a sliding scale covering the cost of living index numbers from 121 to 135. It was agreed that if the index number went above 135 no additional payment was to be made but that if the index fell below 120 the allowance of Rs. 3 was still to be paid until the index had remained below 105 for three successive months. The allowance was to be paid at these rates till the end of April 1942, but the same payments have been continued pending the settlement of the present disputes.

34. The Unions rely on Sir Govind Madgavkar's Award, which was in excess of the rate of dearness allowance then being paid in the textile industry. But in view of the general trend of that Award, I think it may well be doubted whether a rate as high as Rs. 4 would have been recommended, if it had had to be combined with other recommendations involving the Company

in heavy expenditure. Anyhow the Award was infructuous and is now out of date. It is necessary now I think to have a sliding scale. According to the Unions this scale should be the same as that approved by the Millowners' Association, with an increase of one-third to allow for the fact that the average wage of the Company's employees is Rs. 43 as against the millhands' average wage of Rs. 32. The Company relies on the dictum of Mr. Justice Divatia in his judgment in the dispute between the Textile Labour Association, Ahmedabad, and the Ahmedabad Millowners' Association (quoted in the *Labour Gazette* for May 1940) that the employer is not bound to make up the full extent of the increased cost of living. In view of what the Company does for its employees in other ways it is argued that there is no case for any increase in the rates of dearness allowance now being paid under the agreement of 1941.

35. More pertinent to the present case in my opinion are the observations of Mr. Justice Divatia in the Lever Brothers Limited, dispute on the importance of uniformity in this matter of dearness allowance:

"In view of the present international situation and the position of industrial India in relation to the war effort, it is highly desirable that there should be complete uniformity in the line of action to be followed by industrialists in India in the matter of the grant of dearness allowances to be paid to industrial workers in any one particular centre. Moreover, the increase in the cost of living of industrial workers in Bombay is the same for workers in all industries and it cannot be said that it is more for the workers in one particular factory over that for workers in other factories."

The Millowners' Association's scale, which Government has recommended as being generally suitable for other industries in Bombay, was accordingly applied to the case of Messrs. Lever Brothers' employees.

36. But, as in the case of wages, so obviously in the case of dearness allowance also, one has got to take all the circumstances into account as far as possible. If the higher cost of living is compensated for in other ways the workers cannot reasonably expect that dearness allowance should be paid on the same scale. Among the benefits provided by the Bombay Electric Supply and Tramways Company are three free uniforms a year to men in the traffic branch, cost price grain shops, stores at cost price, free medical attention and medicines. Residential quarters at cheap rents are also provided for a certain amount of the traffic and workshop's staff. It cannot be and is not denied that these benefits, the first three especially, have a material bearing on the question. The cost to the Company is considerable. I am told the figures

are: uniforms Rs. 77,000, staff of grain shops and stores Rs. 5,500, medical facilities Rs. 26,000, quarters Rs. 43,000. The exact value to individual employees of these and other amenities it is impossible to estimate exactly. But I think these factors are a sufficient answer to the demand for dearness allowance even at the same rate as the millhands, to say nothing of the demand for an increase of one-third.

37. I consider further that the agreement of 1941 is important in this connection. The scale then agreed upon is definitely lower than the Millowners' scale, the percentage which the Bombay Electric Supply and Tramways rate bears to the millowners' rate ranging from 79.2 per cent. at index 124 to 73.6 at index 135. It is perfectly true that the Union leaders did not regard these rates as fully adequate. Nevertheless the fact that there was a compromise on these lines, a working arrangement between opposing points of view which it is impossible to reconcile completely, does seem to me to show that the compromise agreement, modified to meet present conditions, is the most reasonable basis for a settlement now.

38. The scale, however, must be extended. The cost of living index for May 1942 was 142. It may go higher. A scale which stops at index 135 cannot be regarded as adequate, for the factors mentioned by me in paragraph 36 were no doubt allowed for in the compromise, and I cannot accept the Company's contention that the special bonuses granted for a different purpose altogether should be considered a ground for refusing an increase in the dearness allowance. The proportionate rates for the indices 135 to 143 are shown in the statement, Exhibit R. The rate for index 142 would be Rs. 6-4-0 as compared with Rs. 8-12-0 in the Millowners' scale. This is an increase of one rupee on the rate now being paid by the Company. I had intended to recommend that in case the index rose above 143, the Company should fall into line with whatever action might be taken by the Millowners' Association, but since the Inquiry closed the Millowners' scale has itself been extended further. I think the Bombay Electric Supply and Tramways Company should follow suit and extend its scale proportionately.

DEMAND FOR ANNUAL BONUS OF ONE MONTH'S PAY

39. This is the demand of the Workers' Union. The Tramway-men's Union, which is more grasping, asks for one and a half months. The basis of the demand is that both the gross and the net receipts of the Company have increased very largely in the last ten years, and that the net profits, in spite of the allocation of very large sums to depreciation and reserve, have maintained an average of over Rs. 40,00,000, allowing for the payment of

very high dividends. (Details of these figures are given in Exhibit S.) It is taken for granted without argument that the workers are entitled to share in these profits. The Company reduced its bonus to the employees from one month's pay to half a month's pay in 1932 and has not increased it again. The reasons given for not paying more are that the dividends are not as high as they seem because the shares are at a high premium (that is not very convincing), that the Company has not made and is not making any special profits out of the war (that appears to be true), that the future of the Company's uncertain as it is liable to be acquired by Government in 1947 and that large sums are spent on the welfare of the employees over and above their wages.

40. I fail to see how I can say anything useful on this subject. It is out of the question to review bonuses already declared and anyhow I am not asked to do that. The demand is for something to be done in the future and it is admitted that future bonuses must depend on future profits. Mr. Purshottam mentioned that the Tata Companies have a regular system of paying bonuses according to a sliding scale. But he did not suggest that this would be feasible for the Bombay Electric Supply and Tramways Company or at any rate that their employees have any right to demand it. Merely to express a pious opinion as to what it might be reasonable for the Company to do in 1943 would be perfectly futile. I can make no recommendation therefore in connection with bonuses, except the one already made in dealing with the question of consolidation.

DEMANDS OF THE TRAMWAYMEN'S UNION AND NON-UNION MEN

41. At the time of the preliminary meeting Mr. V. H. Joshi, was undecided whether he would take part in the proceedings. As I have mentioned, his Union was not concerned in the strike. But he produced a written statement containing 33 demands, to which he added a supplement containing seven more. This Union has not yet been formally recognised by the Company; and the first demand is for recognition, obviously not a trade dispute under the definition. The Union has been in the habit of making representations through committees of employees. The Company's officers deal with these committees; conferences are held and those requests which are found to be reasonable are granted. The last of these conferences took place early in March 1942 when some of the demands now put forward and some others were discussed. I do not consider that this periodical airing of grievances can be said to have any connection with the crisis of last May. The letter sent by the Tramway men's Union on the 21st of May mentioned two matters only, one of them dearness allowance and the other evacuation allowance, which latter finds no place at all in the present list of demands. Many of the demands put forward now are entirely new.

42. I pointed out at an early stage of the proceedings that in order that I should not go beyond the terms of my appointment, and also in order to confine the Inquiry within reasonable limits, I did not propose to go into any matters which were not already the subject of dispute between the employees and the Company at the time of my appointment as Adjudicator. I considered that this condition was not complied with unless there was a clearly formulated demand on the part of the employees which was being insisted on at the material time. Other reasons for ruling out these demands are that several of them are not properly speaking trade disputes and many of them are obviously matters of indoor management which must be left to the discretion of the Company's officers.

43. The same considerations apply to the complaints put forward by Messrs. Bharucha and Mhatre. My refusal to consider these demands of the Tramwaymen's Union and non-union men should not be understood, of course, as a rejection of them. Although many of them appear to be somewhat trivial, it may be that some genuine grievances are included which I have no doubt the Company's officers will inquire into.

44. I may add that Mr. V. H. Joshi was heard at considerable length on those points which he urged in common with the other Unions. Those have been already dealt with. He was also allowed to argue another matter, a claim by the new workers employed after September 1940 to receive the same bonuses as are given to other employees. It appears that these are temporary men, "jobbers", engaged only for war work. They are given dearness allowance, though, strictly speaking, they are not entitled even to that under the terms of their employment. They are transferred to the permanent staff when vacancies occur. The demand that while they remain temporary hands they should be given the same bonus as permanent hands seems to me quite unreasonable.

SUMMARY OF RECOMMENDATIONS

45. I sum up my recommendations as follows:—

Bonus.—In future the old war allowance should be treated as part of pay in the calculation of bonuses. (In principle this should apply to all employees, but as those engaged prior to 1934 enjoy higher scales of pay and *buxis* it would not be unfair if this concession were to be held inapplicable to them.)

Leave with pay.—The practice of giving leave pay in lieu of leave with pay should be discontinued. All those entitled under the present rules either to leave with pay or leave pay for 15 days should be given leave with pay for that period. This leave should be allowed to be accumulated for a period of three years.

Weekly off-days.—The calling up of employees for duty on their off-days should be avoided as far as possible. If it is unavoidable, payment should be at the present rates plus one-fourth for work which is less than full duty. For each full duty worked on an off-day payment should be at the present rates, but the employee should be allowed in addition one day's leave on half pay to be added to his leave account. The above is subject to the proviso that the off-day is duly earned under the rules.

Dearness allowance.—The scale in force up to the end of April 1942 should be extended so as to cover the same cost of living index numbers as the scale now sanctioned by the Millowners' Association. The rates for the index numbers above 135 should be worked out so that they bear a similar proportion to the Millowners' Association rates as in the case of the index numbers below 135. (Statement Exhibit R shows the figures worked out up to index No. 143). The allowance should be paid at these rates with effect from May 1942, deducting what has been paid already.

FINANCIAL EFFECT OF THE RECOMMENDATIONS

46. The Company estimates that the cost of paying dearness allowance on the proposed new scale at the rate of Rs. 6-4-0 (the cost of living index for May 1942 being 142) will amount to Rs. 55,000. The cost of living may go up of course. On the other hand it may fall. The cost of the other recommendations it is impossible to estimate exactly. The effect of consolidating war allowance with pay for the purpose of bonus naturally depends on the amount of the bonuses. The increase will be 25 per cent. or 17 per cent. as the case might be, but, as pointed out in the preceding paragraph, it might be limited to the case of those employed after 1934. As regards leave, those employees who will now get leave with pay instead of leave pay will presumably have to be replaced. But whatever extra cost may be caused by this must be very largely money which the Company formerly saved by an unsatisfactory system.

47. The cost of my recommendations about weekly off-days will be considerable. I have dealt with this matter already in paragraph 31. If the Company's estimate of the cost of the Unions' demand (Rs. 3,30,000) is correct, the extra expenditure under the new system may be one to one and a half lakhs a year. The Company's own offer, as I understand it, would have cost Rs. 82,500. (The Unions demanded an extra day's pay. The Company offered extra pay for a quarter of a day). In any case there can be no doubt as to the necessity for this reform.

26th June 1942.

R. S. BROOMFIELD.

(Bombay Castle, 15-9-1942, No. 5907/34, Government Gazette, Part 1, pp. 3323 to 3334).

BOMBAY ELECTRIC SUPPLY AND TRAMWAYS CO., LTD.

AND

THE WORKERS OF THE BUS SHEDS, CAR SHEDS, WORKSHOPS,
OVERHEAD DEPARTMENT AND SUB-STATIONS.

Adjudicator:—A. Latifi, C.I.E., O.B.E., I.C.S., (Retired).

Mr. M. S. Captain, Solicitor, with Messrs. A. S. Trollip, General Manager, A. L. Guilford, Deputy Manager, and B. W. Peel, Workshop Engineer, for the B. E. S. & T. Co., Ltd.

Mr. V. H. Joshi, Advocate, with Messrs. G. R. Malap and B. L. Salvi, Company's employees, for the Tramwaymen's Union.

Mr. V. H. Joshi, also represents the employees of the Drawing Office, Kingsway.

Mr. F. M. Bharucha, Company's employee, for the Supervising staff of the Car sheds.

A w a r d

I was appointed to adjudicate in this dispute by the Government Notification, Political and Services Department, No. 5907/34 of 10th July 1942, under sub-rule (i) of the rule 81-A of the Defence of India Rules, read with the Government of India Notification No. L3005 of 20th May 1942. I was to exercise, so far as may be, such powers as are conferred on, and follow such procedure as is prescribed for, a Board of Conciliation by the Trade Disputes Act, 1929, and the Bombay Trade Disputes Rules, 1930.

2. For earlier history a reference should be made to the Broomfield Award on the trade dispute between this Company and its employees, including the B. E. S. T. Traffic Union, the B. E. S. T. Workers' Union and the Tramway Men's Union, published in the *Bombay Government Gazette* Extraordinary, Part I, of 10th July 1942.

3. In response to the notices issued during the investigation of that dispute Mr. V. H. Joshi on behalf of the Tramway Men's Union, submitted a Written Statement containing thirty-three heads to which seven were later added. Sir Robert Broomfield

held that of all those items only such came within his purview as were already the subject of dispute at the time he was appointed adjudicator; with the result that his recommendations covered only those few items which the Tramway Men's Union had urged in common with the two other unions. According to paragraph 44 of the Broomfield Award it was only on those common points, and one other, that Mr. V. H. Joshi was heard on behalf of the Tramway Men's Union.

4. Sir Robert Broomfield concluded his investigation on the 19th June 1942. On the 23rd June following, the Tramway Men's Union had the Company notified that unless all the grievances placed before Sir Robert Broomfield were met, the men would go on strike. The Notification appointing me adjudicator in this dispute followed.

5. I commenced these proceedings with a written notice to the Tramway Men's Union requiring them to submit their dispute in writing by 21st July. A similar notice was put up on the Company's boards for such workers of the bus sheds, car sheds, workshops, overhead department and sub-stations of the Company as did not wish to be represented by the Union. In response, Mr. V. H. Joshi submitted on behalf of the Tramway Men's Union a statement with thirty-four heads (actually 55 items), practically the same as those placed before Sir Robert Broomfield (Ex. A); Mr. F. M. Bharucha, a foreman in the Car sheds, submitted a statement with nine items on behalf of the car sheds supervising staff (Ex. B); four employees of the Kingsway workshop drawing office submitted a statement with seven items on behalf of the six employees of that office (Ex. C); and Mr. S. S. Mhatre, an employee of the Company submitted a statement with six items on behalf of the fitters and coolies of the sub-station department (Ex. D.).

6. The Company having put in a written reply to all these demands, a preliminary meeting was held on 3rd August 1942, where it was arranged that the parties should meet and try with the help of Mr. S. V. Joshi, Assistant Commissioner of Labour, to arrive at an amicable settlement on some at least of the items of dispute. Mr. S. V. Joshi accordingly conferred with the parties on the 6th and 8th August and he has submitted a report on what they were able to do (Ex. M.). As was also arranged at the preliminary meeting, I visited on 7th August the Kingsway Workshop and Car shed and the Colaba car and bus sheds in company with Mr. S. V. Joshi, and Mr. T. W. Johnstone, Chief Inspector of Factories, and viewed in particular the operations and places the parties had suggested for my inspection (Exs. I and J). Thereafter, the parties appeared before me on the 10th, 11th, 12th, 13th, 14th, 18th, 19th, 21st, 24th, 26th and 27th August 1942.

7. This dispute is in some respects unique in Indian industrial history inasmuch as it covers over seventy-five items, running the gamut from problems of dearness allowance to the thatching of a workmen's urinal. Were it not for the self-restraint of the parties and the friendliness that prevailed, it would not have been possible to make one's way through this maze of demands within any reasonable length of time. Mr. V. H. Joshi's Retort Courteous to the charge that much of what he asked was "somewhat trivial", has in it the sting of the fabled ant under the elephant's foot. Had the Company, he said, given recognition to his union, or at any rate devised some plan of joint talks where the workers would be helped by outside advisers of their own choosing, why should they have invoked the machinery of adjudication under the Defence of India Rules for settling whether a urinal should or should not be thatched. This retort notwithstanding, I am sure Mr. Joshi has sensed the Gilbertain ring in some of the Union's demands. The eight tin-men, for example, who want to rectify their grades [items 34 (b), Annex III] are none the less keen that their jobs should be passed on to their relations after them. Not to be outdone in humour, the Company's representative has affixed his signature to a document [Annex I, Item No. 34(c)] which formally records that they will be happy to do what they can for the tin-men's relations.

8. The fitters and coolies of the sub-station department withdrew their demands, leaving them "to the decision and kindness of the management" (Ex. Z). Nineteen out of the fifty-five items raised by the Tramway Men's Union, including happily the dispute of the unthatched urinal, were brought to a settlement (Annex I to this Award). Of these two [7 and 8 (b)] were settled in the conference held by Mr. S. V. Joshi, who has given valuable help to all concerned, including myself, in the course of this investigation.

9. Turning now to the various sets of demands, I will begin with two submitted by the Tramway Men's Union, which appear to be *res judicata*.

The first is the Union's demand No. 2 that the "same conditions of work, wages, holidays, etc., to all workers be granted and distinction made between the old and new workers be discontinued", which the Company submit has already been disposed of by the Broomfield Award. As for "wages", it is agreed that prior to 1927 there was a scale known as the "S rate" for the workshop employees. In 1927 a new scale, the "C rate" was devised and applied to all new entrants. The previously engaged men remained on the old "S rate" which was better. What Mr. Joshi asks is that all the "C rate" men should get the "S rate". This demand is the same as that for "restoration of the old scale of wages"

referred to in paragraph 10 of the Broomfield Award. The fact that here it is a question of the pre-1927 scales of wages and not pre-1932 or 1934 is immaterial. Paragraph 15 of the Broomfield Award clearly disallows all the old scales of wages and must therefore be deemed to dispose of this demand so far as it concerns "wages". As for the "holidays" the real point in dispute, as it emerged during the investigation, is that whereas "S rate" workers get 8½ hours' wages on Saturdays although they work only for 5½ hours, the "C rate" men below 10 years' service get only 5½ hours' wages on Saturdays for the same 5½ hours work. What the "C rate" men below 10 years' service, therefore, demand is not a half-holiday on Saturday, which they already get, but higher pay for the 5½ hours' work that they do on that day. This is clearly a question of "wages" and must be deemed to have also been disposed of by paragraph 15 of the Broomfield Award. Mr. Joshi agrees that the words "work" and "etc." in the demand are otiose.

10. The Company also submit that the Broomfield Award has disposed of the whole of the Union's demand No. 3 that "Every worker who is employed for a month or more be considered a monthly wage-earner and his wages and last war's dearfood allowance be consolidated for all purposes such as bonus, provident fund, gratuity, dearfood allowance, and considered as fixed wages; and his monthly wages be fixed at a figure thirty times his daily consolidated wages; Departmental Letter No. ALG/14897/40 of 26th September 1940 be reconsidered". Mr. Joshi agrees as to the portion italicized in the above demand, but joins issue on the remainder.

11. It is clear from the record of the Broomfield Award that the departmental letter referred to in the demand was submitted to the Adjudicator (Ex. C on that record) and was considered by him. The latter part of paragraph 44 of the Award implies that the adjudicator held the claim of these temporary men or "jobbers" to the privileges mentioned in that letter to be "quite unreasonable". The whole of this demand must therefore be deemed to have been disposed of by the Broomfield Award.

12. I will now consider the Union's demand No. 9 that "Compensation for less dearfood allowance paid to workers described as daily wage-earners, compared with the amount paid to Traffic and Bus workers, be granted".

13. The explanation of this demand is that with effect from 1st June 1940 dearness allowance was sanctioned by the Company at a flat rate of Rs. 3 per month to monthly-rated workers, and at 1½ annas per day, amounting to Rs. 2-7-0 per month, to daily-rated workers, which category includes all the men in the workshop, whether temporary or permanent. With effect from 1st

August 1941, this rate was revised by the Company in agreement with the three Unions, and a sliding scale was fixed to have effect till April 1942. This sliding scale was to be the same for all, viz. Rs. 3 per month for monthly-rated as well as daily-rated workers. The Union claims that the daily-rated workers should have been paid dearness allowance at Rs. 3 per month right from the beginning, i.e., from 1st June 1940. It was unfair that for thirteen months they should have been paid nine annas per month less than the monthly-rated workers whose needs or deserts were no greater; and the demand is that the difference should now be made good.

14. The Company's first objection is that although this demand has been in dispute between them and the Union, it is not a "*trade dispute*" within the meaning of section 2 (j) of the Indian Trade Disputes Act, 1929. The only authority cited before me is *Convey v. Wade* (1909, A.C., 506). With regard to the definition of "*trade dispute*" in section 5, sub-section 3 of the English Trade Disputes Act, 1906, which is, so far as concerns this issue, the same as in the Indian Act, Lord Loreburn L.C. says at p. 509 of the Report, "I do not know that the definition is of much assistance...". And Lord Shaw of Dunfermline at p. 520: "It is also true that by section 5, sub-section 3, the expression '*trade dispute*' receives a very wide interpretation..." I make no doubt that section 2 (j) of the Indian Trade Disputes Act, is wide enough to cover this demand.

15. It may here be noted that the Company objects to several other demands on the same ground. As all those demands have been otherwise disposed of, it will serve no useful purpose to carry this discussion further.

16. The Company further objects to demand No. 9 on the ground that it has been disposed of by paragraphs 33 to 38 of the Broomfield Award. But the first two sentences of paragraph 33 of the Award show that Sir Robert Broomfield did not know that any worker was ever paid less than Rs. 3 per month, and so it cannot be said that this claim was considered and disallowed. Nor do I agree that this claim was wiped out by the arrangement made by the Company with the three Unions towards the end of 1941. From the minutes of the meeting of 25th September 1941 (Ex. X), it is clear that Mr. Joshi centered his argument on the main issue, viz. the justice of the claim of the daily-rated workers to equal treatment with the monthly-rated in regard to the flat monthly rate of Rs. 3, and the sliding scale. That claim was accepted; but there is nothing on the record that a claim for the rectification of what had been done before was raised or given up. The demand for equality was mooted by the daily-rated workers as early as July 1940, and was further pressed on the management by a deputation of workers in August 1940. The fairness of that demand

was in the end accepted; and it is equitable that an allowance devised to help workers on the poverty line, should be given retrospective effect in its fulness from the date when they admittedly began to be pushed below the level of minimum subsistence. The difference as claimed should therefore be made good. I understand that this will cost the Company a lump sum round about Rs. 20,000.

17. I now turn to item No. 1 which asks for the recognition of the Bombay Tramwaymen's Union. This Union was founded in 1927 and registered in 1928. Its membership is open to all the employees of the Company, but it actually comprises only the workers of the bus sheds, car sheds, workshops, overhead department and sub-stations of the Company. It had 500 members on its books on 1st December 1941, as reported at pp. 954-55 of the *Labour Gazette*, for May 1942. Under its constitution (Ex. O) not more than a fifth of the seats on the Committee can be held by non-employees.

18. The Union first applied for recognition in 1928. The Company then insisted on a membership of 50 per cent. and there were to be other conditions which were felt to be not worth discussing at that stage. On the occasion of the lock-out in September 1931, which was settled through the good offices of the Mayor of Bombay, three persons, Mr. V. H. Joshi, Dr. G. Y. Chitnis and Bapu Ramchandra Shinde were accepted as representatives of the Kingsway Workshopmen and took part in the settlement, although the first two were not employees of the Company. One of the items of that settlement was that during the ensuing cold weather the Company would reconsider the question of the recognition of the Union in the light of the Report of the Royal Commission on Labour. Accordingly in March 1932, the Company issued a notice (Ex. P) to the Kingsway Workshop employees, of which the third paragraph runs as follows:—

“*Recognition of the Union.*—The Company will recognise the Bombay Tramway Men's Union, provided—

- (a) The name of the Union is changed to ‘The Bombay Tramways Workshops Men's Union,’ as representing the Workshops Employees only;
- (b) The membership of the Union embraces a majority of the Workshop Employees;
- (c) All the officers of the Union are employees in the Kingsway Workshops.

Note.—Condition (c) is made in accordance with the opinion of the Royal Commission on Indian Labour that the leader drawn from outside the ranks of Labour has ‘seldom a complete knowledge of the technical details of the industry to which his

work is related, and cannot hope to meet the employer on equal terms in this respect'. The Kingsway Workshop Employees include men fully qualified to put forward and maintain any legitimate grievance in their working conditions."

19. As for the first condition, the name, Mr. Joshi says that there is now no difficulty. The sting lies in the note which is apparently based on the remarks at p. 329 of the Report. In refutation Mr. Joshi cites the Royal Commission's observations at pages 324-7 and also at page 166 of their Report; but he places special reliance on what has been said more recently by the Textile Labour Inquiry Committee at pages 376-8 of their Vol. II (Final Report).

20. It appears that the practice in recent years has been for the Union to make representations to the management through committees of employees. Further Mr. Joshi is himself allowed free access to the management, but not if any of the workers goes in with him. It is admitted that there has been an improvement during the last three years or so, but the position, he says, is still unsatisfactory; so that grievances sometimes remain unsettled for two or three years simply because there could be no proper contact between the office-bearers of the Union and the Management.

21. The Company's attitude appears on the whole to be moderate and conciliatory. They point out that, so far, not a single union has been recognised by the employers in this Province. Whether recognition is to be looked upon as a boon or a burden, it should be for the industry as a whole, and not for any individual Company, especially one that has done so much for its workers. The question of recognition of Unions has been accepted as an All-India problem, and the Government of India has already set the stage for an All-India measure to deal with it. That measure will not be delayed for long. It would be inconvenient and unsatisfactory if a precedent is set up in an isolated case like the present, while the whole question is as it were *sub-judice*.

22. I think the position that the forthcoming legislation should be awaited is correct. The Union have already waited for fourteen years since they first made their application, and a few months more will not make much difference, especially in view of the improvement in the machinery of consultation that has been taking place during the last few years. I am sure that with the good-will that now exists on both sides, this machinery will make further progress during the period of transition.

23. The four Annexes are part and parcel of this Award. The items of dispute that have been disposed of by agreement of the parties are all recorded in Annex I; the residue have been grouped

under three heads—General, Emoluments and Individual Cases—in Annexes II, III and IV, respectively.

24. The items in Annexes II, III and IV all concern internal organisation and discipline, matters that should normally be left to the Company's Board and officers without outside interference. Although the Company have raised this plea, they have not taken refuge behind it, but contested each case on the merits; and they have succeeded in showing that there is no real grievance in any one of them. With special reference to the six heads in Annex II, which seek to raise emoluments chiefly by a rectification of grades, the Company have filed their tables of wages, which, they submit, compare very favourably with those of any other similar concern in Bombay. They urge that their system has been framed with great care as one balanced whole, and should be considered as such with due regard to the many benefits they have devised for their employees—provident fund, retirement gratuities, free medicines and medical attendance, cheap quarters and the like. That the Company's service is popular is shown not only by the numerous applications on their records, but in this very case by the demand of the tin-men who, while seeking to rectify their grades [Annex III, Item No. 34 (b)], are anxious that their jobs should not go out of their family circle [Annex I, Item No. 34 (c)].

25. Finally, the Company point out that they and others of their class in Bombay are now finding it cheaper and less troublesome to let out on contract the making of products, parts, etc. to small firms, who pay little attention to working conditions such as lighting, ventilation and the like, and who pay smaller wages with less benefits. In fact, the increasing costs of production in Bombay are driving business to other parts of India, where conditions are more favourable.

26. There remain the six employees of the Kingsway drawing office and sixteen of the car sheds supervising staff. I have heard their spokesmen at length, but have failed to discover any grounds for interfering with the discretion of the Company in respect of their demands. They all seem to labour under the impression that the Bombay Shops and Establishments Act, 1939, applies to them. It does not. They are all of them "workers" within the definition of section 2 (h) of the Factories Act, 1934; but the car sheds supervising staff are out of the purview of even Chapter IV of the Act, by virtue of rule 77 of the Bombay Factories Rules, 1935.

27. I conclude with recommending that (a) the Company do pay to all their daily rated workers of bus sheds, car sheds, overhead department and sub-stations with effect from first June 1940,

to thirtieth June 1941, a dearness allowance at Rs. 3 per mensem, calculated in the same manner as has been done from 1st August 1941, deducting what has already been paid; (b) the parties do comply with the terms of Settlement (Annex I).

Bombay, 3rd September 1942.

(Signed) A. LATIFI,
Adjudicator.

ANNEX I

BEFORE MR. A. LATIFI, C.I.E., O.B.E., ADJUDICATOR

In the Trade Dispute Between

The Bombay Electric Supply and Tramways Company Limited
and

The workers of the Bus sheds, Car sheds, Workshops, Overhead
Department and Sub-Stations of the Company

MEMORANDUM OF SETTLEMENT

DEMAND

(Submitted by the Tramway
Men's Union, Ex. A.)

TERMS OF SETTLEMENT

No. 4.—Increase in wages to all Assistant Grade Workers when being promoted to the full grade be as much in all shops as it is in the Carpentershop.

No. 5.—Bonus equal to one and a half month's consolidated wages including the last war's dearness allowance.

No. 6.—Fifteen minutes for washing and dressing before closing time be granted.

No. 7.—Every coolie who is in the service for five years on-

1. In view of the Company's reply and on finding that it is substantially included in demand No. 18, this demand is withdrawn.

2. It is agreed that the demand has been disposed of by the orders of Government on the Broomfield Report.

3. The demand is withdrawn on the Company's undertaking to provide extra water taps for washing, which will only be available during washing time, subject to the necessary material being available.

4. It is admitted that the rate of Rs. 1-10 granted by the

wards be granted wages at the rate of Rs. 1-4-0 per day and Assistant Grade Worker's posts be granted to as large a number of them as possible.

No. 8 (*Preamble-i*).—Day workers also in the Running Car Shed be granted four full pay off-days per month. Compensation for two days wages per month with dearfood allowance be granted to them from November 1940, after taking into consideration the Bombay Shops and Establishments Act, 1940.

No. 8 (*b*).—A shunter should be paid Rs. 1-3-10 instead of the coolie's wages.

No. 10 (*a*).—The system of detaining at the dispensary a worker hurt in the workshop be discontinued. In case he is not admitted in the hospital and he is not certified fit for work he be allowed to go home at once.

(*b*) Every complaint against any Officer including the Doctor and the Superintendent be inquired into and deterrent measures be taken against the guilty persons.

No. 11.—The system of sending every worker who happened to be absent after sending a letter regarding casual sickness to the Doctor and wasting his half day in every case and many more days in some cases by asking him to remain at home

Company is higher than the average market rate in the Engineering industry. The demand is withdrawn and Mr. V. H. Joshi appeals to the Company on purely humanitarian grounds.

5. The demand is withdrawn by the Union before the Adjudicator, as, if any amount is legally due to the workers concerned, by way of wages, dearness allowance and overtime it will be paid by the Company. This is without prejudice to the right of the Union to seek redress in respect of grievances in this connection before the proper authorities.

6. The demand is withdrawn in view of the Company's explanation that the shunter's wage is at present actually Rs. 1-3-10 as demanded by the Union.

7. After discussion Mr. V. H. Joshi is satisfied with the Company's explanation and withdraws demands Nos. 10 and 11. The Company agrees to make arrangements for medical examination up to 5 p.m. on every working day (except Saturdays) of workers proposing to return to duty on the morning of the following working day. The Company also agrees to the suggestion of the Adjudicator that all complaints of the workers of the Kingsway Workshop against the Company's Medical Officers should be carefully enquired into by a Senior Official not connected with the Workshop or the Medical Department.

when he offers to join work be discontinued.

No. 12.—The urinal and the passage to it be thatched.

No. 19.—Overtime work taken from stores coolies be paid at overtime rates and the practice of giving them full pay holidays be re-started.

No. 20.—Arrangement to work in a sitting position be re-started for winders.

No. 24 (a).—Loans according to old method be available, i.e. (a) Fresh loan before old one is fully paid, be available after deducting the old arrears from the new loan.

No. 26.—Circulars regarding rates of wages, standing orders, notices, etc., to be in vernacular and to be made available to all workers.

No. 28.—Application of the Bombay Shops and Establishments Act of 1940 to workers in Bus Running Shed Staff and the Overhead Wire Workers and to Car Sheds be made.

No. 29.—Hindu New Year's Day be included in the list of

8. The Company has already agreed in their reply to provide a temporary roof on the urinals during the monsoon; but not on the passage. This is accepted on behalf of the Union.

9. The demand is withdrawn for the reason given against item No. 8 (*Preamble-i*).

10. After discussion the demand is withdrawn. It is left to the Company to consider the question of providing stools wherever possible for the workers to sit on when not actually working so as to minimise the fatigue and strain of standing.

11. The demand related to loans from the Provident Fund and it is withdrawn in view of the Company's reply.

12. The demand is withdrawn in view of the Company's reply, viz., that all circulars and general notices are translated into Marathi and posted on the Company's Notice Board.

13. The demand is withdrawn for the reason given against item No. 8 (*Preamble-i*).

14. The demand is withdrawn in view of the Com-

holidays and be granted with full pay.

No. 33 (a).—To make the Bombay Shops and Establishments Act of 1940 applicable to them.

No. 33 (c).—Responsibility of the Assistant Fitters and Fitters should end as soon as the Chargeman tests the Job which should be done before buses are allowed to work.

No. 33 (d).—Ten minutes time before 12-30 and 15 minutes before 5-30 be given for washing the person and changing clothes.

No. 34 (c).—The system of accepting Tin-boys should be started and relatives of the present workers be accepted as such.

pany's explanation that it is open to Hindu workers as a whole to have this day substituted for any one of the other Hindu sectional holidays granted by the Company so that the total number of sectional holidays is not increased.

15. The demand is withdrawn for the reason given against item No. 8 (*Preamble-i*).

16. The demand is withdrawn in view of the Company's reply that the Chargeman is already being held responsible along with Assistant Fitters and Fitters for defects which with reasonable care the Chargeman should have discovered.

17. The demand is withdrawn.

18. The demand is withdrawn in view of the Company's assurance that they would be glad to take relatives of tin-men as tin-boys, as required by the Company, if they are found suitable.

For and on behalf of the
B. E. S. T. Co., Ltd.,
(Signed) A. L. GUILFORD,
Acting General Manager

For and on behalf of the
Tramway Men's Union.
(Signed) V. H. JOSHI,
General Secretary

(Signed) A. LATIFI,
Adjudicator
Bombay, 3rd September 1942.

ANNEX II

GENERAL TERMS

No.	<i>Items of dispute</i>	<i>Reply of the Company</i>
(Submitted by the Tramway Men's Union, Ex. A.)		(From Ex. E, as supplemented by their submissions during the proceedings.)
33 (b) There should be no service record for Learners ...		It is the usual practice for commercial and manufacturing concerns of repute to keep service records of <i>all</i> employees. There is no reason why Learners should be singled out for exemption from service records.
13 Every worker employed as learner and in the employ for one year or more be at once given a number and wages of assistant grade workers. This group includes a number of young men who are given alternatively day and night work mostly on war jobs.		The Union's demand is that a worker who has been employed as a learner be promoted to an assistant tradesman in a year. This is not possible for the following reasons: it is not possible for a learner to learn a trade within that period; the Company's establishment (like all engineering works) is limited to a number of tradesmen and assistant tradesmen in each grade and learners and when vacancies take place they are given opportunities, if found proficient, of promotion; the Company's establishment has a disproportionate number of tradesmen already; whilst he is in this Company, the learner is advancing from annas 11-4 to Rs. 1-1-0 by biennial increase of annas 2 pies 10 per day.

No. *Items of dispute*

Reply of the Company

(Submitted by the Tramway Men's Union, Ex. A.) (From Ex. E, as supplemented by their submissions during the proceedings.)

14 Every worker whether (a) permanent or (b) temporary sent to learn Turner's work in the name of war work and who accepted it even at night time giving over his day work and who is now doing full turner's work at night, be at once granted the number and wages of a full grade turner.

The Union's argument under this item is that as soon as a man produces something which a turner can do, he should be given the grade of turner. This, for the reasons stated above, is not practicable. The man concerned has a long way to go in gaining experience in his own work before he becomes a fully qualified tradesman.

23 The number of posts in higher grade be doubled ...

On the establishment we have at present 311 tradesmen, 74 assistant tradesmen and 51 learners and this more than adequate. We cannot contemplate increasing this. It is contrary to general engineering practice to have such a high percentage of tradesmen as we have and any further increase in costs will mean that the Company will have to put such work out to contract.

22 System of trial before promotion to higher grade be stopped ...

This is necessary and cannot be departed from, otherwise we would have a number of inefficient men in higher posts.

21 (a) The system of filling all higher posts as soon

All vacancies in higher posts are filled as soon as

(Submitted by the Tramway Men's Union, Ex. A.)

(From Ex. E, as supplemented by their submissions during the proceedings.)

as they fall vacant be started. Senior men in the workshop be appointed on such posts instead of bringing men from outside. For example vacancies of two Jamadars of watchmen. In Truckshop five places of maistries and foremen fell vacant since 1930. Four of them not at all filled up and one is filled up with an outsider Mr. Smith who was once discharged on account of some fault.

(b) The system to fill up all ordinary posts as soon as promotions are given to workers be started. For example in Truckshop in 1937-38 there were about 33 assistant fitters. Now there are only 20. These vacancies be filled up at once.

15 The number of coolies in every shop be at least doubled ...

trials have been made. The Union's contention that outsiders are brought in is not understood as it is not practised. The filling up of any vacancy depends (a) on a suitable man for it being available and (b) the necessity for the post. Jamadars of watchmen, for example, are now not wanted.

The correct figures for the Truckshops are :—

	Fitters.	Assistant Fitters.	Boys or Learners.
1937—38	...	33	17
1942	...	33	17
			3
			5

The Union ask for the number of coolies to be doubled. They give no reasons. The Management consider the number of coolies on the staff is adequate. The correct figures are :—

In 1938 = 533 tradesmen and assistants and 65 coolies.

In 1942 = 631 tradesmen and assistants and 109

No. *Items of dispute**Reply of the Company*

(Submitted by the Tramway Men's Union, Ex. A.) (From Ex. E, as supplemented by their submissions during the proceedings.)

27 Notice regarding Sectional Holidays be in the old wording ...

coolies (permanent and temporary).

Under the Company's Standing Orders, men with 10 years' service are given certain additional holidays with pay. Men under 10 years' service are not given these holidays with pay and in order to make this clear to the men, the circular was clarified and it was stated that men having over 10 years' service would be given such-and-such a holiday, and men under 10 years' service could work if they wished.

8 (*pre-amble* ii) The system of cutting double number of off days in case of leave for six days or more involving end of one month and the beginning of another, be at once discontinued, and a system of cutting of off days exactly in proportion of leave granted, be introduced, for night duty only.

The Company put in a statement (Exhibit Y) to explain the system, which they urge is very fair. It has been devised to counter the evil of absenteeism which is a serious one in a public utility service of this kind. It is not correct that double the number of off days is cut for leave taken as stated.

24 (b) Loans according to old method be available, *i.e.*, * * *

This Fund, called the Employees' Welfare Fund is maintained by the Company as a pure matter of grace and loans from it are given only to tide over

(b) Fresh loan from Employees' Welfare Fund

No.	<i>Items of dispute</i>	<i>Reply of the Company</i>
(Submitted by the	Tramway Men's Union, Ex. A.)	(From Ex. E as supplemented by their submissions during the proceedings).
	immediately after the old loan is paid off and not after six months' gap be available.	temporary difficulties. Grant of this demand would help only the habitual borrower at the expense of the generality of the workers. As appears from Company's Standing Order No. 31 this Fund is kept up not merely for the 700 odd persons concerned in this adjudication, but the 7,000 odd employees of the Company and the poorer section of the travelling public.

ANNEX III

EMOLUMENTS

- 32 There are 29 machines in the carpentershop and 13 workers are in charge of them. These include the Saw Doctors. Work on these machines is very valuable and they deserve much higher pay than what is paid at present. Seven of them are paid wages at the rate of Rs. 1-3-0 to Rs. 1-12-0 and six are paid at Rs. 1-12-0 to Rs. 2-7-0. These grades should be rearranged as Rs. 1-12-0 to Rs. 2-8-0 and Rs. 2-8-0 to Rs. 3-4-0, the final wage to be reached within five years.
- We have not got 29 machines but only 21. The only highly skilled work carried out in Carpenter Shop is done by the cabinet makers who are on higher rates of pay than the workers referred to by the Union. The men referred to by the Union are performing ordinary work on machines for timber sawing, planing and such like straight-forward jobs. The grades mentioned are not correct. We have:—

*Items of dispute**Reply of the Company*

No.

(Submitted by the Tramway Men's Union, Ex. A.)

(From Ex. E, as supplemented by their submissions during the proceedings.)

" S " *Rate*.—2 Machine Sawyers and 1 Saw Doctor or 3 men on Rs. 1-8-9 to Rs. 2-4-6, this rate with allowances = Rs. 2-2-8 to Rs. 3-0-6.

" C " *Rate*.—Machine Sawyers—1 man 1st grade Rs. 1-15-2 to Rs. 2-7-8.

3 men 2nd grade Rs. 1-9-6 to Rs. 1-12-4.

4 men Assistants Rs. 1-3-10 to Rs. 1-6-8.

" C " *Rate*.—Assistants to Saw Doctors—2 men Assistant grade Rs. 1-3-10 to Rs. 1-6-8. None of the " C " Rate men have more than 8 years' service, and some are quite new. They were engaged as Learners and have advanced much quicker than Learners normally do in other departments.

8 (a) Greaser-oiler in carsheds should obtain from Rs. 1-1-0 to Rs. 1-6-8 instead of stopping at Rs. 1-3-10.

16 The following increases in the present grade wages be granted:—

(a) Turner's final wages to be Rs. 2-5-3 instead of Rs. 2-2-0.

(b) Moulder's final wages to be Rs. 2-10-8 instead of Rs. 2-2-0.

The wages paid are fair. Opportunities are given to advance to higher grades.

This rate (" S ") is becoming obsolete. Some years ago the Company's grading schedule was examined by a senior official of the G. I. P. Railway and he graded our men in accordance with the work they were doing and according to the payment made

No. *Items of dispute**Reply of the Company*

(Submitted by the Tramway Men's Union, Ex. A.) (From Ex. E, as supplemented by their submissions during the proceedings.)

- (c) Drillman's final wages to be Rs. 2-5-0 instead of Rs. 1-13-0.
- (d) Good Painter's, Liner's and Polisher's final wages be Rs. 2-5-0 instead of Rs. 1-13-0.
- (e) Writer's final wages be Rs. 2-10-0 instead of Rs. 2-3-0.
- (f) Spray Painter's grade to start on Rs. 1-15-6 and to reach Rs. 2-10-8 in five years.
- (g) Wireman's final wages be Rs. 2-5-0 instead of Rs. 1-15-3.
- (h) Crane Driver's wages be Rs. 1-12-3 and should reach Rs. 2-2-0 within five years.
- (i) Watchman's wages be increased from Rs. 1-1-0 to Rs. 1-6-0 and watchman Jamadar's wages be increased from Rs. 1-9-6 to Rs. 1-12-0. They should be granted four fully paid offs per month and double wages for work done on off days or work done of two men by one on the same day. Two Jamadar's vacancies be filled up forthwith.
- (j) Oilman's wages be increased from Rs. 1-3-10 to Rs. 1-6-0.

17 A new superior turner's grade be introduced and granted to those superior turners who have

for similar work in the G. I. P. Railway Work-shops.

In 1927 the new rate known as the "C" Rate was introduced and the bulk of the men in the Work-shop are under this. There are 195 men on the "S" Rate, and 564 men on the "C" Rate. The number of men on "S" Rate reduces automatically each year by resignation, retirement, etc. (approximately 33 per year).

There is no justification for the increases suggested.

We have no superior work to warrant such a grade. The Show Room work is not "superior" and, as it is, the bulk of it goes outside, because we can

No. *Items of dispute**Reply of the Company*

(Submitted by the Tramway Men's Union, Ex. A.)

(From Ex. E as supplemented by their submissions during the proceedings.)

been working on the Show Room exhibits and war work such as gauges etc. The wages for the grade be Rs. 3-1-0 and should reach Rs. 4-4-0 in five years. A similarly paid superior grade for Cabinet Makers and Pattern Makers be introduced.

get it done cheaper so. The gauge work is not superior except for the final stage of lapping for which there is only one man and he has not been given any special consideration because he is junior and his promotion would create friction with the Union.

34 (b) For Tin-men there should be no trial at Rs. 1-12-6 but the second grade should be from Rs. 1-9-6 to Rs. 1-15-2. When trial will be passed at Rs. 1-15-2 if it is insisted upon, he should reach Rs. 2-10-6 without stop. The special grade need not exist.

The Company submit that the scale is adequate and compares favourably with other employers. They have no difficulty in recruiting trained craftsmen direct on these terms.

25 Wages be paid according to the work taken and not according to endorsement on card.

The Company deny the existence of the practice complained against.

 ANNEX IV

INDIVIDUAL CASES

8 (c) Ch. No. 1528 Day Staff be promoted to the post of a wireman.

Check No. 1528 was offered a Wireman's vacancy on night shift but refused it. The man has done very well as it is.

No. *Items of dispute*

Reply of the Company

(Submitted by the Tramway Men's Union, Ex. A.)

(From Ex. E as supplemented by their submissions during the proceedings.)

30 The mason (in carpenter shop) Keshav Gopal is serving for 23 years. He is drawing Rs. 1-8-8 per day. There are other masons in the Company who are better paid (Rs. 2-2-0, Rs. 3-4-0). He was promised that his case will be considered but the promise is yet to be carried out. A mason employed after him in the Kingsway Workshop is paid Rs. 2-7-0 per day and is placed in a better grade though his service is only 5 to 6 years, while Keshav Gopal is supposed to work till the end of his service on Rs. 1-8-8 basic wage. His wages be now increased to Rs. 2-8-0 and the same to rise up to Rs. 3-4-0 within five years.

Keshav Gopal has only been here 20 years and he is on the "S" Rate scale and drawing the maximum Rs. 1-8-8. This with allowances comes to Rs. 54-15-4 for a 26-day month, e.g.

26 × Rs. 1-8-8	...	Rs. a. p.
25 per cent. War Allowance	...	40 1 4
Tram fare at As. 3 per day	...	10 0 0
	...	4 14 0
Total	...	54 15 4

On "C" Rate we have no mason on Rs. 2-7-0 as stated. The highest is Rs. 2-2-0, and we have one man only on this rate, and under "C" Rate conditions he can only earn 24 days and 5 hours' pay for a 26-working day month which = Rs. 52-4-0 which is Rs. 2-11-4 less than the case of the man cited. Keshav Gopal is not worth more than what he is getting.

No. *Items of dispute**Reply of the Company*

(Submitted by the Tramway Men's Union, Ex. A.) (From Ex. E, as supplemented by their submissions during the proceedings.)

34 (a) Nos. 48 and 51 should at once be promoted to Rs. 2-10-6 daily wages.

No. 48 is on the superior grade and will advance to Rs. 2-10-6 subject to satisfactory service. No. 51—attendance is unsatisfactory. The Company submit that the scale is adequate and compares favourably with other employers.

31 The three Muccadams of coolies in Machine, Truck and Carpenter shops who have over 20 years' service get Rs. 1-3-3. Their basic wages be now increased to Rs. 2 rising to Rs. 3-4-0 within five years.

We have only 3 Muccadams on "S" Rate and the rate given is correct but when 25 per cent. allowance and tram fare is added it comes to Rs. 1-10-3 per day. "C" Rate Muccadam's grade is Rs. 1-3-10 to Rs. 1-6-8, so Rs. 1-10-3 "S" Rate is comparable to Rs. 1-6-8 "C" Rate. To talk about raising Muccadams to Rs. 3-4-0 per day is ridiculous, as they are only promoted coolies who are responsible for the supervision of distribution of coolies according to demands of departments or on instructions from the various Foremen. They also work as coolies themselves. The rate demanded is much higher than that paid to skilled tradesmen.

18 A number of "S" Rate workers having fifteen to twenty years' service to their credit have not been allowed to reach their final wages of

What the Union state under this head is incorrect. The Company only withhold increases from employees for adequate reasons. What the Union

No. (Submitted by the Tramway Men's Union, Ex. A.) (From Ex. E, as supplemented by their submissions during the proceedings.)

Rs. 1-15-0 of their full grade due to the Company's policy of withholding increases even when they are overdue. These workers should at once be granted their final wages.

suggest is that if a man is waiting for a vacancy, he should, when he gets that vacancy, be given a rate equal to what he would have had, had he automatically been transferred from the one grade to the other, immediately on reaching the top of his previous grade. For example, the grade of a fitter is Rs. 1-4-9, by 1 anna, to an Efficiency Bar at Rs. 1-15-9, by 1 anna to Rs. 2-5-1; e.g. a certain man with a service of 17 years started as a coolie, and then was advanced to an Assistant Fitter, then to a Fitter in table 10 scale, and is at present drawing Rs. 1-9-9 *plus* allowance. The Union's case is that this man should go from Rs. 1-9-9 to Rs. 1-15-9 simply because he has over 15 years' service.

As it is, these men have already received a double concession, as a matter of pure grace, *i.e.*, when they were blocked for promotion at Rs. 1-4-3 they were promoted to full tradesmen at Rs. 1-5-9 (Rs. 1-4-9 plus special increment of Re. 0-1-0).

(*Bombay Castle, 16-12-1944, No. 5907/34-I. Government Gazette, Part 1, pp. 2988-3010*).

BOMBAY ELECTRIC SUPPLY AND TRAMWAYS CO., LTD.

and

- (1) ITS "NON-SCHEDULED" EMPLOYEES OF THE TRAFFIC DEPT.
- (2) ITS "NON-SCHEDULED" EMPLOYEES OF THE KINGSWAY WORKSHOP,
- (3) ITS "SCHEDULED EMPLOYEES", AND
- (4) ITS "NON-SCHEDULED" EMPLOYEES IN THE ENGINEERING DEPARTMENTS OTHER THAN THE KINGSWAY WORKSHOP

Adjudicator.—E. M. Nanavutty, Esq., I.C.S. (Retd.).

In the matter of the trade dispute between the Bombay Electric Supply and Tramways Co. Ltd., Bombay, and its "non-scheduled" employees of the Traffic Department (Dispute No. I).

Mr. M. S. Captain, Solicitor, with Mr. D. S. Captain, Solicitor, instructed by Mr. A. S. Trollip, General Manager, and Mr. A. L. Guilford, Deputy Manager, for the Bombay Electric Supply and Tramways Co., Ltd.

Counsel Mr. S. C. Joshi, with Mr. N. V. Phadke, Joint General Secretary of the Union of B. S. S. T. Employees for the "non-scheduled" employees of the Traffic Department.

A w a r d

By Government Order, Political and Services Department, No. 5907/34-I, dated the 17th July 1944, issued under sub-rule (1) of rule 81A of the Defence of India Rules, read with Government of India, Department of Labour, Notification No. L. 3005, dated the 20th May 1942, I was appointed to adjudicate in the trade dispute between the Bombay Electric Supply and Tramways Co., Ltd. and its "non-scheduled" employees of the Traffic Department (Dispute No. I.). The same Order also directed that I was to exercise such powers as are conferred on, and follow such procedure as is prescribed for, a Board of Conciliation under the Trade Disputes Act of 1929 and the Bombay Trade Disputes Rules of 1930. By similar Government Orders, Political and Services Department, Nos. 5907/34-II, 5907/34-III and 5907/34-IV, dated the 17th July 1944, I was also appointed to adjudicate in the

disputes between the Bombay Electric Supply and Tramways Co., Ltd., on the one hand and (1) the "non-scheduled" employees of the Kingsway Workshop (Dispute No. II), (2) the "scheduled" employees (Dispute No. III) and (3) the "non-scheduled" employees of the Engineering Departments other than the Kingsway Workshop (Dispute No. IV), respectively, on the other. Thus altogether four trade disputes between the Bombay Electric Supply and Tramways Co. Ltd., (hereinafter referred to as "the Company" for the sake of brevity) and four different sets of its employees were referred to me for adjudication. Although most of the demands are common in the four disputes referred to above, each dispute was heard separately, and a separate award is given in respect of each adjudication. It would, however, be convenient to give the antecedents of these disputes at one place so as to avoid repetition. It is, therefore, proposed to furnish the historical background in this award (in Dispute No. I). The above disputes have arisen under the following circumstances.

2. After the outbreak of the present war in September 1939, the prices of commodities began to rise, and the cost of living index number indicated a rapidly upward trend. In March 1940, a serious trade dispute on the question of dearness allowance to compensate the workers for the rise in the cost of living due to the war was feared between the Company on the one hand, and their employees represented by the Tramway Men's Union, the Tramway Traffic Union, the B. E. S. T. Omnibus Drivers' Union and the B. E. S. T. Omnibus Conductors' Union, on the other. On the 14th March 1940, the Government of Bombay, with a view to promote a settlement of this dispute, appointed a Board of Conciliation presided over by Sir Govind Madgavkar, under the provisions of the Trade Disputes Act of 1929. Sir Govind Madgavkar held an inquiry into that dispute but was not able to bring about a settlement on the sole question of dearness allowance. He, therefore, sent his report to Government on 4th April 1940, and made certain recommendations regarding the grant of dearness allowance to the employees of the Company. The report was published by Government in Part IV-A of the *Bombay Government Gazette Extraordinary*, dated 8th April 1940. The Company, however, did not accept "*in toto*" the recommendations made by Sir Govind Madgavkar but granted a certain amount of dearness allowance to compensate the employees for the then rise in the cost of living.

3. On the 3rd of April 1942, a general meeting of B. E. S. T. Traffic Union, to which most of the bus drivers and conductors and some tramway-men belonged, passed twelve resolutions formulating grievances and demanding their redress. On the 7th May 1942, another general meeting of the Union passed a resolution to forward three out of the twelve original demands to the Company, which the Union thought were most pressing and urgent. On the

14th May 1942, the Union served the Company with a notice embodying the three demands, and threatening a strike, which was to commence after the 28th of May 1942, if those demands were not conceded. On the 18th May 1942, the Managing Committee of the Tramway Men's Union passed resolutions asking for a revision of the scale of dearness allowance and for an emergency evacuation allowance. On the 22nd May 1942, the Commissioner of Labour put forward a suggestion that the demands of the Unions might be referred to an Arbitrator to be appointed by Government. This proposal was acceptable to the Company but not to some of the Unions. The notice to strike expired on the 28th May 1942 and most of the bus drivers and conductors and some of the tramway-men struck work. There was no strike in the workshop. The Company made arrangements to carry on a restricted service with the aid of volunteers. On the 29th May 1942, the Government of Bombay issued an order under rule 81-A of the Defence of India Rules, appointing the Honourable Sir Robert Broomfield (then officiating Chief Justice of the High Court of Bombay) to adjudicate in that dispute. The strikers thereupon decided at their meeting held on 1st June 1942, to call off the strike and they resumed work accordingly on the following day. Sir Robert Broomfield made his award on the 26th June 1942. The award was published in Part I of the *Bombay Government Gazette* Extraordinary, dated 10th July 1942, together with the Government order of enforcement making the award binding on the Company and its employees. Sir Robert Broomfield adjudicated upon certain demands of the Tramway Men's Union, which were common with the other Unions, and ruled out a number of demands which, in his opinion, were beyond the scope of his inquiry. Being aggrieved that a large number of their demands remained unredressed, the Tramway Men's Union again formulated the same demands, which were not considered by Sir Robert Broomfield, and forwarded them to the management on 24th June 1942, with a threat that if nothing was done within 15 days the employees would strike work on the 11th July 1942. The Government of Bombay again intervened, and by notification No. 5907/34, dated the 10th July 1942, appointed Dr. A. Latifi, C.I.E., O.B.E., I.C.S. (Retd.), to adjudicate in that dispute. Dr. Latifi heard the parties and made his award on 3rd September 1942. The award was published in Part I of the *Bombay Government Gazette*, dated 17th September 1942. The award was also enforced and made binding on the parties by Government Order, Political and Services Department, No. 5907/34, dated 5th November 1942.

4. In January 1943, the Union of the B. E. S. T. Employees, to use their very words, "felt called upon to seek a revision of the award of Sir Robert Broomfield." A resolution to that effect was passed at a general meeting of the Union on 22nd January 1943. A copy of the resolution, accompanied by certain other

urgent and pressing demands, was forwarded to the General Manager of the Company on the same day. On 21st February 1943, the Tramway Men's Union also submitted a number of demands to the Company. Certain negotiations were carried on between the Board of Directors of the Company and the representatives of the employees, but nothing tangible resulted from these discussions. In the month of May 1943, the Company replied to the Unions that they were unable to accede to their demands. On 25th October 1943, the Union of the B. E. S. T. Employees passed a resolution urging Government to appoint a Court of Inquiry under the Trade Disputes Act or an Adjudicator. Similarly on the 10th December 1943, the Tramway Men's Union wrote to the Commissioner of Labour urging that the dispute in the Kingsway Workshop be referred to adjudication. The Commissioner of Labour informed the Union of the B. E. S. T. Employees on 14th December 1943, that so long as the previous awards were in force, another adjudication could not be ordered upon the demands covered by the decisions in those awards. The Tramway Men's Union was similarly informed by the Commissioner of Labour on 21st December 1943 that the previous awards were subsisting. On 28th December 1943, the Union of the B. E. S. T. Employees gave a notice of termination of the award of Sir Robert Broomfield to the Company; and the award of Dr. Latifi was terminated by the same Union by giving a notice on 24th March 1944. The notice of termination of the awards of Sir Robert Broomfield and of Dr. Latifi was given by the Tramway Men's Union on 7th March 1944. The B. E. S. T. Scheduled Staff Union, which was formed in November 1942, and was putting forth several demands since that time was also dissatisfied with the negative reply it received from the Company in May 1943, turning down most of their demands except that of dearness allowance which was extended by the Company to cover employees drawing up to Rs. 200 a month. Although this Union was not a party to any of the proceedings before either Sir Robert Broomfield or Dr. Latifi, yet in order to avoid any technical flaw or irregularity it also gave a formal notice for termination of the award of Sir Robert Broomfield on 20th January 1944. A similar notice to terminate the award of Dr. Latifi was given on 25th March 1944 by the B. E. S. T. Scheduled Staff Union. Thus by the end of March 1944, the awards of Sir Robert Broomfield and of Dr. Latifi had ceased to bind the parties to it. On the 3rd April 1944, the Union of the B. E. S. T. Employees served the Company with a notice to strike work, which was to expire on the 17th April 1944. The Government of Bombay again intervened, and the dispute between the Company and the "non-scheduled" employees of the Traffic Department was referred to the adjudication of Mr. K. B. Wassoodew, by Government Order, Political and Services Department, No. 5907/34, dated the 12th April 1944. Mr. K. B. Wassoodew issued the usual notices on 17th April 1944, calling upon the parties

to file their respective written statements. The Union of the B. E. S. T. Employees filed its statement on 24th April 1944 and the Company filed its reply on 2nd May 1944. A preliminary hearing in this dispute was held by Mr. Wassoodew on 3rd May 1944, and further hearing was postponed till 12th June 1944, when the High Court would be reopened after the summer vacation. In the meantime, on the 29th April 1944, the B. E. S. T. Scheduled Staff Union also passed a resolution, threatening a strike if the dispute of the scheduled staff of the Company was not referred to adjudication. A copy of it was forwarded to the Commissioner of Labour on 6th May 1944. Three other disputes were also referred to the adjudication of Mr. Wassoodew by separate Government Orders dated 15th May 1944, 18th May 1944 and 7th June 1944. The usual notices in respect of each of these disputes were also issued and the written statements by the parties were filed with the Secretary of the Industrial Court. The hearing of the first dispute, which was fixed for 12th June 1944, before Mr. Wassoodew, had to be postponed "sine die", as in the meantime Mr. Wassoodew fell ill. As it appeared that his illness was of a serious nature and would incapacitate him from hearing the cases for some considerable time, he informed Government that all the disputes might be referred to some other Adjudicator. Government thereupon, in supersession of the previous Orders, issued fresh Orders on 17th July 1944, referring all the four disputes to me as stated above. I took over charge of the cases on the 19th July 1944, perused the written statements of the parties and fixed the preliminary hearing of the cases for the 24th July 1944 in the Industrial Court at 11 a.m. On that day the parties agreed that I need not issue fresh notices, and that whatever statements had already been filed in pursuance of the directions given by Mr. Wassoodew, should be taken as if they were filed before me. Regarding the venue of the proceedings, Mr. Captain on behalf of the Company suggested that the proceedings should be held in the Board-room of the Company at "Electric House" as was done on the last occasion when the dispute was decided by Dr. Latifi. This request was made on the ground that the Company's officers were required to answer a number of telephone calls from time to time and that if the proceedings were held in the Industrial Court, it would keep a number of the Company's officers away from their duties as their presence was essential in the Court for the purpose of giving instructions to their Solicitor, and it was feared that their absence from "Electric House" might affect to a certain extent the traffic arrangements of trams and buses, which imposed a very heavy demand on the Company at present. The representatives of the workers opposed this proposal of Mr. Captain on grounds of policy and of what they considered fair play. Realising that if the proceedings were held in the Board-room of the Company it would put everybody to a lot of inconvenience except the officers and the Solicitor for the Company,

and finding that through the kindness and courtesy of the President of the Industrial Court a separate court-room had been placed at my disposal, I decided that the forum for these disputes should be no other than the premises of the Industrial Court. At the special request, however, of Mr. Captain who pleaded his infirmities on the ground of old age, I agreed to dispense with the usual court method, and decided that the proceedings be held in the same manner as chamber-matters are heard on the Original Side of the High Court of Bombay, so that the parties could address the Adjudicator while sitting. The parties suggested that for the purpose of these adjudications I should visit the Company's workshops and depôts. On the 25th July 1944, I, therefore, visited the Kingsway Workshop in order to acquaint myself with the nature of the work done there. Similarly on the 26th July 1944, I visited "Electric House" and the Workshop at Colaba; on the 27th July I went to the Kussara sub-station depôt at Mazgaon and on 2nd August 1944, I inspected the Tramway-depôt at Tardeo and the Bus-depôt at Byculla and inspected the laying of mains near the K. E. M. Hospital at Parel. The regular day-to-day sittings of these disputes were scheduled to commence on 7th August 1944. The parties in dispute No. I appeared before me on the 7th and 8th August 1944, but as Mr. Captain, the Company's Solicitor, fell ill and had cardiac trouble, at the request of Mr. Trollip, the further hearing of the case had to be postponed to Monday, the 14th August 1944, when the hearing was resumed and it continued on the 15th, 16th, 17th, 18th, 21st, 24th and 25th August 1944. The second dispute relating to the "non-scheduled" employees of the Kingsway Workshop commenced on 28th August and continued on 29th, 30th, 31st August and 1st, 11th, 12th, 13th, 14th, 15th, 21st, 22nd, 25th, 26th and 28th September 1944. The third dispute of the scheduled staff commenced on 5th September 1944 and continued on 6th, 7th, 18th and 19th September 1944. The fourth dispute affecting the "non-scheduled" employees in the Engineering Departments other than the Kingsway Workshop, was heard on 8th September 1944.

5. Certain issues were compromised and some of the demands have been withdrawn. The memoranda of settlement in all the four disputes were drawn up separately for each case and were signed by the parties in my presence on 22nd September 1944. The memorandum of settlement in Dispute No. I is attached herewith as Annex "A". The proceedings in all the four disputes were concluded on 28th September 1944.

6. It will be convenient if I group the demands in all four disputes according to their subject-matter; and to economise paper and to avoid repetition of arguments in respect of common demands, I think it proper to decide all common demands in these four disputes in my award in this Dispute No. I relating to the

"non-scheduled" employees of the Traffic Department. I will, therefore, first take up the important and universal demand for an increase in the wages of all employees of this Company whether that demand be camouflaged as change in the classification of workers, or as revision of the scales of pay in force since 1934, or as revision in the rates of wages known as "C" rate amongst the "non-scheduled" employees of the Kingsway Workshop at Dadar, or as revision in the scales of pay of the "scheduled" employees included in Schedules C and F of the grading of the staff, or as revision in the classification and in the rates of wages known as "C" rates of the "non-scheduled" employees in the Engineering Departments of the Company other than the Kingsway Workshop at Dadar.

REVISION OF SCALES OF PAY AND OCCUPATIONAL
CLASSIFICATION OF EMPLOYEES

7. This demand for increase in wages is embodied in issues (1), (2) and (3) of Dispute no. I, and in issues (1) and (2) of Dispute No. II, and in issues (1A) and (1B) of Dispute No. III, and in issues (1), (2A), (2B) and (3) of Dispute No. IV.

8. The workers in Dispute No. I demanded an increase of 25 per cent. in their wages, whilst those in Dispute No. II demanded an increase of 40 per cent. in their wages. The workers in Disputes Nos. III and IV fixed no definite limits to their demands for increases in wages.

9. I may note here by way of explanation that those workers whose wages are calculated at so much a day though paid at the end of the month are classified by the Company as "non-scheduled" workers and their wages are shown in the Tables attached to the grading of the staff of the Bombay Electric Supply and Tramways Co., Ltd. (Exhibit 3). Those employees who are paid monthly are known as "scheduled" workers and are shown in the various schedules set forth in the grading of the staff of the Company (Exhibit 3).

10. The revised rates of wages for the employees in the Kingsway Workshop and in the other Engineering Departments of the Company were known as "C" rates or consolidated rates for new entrants whereas the old employees in these departments were on what the Company described as "S" rates or Standard or Scheduled rates.

11. The demands for a 25 per cent. increase in wages in Dispute No. I and for a 40 per cent. increase in Dispute No. II

were wisely given up by the learned counsel who appeared on behalf of the workers in these two disputes. They ultimately confined their demands to revising the scales of pay of the "non-scheduled" employees of the Traffic Department so as to reintroduce the scale of wages that had been in force before 1934 and to raising the scale of wages of "C" rate employees of the Kingsway Workshop and other Engineering Departments of the Company to the level of that enjoyed by "S" rate workers. Now there can be no doubt that the wages granted by the Company to its "non-scheduled" employees of the Traffic Department, who have been in the service of the Company before 1934, are higher than the scale of pay now in force in that Department in respect of new entrants. Similarly the scale of wages of "S" rate workers is higher than that of "C" rate workers, who joined the service of the Company since the revision of wages in the Engineering Departments of the Company in 1929. It has been argued on behalf of the employees of the Company that these differences in the wages of workers working in the same Company and doing exactly the same kind of work are manifestly unjust and lead to much heart-burning and labour-unrest and should be done away with, and there should be a uniform rate of wages for all employees of the Company doing work of the same kind. They, therefore, demand that the old scales of pay, which were in force before 1934, should be made applicable to all "non-scheduled" employees of the Traffic Department, and, that the "S" rate scale of wages should be granted to all employees engaged on the "C" rate scale of pay in the Kingsway Workshop and in the Engineering Departments of the Company other than the Kingsway Workshop.

12. They also demanded that the scales of pay of the "scheduled" employees included in Schedule C and Schedule F of the grading of the staff should be raised so as to give the clerks, compounders and dressers of the Company a fair and reasonable wage.

13. This demand for an increase in wages of all the employees of the Company is based on the tacit assumption that the wages at present paid to the workers of this Company are not fair and reasonable. This assumption the workers have, in my opinion, failed to prove. After hearing the arguments of both sides at considerable length, I have after much deliberation come to the conclusion that even the present revised rates of pay fixed for employees in the Traffic and the Engineering Departments of the Company (including those in the Kingsway Workshop) are fair and reasonable when taken in conjunction with the amenities and welfare benefits granted by the Company to its employees. The total annual value of these benefits and amenities enjoyed by the employees of the Company is very considerable and reaches the

very gratifying figure of over 13½ lacs of rupees (*vide* Exhibit 41 filed by the Company and proved by the evidence of Mr. Tijoriwala, Senior Assistant Accountant of the Company).

14. The learned advocate for the employees in the Kingsway Workshop at Dadar has relied upon the General Wage Census Report, Part I (First Report) of 1934, published by the Labour Office, Bombay. At page 94 of this report there is a tabular statement showing that the average monthly earnings of all workers in engineering concerns in the City of Bombay amount to Rs. 41-0-11. Mr. Sule has argued on the strength of this entry that the wages of the employees in the Kingsway Workshop are not fair and reasonable inasmuch as they fall below this monthly average. At page 91, however, of this same Wage Census Report there is a paragraph headed "VARIATIONS IN EARNINGS BETWEEN DIFFERENT CONCERNS" which runs as follows:

"Considerable stress has been laid in this report on the variations in both rates and earnings as between area and area and between concern and concern in the same area."

That being the case, average monthly earnings are misleading and have no evidentiary value in deciding the question whether the scales of wages paid to the workmen in the Kingsway Workshop and in other Engineering Departments of this Company are fair and reasonable or not.

15. So far as the Traffic Department of this Company is concerned, Mr. Trollip has filed a comparative statement showing the rates and scales of pay in other Tramways and Bus Companies outside Bombay as contrasted with the rates and scales of pay of the Bombay Electric Supply and Tramways Co., Ltd. This statement is Exhibit 44, and it proves to my entire satisfaction that the "non-scheduled" employees of the Traffic Department of this Company are better off here in Bombay than they would be in any other similar concern in any other city in India.

16. As for the clerical staff of this Company, Mr. S. C. Joshi, the learned counsel who appeared on behalf of the "scheduled" employees in Dispute No. III, frankly admitted that for the first thirteen years of their service the clerks of this Company enjoyed a higher salary than clerks in Government service or in railways or in other business concerns.

17. Failing to prove that the wages of the employees of this Company were in fact below those earned by workers in other concerns, both Mr. Sule and Mr. Joshi fell back upon the report of the Textile Labour Inquiry Committee, presided over by the Honourable Mr. Justice H. V. Divatia. That Committee appointed by the then Congress Government came to the conclusion after an

elaborate inquiry that the range of total expenditure for maintaining a living wage standard for a typical family of husband, wife and two children would be between Rs. 50 and Rs. 55 a month. It was argued on behalf of the employees of the Company that, judged by this living wage standard, the wages and salaries paid by this Company to its workers were not fair and reasonable and should be raised at least to the level arrived at by the Divatia Committee. It is not for me, as an Adjudicator, to raise the level of the wages of the employees of the Company up to the living wage standard prescribed by the Divatia Committee. In this connection I cannot do better than cite the authority of Lord Amulree, at one time President of the Industrial Court, London, and Chairman of the National Wages Board for Railways.

“On the one hand the very fact that recourse is had to arbitration indicates that sheer individualism has broken down and that the circumstances require something better than that each workman should make his own bargain with his employer. On the other hand the Court has to give a decision to meet present-day requirements and must take the world as it is. Whatever may be their political and social views, the individual members of the Court cannot, in their professional capacity, ignore existing facts or give decisions related to a state of affairs which, however much desired, is of the future and not of the present. They are concerned not with what the workers ‘ought’ in a moral sense to receive, but what it is proper that they should receive in view of the state of the industry, if more good than harm is to result from the Court’s decision.”

“The Court is indeed in a position similar to that of the Courts of Justice which administer the Common Law. The Common Law is organic; it undergoes change, and at any time bears a relationship to current, moral and ethical opinion. *It must, however, move in the rear rather than in the van of reform.* Its function is rather to peg down and make secure gains which have been won in the march of progress and not itself to lead the advance. The judges who apply and administer the law do so consistently with this view, and however advanced and progressive may be their opinion in private, on the bench they must see that they do not go beyond the point reached by the general body of ordinary people.”

(“Industrial Arbitration in Great Britain” by Lord Amulree, G.B.E., Oxford University Press, 1929, p. 186).

The view I take of this matter is further strengthened by the observations of the Honourable Mr. Justice M. C. Chagla in his award as arbitrator in the trade-dispute between the General Motors (India), Ltd., and its employees. In the course of his award the learned Judge says:

"I think that the Bombay Textile Labour Inquiry Committee laid down the ideal which labour legislation in India should ultimately attain to. It should also be an ideal at which model employers should aim, but I do not think it would be right on my part to compel any particular employer to conform to this ideal. The wages paid in the City of Bombay are still very far from this standard. All that I can do in giving my award is to see how far I can legitimately prevail upon the employer to come as near this standard as possible."

(*Bombay Government Gazette of 28th May 1942, Part I p. 1900.*)

Mr. Justice Divatia himself when asked to increase the wages of the employees in Messrs. Lever Brothers (India) Ltd., in accordance with the recommendation of the Textile Labour Inquiry Committee, made the following significant observation:

"Whether the Company [Messrs. Lever Brothers (India) Ltd.] should or should not pay a living wage on the standards found to be equitable by the Textile Labour Inquiry Committee is a matter which cannot be decided for one individual concern alone and I therefore see no utility in discussing this aspect of the question beyond saying that to my mind the Company has adopted a generous and liberal policy with regard to the subject of wages which it should pay. For it to adopt a still more liberal standard would depend not only on its own capacity to pay; but also on the levels of wages paid by its competitors."

[Award of Mr. Justice Divatia in Messrs. Lever Brothers (India) Ltd., Bombay, and its employees. *Bombay Labour Gazette*, September 1941, p. 74.]

18. Unable to prove that the wages of the workers in the Bombay Electric Supply and Tramways Co., Ltd., were below the subsistence wage, and balked in their attempt to get the wages of the workers raised to the level of Rs. 55 a month as calculated by the Divatia Committee, the learned counsel for the employees of the Company fell back as a last resort upon the differences in the scales of pay of "S" rate workers and "C" rate workers, and demanded that "C" rate workers should get the same scale of wages as the old "S" rate workers and that in the Traffic Department the scale of pay in force before 1934 and thereafter should be made uniform. In arguing this particular point, Mr. S. C. Joshi, the learned counsel who appeared for the workers in Disputes Nos. I, III and IV vigorously urged that the fact that the employees had voluntarily entered into agreements with the Company and had freely accepted the lower rates of pay offered to them at the time they joined the service of the Company should not make a Court of arbitration hesitate to brush aside these agreements in the interests of the workers. I cannot for a

moment accept this preposterous contention. Ours is a capitalistic society based on complete freedom of contract. In this epoch of full-blown economic freedom of contract, men do not readily acquiesce in the given condition of things. Taking little for granted, they seek to know the ground they stand on, and the road they travel and the reason why.

19. Mr. Joshi's contention, if, accepted and acted upon, would make an end of our present capitalistic society. Mr. Joshi coolly asks the Court to treat all agreements regarding wages, whether verbal or written between employers and employees, as worthless and to be brushed aside at the sweet will of the workers if it suits their convenience—a doctrine laden with storm and havoc, which is the secret essence of the Rights of Man, and the indestructible soul of Revolution. Verily, we are living in revolutionary times when men, deeply versed in law, seriously advance in a trade-dispute before an Adjudicator these dangerous and subversive doctrines which strike at the very roots of our social, economic and political organisations.

Mr. Joshi cites as his authority on this point certain observations of an eminent Australian Judge, Mr. Henry B. Higgins, who was at one time a Justice of the High Court of Australia, and President of the Court of Conciliation and Arbitration for 14 years in Australia. Mr. Higgins says on page 19 of his book, "A New Province For Law And Order" that "freedom of contract is a misnomer as applied to the contract between an employer and an ordinary individual employee", and he goes on to add: "Low wages are bad in the worker's eyes, but unemployment, with starvation in the background, is worse."

20. Now these observations were made by Mr. Higgins with reference to a special set of circumstances. In Australia the legislature has fixed a minimum wage or basic wage for various classes of workers. This basic wage is held to be sacrosanct. Neither the employer can legally employ any worker on a lower wage than this basic wage, nor can a worker contract himself out of his legal right to earn this basic wage. The Court of Arbitration in Australia would see to it that the employer did not swindle the employee out of his legal right to receive his basic wage. We, in Bombay, have no such fixed minimum or basic wage laid down by the Local Government to which effect could be given in any trade-dispute pending before an Adjudicator or an Industrial Tribunal. The observations of Mr. Higgins quoted above, can, therefore, have no bearing or relevancy in the present disputes between the Bombay Electric Supply and Tramways Co. Ltd., and its employees.

21. In answer to Mr. Joshi's contention on this point, Mr. Trollip on behalf of the Company has argued that just as it is

lawful for the workers to demand an increase in wages, so it is equally permissible and lawful for the Company to engage new workers on a lower scale of wages than what it formerly offered if the exigencies of the business and market conditions rendered such a course expedient and advisable; and he pointed to the fact that recently even the Government of India thought fit to engage clerks in its service on a lower scale of wages than what it used to offer previously. Mr. Trollip further urged that the Company should not be penalised in the manner suggested by Mr. Joshi and Mr. Sule, just because it generously kept on some of its old "S" rate workers out of sheer kindness instead of sacking them all when it engaged new men on "C" rate wages.

22. For the reasons given above, I am clearly of opinion that the workers have failed to prove that any revision in the scales of pay in force since 1934 is called for, or that any revision in the rates of wages known as "C" rates is necessary, or that the employees included in schedules C and F of the Grading of the Staff need to have their wages increased.

23. I may note here that while demand No. (1) in Dispute No. I relating to classification of the workers was withdrawn, a similar demand for classification of the workers embodied in issue No. (1) of Dispute No. IV has not been withdrawn. I, therefore, think it proper to say a few words regarding the classification of workers in this Company and the demand for a change therein made by the employees of the Company. At the outset, I may note that this classification of workers made by the management of the Company has, with slight modifications, worked satisfactorily for a quarter of a century, and it is only now when the business of the Company is shortly to be bought over by the Bombay Municipality in 1947 that the workers have thought fit to agitate for a fresh classification.

24. It was in 1920 that Mr. Peel, the Workshop Superintendent, started the classification of the workers in the Engineering Departments of the Company. When the workers objected to Mr. Peel's classification, the then General Manager of the Company, Mr. Moberley, secured the services of Mr. Wrench, Chief Mechanical Engineer of the G. I. P. Railway, to revise the classification prepared by Mr. Peel. The workers of the Company were satisfied with the revised classification made by Mr. Wrench, who subsequently rose to be a member of the Railway Board. The carpenters of the Company, however, objected to Mr. Wrench revising their rates as they said that he was no carpenter. Mr. Peel thereupon himself went in 1922 to the Carriage and Wagon Workshop of the G. I. P. Railway at Matunga and revised the rates paid to his carpenters in his engineering workshops in the light of the rates of wages paid to carpenters by the Railway Company, and all the

workers were well content with the classification made by Mr. Wrench and Mr. Peel.

25. As pointed out by Mr. Trollip, wage-rating and job-evaluation can only be done by an expert in his own line. Employees of this Company and their Unions have not examined any engineering expert to show that the classification of workers upon which rests the whole foundation of the management of the Company's affairs is unsound and unfair.

I, therefore, think it best to leave well alone, and not to tamper with a classification which has stood the test of time for a quarter of a century.

26. Mr. Sule and Mr. Joshi have discussed at great length the cases of several individual employees of the Company as regards the wages paid to them and the increments earned by them; but after hearing the explanation furnished by the General Manager of the Company, in each individual case, I do not think that there is much substance in these complaints; and as Government has not asked me in its Order appointing me as Adjudicator to discuss the cases of individual workers, I feel that I would not be justified in lengthening out this already long award by discussing in detail the case of every individual employee of the Company argued before me.

27. For the reasons given above, I hold that no case has been made out for an increase in the wages of the workers or for revision of scales or rates of pay or for change in the classification of workers in all four disputes. I decide issues (1), (2) and (3) of Dispute No. I, issues (1) and (2) of Dispute No. II, issues (1A) and (1B) of Dispute No. III and issues (1), (2A), (2B), and (3) of Dispute No. IV in favour of the Company and against its employees.

DEARNESS ALLOWANCE

28. I come next to discuss the question of dearness allowance. This demand is common to all four disputes. It is issue No. (4) in Disputes Nos. I, II and IV and it is issue No. (2) in Dispute No. III. Over this question of dearness allowance parties have fought most fiercely. The workers in the first instance demanded that they should be paid such an amount of dearness allowance as would neutralise to the full extent the cut in their real wages consequent on the rise in the cost of living. Subsequently, counsel for the employees of the Company submitted that the workers would be satisfied if they were paid dearness allowance by their Company on the same scale as that adopted by the Millowners' Association of Bombay.

29. For a proper understanding of this problem of dearness allowance it is necessary for me to give here a brief history of the events leading up to the grant of dearness allowance by the Mill-owners of Bombay to their mill-hands and by other concerns to their employees. Shortly after the outbreak of the present world-war in September 1939, prices of commodities began to rise, and the official cost of living index number, prepared by the Labour Office in Bombay, indicated an upward trend. In January 1940 the index number for Bombay rose to 114. In that month the textile workers of the City of Bombay held a "mahagai" (dearness of food) conference. It was convened by the Bombay Girni Kamgar Union (Red Flag). At that meeting the workers demanded a 40 per cent. increase in their wages to compensate them for the then rise in the cost of living. This resulted in a trade dispute which the Government of Bombay tried to settle by appointing, under the Bombay Industrial Disputes Act of 1938, a Board of Conciliation under the Chairmanship of Sir Sajba Rangnekar. The Board was not able to bring about a settlement between the parties. A majority of the members of the Board came to the conclusion that the cost of maintaining the pre-war standard of living for the cotton textile workers in the City of Bombay was about 13 per cent. higher in January 1940, as compared with the pre-war month of August 1939. They, therefore, recommended a dearness allowance at a flat rate of two annas a day for each worker or Rs. 3-4-0 a month (for a month of 26 days) to cover variations in the official cost of living index numbers between 105 and 123. This dearness allowance was to be given to all the employees drawing up to Rs. 150 a month, and the mills were asked to open cost price grain shops at convenient centres to enable workers to obtain good cereals at cheap prices. Thus the 13 per cent. rise in the cost of living then estimated by the Board was to be fully neutralised.

30. In pursuance of these recommendations the Millowners' Association of Bombay opened cost price grain shops so that 3 per cent. benefit was to be derived by the mill-hands by making purchases of grain at these cost-price grain shops besides getting a dearness allowance in cash at the rate of two annas a day for each worker or in other words Rs. 3-4-0 a month for a month of 26 working days.

31. The rise in the cost of living also affected industries other than the mill-industry in the City of Bombay, and a dispute having arisen between the Bombay Electric Supply and Tramways Co. Ltd., and its employees, the Government of Bombay appointed a Board of Conciliation presided over by Sir Govind Madgavkar under the provisions of the Trade Disputes Act of 1929 to bring about a settlement of this dispute. Sir Govind Madgavkar submitted his report in April 1940, in which he recommended that the Company should pay dearness allowance at a flat rate of

Rs. 4 a month for each employee drawing a salary up to Rs. 100 a month and at the rate of two annas and six pies a day to each daily wage-earner. The Bombay Electric Supply and Tramways Co. Ltd., did not accept these recommendations, but granted from the month of April 1940 a dearness allowance of Rs. 2 a month to all employees drawing Rs. 50 a month or less. In June 1940, the Company increased the dearness allowance from Rs. 2 to Rs. 3 a month to each employee whose gross monthly earnings were Rs. 100 or under. A daily paid worker whose monthly earning capacity was Rs. 100 or less was given a dearness allowance of one anna and six pies a day.

32. In July 1941, the cost of living index number for Bombay City, rose to 126. Owing to this upward tendency in the cost of living index number the Government of Bombay discussed this question of dearness allowance with the Bombay Millowners' Association and persuaded them to set up a sliding scale and link it with the progressive rise in the cost of living index numbers as in the table shown below:

Official working class cost of living index number.			Dearness allowance for a month of 26 days. Rs. a. p.		
124	...	...	...	4	8 0
125	...	...	...	4	12 0
126	...	...	...	5	0 0
127	...	...	...	5	3 0
128	...	...	...	5	7 0
129	...	...	...	5	11 0
130	...	...	...	5	15 0
131	...	...	...	6	3 0
132	...	...	...	6	6 0
133	...	...	...	6	10 0
134	...	...	...	6	14 0
135	...	...	...	7	2 0
136	...	...	...	7	6 0
137	...	...	...	7	9 0
138	...	...	...	7	13 0
139	...	...	...	8	1 0
140	...	...	...	8	5 0
141	...	...	...	8	9 0
142	...	...	...	8	12 0
143	...	...	...	9	0 0

The Government of Bombay greatly appreciated the attitude taken up by the Bombay Millowners' Association, and issued a press note on the 8th August 1941, expressing a hope that other industries in the City of Bombay would, as far as practicable, accept the further scale of dearness allowance adopted for the cotton textile industry and pay their workers accordingly. (See *Bombay Labour Gazette* for August 1941, pp. 1936-37.)

33. The Bombay Electric Supply and Tramways Co. Ltd., accordingly revised its scale of dearness allowance and set up a sliding scale of its own linked up with the proportionate rise in the cost of living index number as in the table shown below:

Bombay working class cost of living index number.			Monthly dearness allowance to B.E.S & T. worker.	
			Rs. a. p.	
121	...	...	3	2 0
122	...	...	3	4 0
123	...	...	3	7 0
124	...	...	3	9 0
125	...	...	3	12 0
126	...	...	3	14 0
127	...	...	4	0 0
128	...	...	4	3 0
129	...	...	4	5 0
130	...	...	4	8 0
131	...	...	4	10 0
132	...	...	4	12 0
133	...	...	4	15 0
134	...	...	5	1 0
135	...	...	5	4 0

This revised scale of dearness allowance came into force from 1st July 1941. The dearness allowance according to this scheme was to be paid up to the end of April 1942. If the index figure rose above 135, no additional payment was to be made or demanded. If it fell below 121, the allowance of Rs. 3 a month which was being paid up to June 1941 was to be paid until the cost of living index figure remained below 105 for three successive months. (See *Bombay Labour Gazette* for December 1941, pp. 367-68).

34. In May 1942 the cost of living index figure rose to 142; and a dispute arose as the employees of the Bombay Electric Supply and Tramways Co., Ltd. demanded a further revision in their scale of dearness allowance. This dispute was referred to Sir Robert Broomfield as Adjudicator and he recommended the extension of the same sliding scale which was then in force to cover the cost of living index numbers from 135 to 142. He, however, held that the employees of this Company were not entitled to get dearness allowance on the scale granted by the Bombay Millowners' Association to their mill-hands because they were compensated by the amenities and welfare benefits enjoyed by them such as free uniforms, free medical aid, cost price grain shops, stores at cost price, residential quarters at cheap rents, etc. He further recommended that as the index number had risen above 143, the Bombay Electric Supply and Tramways Co. Ltd., should fall into line with the action taken by the Millowners' Association of Bombay and extend its scale proportionately. (See

Bombay Government Gazette, Extraordinary, Part I, dated 10th July 1942, p. 2535.)

35. The Company has filed exhibit 76 showing that it has adopted throughout a basis of giving Rs. 3 for every rise of 20 points in the cost of living index number.

36. After Sir Robert Broomfield had given his award, the Tramwaymen's Union raised the claim that the daily-rated employees of the Bombay Electric Supply and Tramways Co. Ltd., should have been paid dearness allowance at Rs. 3 a month, right from the beginning that is to say from 1st June 1940, and that they had only been paid at the rate of one anna and six pies a day amounting to Rs. 2-7-0 for a month of 26 working days. They, therefore, demanded that the deficit of nine annas a month for 13 months should be made good to them. This dispute was referred to Dr. Alma Latifi who accepted the contention of the Tramwaymen's Union and in his award dated 3rd September 1942 directed the Company to pay all their daily-rated workers at bus-sheds, car-sheds, over-head department and sub-stations of the Company with effect from 1st June 1940 to 30th June 1941, a dearness allowance of Rs. 3 a month, deducting of course the amount of dearness allowance already paid to them for these months. In this manner the arrears of dearness allowance due to the daily-rated employees of the Company were made up to them.

37. Thus far, I have laboured to give a brief account of the rise of the problem of dearness allowance in the City of Bombay in so far as it has affected the Bombay Electric Supply and Tramways Co. Ltd., and its employees. The problem of dearness allowance is one which still entangles the feet and vexes the hearts of men.

38. In the present four disputes the employees of the Bombay Electric Supply and Tramways Co. Ltd., demand that dearness allowance should be paid to them on the same scale as that on which the Bombay Millowners' Association pay dearness allowance to their mill-hands. They further demand that this enhanced rate of dearness allowance should be paid to them with retrospective effect from the date of their first notice to the company in this respect.

39. At present the Company is paying to its employees dearness allowance at the rate of approximately 65.4 per cent. or roughly about two-thirds of the scale of dearness allowance paid by the Millowners' Association of Bombay. (See exhibit 34.) The contention on behalf of the employees of the Company is that the scale of the Company's dearness allowance compensates the worker

for the rise in the cost of living only to the extent of 35 per cent. on the basis of Rs. 47 as the average monthly wage of a Bombay Electric Supply and Tramways Company's employee. In other words the real wages of the employees of this Company are reduced by about 65 per cent. If the Company were to pay dearness allowance to its workmen on the scale adopted by the Bombay Millowners' Association, the neutralisation of the cut in the real wages of the employees would barely be 52 per cent. In other words, even if the Bombay Electric Supply and Tramways Co. Ltd., were to adopt the Bombay Millowners' scale of dearness allowance, the employees of this Company would be suffering a reduction of 47 to 48 per cent. in their real wages. On these grounds and for these reasons the employees of the Company claim that their demand that the Company should at least grant them dearness allowance on the scale fixed by the Bombay Millowners' Association, is neither excessive nor unreasonable but is, on the contrary, in fact exceedingly moderate.

40. On the other hand, the learned Solicitor for the Company has strenuously argued that this very question of dearness allowance was fully argued before a very learned Judge, the Honourable Sir Robert Broomfield, and though his decision on this question was not binding on the parties or on me as Adjudicator, still it was contended that due weight should be given to the grounds upon which he rejected the demand of the employees for increased dearness allowance.

41. I have carefully studied the award of Sir Robert Broomfield, especially on this question of dearness allowance. In paragraph 35 of his award the learned Judge quotes with approval the observations of Mr. Justice Divatia in the dispute relating to Lever Brothers (India) Ltd., on the importance of uniformity and the need for observing it in the matter of the grant of dearness allowance. In the following paragraph, however, the learned Judge proceeds to give his reason for rejecting the demand of the workers for increased dearness allowance. It runs as follows:

"But, as in the case of wages, so obviously in the case of dearness allowance also, one has got to take all the circumstances into account as far as possible. *If the higher cost of living is compensated for in other ways, the workers cannot reasonably expect that dearness allowance should be paid on the same scale.* Among the benefits provided by the Bombay Electric Supply and Tramways Co. Ltd., are, three free uniforms a year to men in the Traffic branch, cost price grain shops, stores at cost price, free medical attention and medicines. Residential quarters at cheap rents are also provided for a certain amount of the Traffic and workshop's staff."

These benefits are, in the opinion of the learned Judge, a sufficient answer to the demand for increase in dearness allowance.

42. He further considered that the agreement of 1941 between the parties was "a working agreement between opposing points of view," and that this "compromise agreement, modified to meet present conditions was the most reasonable basis for a settlement now."

43. With all due respect to the learned Judge I find myself unable to agree with him on this point. The basic conception of dearness allowance, which underlies and explains the grant of it to an employee is that it is an attempt on the part of a generous and understanding employer to make good and to neutralise to some extent at least the cut in the real wages of the workman due to the rise in the cost of living, and thus prevent undeserved hardship to the poor worker who finds that the purchasing power of the rupee at present in terms of food-stuffs, due to no fault of his, is less than even half of the purchasing power of the rupee in pre-war days. In these difficult and distressing days due to a dreadful war raging all over the world, the workers even in India find that their wages paid in rupees have, so to speak by the stroke of an invisible pen, been reduced to less than half. What they want therefore is enough ready money to enable them to purchase the grain and other food-stuffs they require to feed themselves and their families. The amenities and welfare benefits relied upon by the learned Judge cannot at a moment's notice be turned into ready money to meet the urgent demands of the employees of the Bombay Electric Supply and Tramways Co. Ltd, for food-stuffs which must be paid for in hard cash. These amenities and welfare benefits are no doubt a great boon to the employees of the Company and make the service of the Company very attractive and constitute a very valuable addition to the wages of the employees, but they cannot be a substitute for dearness allowance which (if it is to serve its purpose), has to be granted mainly in cash and perhaps to a small extent, if the employee so desires, in grain.

44. Then again the compromise agreement of 1941, relied upon by the learned Judge, has not been reduced to writing, and it is not known exactly what Unions and what employees entered into this agreement. In the very nature of things, dearness allowance is a temporary and unstable measure, depending upon the rise and fall of the cost of living index number, and it is not possible, therefore, to make it the subject-matter of any lasting or permanent agreement, and no court of law in my opinion would hold the parties bound by such an oral agreement entered into by only some of the workers of the Company. Since the publication of

the award of Sir Robert Broomfield in July 1942, conditions have much worsened, and the cost of living index number for June 1944 has gone up to 236 which means that there is a rise in the cost of living of 124.76 per cent. over the pre-war month of August 1939. I must, therefore, treat this question of dearness allowance as if it were *res integra*, as in fact it is, and decide it afresh in the light of the evidence and arguments advanced before me by both sides.

45. Besides the stress laid upon the finding of Sir Robert Broomfield on the question of dearness allowance the learned Solicitor for the Company has filed a chart (Exhibit 77) whereby it is sought to prove that absenteeism in the Company increases *pari passu* with increase in the grant of dearness allowance. In my opinion no casual connection has been established between absenteeism and the grant of increased dearness allowance. It is one more instance of the age-old fallacy, *post hoc, ergo propter hoc*. In the Ministry of Labour Gazette for November 1942, at page 190, there is an illuminating article on "the Problem of Absenteeism" but the grant of dearness allowance is not alleged therein as one of the causes of absenteeism. Exhibit 77 is a beautiful and neat chart, but as a piece of evidence in support of the Company's contention it is in my opinion quite valueless.

46. I will now take up the more serious arguments advanced on behalf of the Company for refusing to grant its employees increased dearness allowance. Two tabular statements (Exhibits 40 and 94) have been filed on behalf of the Company showing that the earnings of an average Bombay Electric Supply and Tramways Company's worker (wage plus dearness allowance) are to-day much higher than the earnings of an average worker in a cotton-mill. Exhibit 49 shows in a tabular form that the millowners paid their workers a dearness allowance of Rs. 33-10-0 for January 1944. If to this figure is added Rs. 32-8-0 which is the average wage of a textile worker in Bombay, the total earnings of a mill-hand come to Rs. 66-2-0, whilst the Company's employee is shown as having earned Rs. 69 which is made up of Rs. 47 average wage plus Rs. 22 dearness allowance for the same month. It is therefore contended on behalf of the Company that as its worker has earned Rs. 3 more than the mill-hand, there is no justification for raising the present rate of dearness allowance granted to its employees. A similar state of things is shown in the tabular statement, Exhibit 94.

47. In my opinion these comparisons are wholly fallacious. It is always misleading, not to say dangerous, when comparisons are made of figures of actuals when added to averages. If the comparison is to be fair and reasonable, then only percentages ought to be taken into consideration. It is admitted that in the

case of a textile worker with an average wage of Rs. 32-8-0, the dearness allowance paid according to the sliding scale of the Bombay Millowners' Association neutralises the rise in the cost of living over the pre-war month of August 1939 only to the extent of 76 per cent., whereas in the case of a Bombay Electric Supply and Tramways Company's worker with an average monthly wage of Rs. 47 the neutralisation is roughly only to the extent of 35 per cent. Even if the Company were to grant its employees dearness allowance according to the millowners' scale, that would compensate the Company's worker only to the extent of 51.8 per cent. of the rise in the cost of living. (See Exhibit 71, page 7).

48. Mr. Sule, the learned Advocate who has appeared for the employees of the Kingsway Workshop in Dispute No. II, has argued that this statement, Exhibit 40, filed by the Company is itself an argument against the Company's own case. Higher dearness allowance is claimed by the Company's workers for the purpose of restoring to them as far as possible, their pre-war standard of life. The standard of life of the average Bombay Electric Supply and Tramways Company's worker, and the kind of work he has to do are, on the admission of the Company itself, much higher than those of a textile worker. In its reply to paragraph 33 of the written statement of the employees in Dispute No. I the Company stated:

"The fact that the average B. E. S. & T. worker has to perform duties which require a higher level of average skill than that required by an average textile worker, is taken into account in fixing the rates of wages paid to the B. E. S. & T. workers, the average of which is considerably higher than that paid to the textile workers."

49. The average wage in the case of the Company's workers is Rs. 47 a month and that of the workers in the textile industry in Bombay is Rs. 32-8-0. The average wage in the Company was thus higher than the average wage in the textile industry by about Rs. 14 in the pre-war month of August 1939. The B. E. S. & T. worker now earns (by way of wages plus dearness allowance) only three rupees more than did a textile worker, though he is still required to do the same type of work of higher skill which brought him Rs. 14 more every month than a textile worker earned in pre-war days. The Company cannot now say that it is paying more to its employee than what the textile owners are doing to theirs.

50. Another argument advanced by the Company is that none of its employees, as a result of the rise in the cost of living, is pushed below the subsistence level, since the average monthly wage of its employees is as high as Rs. 47. The factors which have to be taken into account in deciding this question are, firstly,

the extent to which the cost of living has risen; secondly, the total purchasing power of the employee; and thirdly, the extent to which the rise in the cost of living is neutralised in his case. Since a flat rate of dearness allowance is given to all the employees, the percentage of neutralisation of the rise in the cost of living is bound to vary for employees in different wage-categories. In this connection Mr. Joshi on behalf of the workers has filed a tabular statement (Exhibit 106) showing the comparative percentages of neutralisation for different categories of workers of this Company and of the textile workers on different wage levels. In this statement it is pointed out that while in the case of an employee of this Company drawing Rs. 35 a month the neutralisation of the cut in his real wages when the cost of living index number is at 235 is only 44.5 per cent., the neutralisation in the case of the textile worker drawing the same amount of wages is as much as 67.9 per cent., Similarly, for an employee drawing Rs. 45 a month in the Bombay Electric Supply and Tramways Co. Ltd., the percentage neutralisation when the cost of living index number is 235 is 34.6 per cent. as against 52.8 per cent. in the case of the textile worker. Had a basic wage been fixed or a living wage standard prescribed by the State, I would have found it easier to decide the question whether an employee is pushed below the subsistence level or not by the rise in the cost of living. So long as there is no such basic wage fixed, the question of what constitutes subsistence level must in my opinion be decided by general considerations of what is fair and reasonable.

51. Another line of defence set up by the Company is to be found in the statements, Exhibits 95 and 96, filed by the Company. By means of these Exhibits the Company has sought to prove that the monthly earnings of a B. E. S. T. worker are much more than the monthly budgetary requirements of a normal worker in Bombay. The Company has given two tables showing the cost of living in Bombay month by month and the earnings of a B. E. S. T. worker during the same period. The Family Budget Inquiry made in Bombay in 1932-33 gave Rs. 46 as the family expenditure with 1.53 earners in a normal family. In other words each full earner had a responsibility of earning at least Rs. 30.1 a month so as to meet the monthly expenditure of Rs. 46 for the whole family.

52. It was further argued on behalf of the Company that when this budget inquiry was made in 1932-33 the index number was 107 with base: July 1914=100. In 1933-34 the index number stood at 98 with the same base, but was assumed to be 100 for the new cost of living numbers. The Company calculated that since old index number 98 was equivalent to new index number 100, the old cost of living index number 107 for the

year 1932-33 would, on the new base, be equivalent to 109. With the index number at 109 a normal wage-earner in Bombay had the responsibility of earning at least Rs. 30.1 a month for his family. If a worker was responsible for earning for his family Rs. 30.1 a month when the index number stood at 109, he was called upon to earn in the pre-war month of August 1939 only Rs. 20.01 (?), for the index number then stood at 105 i.e. four points lower than in 1932-33. In July 1944, the cost of living index number stood at 241, and the normal wage-earner ought to have earned Rs. 66.57. The B. E. S. T. employee, the Company proudly asserted, earned Rs. 68-6-0 i.e. about two rupees more than what his responsibility as a paterfamilias required him to do.

53. There is to my mind no substance in this line of argument adopted by the Company and its able and versatile expert in statistics. The attempt to convert the new series of index numbers based on the year ending June 1934=100 to the old index numbers based on July 1914=100 by a mere arithmetical device is in itself an erroneous and unscientific method of dealing with this problem. The old series was worked out on the basis of what is known as the Aggregate Expenditure method, whereas the new series was based on the Family Budget method. Conversion to a common base, as attempted by the Company, could only have been valid if the two series had been constructed on similar or kindred bases. As pointed out in the Proceedings of the Third Conference of Labour Ministers (No. 73, Bulletins of Indian Industries and Labour, p. 32) under the heading *Constitution of the Index Numbers*:

“.....as an arithmetic mean (or aggregative which is an arithmetic mean) cannot be shifted to a different base without introducing an error, it is unsafe to reduce them to a common base for purposes of comparison.”

54. In this connection I would also note here that apart from the erroneous attempt to convert the new index number to the old base of July 1914=100, the argument on behalf of the Company is further vitiated by another serious misconception about the grant of dearness allowance. It is urged on behalf of the Company that the wages including dearness allowance at present received by the B. E. S. T. workers are already above the wage-level required to meet the expenses of their families, and as there is a surplus there is no justification on the part of these employees for asking for an increase in the amount of dearness allowance. To prove this contention that there is a surplus over the requirements of the family, the Company has divided the family budget of Rs. 46 by 1.53, the number of wage-earners in a family in Bombay and arrived at the figure of Rs. 30.1 referred to above. It is nowhere stated in the Family Budget Inquiry that the rate of earning is uniform for all the 1.53 wage-earners of a family. On

the contrary, the Textile Labour Inquiry Committee at page 383 of its report has categorically stated:

"16. We cannot for our typical family make any allowance for the earnings of the wife."
and again,

"17. Any supplementary sources of earning may be safely neglected from the calculations in arriving at the total expenditure for maintaining a living wage standard."

It is common ground between the parties that the wife or dependent of a B. E. S. T. worker does not earn anything. It follows therefore that the B. E. S. T. worker is the sole earning member of his family.

55. If for a moment I accept the contention of the Company that Rs. 46 a month was the minimum amount necessary for a typical working class family in Bombay in the years 1932-33 or 1933-34 when the cost of living index number stood at 100, the same family would require in the month of July 1944, when the index number stood at 241, a minimum amount for their maintenance of Rs. 110-15-4. On the Company's own showing (see Exhibit 110) the B. E. S. T. worker got only Rs. 68-6-0 when the cost of living index number was 241. The argument based upon an alleged surplus income thus falls to the ground.

56. The Company at the last hearing of the case made a final and gallant attempt to meet the case of the workers and prepared a new table (Exhibit 110) showing what a B. E. S. T. worker ought to earn on the basis of Rs. 30.1 as his share of responsibility in the family budget and what he actually earns. It gave up the idea of linking up the present index numbers to the old base of July 1914=100. I have already pointed out that the division of Rs. 46 by 1.53 is unsound and cannot for a moment be accepted. I am not in these disputes directly concerned with the earnings of 1.53 earners in a normal working family; but the questions for my determination in these disputes concerning dearness allowance, are what were the earnings of a typical B. E. S. T. worker in the month of August 1939, and how far were his real wages (i.e. his pre-war standard of living) affected by the abnormal rise in the cost of living. This to my mind is the only safe and sound method of dealing with the problem of dearness allowance raised in these disputes; and judged by this method, I must hold that the contention of the workers of the Company on this question of dearness allowance must inevitably and inexorably prevail.

57. Two other minor matters remain for my decision in connection with this issue before I wind up this elaborate discussion on dearness allowance. Mr. Sule, the learned advocate who appeared on behalf of the employees of the Company in Dis-

pute No. II, has strenuously argued that the workers in the Canteen Department of the Kingsway Workshop at Dadar are also entitled to be paid the same dearness allowance as will be paid to the regular employees of the Company; since from November 1943, these canteen workers became employees of the Company.

58. On this point it is sufficient for me to say that I unreservedly believe the sworn testimony of the Labour Officer of the Company who is an Advocate of the Bombay High Court and a disinterested witness in these trade-disputes. His evidence goes to prove to my entire satisfaction that these canteen-workers are only temporary employees of the Company who in consideration of the higher wages offered to them by the Company gave up all claims to dearness allowance. The present demand is to my mind only an after-thought on their part, and I therefore unhesitatingly reject the demand for dearness allowance made by these canteen-workers attached to the Kingsway Workshop at Dadar.

59. A claim has also been made on behalf of the members of the "scheduled" staff of the Company that they too should be given the same dearness allowance according to the millowners' scale as the rest of the workers of the Company. I am clearly of opinion that this demand should be granted. The "scheduled" staff of the Company is recruited mainly from the lower middle class in Bombay and is much more seriously affected by the rise in the cost of living than the workers of the Engineering Departments of the Company whose standard of living is slightly lower than that of the "scheduled" staff. The members of the "scheduled" staff complain that many of them have reached the maximum of their basic pay viz., Rs. 85 (excluding the old war allowance and tramway fares and the present dearness allowance) and have nothing more to look forward to. The total strength of the "scheduled" staff is 1095 out of whom 1021 are drawing less than Rs. 200 a month (see Exhibit 61). Government has recently announced that all Government officials drawing a salary of a thousand rupees a month and under, should get dearness allowance. This clearly shows that this class of employees is also seriously affected by the rise in the cost of living.

60. The Company demurs to the grant of additional dearness allowance on the ground of financial stringency. No doubt, the capacity of a business-concern to pay increased dearness allowance must always be deemed a relevant and important factor in considering this question, provided the company is in its nascent stage. But for a company like the Bombay Electric Supply and Tramways Co. Ltd., which has stood the test of time for two decades and more and has virtually held a monopoly so far as the City's passenger-transport service and electric lighting are concerned,

I am of opinion that it need not be seriously affected by paying an additional amount of dearness allowance which would remain as an item of expenditure in the Company's account-books till the price-level comes down to normal. The Company has estimated the cost of the additional grant of dearness allowance at Rs. 8,45,000 (Exhibit 40). I do not think that this sum would seriously affect the profit-earning capacity of the Company which has been paying a uniform dividend of 12 per cent. to its shareholders for a number of years in the past. I have examined the profit and loss account of the Company for 1943 submitted under a confidential cover and I am satisfied that the finances of the Company can well stand the strain of this additional expenditure due to increased payment of dearness allowance to its employees.

61. I therefore decide that all the employees of the Company to whom dearness allowance is being paid at present will henceforth be paid by the Company a dearness allowance on the same scale as that adopted by the Millowners' Association of Bombay with effect from the month in which the awards in these disputes are published in the *Bombay Government Gazette*.

The "scheduled" staff of the Company will also be entitled to get the same amount of dearness allowance as that paid to other employees of the Company. The workers in the canteen attached to the Kingsway Workshop at Dadar will not be entitled to any dearness allowance. These employees of the canteen department in the Kingsway Workshop deliberately gave up their right to demand dearness allowance by entering into separate agreements (Exhibit 108) with the Company at the time they joined the service of the Company.

I accordingly decide issue (4) in Disputes Nos. I, II and IV and issue (2) in Dispute No. III in favour of the employees of the Company and against the Company.

CONSOLIDATION OF OLD WAR ALLOWANCE

62. I will now take up the question of consolidating the old (1918) war-allowance with wages. This is issue (5) in Disputes Nos. I and IV and issue (11) in Dispute No. II. It is not made the subject of an issue in Dispute No. III.

63. This old war-allowance of 1918 was originally granted in order to compensate the employees of the Company for the increased cost of living which resulted from the First Great War of this Century (1914-1918). This war-allowance has been paid since October 1918. From 1st January 1919 this war-allowance was paid at the rate of 25 per cent. on salaries up to Rs. 75 a month. For employees getting salaries from Rs. 76 to Rs. 125 a month the rate of the war-allowance was 17½ per cent.; and it

was 10 per cent. on salaries ranging between Rs. 125 and Rs. 200 a month. Payment of this war-allowance has been continued by the Company ever since October 1918 without reference to changes in the cost of living index number. The Company itself treated this war-allowance as a permanent addition to the wages of its employees when the question of dearness allowance was before Sir Govind Madgavkar. To all intents and purposes this war-allowance was treated as part of wages.

64. The demand of the employees of the Company in the present disputes is that this war-allowance should also be treated as part of wages for the purpose of calculating Provident Fund contributions and for gratuities. Sir Robert Broomfield in his award dated 26th June 1942 (published in the *Bombay Government Gazette*, Extraordinary, Part I, dated 10th July 1942, at page 2533) held that "the claim that in future the war-allowance should be treated as part of wages in the calculation of bonuses is in my opinion a reasonable one and should be conceded."

65. Since the publication of this award of Sir Robert Broomfield the Company has been treating the old 1918 war-allowance as part of wages in the calculation of bonus, and it has continued to do so up to date, although that award is now not binding on either party after the employees of the Company had given notice of termination of that award. The Company agrees even now before me to continue to treat the old (1918) war-allowance as part of wages in the calculation of bonus, but it has strong objection to treating this war-allowance as part of wages for the purpose of calculating Provident Fund and gratuities. Its reasons are the same as those advanced by it before Sir Robert Broomfield. The Company lays stress upon the fact that the rules of the Provident Fund in respect of the Company's contribution and the payment of gratuities on retirement are more liberal than they otherwise would have been if the calculation of such contributions had been based on pay plus war-allowance. The final reason which ultimately induced Sir Robert Broomfield to reject the contention of the workers that war-allowance should be consolidated with wages for the purpose of Provident Fund and gratuity, was also urged by the Company's learned Solicitor as a valid ground for rejecting this demand of its employees.

66. I have heard the arguments of both sides at great length. I am in complete agreement with Sir Robert Broomfield when he holds that this demand of the workers of the Company is in principle perfectly reasonable, but I regret I find myself unable to follow his reason for rejecting the demand for consolidating the war-allowance with wages for the purpose of Provident Fund and gratuity. On this point I think it best to give the reasoning of the

learned Judge in his own words. He writes as follows :

“But a much more serious difficulty arises from the fact that the fund is vested in trustees, and the rules, which have been duly approved by the Commissioner of Income-tax, contain a proviso (see Rule 30) that no alteration shall be made affecting the amount of the Company's contribution. It would be futile therefore to recommend consolidation of the war allowance with basic pay for the purpose of Provident Fund and gratuity.”

Rule 30 of the Provident Fund Institution for the staff of the Bombay Electric Supply and Tramways Co. Ltd., runs as follows :

“30. *Power to make Rules and Regulations.*—The trustees, with the consent of the Company and with the previous approval of the Commissioner of Income-tax, may from time to time repeal, vary, or alter these rules, and frame such other rules and regulations with reference to the working and management of the Fund as the trustees may from time to time think fit. *Provided always that the amount of the Company's contribution shall not be affected by any such alteration, addition or variation.....*”

(The rest of the paragraph does not affect the decision of this case).

It is the proviso in this Rule 30 that no alteration shall be made affecting the amount of the Company's contribution that has influenced the learned Judge and made him averse to granting this demand of the employees.

67. Now a little careful consideration of this Rule 30 will convince us that this proviso to the rule can never be fulfilled for the simple reason that contributions of the employees to the Provident Fund can never remain constant. The promotion of employees from lower grades to higher grades, the admission of new entrants into the service of the Company, the retirement of old employees from the service of the Company and the consequent withdrawal of their amount of contribution from the Fund together with the Company's contribution—all these factors must necessarily vary the total amount of the subscribers' contribution to the Fund and as a result thereof, the total amount of the Company's contribution to the Fund must also necessarily vary to the same extent and can never remain constant. What, however, does remain constant throughout all these changes is the *rate* of the Company's contribution to the Fund as fixed by Rule 9 of the Provident Fund Rules. That Rule 9 lays down that the rate for the Company's contribution shall be the same as that fixed for the employee of the Company who by Rule 6 has to become a member of this Provident Fund. That fixed rate of $1/3$ per cent. of the employee's

wage or salary is what in my opinion the proviso to Rule 30 of the Provident Fund enjoins. I am, therefore, clearly of opinion that the word "amount" in the proviso to Rule 30 is a mistake for the word "rate" and the proviso, as I understand the matter, should read thus: "Provided always that the rate of the Company's contribution as provided for in Rule 9 shall not be affected by any such alteration, addition or variation."

68. On behalf of the employees of the Company it was pointed out to me that recently the Directors of the Company raised the salary of their General Manager by Rs. 500 a month and naturally the amount of the Company's contribution in respect of the General Manager's salary had also to be increased proportionately, but no attempt was made by the Company to comply with the existing proviso to Rule 30. In fact that proviso seems to have remained a dead letter '*ab initio*', for the simple reason that in the very nature of things it was impossible to give effect to it without altering the word "amount" to the word "rate", and no one has up to now taken the trouble to get this slight alteration made in Rule 30. If the Directors of the Company took the trouble to move the Commissioner of Income-tax in this matter, they would, I feel sure, have no difficulty in securing the sanction of the Commissioner of Income-tax to this verbal modification which does not affect the interests of anybody adversely, and which, moreover, makes good sense out of a proviso which up to now makes no sense and is incapable of enforcement as it stands.

69. If the Directors of the Company do feel inclined to act upon my suggestion, I would, in this connection, invite their attention also to Rule 8 of the Provident Fund, and request them to move the Commissioner of Income-tax to remove the word "war" from that Rule 8 and substitute therein the words "dearness allowance"; these verbal changes would bring these Provident Fund Rules up to date.

70. I have already pointed out that Sir Robert Broomfield considered the demand of the workers that this old (1918) war allowance should be treated as part of wages for the purpose of Provident Fund and gratuities, as perfectly reasonable; and I myself am clearly of opinion that this demand is eminently just and fair and should be granted. No valid reasons have been advanced before me on behalf of the Company for refusing to grant this demand.

71. I accordingly decide issue (5) in Disputes Nos. I and IV and issue (11) in Dispute No. II in favour of the employees of the Company and hold that the old war allowance of 1918 should be treated as part of wages not only in the calculation of bonus but also for the purpose of Provident Fund and gratuities. The grant

of this demand will cost the Company Rs. 1,86,000 annually (Exhibit 51).

In view of its prosperous financial condition, the Company can well afford to incur this additional cost, especially as it will result (as I hope it will) in securing the goodwill and contentment of its employees.

BONUS

72. I next turn to discuss the question of bonus and the terms and conditions on which it should be granted. This demand is issue (7) in Dispute No. I, issue (3) in Dispute No. II, issue (4) in Dispute No. III and issue (7) in Dispute No. IV.

73. The Company has already very generously granted a bonus equivalent to two months' wages to its employees. In the present four disputes, the workers demand an additional bonus of another month's wages over and above the two months' wages already enjoyed, besides the right to dictate to their Company the terms and conditions on which these bonuses should be granted.

74. At the outset, I pointed out to the learned counsel who were appearing on behalf of the employees in all four disputes that the workers were behaving in a rather unseemly manner in making these extravagant demands in respect of the grant of bonus. Counsel thereupon persuaded their clients to give up the demand for additional bonus of a third month's wages in respect of each of the years 1942 and 1943, and a memorandum of settlement was drawn up to that effect in respect of all four disputes and signed by parties and their counsel in my presence in Court.

75. I need not therefore decide the question as to what bonus should be granted by the Company for the years 1942 and 1943. The employees of the Company in Disputes Nos. I, II and IV, however, desire that the terms and conditions under which such bonus should be granted, should be decided by me. I have heard the arguments of both sides at great length.

76. In the first place it was argued before me that specific and just and equitable rules regarding the payment and calculation of bonus should be framed by the Company in consultation with the Unions of the workers and the Commissioner of Labour. This contention on the part of the employees of the Company completely ignores the cardinal fact that bonus is a free and voluntary gift to their workmen on the part of the Directors of the Company; the demand that the employees of the Company should be authorised

by the Court of an Adjudicator to fetter the discretion of the Directors of the Company in the matter of the payment and calculation of bonus is truly preposterous. It almost justifies the mordant remark of Sir Govind Madgavkar that in a very short time the workers of this Company will become its masters and the Directors their servants.

77. The General Manager of the Company has strenuously argued that bonus is an "ex gratia" payment and is purely a matter of internal administration of the Company, and, as such, outside the scope of interference by third parties. While not agreeing with him wholly I sympathise with the General Manager of the Company on this point. It would be intolerable for the Directors of the Company to be dictated to by the very persons on whom they are showering their favours as to the amount of the bonus they should grant and the terms and conditions on which they should grant it.

78. While, however, I fully agree with the General Manager of the Company that the discretion exercised by the Directors of the Company in the matter of the grant of bonus to its employees should not be lightly interfered with, I must point out that the Company is not justified on any ground whatsoever in excluding overtime from the wages of an employee in calculating the amount of bonus awarded to each such employee. After all, overtime constitutes an essential part of wages, for it is nothing but wages or monetary remuneration on a higher scale for work done during extra hours, over and above the stipulated hours of work for which a workman contracted to work for his employer. It is thus an integral part of wages; and when a Company graciously grants its workers bonus measured in terms of a month's or two months' wages it cannot meanly detract from its own gracious act by arbitrarily laying down that overtime shall not be reckoned as part of wages. The Millowners' Association of Bombay in granting bonus to its millhands always includes overtime as part of wages in calculating the bonus which the millowners award to their workmen. The Company's conduct in this matter is apt to engender resentment in the minds of its employees and thus defeat the very object for which it decides to grant bonus. For on no principle of justice, equity and good conscience can the conduct of the Company in excluding overtime be defended. I must therefore hold that in future whenever the Company decides to grant bonus to its employees it will include overtime as part of wages in the calculation of the amount of bonus it chooses to award to its workers.

79. The learned counsel for the workers has also put in a plea on behalf of the temporary employees of the Company that they too should be granted bonus. It is true that by the very terms of their service agreements they are debarred from enjoying the benefits which their permanent co-workers of the Company have

been granted. If, however, these so-called temporary employees happen by sheer good fortune to work continuously for the Company for over a year, then, apart from any question of the terms of their service agreements, these workers feel that they have as good a moral claim to the grant of bonus as the permanent employees of the Company. Since bonus is a voluntary gift on the part of the Company, neither the permanent workers nor the temporary employees can lay any legal claim to it. The terms of the service agreements entered into by the permanent employees as well as by the temporary workers make no mention of any bonus whatsoever. The grant of bonus on the part of the Company is obviously for the purpose of placating its employees and of keeping them happy and contented during these troublesome times. If it is worldly wisdom on the part of the Company to grant bonus of its own accord to its permanent employees, then it is equally wise on its part to grant to its temporary employees, who have been *continuously in its service for over a year* (some of them even for six or seven years), the same favour, otherwise, this unequal treatment will rankle in the breasts of its temporary employees as gross injustice. In my opinion it is false economy on the part of the Company to save a few thousand rupees and thereby create grave labour-unrest amongst its employees.

Of course if a temporary worker *has not been* in the service of the Company *continuously for over a year* then he cannot claim to be treated in the same way as a permanent employee in the matter of bonus, but if by sheer good fortune he happens to have found work in the Company continuously for a year and more, then his contribution towards the profits of the Company cannot be deemed to be less than that of any permanent employee of the Company, and his moral and equitable claim to the grant of a bonus is, in my opinion, as good as that of any permanent worker of the Company. I would, therefore, suggest that in future whenever the Company decides to grant bonus to its employees it would give to its temporary workmen, who have been continuously in its service for over a year and more, the same amount of bonus as it grants to its permanent employees. This will avoid much heart-burning amongst its workers and subserve the real purpose for which it elects to grant such bonuses of its own free will.

80. For the reasons given above, while I have no desire to fetter the discretion of the Company in the matter of the bonuses already granted to its employees, I would suggest in its own enlightened self-interest that it should in future include overtime as part of wages in calculating bonus, and should treat temporary employees who have been continuously in its service for over a year and more in the same manner as its permanent workers in the matter of the grant of bonus. I decide issue (7) in Disputes Nos. I and IV and issue (3) in Dispute No. II and issue (4) in Dispute No. III accordingly.

PROVIDENT FUND RULES

81. I will now take up the question of revising the Provident Fund Rules of the Company. This demand is embodied in issue (6) of Disputes Nos. I, II and IV and issue (8) of Dispute No. III.

82. The Provident Fund Rules of the Company were first framed in 1914 and are still substantially the same except for a few necessary changes made from time to time as for example when the Fund was converted into a recognised Fund.

83. The allegation made on behalf of the employees of the Company is that the existing Provident Fund Rules of the Company are detrimental to their real interests and that Rules 4, 6, 7, 8, 16, 17, 18, 24 and 30 require modification in order to safeguard the interests of the workers of the Company. It is suggested that in Rule 4, six more trustees taken from amongst the members of the subordinate staff should be added to the existing number of trustees nominated by the Board of Directors of the Company. It is argued that in that way only could adequate representation on behalf of the employees of the Company be secured and their interests be safeguarded. Reference was made to the Model Rules of Provident Fund approved by the Fifth Tripartite Labour Conference held in India in December 1943, and at the Fourth meeting of the Standing Labour Committee in January 1944, and stress was laid upon the principle that there should be an equal number of representatives of the employers and of the employees on the Board of Trustees administering the Provident Fund of the Company and the income thereof.

84. This contention on behalf of the employees of the Company tacitly assumes that the General Manager and other senior officers of the Company nominated by the Board of Directors, are not the employees of the Company and that the interests of these officers, who are as much servants of the Company as the humblest workmen of the Company, are in some way or other inimical to those of the employees of the Company. This tacit assumption on the part of the workmen's Unions is entirely false. The employees of the Company could have no better champions to safeguard their interests in the Provident Fund than these very officers whose enlightened self-interest would see to it that neither they nor the Company's workmen lost any of the benefits accruing to them under the rules of the Company's Provident Fund. The truth of this statement is manifest from the very fact that during the last thirty years (that is to say, ever since these Rules of the Provident Fund were first framed in 1914), not one single instance has ever been alleged that the trustees of this Fund nominated by the Board of Directors had misused their powers in respect of

this Fund to the detriment of the workers of the Company.

85. No allegation against the character and conduct of any trustee of this Fund nominated by the Board of Directors has been made by the Unions of the workers in any of these four disputes. I therefore see no reason whatsoever to revise Rule (4) of the Company's Provident Fund. It seems to me that this demand for revision of the Provident Fund Rules is just an attempt on the part of the workers and their Unions to subjugate the Directors of the Company and to harass them in various ways if they did not fall in line with their views.

86. In respect of Rule (6) of these Provident Fund Rules, the contention on behalf of the workers' Union is that every employee of the Company irrespective of the amount of wages earned by him and the length of his service should be entitled to join this Fund. Rule (6), as it stands, seems to me to be very fair and reasonable, and the change proposed by the Unions does not commend itself to me.

87. Rule (7) lays down the amount of subscription every subscriber of the Fund shall contribute, and the proposal of the Unions is that this amount should be reduced. This proposal is not in the real interests of the workers themselves and I do not approve of it.

88. In respect of Rule (8) of the Fund, counsel for the employees of the Company gave up his demand for a change in this Rule. I need therefore say nothing except to point out that if the Directors of the Company decide to move the Commissioner of Income Tax to amend Rule 30 of this Fund as suggested by me in paragraphs 68 and 69 of this award as regards the consolidation of the old war-allowance with wages then it might take the opportunity to get this Rule (8) amended by having the word "war" omitted from it.

89. Rules 16, 17, 18 and 24 of these Provident Fund Rules have been also sought to be amended in the interest of the employees of the Company. No valid reasons have been advanced by counsel for the workers and their Unions as to why the Company should grant greater favours to its employees than what these Rules already confer on them. This clearly shows that what the workers want by revision of the Company's Provident Fund Rules is mainly to secure greater monetary benefits for themselves.

90. As pointed out by Mr. Trollip, the Directors of the Company do not desire to have an Elective Board. The Provident Fund is the Company's Fund and the Directors do not wish to

have trustees from amongst their employees who will merely create disharmony and make it impossible for the present Trustees to administer the Fund in a smooth business-like manner. Mr. Trollip further mentioned the fact that the Company had formed a Co-operative Credit Society three years ago. Half the members of this Society were elected by the Directors of the Company and the other half were elected by the workmen of the Company; and the result was great lack of harmony and the work of the Society suffered in consequence. This is a serious warning to me not to grant this unnecessary demand of the workers if the smooth administration of the Provident Fund is to continue as of old.

91. As regards Rule 30 of this Fund, I have already in paragraphs 66, 67 and 68 of this award suggested to the Company that the word "amount" in that Rule should be altered to "rate" and perhaps it was the refusal of Sir Robert Broomfield to grant the demand of the workers for consolidation of the war-allowance for the purpose of Provident Fund and gratuity that gave the workers the idea of demanding a wholesale revision of the Provident Fund Rules with a view to coercing the Directors of the Company to yield to their wishes. Be that as it may, I see no reason whatsoever to grant this demand of the workers, and accordingly decide issue (6) of Disputes Nos. I, II and IV and issue (3) of Dispute No. III in favour of the Company and against the employees of the Company.

SERVICE AGREEMENTS

92. This demand [issue (8) of Dispute No. I] relates to the Service Agreements (Exhibit 37) which *at present* govern the "non-scheduled" employees of the Traffic Department who are involved in Dispute No. I and is confined to Dispute No. I alone. The "non-scheduled" workers of the Traffic Department and their Union desire that the present Service Agreements in force in the Traffic Department should be completely revised in consultation with the workers' Union and the Commissioner of Labour.

93. This demand is wholly misconceived, and is, moreover, couched in very strong and melodramatic language in paragraph 58 of the written statement of the employees in Dispute No. I. The demand obviously refers to what the Company should do in future, and the Agreements which it will have to make with men who in future wish to join the Traffic Department of the Company. I fail to understand how the present workers of the Company can insist on the Directors of the Company laying down fresh terms of Service Agreements for future entrants. I know of no law which can bind the Company

to employ labour in future on certain terms and on no others. I as an Adjudicator cannot interfere with the Service Agreements which are in force at present and binding on the parties to those contracts. Regarding the conditions of service which the Traffic staff have to accept on joining the service of the Company, the General Manager points out that it is necessary for the Company to get these men trained for periods up to three months at the Company's expense, to give a subsistence allowance to the trainees during such training period and in some cases to pay licence fees for them and to provide them with uniforms also.

94. The Company therefore considers that it is entitled to expect at least a year's service in return for these favours, and that if an employee in the Traffic Department leaves before putting in a year's service the Company should be re-imbursed for the loss sustained by it. The General Manager further points out that it is essential for the public convenience and in the interest of the public of Bombay City that absenteeism should be reduced as far as possible, and deterrents provided in order to secure regular attendance. The maintenance of discipline amongst the large staff of the Traffic Department is therefore of prime importance, and the allegations of the workers and their Union that the measures taken by the Company to secure discipline are "harsh", "severe" and "atrocious" have really no foundation in fact.

95. Finally, it was pointed out on behalf of the Company that these Service Agreements are matters entirely of internal management. Only the officers of the Company know by personal experience what difficulties they have to meet in running the Traffic Department of the Company. It is therefore argued that the discretion of these officers based on long experience should not be lightly interfered with, otherwise the business of the Company would be disorganised with disastrous results to public convenience and financial loss to the Company itself.

96. I may add that the workers and their Union have not submitted any draft of the proposed Service Agreement which would be acceptable to them; and I may also note here that the present Service Agreements have been in force for two decades and more and no employee had up to now complained that the terms of these Service Agreements were harsh and unconscionable. It is only when the demands of the workers of the Company were rejected by Sir Robert Broomfield and Dr. Latifi that the workers thought fit in the present trade dispute to attack the validity of these Service Agreements and the fairness of the terms embodied therein.

97. The Bombay Electric Supply and Tramways Co. Ltd., will cease to exist in 1947 when its business will be bought over

by the Bombay Municipality, and I see no point in disturbing existing arrangements for these few years, when they have stood the test of time for so many years.

98. For the reasons given above, I decide issue (8) of Dispute No. I in favour of the Company and against the 'non-scheduled' employees of the Traffic Department.

REVISION OF STANDING RULES OF THE TRAFFIC DEPARTMENT

99. I will now take up issues (9A) and (9B) of Dispute No. I which are as follows:

“(9A). Do the Standing Rules for Traffic Department require any revision, additions or alterations in regard to the following matters: overtime wages, paid weekly off, leave, promotions, court, medical help and sickness, hours of work and duty schedules, schools in respect of workers sent back for retraining and clothing?”

“(9B). Is it necessary to frame rules regarding disciplinary action against workers, and if so, what rules should be framed for the purpose?”

100. Most of the demands embodied in this issue (9) with its two sub-heads really concern the internal administration of the Company, and in my opinion the discretion of the managing and supervising staff of the Company in these matters should not be lightly interfered with, otherwise the management of the Company will get completely disorganised with disastrous consequences not only to the Directors of the Company but also to the workers themselves. The tendency of the workers of this Company and of their Unions to have their finger in every pie must be curtailed, if the affairs of the Company are to be run on lines approved of by its Directors and if one does not wish that the prophecy of Sir Govind Madgavkar should come true.

In the light of these general observations, I will now discuss each item of this issue separately.

OVERTIME

101. The first demand of the workers is that overtime should not be made compulsory and that no worker should be suspended for refusing to do overtime work. Now this demand it is impossible to grant without doing a lot of harm to the working of the Company. Overtime usually depends upon the exigencies of the transport service and frequently cannot be foreseen or provided for in advance. Since in the arrangement of tram and bus services public interest and public convenience are involved, it is impera-

tive that workers must be prepared to accept overtime when the management of the Company ask them to perform overtime duties. The workers must not labour under the delusion that the General Manager and the supervising staff are their avowed enemies and out to do them down at every turn when asked to do overtime. The sooner the employees get rid of such wrong ideas, the better for their peace of mind and for their prospect of promotion in the Company.

102. The second demand of the workers in connection with overtime is that if at all overtime is to be exacted it should be paid for at the rate of a time and a half. Now this demand too is most unreasonable. Both under the Factories Act as well as under the Bombay Shops and Establishments Act Government has laid down the rate of payment for overtime as time and a quarter, and I, as an Adjudicator, have no power to compel the Bombay Electric Supply and Tramways Co. Ltd., to pay their employees for overtime at a higher rate than that fixed by Government. The demands of the workers in respect of overtime are frivolous and I have no hesitation in rejecting them.

WEEKLY OFF

103. It is contended on behalf of the employees of the Company that all workers should get four or five paid weekly offs and the principle underlying the Bombay Shops and Establishments Act should be extended to workmen who are not covered by this Act.

On behalf of the Company it is pointed out that the Traffic staff already enjoy a paid weekly off, and it is not for me to override the Government by applying the provisions of the Bombay Shops and Establishments Act to workmen who have been expressly exempted from the operation of that Act. I therefore disallow this demand also.

LEAVE

104. This demand has been withdrawn by counsel for the employees of the Company; so nothing need be said here.

PROMOTIONS

105. The General Manager of the Company submitted draft rules relating to promotions (Exhibit 103) which he designated as new Standing Order 33A. In my opinion these proposed draft rules for promotions are admirable and not open to any valid objection. Counsel for the workers of the Company objected to the previous entries in the service-record of an employee being considered at the time of his promotion on the ground that entries

in service-records of the employees were often deliberately made by superior officers with a view to spoiling the chances of such workers for promotions. This objection to my mind is quite fantastic and baseless and casts an unmerited slur upon the character and integrity of the superior officers of the Company in whose hands the promotion of the worker lies. It seems to me from the attitude taken up before me by the workers of the Company in these four disputes that they and their Unions labour under the fixed delusion that the officers of the Company from the General Manager downwards are the avowed enemies of the workers, bent upon doing them injustice at every turn. I can only deplore this unhappy frame of mind of the workers and hope that in course of time the management will be able to disabuse the minds of the workers of the wrong ideas under which unhappily they are at present labouring.

The proposed draft rules for promotions submitted by the Company as new Standing Order No. 33A are in my opinion admirable and effectually remove all alleged grievances of the workers. These draft rules for promotions (Exhibit 103) are as follows:

“Promotions to higher posts will be considered as vacancies arise. Applications for such promotions will be entertained from employees having necessary qualifications and must be submitted through the Head of the Department in which the worker is employed. The Head of the Department will forward such applications with his remarks. In considering applications of candidates due weight will be given to seniority in service but service record and merit will also be taken into consideration. The best candidate having regard to all the relevant circumstances will be selected. Any attempt to bring influence to bear upon the officer dealing with the appointment will disqualify an applicant or candidate for promotion. If no suitable employee is found to fill the vacancy the appointment will be filled from outside the Company.”

For the reasons given above I hold that the above rule be inserted as Standing Order No. 33A in the Standing Orders of the Company (Exhibit 26). In my opinion this demand involves question of internal management and the Company cannot tolerate interference in such matters from their employees or their Unions. The new Standing Order No. 33A (Exhibit 103) as framed by the Company removes, in my opinion, any complaint of the workers as regards their demands in respect of promotions and I need not add anything more except to point out that rule No. 23 of the Standing Rules for Traffic Department (Exhibit 28) will have to be amended accordingly.

C o u r t

106. The workers demand that the rules regarding attendance at the "Court" held by the Company's officers should be completely overhauled.

107. Some years ago the Company took up this matter with the Unions of its workers, and in consultation with the Commissioner of Labour, drew up a complete set of rules, clearly defining the punishments which could be given for various types of "offences" liable to be committed in the Traffic Department. These Rules were known as the "Points System". A list of "offences" was drawn up and each "offence" was assessed in terms of points. A detailed statement giving full particulars of this elaborate system has been filed by the Company in this dispute No. I, and it is marked exhibit 4. The Commissioner of Labour, after making certain modifications in the scheme which the Company accepted "in toto", gave his full support to this "Points System". The employees and their Unions, however, declined to accept this new system but gave no reasons for their refusal, nor did they evolve another system of their own which the Company could have accepted as an adequate substitute for their existing "Court" system. The workers therefore cannot now legitimately complain about the shortcomings of the "Court" system when they refused to accept a better method of dealing with traffic "offences" devised by the Company. I may add that the "Court" system has been working fairly satisfactorily all these years, and now when the business of the Company is shortly going to pass into other hands, as pointed out by Mr. Captain more than once, it is hardly worth while tinkering with the present system of punishing "traffic offences". In 1947 under a new regime the workers will have a chance of evolving a system of punishment in the Traffic Department in consonance with their own wishes if these meet with the approval of the Bombay Corporation.

For the reasons given above, I disallow the workers' demand for revision of the existing system known as "Court".

MEDICAL HELP AND SICKNESS

108. After hearing the contentions of both parties as regards the allegations against the medical service of the Company, I have no hesitation in coming to the conclusion that there is no truth in the charges brought against the medical officers of the Company. Malingering seems to be rife amongst a certain section of the employees of the Company and when the fraud of the malingerer is exposed he naturally turns against the medical officer, and tries in self-defence to give him a bad name.

109. Another reason for the unpopularity of the Company's medical officers amongst a certain section of disgruntled workers of the Company is to be found in the refusal of the Company's medical officers to accept false medical certificates given by private medical practitioners which are produced by some of the employees of the Company, to excuse or explain away their absence from duty.

110. Counsel for the employees of the Company protests against the Company accepting as gospel truth the opinion of its medical officer regarding the fitness or otherwise of an employee from the health-point of view. This complaint is really frivolous. Naturally, the medical officer will have regard for the financial interest of the Company, but for that reason he is not going to sell his conscience and give a false medical opinion about the health of any employee of the Company. I therefore reject the demand of the workers as regards a change in the system of medical help to its employees organised by the Company.

HOURS OF WORK AND DUTY SCHEDULES

111. The allegation of the workers that the provisions of the Motor Vehicles Act regarding hours of work have been violated by the Company is hotly denied by the General Manager of the Company. He, however, admitted that in the event of non-reporting of relief hands or because of breakdown on the line or because of some other unforeseen circumstance it was sometimes necessary for the staff to work beyond the normal scheduled hours of work. He further stated that in arranging duty schedules, shifts had necessarily to be spread over the working day, but as the duties carried out by particular employees were changed at regular intervals each employee enjoyed the benefits of favourable duties as well as having had the disadvantage of unfavourable duties in fair rotation. He added that it was his experience that tram-drivers frequently preferred to work continuously in order to complete their daily tour of duty, but it was not a practice which was looked upon with favour by the Company.

112. The difficulties of arranging hours of work and duty schedules are not fully grasped by the workers nor by their Unions. The attitude of hostility towards the management of the Company taken up by some of the workers and their fixed delusion that the supervising staff are out to down them, account for many of the frivolous complaints made by the employees of the Company in respect of hours of work and duty schedules.

113. The demand for overtime to be paid for at the rate of a time and a half is unreasonable, as I have pointed out above in

paragraph 102, and it may be noted here that the bulk of the overtime worked is due to the misconduct of fellow-employees. Overtime has to be made compulsory in the Traffic Department if regular schedules are to be maintained, and such regularity is essential in the interest of the public and for their convenience.

114. As regards Inspectors, Ticket Examiners, Traffic Regulators, Starters, A-Grade Conductors, the Company has tried out in practice both split duties of approximately four and half hours' duration and straight duties; and the staff invariably prefer to work straight duties where possible. In view of the fact that the average number of reports is less than one a day, the allegation of the workers that some of them have to spend two hours during their free time in writing these reports is absurd on the face of it.

There is to my mind no force in the complaints regarding hours of work and duty schedules and I see no reason to revise or alter the existing hours of work and duty schedules.

"SCHOOL" FOR RETRAINING

115. The contention of the workers of the Company is that every employee sent to "School" should get full pay for the period for which he is so sent. This proposal is quite Gilbertian in its absurdity. The Company does not send a worker to "school" for a holiday but by way of punishment in order that he may learn once again to do his work more thoroughly and without making mistakes. If the worker gets full pay while in "school" he would like to malingering therein as long as he can rather than come out of it to do onerous work on the line. This may be the workers' idea of "making the punishment fit the crime" but it certainly cannot be the Company's. I reject this demand as frivolous in the extreme.

CLOTHING

116. The workers of the Company want that tram and bus drivers and conductors should get four uniforms every year, that conductors of trams should have sun-proof head-gear, and tram-drivers should get warm clothing. They further desire that Point-Boys and Trolley men should get three uniforms a year and a water-proof over-coat every three years. They would also insist upon Inspectors, Ticket-Examiners and others being provided with two hats every year together with a water-proof cover and two extra khaki shorts and a pair of shoes every year. Finally, to complete their demands, the workers also want that starters and A-Grade Conductors should be given four khaki uniforms every year or in lieu thereof five white uniforms with adequate "*dhobi*" allowance for getting them washed and kept clean. When counsel

for the workers' Unions was discussing the question of dearness allowance, he deliberately belittled the importance of this welfare amenity and argued that the employees of the Company would be quite willing to forego the gift of these uniforms if only increased dearness allowance were granted to them. Now counsel for the workers performs a complete somersault and demands in the name of the workers a considerably larger number of uniforms.

117. The short answer to this demand for additional clothing is that the giving of additional uniforms is a matter of favour, and that the Directors of the Company cannot be dictated to in this matter by their workers, nor would I, as an Adjudicator, be justified in coercing them to be more generous in this matter than what they have been up to now. I have no hesitation in rejecting this demand for additional clothing. What the Company may hereafter of its own free will choose to give in the way of additional clothing should be thankfully received by the workers.

For the reasons given above, I decide all matters grouped in issue (9A) in favour of the Company and against its employees.

RULES REGARDING DISCIPLINARY ACTION

118. Issue (9B) is quite redundant. It is covered by the demand under the head "Court" in issue (9A). The Company had prepared an entire system known as the "Points System" with the full approval of the Commissioner of Labour. It is filed in this case and is marked Exhibit 4. But for reasons which have not been disclosed by the employees of the Company or their Unions or their counsel, this "Points System" has not met with the approval of the workers, and they will have none of it. In view of the fact that the present "Court" system has worked fairly satisfactorily for two decades and more and the employees have got to know it fairly well, and in view of the further fact that the business of this Company is likely to change hands in 1947, I have not thought it wise or expedient to impose the "Points System" on the Company in the teeth of the opposition of the workers of the Company. No doubt the "Points System" is a great improvement on the present "Court" system and the management of the Company admit that fact, and it has, moreover, been successfully worked in many towns in England, but to my mind it is a moot point whether the workers will make a success of this new system which they do not want to be introduced in their Company. In this state of things I think it best to decide that it is not necessary to frame rules regarding disciplinary action against workers but to accept the draft rules for disciplinary action (Exhibit 104) filed by the Company which should be incorporated as new Standing Order No. 20A (see Annex. A-1). I accordingly decide issue (9B).

ISSUES (10A) runs as follows:

“Is any addition necessary to the Schedule in Standing Order No. 17 in respect of conductors who are required to work as District Starters or Waiting Conductors?”.

119. In respect of the demand embodied in issue (10-A) the General Manager of the Company has given a very satisfactory explanation in the written statement of the Company which is as under:

“Acting starters on the buses are employed only at minor termini where the amount of work is very small, and there is a big demand for these posts as the work is easier than that of a conductor. Furthermore, the regular starters are recruited from these acting starters, so that by obtaining a post as an acting starter the employee is then in line for further promotion . . . Such promotions are very much sought after because of the benefits accruing and the future prospects.”

120. The anomaly referred to by Mr. Phadke in the written statement of the workers is fully explained by the General Manager in the written statement filed on behalf of the Company, but it will take me too long to discuss this at length in this award. I am satisfied that it is not necessary to make any addition to the Schedule in Standing Order No. 17 as desired by the workers and I decide the issue accordingly.

CONDUCTOR'S CASH BAGS

Issue (11) relates to the checking of money in conductors' bags.

121. The necessity for checking the cash in the bag of a conductor arises on the following occasions:

(a) when a passenger complains that he has not been given back the full balance out of the coin or note he tendered for his fare and the conductor denies the allegation;

(b) when a conductor challenges the statement of a passenger that the latter has paid his fare;

(c) when a conductor complains of shortage in his cash occasioned by a quarrel or a fall in the vehicle or for any other reason;

(d) when a passenger reports that he has paid the conductor his fare, but no ticket has been issued to him;

(e) when a conductor re-issues a used ticket on receipt of a fare;

(f) when a conductor complains that a pick-pocket has stolen his money from his bag;

(g) when an Inspector on checking finds that a conductor has issued a ticket from the middle of a block of tickets.

All these occasions when the bag of a conductor is checked are perfectly legitimate and no humiliation attaches to the conductor, and the grievance made out of this is purely imaginary. Further I fail to understand why the workers' Unions should malign the supervisory staff in this manner seeing that they too have risen from the ranks of conductors. Altogether this demand is misconceived and frivolous and I reject it summarily and I decide that no rules are necessary to be framed with regard to the manner of checking conductors' cash bags by superior officers.

ISSUE (12) "Should Inspectors, Ticket Examiners and Starters be classified under scheduled staff?"

122. This is really a demand for the additional advantages which the 'scheduled' staff enjoy. Opportunities are created for the 'non-scheduled' supervisory staff to show their fitness for promotion by acting for the superior staff and during such periods of acting, a suitable acting allowance is granted to them; if they prove their fitness and efficiency they are in due course promoted to fill the vacancies as they arise.

The issue regarding revision of classification has been given up, and in my opinion these Inspectors, Ticket Examiners and Starters have got no legitimate grievances. I decide issue (12) in favour of the Company and against its employees.

WRITING OF REPORTS

ISSUE (13) "Should Inspectors and Ticket Examiners be permitted or allowed time to write all their reports during duty hours? If not, should they be paid any compensation for being required to write them outside their duty hours, and if so, on what basis?"

123. These reports have been shown to me and from statistics prepared by the Company it is found that the average number of reports submitted is less than one a day per man. It is therefore ridiculous to suggest that overtime should be paid for this negligible piece of work; and if overtime were paid the concession would inevitably lead to very serious abuse. I disallow this demand as

there is no substance in the complaint. I decide issue (13) in favour of the Company and against its employees.

ISSUE (14) "Should Ticket-Examiners be given the same grades and scales of pay as Inspectors, and A-Grade conductors the same grades and scales of pay as Assistant Starters?"

124. As pointed out by the General Manager of the Company, this demand really amounts in effect to a demand for the immediate promotion of 31 employees who are at present regarded as being on probation, pending vacancies arising in a higher grade to which they could aspire if found worthy. The workers' Unions charge the management of the Company with favouritism and unfair discrimination, but no evidence has been produced in proof of such mal-practices, and the General Manager of the Company indignantly protests against such unfair imputations. The latter also points out that the duties of an Inspector are not the same as those of a Ticket Examiner who is merely a pupil working under the supervision of the Inspector. I see no reason to grant this demand and accordingly decide issue (14) in favour of the Company and against its employees.

125. Issues (1), (7), (9A) relating to "leave" and (10B) have been compromised by the parties, and I make the memorandum of settlement filed by the parties before me as part of my award in this Dispute No. I.

126. To sum up, I decide issues (4) and (5) in favour of the employees of the Company and all other issues in favour of the Company.

127. At the close of his address in this dispute, the General Manager of the Company delivered a homily to the workers of his Company who were present in Court. The rebuke was fully deserved, inasmuch as the workers had shown throughout a lamentable lack of discipline. On the other hand, I may be permitted to point out to the Directors of the Company, who are all Indians, that there is an industrial revolution ahead of us in India. It has been said: "The East has definitely entered the revolutionary movement as a result of the first Imperialist war (1914-1918); it has definitely been drawn into the common whirlpool of the revolutionary movement." The present world-war has further accelerated the pace of this revolutionary movement, in the field of economics as well as in that of politics. It will require all the tact, "*savoir faire*" and sympathetic understanding of the workers' point of view on the part of the capitalists and organisers of industry in India to guide this industrial revolution into peaceful channels and so avert class warfare and bloodshed; and in this connection the Directors of this Company may well

bear in mind the wise words of a great student of modern history :

“There is another world for the expiation of guilt, but the wages of folly are payable here below.”

128. Before I conclude, I wish to place on record my deep appreciation of the kindness and courtesy of Mr. Trollip and of Mr. Guilford in getting all the necessary statements that I wanted for the decision of these trade disputes prepared in their office. Without their cordial help and co-operation my inquiry into these cases would not have been as exhaustive as in fact it has been. A just meed of praise is also due to the able advocates, Mr. Sule and Mr. S. C. Joshi, who argued the cause of the workers; and although they may have over-stated the case of the employees of the Company on some points, yet they were very helpful to me in many matters and particularly over the questions of dearness allowance and of consolidation of the old war-allowance with wages.

129. It is my earnest wish and prayer that in the fullness of time both sides to these disputes may learn to appreciate the truth and the wisdom of a notable saying of Lord Acton:—“Compromise is the soul and the whole of politics,” and, I may add, of economics too.

E. M. NANAVUTTY,
Adjudicator

Bombay, 10th November 1944

ANNEX “ A ”

In the matter of the trade dispute between the Bombay Electric Supply and Tramways Co., Ltd., Bombay, and its ‘non-scheduled’ employees of the Traffic Department, (Dispute No. I).

MEMORANDUM OF SETTLEMENT

ISSUES

TERMS OF SETTLEMENT

No. I. Should there be any change in the classification of the workers, and, if so, on what basis?

The demand of the employees contained in this issue is withdrawn.

No. 7. What bonus, if any, should be granted for the years 1942 and 1943, and on what terms and conditions?

In view of the fact that the Company has already granted bonus equivalent to two months' earnings, for each of the years 1942 and 1943, the demand of the employees for an additional month's bonus for each of the said years is given up. The terms and conditions regarding the payment of bonus will be decided by the Adjudicator.

No. 9 (A). Do the Standing Rules for Traffic Department require any revision, additions or alterations in regard to the following matters:
..... leave
.....?

The demand of the employees relating to leave with pay contained in this issue is withdrawn without prejudice to the other demands contained in this issue.

No. 10 (B) What modifications, alterations or additions, if any, are required in Standing Order No. 43?

It is agreed that the following Standing Order will be substituted for the existing Standing order No. 43:

"43. Transfers, Inter-Departmental.

Applications from Scheduled or non-scheduled employees for inter-departmental transfers will only be considered when there is a vacancy and when accompanied by the written approval of the Head of the Department in which the employee is working. Any employee to whom such approval has been refused may make a representation for the consideration of his case to the General Manager."

Before me,
E. M. NANAVUTTY,

A. L. GUILFORD,
for and on behalf of the Bombay Electric Supply and Tramways Co., Ltd., Bombay

Adjudicator,
Bombay. 22nd September 1944

S. C. JOSHI,
for and on behalf of the Union of the B.E.S.T. Employees.

ANNEX A1 (EXHIBIT 104)

"Draft Rules for Disciplinary Action (New Standing Order 20A).

Except in cases of summary dismissal or offences of a petty nature, an alleged offender shall be informed in writing of the offence and the date and time at which the case will be disposed of, which date shall not be less than two days after the service of the notice. At the hearing of the case the accused may be represented by the Company's Labour Officer on prior request or, if the offence is such that in the opinion of the officer who will hear the case the guilt of the accused would result in an order of dismissal, by one Union official or other representative.

An employee may be suspended pending the hearing of the case but if found not at fault such suspension shall not involve any loss of wages.

An order of dismissal shall only be passed by the Head of the Department and the employee shall have the right of appeal to the General Manager, which right shall be exercised within seven days."

In the matter of the trade dispute between the Bombay Electric Supply and Tramways Co., Ltd., Bombay, and its 'non-scheduled' employees of the Kingsway Workshop (Dispute No. II).

Mr. M. S. Captain, Solicitor, with Mr. D. S. Captain, Solicitor, instructed by Mr. A. S. Trollip, General Manager, and Mr. A. L. Guilford, Deputy Manager, for the Bombay Electric Supply and Tramways Co., Ltd.

Mr. K. T. Sule, Advocate, with Mr. R. N. Bhalerao, Mr. S. S. Mirajkar and Mr. B. L. Salvi, of the Tramwaymen's Union, for the "non-scheduled" employees of the Kingsway Workshop.

Mr. K. T. Sule, Advocate, for the employees working in the Canteen attached to the Kingsway Workshop.

A w a r d

By Government Order, Political and Services Department, No. 5907/34-II, dated the 17th July 1944, issued under sub-rule (1) of Rule 81-A of the Defence of India Rules read with Government of India, Department of Labour, Notification No. L. 3005, dated

the 20th May 1942, I was appointed Adjudicator in the trade-dispute between the Bombay Electric Supply and Tramways Co. Ltd., and its "non-scheduled" employees of the Kingsway Workshop at Dadar (Dispute No. II). The same order also directed that I was to exercise such powers as are conferred on, and follow such procedure as is prescribed for, a Board of Conciliation under the Trade Disputes Act of 1929 and the Bombay Trade Disputes Rules of 1930.

2. The previous history of the dispute between the parties has been fully set forth in my award of to-day's date in Dispute No. I between the said Company and the "non-scheduled" employees of the Traffic Department. I will therefore proceed at once to decide the issues framed in this dispute.

3. Issues (1) and (2) relate to the demand for increase in wages. I have discussed these issues at length in my award in Dispute No. I of to-day's date, and for the reasons given at length in that award I decide these issues (1) and (2) in favour of the Company and hold that no revision in the rates of wages known as "C" rates is called for.

4. Issue (3) relates to the grant of bonus by the Company. This issue too has been partly compromised and partly dealt with in my award in Dispute No. I and for the reasons given therein I decide this issue also in favour of the Company and against its employees.

5. Issue (4) raises the question of increased dearness allowance. This demand has been fully discussed in my award in Dispute No. I and for the reasons set forth therein, I decide this issue in favour of the employees of the Company and hold that the workers of the Company should get full dearness allowance according to the sliding scale adopted by the Millowners' Association of Bombay. The canteen-workers attached to the Kingsway Workshop at Dadar will, however, not get any dearness allowance as they voluntarily of their own accord gave up all claims to dearness allowance. This enhanced rate of dearness allowance will be granted to the workers from the month in which this award is published in the *Bombay Government Gazette*.

6. Issue (5) relates to (a) leave with pay, (b) holidays, (c) welfare fund rules and (d) inter-departmental transfers.

As regards the demands for (a) leave with pay and (d) inter-departmental transfers parties have come to a settlement (Annex B) which has been verified before me. I accordingly decide these two matters in terms of the compromise which will form part of my award in this dispute.

7. As regards holidays, I hold that the Company has been quite liberal in the grant of these holidays, and I see no reason to compel it to give more holidays. The demand of the Hindu workers that "Goodi Padwa" should be given to them as an additional sectional holiday with pay was compromised before Dr. Alma Latifi, in the previous award; and the terms of the agreement were set forth in Annex I attached to that award. The Hindu workers not only want to have this Hindu New Year's Day as a holiday but also to enjoy all the other Hindu holidays previously enjoyed by them. If this demand were acceded to, then other communities would also demand an additional sectional holiday. The Company has agreed to give pay to those employees entitled to a paid holiday if such holiday falls on a Sunday. The workers in my opinion are not entitled to any further concession in the matter of holidays, and I therefore disallow the demand for a larger number of paid holidays.

8. As regards welfare fund rules, the demand that fresh loans from the Employees' Welfare Fund be made available immediately after the old loan is paid off is one that really ought to be left to the discretion of the management of the Company, and it seems to me that up to now the management has been acting in the best interests of the workers themselves.

The result is that I decide issue (5b) and (5c) in favour of the Company and against its employees.

9. Issue (6) regarding revision of Provident Fund Rules has been discussed by me in my award of to-day's date in Dispute No. I and for the reasons given therein I decide it in favour of the Company and against its employees.

10. Issue (7) regarding promotions has also been discussed in my award of to-day's date in Dispute No. I and my finding in that dispute will also apply to this case.

Issue (8) runs as follows:

"Should the workers in 'C' rate be treated in the same manner as the 'S' rate workers in regard to payment for work on Saturdays and other conditions of work?"

11. This issue really concerns the question of increase in wages which has been fully discussed and decided in my award of to-day's date in Dispute No. I. Having entered the service of the Company on a clear specific agreement, the 'C' rate worker cannot now legally demand after the lapse of nearly two decades that he should be given the same benefits and privileges as the old 'S' rate workers enjoyed. There has been no change in the condi-

tions of service of the 'C' rate worker. Even before he joined the service of the Company the 'C' rate worker knew that the 'S' rate worker was enjoying benefits and privileges denied to him as a new entrant, and if he did not like the terms upon which he was offered employment he need not have joined the service of the Company. The 'C' rate worker has failed to prove that the wages granted to him are not fair and reasonable, and just because a few old 'S' rate workers are enjoying special favours denied to him, he cannot, either in equity or justice demand that he too should be granted the same favours. I therefore decide this issue in favour of the Company and against its employees.

Issue (9) is as follows:

"Should a worker called upon to do work normally done by a worker in the superior grade be given the pay of the superior grade whilst he is doing that work?"

12. This issue is really another aspect of the demand for increase in wages though in a veiled form. The point of view of the employees of the Company is that every worker who is made to work on a higher or superior grade should get the full pay of that grade as long as he is working in that grade. The Company's reply is that the practice in their workshops was for the learner to be trained in various trades and kinds of work from time to time and when he proved efficient and a vacancy arose then he was promoted to the grade at which he was working while learning the trade. I see no reason to interfere with the internal arrangement and economy of the Company's business and the workers have got no legal or moral right to make such a demand for increase in wages seeing that they are really learning a trade while working in a higher grade, and it is always open to any learner to leave the service of the Company whenever he so desires. I therefore decide issue (9) in favour of the Company and against its employees.

13. Issue (10) relates to medical attention and medical certificates.

I have fully discussed this matter in my award of to-day's date in Dispute No. I and for the reasons given therein I decline to interfere with the practice of the Company in respect of medical aid and medical certificates, and accordingly decide this issue also in favour of the Company and against its employees.

14. Issue (11) relates to the consolidation of the old war-allowance of 1918 with wages. This issue has been fully discussed and decided by me in my award of to-day's date in Dispute No. I between the Bombay Electric Supply and Tramways Co. Ltd., and

its "non-scheduled" employees of the Traffic Department; and for the reasons given therein I decide this issue in favour of the employees and against the Company and hold that the old (1918) war-allowance should be consolidated with wages.

15. To sum up, I grant the demand of the employees of the Company for dearness allowance and for consolidation of the old war-allowance of 1918 with wages and I decide all other issues in favour of the Company.

Bombay, 10th November 1944

E. M. NANAVUTTY,
Adjudicator

ANNEX " B "

In the matter of the trade dispute between the Bombay Electric Supply and Tramways Co., Ltd., Bombay, and its 'non-scheduled' employees of the Kingsway Workshop. (Dispute No. II).

MEMORANDUM OF SETTLEMENT

ISSUES

No. 3. What bonus, if any, should be granted for the years 1942 and 1943, and on what terms and conditions ?

No. 5. What revision of Standing Orders, if any, is necessary in respect of the following matters ?

- (a) leave with pay ...
- (b)
- (c)

TERMS OF SETTLEMENT

In view of the fact that the Company has already granted bonus equivalent to two months' earnings, for each of the years 1942 and 1943, the demand of the employees for an additional month's bonus for each of the said years is given up. The terms and conditions regarding the payment of bonus will be decided by the Adjudicator.

- (a) The demand of the employees with regard to leave with pay contained in this issue is withdrawn without prejudice to the other demands in view of the fact that the Company has already granted 15 days' leave with pay.

(d) Inter-Departmental transfers.

(d) It is agreed that the following Standing Order will be substituted for the existing Standing Order No. 43:

“ 43. Transfers, Inter-Departmental—Applications from Scheduled or non-scheduled employees for inter-departmental transfers will only be considered when there is a vacancy and when accompanied by the written approval of the Head of the Department in which the employee is working. Any employee to whom such approval has been refused may make a representation for the consideration of his case to the General Manager.”

A. L. GUILFORD,

for and on behalf of the
Bombay Electric Supply
and Tramways Co. Ltd.,
Bombay.

Before me,

E. M. NANAVUTTY,

Adjudicator,

Bombay, 22nd Sept. 1944.

K. T. SULE,

for and on behalf of the Tram-
waymen's Union, Bombay.

In the matter of the trade dispute between the Bombay Electric Supply and Tramways Co. Ltd., Bombay, and its "scheduled" employees. (Dispute No. III.)

Mr. M. S. Captain, Solicitor, with Mr. D. S. Captain, Solicitor, instructed by Mr. A. S. Trollip, General Manager, and Mr. A. L. Guilford, Deputy Manager, for the Bombay Electric Supply and Tramways, Co. Ltd.

Counsel Mr. S. C. Joshi, with Mr. Dinkar Desai and Mr. N. V. Phadke, of the B. E. S. T. Scheduled Staff Union, for the "scheduled" employees.

Counsel Mr. S. C. Joshi, with Mr. N. V. Phadke and Mr. A. R. Kambli for certain scheduled staff employees (Engineering section, Meter Testing Department).

Counsel Mr. S. C. Joshi, with Mr. N. V. Phadke and Mr. M. H. Rasool, for the employees in the sub-stations departments, Kussara Power House, Mazagaon.

A w a r d

By Government Order, Political and Services Department, No. 5907/34-III, dated the 17th July 1944, issued under sub-rule (1) of Rule 81A of the Defence of India Rules read with Government of India, Department of Labour, Notification No. L. 3005, dated the 20th May 1942, I was appointed to adjudicate in the trade dispute between the Bombay Electric Supply and Tramways Co. Ltd., and its "scheduled" employees. (Dispute No. III.)

2. The history of this trade dispute has been fully set forth in my award of to-day's date between the Bombay Electric Supply and Tramways Co. Ltd., and its "non-scheduled" employees of the Traffic Department (Dispute No. I) and I need not repeat it here. I will therefore proceed at once to decide the issues framed in this case.

3. Issue (1) relates to the demand for increase in wages of employees graded in Schedules C and F of the Grading of the staff of the Company.

4. This issue has been fully discussed and decided in my award of to-day's date in Dispute No. I between the Bombay Electric Supply and Tramways Co. Ltd., and its "non-scheduled" employees of the Traffic Department; and for the reasons given therein I decide this issue in favour of the Company and against its employees.

5. Issue (2) relates to the demand for increase in dearness allowance. This issue too has been decided in Dispute No. I, and for the reasons given therein I grant this demand and decide this issue in favour of the workers and against the Company.

6. Issues (3) relating to revision of Provident Fund Rules and (5) regarding promotions have been decided in my award of to-day's date between the Bombay Electric Supply and Tramways Co. Ltd., and its "non-scheduled" employees of the Traffic Department in Dispute No. I and I decide these issues in favour of the Company and against its employees.

7. Issue (4) relates to the grant of bonus by the Company. This issue has been entirely withdrawn by the B. E. S. T. Scheduled Staff Union (*see* Annex C). I need not therefore discuss it in this award.

8. Issues (6), (8) and (9) have been compromised and I decide them in terms of the compromise (Annex C) entered into by parties and verified by them before me.

Issue (7) runs as follows:

“What change, if any, should be made in Standing Order No. 27/16 in order to enable the scheduled employees to accumulate special leave to their credit?”

9. The Company objects to this demand for accumulation of special leave till the end of an employee's service on the ground that such special leave is granted mainly with the object that an employee can enjoy periods of rest and change of climate so essential for the preservation of his health and for the prevention of sickness. The Company considers it of paramount importance that its employees should in fact avail themselves regularly of these opportunities for recuperation of health, and this object would be frustrated if the leave were availed of only after the onset of serious or prolonged illness or at the end of the employees' service.

10. I am of opinion that on this point the views of the Company are sounder than those of its employees, and I accordingly decide this issue in favour of the Company and against its employees and hold that no change is necessary in Standing Order No. 27/16.

Issues (10A and 10B) deal with the question of night duties for ticket and cash departments.

11. In this matter too the demand of the workers cannot be granted. Out of a total staff of 117 clerks, 97 clerks are in those sections of the staff which are required to do night duties. These duties are arranged by rotation so that normally an employee is only required to do on an average one week of night duty at a time with a break of two weeks' day-time duties in between, and no employee is in fact required to perform night duty continuously.

12. The contention of the workers that employees of ten years' service should be exempt from night duty is quite impracticable, as nearly one-half of the employees have already more than ten years' service, and if they were to be exempt from night duties, all the remaining members of this section of the staff would have to perform double the amount of night duty which is required of

them at present. This would throw an intolerable burden on the shoulders of employees under ten years' service.

13. As regards the suggestion of reduction in the hours of night duty,—that is not possible without seriously interfering with the operation of the department. Employees on night duty normally can secure about three hours' complete rest during these hours of duty, and so the Company does not think it necessary to reduce the hours of duty.

14. The demand for a special allowance for night duty is not justified when a rotational system is adopted, nor is such allowance granted by any other organisation where rotational night-duty is performed. I accordingly decide both parts of issue (10) in favour of the Company and against its employees and hold that no change is necessary in the present practice regarding night duty and no extra allowance for such night duty is called for.

15. Issue (11) deals with the question of gratuities. The workers demand that the 'scheduled' employees should be given gratuity on the same scale as is granted to the employees in the Engineering and Traffic Departments.

16. This is a matter of discretion on the part of those administering the affairs of the Company. The word 'gratuities' itself implies favours, and favours cannot be demanded as a matter of legal right. The Company justifies its reason for maintaining a distinction between the gratuity granted to the Traffic and Engineering staff and that granted to the clerical staff by the fact that the clerical staff is drawn almost entirely from the inhabitants of Bombay and its neighbouring districts whereas the members of the Traffic and Engineering staffs are mainly recruited from the agriculturists of Northern India who after a few years' service return to their farms with their savings. They are also men of stronger physique who are fit to do outdoor work of a strenuous character and more onerous than clerical work. The normal working period for a clerk whether in private service or in Government service is 25 years, and the management of the Bombay Electric Supply and Tramways Co. Ltd., considers it unreasonable if a member of its clerical staff were allowed to retire with full benefits after only 15 years' service, say at the age of about 35 or under.

17. I see no reason to interfere with the discretion exercised by the Company in this matter and accordingly decide issue (11) in favour of the Company and against its employees.

18. I have now disposed of all the issues framed in this Dis-

pute No. III relating to the 'scheduled' employees of the Bombay Electric Supply and Tramways Co. Ltd., referred to me for adjudication.

19. Upon receipt of the notice issued from the office of the Secretary of the Industrial Court to all the employees of the Company, certain workers of the 'scheduled' staff (Engineering section) belonging to the meter-testing department of the Company sent in a separate representation of their demands (Exhibit 9). These demands relate to increase in pay, privilege leave for 31 days and casual leave for 15 days a year.

20. The Company in its reply (Exhibit 10) to these demands has given very full and convincing reasons why these demands of the employees of the meter-testing department should be rejected. It is not necessary for me to reproduce in this award all the arguments of the Company in refutation of these demands. I hold that there is no substance in these complaints of the workers of the meter-testing department and accordingly reject their application (Exhibit 9).

21. Another application (Exhibit 11) was filed by certain employees of the Company working at the Sub-station Depot, Kussara Power House, Mazgaon. The Company filed a written statement, marked Exhibit 12, in reply to these demands of the workers at the Kussara Power House, Mazgaon. Ultimately a compromise was arrived at between the parties and verified before me whereby it was agreed by the Company that the senior of the Assistant Charge Engineers on duty during each shift at the Company's Kussara Receiving Station should receive a compensatory allowance at the rate of Rs. 15 a month and all other demands of the employees working in the Sub-station Depot, Kussara Power House, Mazgaon, set forth in Exhibit 11 were withdrawn. In terms of this compromise (Annex C) which will form part of my award in this dispute, I decide all the matters raised by the workers at the Kussara Power House in their petition, Exhibit 11.

Bombay, 10th November 1944.

E. M. NANAVUTTY,
Adjudicator.

ANNEX " C ".

In the matter of the trade dispute between the Bombay Electric Supply and Tramways Co. Ltd., Bombay, and its Scheduled employees. (Dispute No. III).

MEMORANDUM OF SETTLEMENT

ISSUES

TERMS OF SETTLEMENT

No. 4.—What bonus, if any, should be granted for the years 1942 and 1943 and on what terms and conditions?

In view of the fact that the Company has already granted bonus equivalent to two months' earnings, for each of the years 1942 and 1943, the demand of the employees contained in this issue is entirely withdrawn.

No. 6.—What modifications, alterations or additions, if any, are required in Standing Order No. 43?

It is agreed that the following Standing Order will be substituted for the existing Standing Order No. 43:

“43. *Transfers, Inter-Departmental.* — Applications from Scheduled or non-scheduled employees for inter-departmental transfers will only be considered when there is a vacancy and when accompanied by the written approval of the Head of the Department in which the employee is working. Any employee to whom such approval has been refused may make a representation for the consideration of his case to the General Manager.”

No. 8.—Should meter-readers and bill collectors be given the concession to travel free of charge in buses when on duty and where there is no tram route?

It is agreed by the Company that Meter Readers and Bill Collectors when proceeding on or returning from duty in uniform shall be permitted to travel at the Company's expense on the Company's buses where available from and to the nearest points on the Tramways system.

ISSUES

No. 9.—Does the existing system of Fidelity Bond require to be changed, and if so, in what manner and to what extent?

TERMS OF SETTLEMENT

The Company agrees to reduce the amount of the insurance to one-half of the amount previously insured if such reduction has not already been made.

It is further agreed between the Company and the B. E. S. T. Scheduled Staff Union that the present system of effecting fidelity insurance for Meter Readers and Bill Collectors shall be revised after the reorganisation of the Consumers' Department of the Company resulting from the mechanisation of accounts is completed, and that fidelity insurance premiums shall then be required only from those employees who have the handling of cash collections and for such amount as is necessary, having regard to the circumstances from time to time.

It is agreed by the Company that the senior of the Assistant Charge Engineers on duty during each shift at the Company's Kussara Receiving Station shall receive a compensatory allowance at the rate of Rs. 15 (Rupees fifteen) per month. The demands made by the employees working in the Sub-Station Depot, Kussara Power House, Mazgaon, in Exhibit 11 are, therefore, withdrawn.

Before me, -
E. M. NANAVUTTY,
Adjudicator.

A. L. GUILFORD,
for and on behalf of the Bombay
Electric Supply & Tramways
Co. Ltd., Bombay.

Bombay, 22nd September, 1944. S. C. JOSHI,
for and on behalf of the B. E. S. T.
Scheduled Staff Union, Bombay.

In the matter of the trade dispute between the Bombay Electric Supply and Tramways Co., Ltd., Bombay, and its 'non-scheduled' employees in the Engineering Departments other than the Kingsway Workshop Dispute No. IV).

Mr. M. S. Captain, Solicitor, with Mr. D. S. Captain, Solicitor, instructed by Mr. A. S. Trollip, General Manager, and Mr. A. L. Guilford, Deputy Manager, for the Bombay Electric Supply and Tramways Co., Ltd.

Counsel Mr. S. C. Joshi, with Mr. N. V. Phadke and Mr. M. H. Rasool for the "non-scheduled" employees of the Engineering Departments other than Kingsway Workshop.

Counsel Mr. S. C. Joshi, with Mr. N. V. Phadke and Mr. M. H. Rasool for certain fitters in the sub-station of the Company.

A w a r d

By Government Order, Political and Services Department, No. 5907/34-IV, dated the 17th July 1944, issued under sub-rule (1) of rule 81A of the Defence of India Rules, read with Government of India, Department of Labour, Notification No. L. 3005, dated the 20th May 1942, I was appointed Adjudicator in the trade dispute between the Bombay Electric Supply and Tramways Co., Ltd., and its "non-scheduled" employees in the Engineering Departments other than the Kingsway Workshop at Dadar (*Dispute No. IV*).

2. The history of this trade dispute has been fully given in my award of to-day's date in the dispute between the Company and its "non-scheduled" employees of the Traffic Department (*Dispute No. I*), and I need not repeat it here. I will therefore proceed to decide at once the issues framed in this case.

3. Issue (1) relates to classification of the workers. I have discussed the question of change in the classification of the workers in my award of to-day's date in *Dispute No. I*. For the reasons given therein I see no reason for any change in the classification of workers and accordingly decide this issue in favour of the Company and against its employees.

4. Issues (2) and (3) embody the demands of the workers for increase in wages. These issues I have already decided in my award of to-day's date in *Dispute No. I*, and for the reasons given therein I disallow the demand for an increase in wages and decide these issues in favour of the Company and against its workers.

5. Issue (4) relates to the grant of increased dearness allowance demanded by the workers; and issue (5) embodies the demand of the workers for consolidation of the old war-allowance of 1918 with wages. Both these issues I have decided in favour of the employees of the Company for reasons given at great length in my award of to-day's date in Dispute No. I.

6. Issue (6) in this Dispute No. IV is the same as issue (6) in Dispute No. I relating to revision of Provident Fund Rules, and for the reasons given in my award of to-day's date in Dispute No. I, I decide this issue in favour of the Company and against its employees.

7. Issue (7) relates to the grant of bonus by the Company. This issue too has been partly compromised and partly dealt with in my award in Dispute No. I and for the reasons given therein, I decide this issue also in favour of the Company and against its employees.

8. Issues (9), (10), (12), (15), (17), (18), (19), (20A), (20B), (22) and (23) have been either compromised by parties or withdrawn by the employees of the Company. In terms of the memorandum of settlement (Annexure D) signed by the parties and verified before me, I decide these issues. The memorandum of settlement will form part of my award in this case.

9. Issues (8) regarding overtime and (11) relating to promotions have been decided by me in my award of to-day's date in Dispute No. I and for the reasons given therein I decide these issues in favour of the Company and against its workers.

Issue (13) runs as follows :

“ Is it necessary to frame rules regarding disciplinary action against workers who are not covered by the Payment of Wages Act, and if so, what rules should be framed for the purpose ? ”

10. The workers alleged that the treatment meted out to them under the pretext of maintaining discipline is cruel and sometimes even inhuman. The General Manager of the Company emphatically repudiates this charge of cruel and inhuman treatment. No evidence in support of their allegation of cruel and inhuman treatment has been adduced by the workers and I have no hesitation in holding that the Company's officers have not been guilty of any act of cruelty or of inhuman treatment towards their workers.

11. In my opinion the draft rules for disciplinary action (Ex-

hibit 104, see Annexure A-1 to the award in Dispute No. 1) proposed by the Company should be incorporated as new Standing Order No. 20A and in that manner the grievances of the workers would be effectually removed. I accordingly decide this issue.

12. Issue (14) relates to the demand of the workers for a change in the present system of medical certificates. This issue has been fully discussed by me in my award of to-day's date in Dispute No. 1 and for the reasons given therein, I decide this issue also in favour of the Company.

Issue (16) is as follows :

“What rules, if any, should be framed for ensuring permanency of employment to temporary workers ? ”

13. The Company objects to the framing of any rules in this connection because the nature of its work is such that it is sometimes necessary to engage temporary labour, and the amount of such temporary labour required fluctuates considerably from time to time. All such temporary workers are engaged on the definite understanding and condition that they will be treated as temporary hands only, and that on completion of their job, their services will be dispensed with. They are also told when they join service that under no circumstances will they be made permanent.

14. As and when the services of other temporary workers are required, preference is given to persons previously engaged by the Company, if such persons wish to have further work of this nature, and in practice it frequently happens that these men offer themselves for re-engagement when extra labour is again required. It is not possible for the Company to find permanent work for such persons. If the demand of the workers' Union in this matter were to be granted by me, it would merely result in compelling the Company to let all such work out on contract; for it is obvious that the Company could not afford to pay wages to a large number of employees when there was no work for them to do.

15. It sometimes happens that the work for which temporary labour was engaged, goes on throughout the year; but in any case, whatever the length of time taken to finish a particular job, these temporary workers are given the usual notice before a job is completed and their services dispensed with.

16. In support of the position taken up by the Company in this matter, Mr. Trollip has cited the case of one department of the Company where the minimum and maximum numbers of temporary workers were 4 and 652 respectively during the past five years, and in another department the figures were 41 and

476 respectively during the same period.

17. It has been further argued on behalf of the Company that it is quite impossible to level out the work so that an equal number of men could be fully employed the whole time throughout the year. The demand, therefore, of the workers in this connection seems unreasonable and I accordingly decide issue (16) in favour of the Company and hold that no rules can be framed for ensuring permanency of employment to temporary workers for in the very nature of things it is not in the power of the Company to insure a continuous flow of work all throughout the year for such temporary workers.

18. I next come to issue (21) which relates to the demand of "C" rate workers to be treated in the same manner as the "S" rate workers in regard to payment for work on Saturdays.

19. This demand has been discussed by me at great length in my award of to-day's date in Dispute No. I when I decided the issues relating to increase in wages. No valid reasons have been advanced why the existing practice of the Company, which is in consonance with the practice generally prevalent in all engineering concerns in Bombay and elsewhere, should be altered for the benefit of the workers and to the financial detriment of the Company.

20. The only reason advanced by the workers in support of this demand is that "S" rate workers are getting a benefit denied to the "C" rate workers. The simple answer to this line of reasoning is that having agreed with the Company to serve on those terms the "C" rate worker cannot now grumble and wish to be put on the same footing as the "S" rate worker. All "C" rate workers are treated on a par throughout the various departments of the Company and are paid for the number of whole days worked during the week and for the number of hours worked on Saturdays. This is strictly in accordance with the terms of their agreements, and the workers cannot vary these terms at their own sweet will.

21. I therefore decide this issue (21) in favour of the Company and hold that "C" rate workers cannot be treated in the same manner as "S" rate workers in regard to payment for work on Saturdays.

I have now decided all the issues framed in this Dispute No. IV.

22. On the issue of a general notice calling upon the employees of the Company, who were not represented by the Company's Unions, to submit their grievances, if any, direct to the Court of the Adjudicator, the fitters working in the sub-stations department of the Company filed their petition personally. It is marked

Exhibit 13. The Company's reply to it is marked Exhibit 14. The total number of fitters employed in the sub-stations department of the Company is eighteen of whom six are " S " rate employees on monthly rates of pay as detailed in Table 3 of the Company's Grading Tables, and twelve are " C " rate employees graded according to Table 11 of the Grading Tables. All these employees are classified as being subject to the provisions of the Factories Act.

23. The demand for a month's leave on full pay cannot be granted for the simple reason that an Adjudicator cannot compel any business-concern to be in advance of what the Legislature itself contemplates in respect of the grant of such leave; and that is the reason why the workers' Unions have withdrawn this demand.

24. As regards payment of wages for Saturdays and Sundays, the " S " rate employees in this section are in no way concerned with the demand for pay for Saturdays and Sundays since they are already in receipt of this privilege, as they are monthly rated employees.

25. As regards the " C " rate employees in this section, they are treated just in the same way as other " C " rate employees of the Company, and the demand of these " C " rate employees to be put on the same footing as " S " rate employees has been disallowed by me for reasons given at length in my award of to-day's date in Dispute No. 1 when discussing the question of increase in wages. No " C " rate employee of the Company receives payment for the weekly off, and there is no reason why the " C " rate workers employed in the sub-stations department of the Company should be treated any differently from other employees in the Company working under similar conditions.

26. The demand for dearness allowance on the full sliding-scale adopted by the Millowners' Association of Bombay has been granted by me and these fitters employed in the sub-stations department of the Company will get the benefit of the increase in dearness allowance just in the same way as other employees of the Company.

27. The allegation that the grades of these employees have been stopped is incorrect. Nine employees working in the sub-stations department of the Company have already reached the maximum of their grades, the remaining seven have not yet reached the maximum of their grades and are still receiving increments as laid down in the Grading Tables, as and when these fall due.

28. As regards tram-car passes this section of the staff is

treated exactly the same as other employees in similar circumstances throughout the Company, and there is no justification for showing them greater favours than those enjoyed by other employees.

29. I therefore reject the application of these fitters (Exhibit 13) except in respect of the demand for increase in dearness allowance. Like the other employees of the Company these fitters employed in the sub-stations department of the Company will get the full dearness allowance according to the sliding scale adopted by the Millowners' Association of Bombay.

Bombay, 10th November, 1944.

E. M. NANAVUTTY,
Adjudicator.

ANNEXURE " D ".

In the matter of the trade dispute between the Bombay Electric Supply and Tramways Co. Ltd., Bombay, and its non-scheduled employees in the Engineering Departments other than the Kingsway Workshop. (Dispute No. IV).

MEMORANDUM OF SETTLEMENT

ISSUES

TERMS OF SETTLEMENT

No. 7.—What bonus, if any, should be granted for the years 1942 and 1943, and on what terms and conditions?

In view of the fact that the Company has already granted bonus equivalent to two months' earnings, for each of the years 1942 and 1943, the demand of the employees for an additional month's bonus for each of the said years is given up. The terms and conditions regarding payment of bonus will be decided by the Adjudicator.

No. 9.—What modifications, additions or alterations are required in the present rules (or practice or method where rules do not exist) regarding leave with pay.

The demand of the employees contained in this issue is withdrawn.

ISSUES

No. 10.—What changes, if any, should be made in the present rules (or practice or method where rules do not exist) regarding grant of weekly rest days to all employees and payment of wages for such days?

No. 12.—What modifications, alterations or additions, if any, are required in Standing Order No. 43?

No. 15.—Should absence due to sickness be excluded from consideration when judging the quality of workers' attendance for purposes of increments and discontinuance of service?

No. 17.—What measures, if any, should be devised to ensure to "temporary" workers work on all the working days in the month?

No. 18.—Should any of the workers or classes of workers required to work in the open be provided with rain coats, and, if so, what workers or classes of workers should be so provided?

TERMS OF SETTLEMENT

The demand of the employees contained in this issue is withdrawn.

It is agreed that the following Standing Order will be substituted for the existing Standing Order No. 43:

"43. *Transfers, Inter-Departmental.*—Applications from Scheduled or non-Scheduled employees for inter-departmental transfers will only be considered when there is a vacancy and when accompanied by the written approval of the Head of the Department in which the employee "to whom such approval has been refused may make a representation for the consideration of his case to the General Manager."

The demand of the employees contained in this issue is withdrawn.

The demand of the employees contained in this issue is withdrawn.

The Company agrees to provide "Kambli" during the rainy season for the use of those permanent employees of the Mains Department and the Permanent Way Department who are required to work in the open.

ISSUES

TERMS OF SETTLEMENT

- No. 19.—Should the system of engaging contract labour be abolished? If not, what condition of work and wages, if any, should the contractors be required to give to their workers?
- No. 20 (A).—Should workers in the Installation Department and Mukadams be given uniforms? If so, how many uniforms per year should they be given?
- No. 20 (B).—Should any workers or classes of workers who are or may be entitled to uniforms be given warm uniforms? If so, at what intervals should they be renewed?
- No. 22.—Should lorry drivers be compelled to clean vehicles?
- No. 23.—Should public lighters be given the concession to travel free of charge in buses when on duty and where there is no tram route?
- The demand of the employees contained in this issue is withdrawn.
- The demand of the employees contained in this issue is withdrawn.
- The demand of the employees contained in this issue is withdrawn.
- It is agreed by the Company that Lighters in the Public Lighting Department when proceeding on or returning from duty shall be permitted to travel at the Company's expense on the Company's buses where available from and to the nearest points on the Tramways system.

A. L. GUILFORD,
for and on behalf of the Bombay
Electric Supply and Tramways
Co. Ltd., Bombay.

Before me,
E. M. NANAVUTTY,
Adjudicator,
Bombay. 22nd September.
1944.

S. C. JOSHI,
for and on behalf of the Union
of the B. E. S. T. Employees,
Bombay.

(Bombay Castle, 25-2-1946 No. 5907/34-1 Government Gazette,
Part I. pp. 668-675).

THE BOMBAY ELECTRIC SUPPLY AND TRAMWAYS CO. LTD.,

AND

ITS "NON-SCHEDULED" EMPLOYEES OF THE
TRAFFIC DEPARTMENT,
KINGSWAY WORKSHOP AND OF THE ENGINEERING DEPARTMENTS
OTHER THAN KINGSWAY WORKSHOP

Adjudicator: The Honorable Mr. Justice M. C. Chagla.

Appearances:

Counsel Sir Jamshedji B. Kanga with Counsel Mr. R. J. Kolah instructed by Mr. A. L. Guilford, General Manager, and Mr. M. S. Captain of Messrs. Captain and Vaidya, Solicitors, for the Company.

Counsel Mr. H. R. Pardivala with Counsel Mr. G. G. Mehta and Mr. B. B. Panchotia instructed by Mr. G. D. Ambekar and Mr. Abidali Jafferbhai of the B. E. S. T. Workers' Union and Messrs. Bhaishanker, Kanga and Girdharlal, Solicitors, for the employees of the Company.

Dated 5th February, 1946.

A w a r d

By an order of the Government of Bombay dated the 15th of December 1945 I was appointed Adjudicator to adjudicate upon the trade dispute between the Bombay Electric Supply and Tramways Company Limited, Bombay, and its "non-scheduled" employees of the Traffic Department, Kingsway Workshop and of the Engineering Departments other than the Kingsway Workshop. The matters in dispute between the Company and its workers which have been referred to me are set out in that order and those are sixteen in number. They are as follows:

(1) (a) Should there be a revision of the existing scales of salary or wages as mentioned in Annexure "A" and if so from what date?

(b) Should special grades be introduced with periodical increments for skilled workers?

(c) Should the present employees receive increment in the revised scales according to their length of service?

(d) Should the present dearness allowance be consolidated with the basic wages as mentioned in Annexure "A"?

(2) Should all employees be given one day off in a week with pay?

(3) Should all employees be given leave as follows:

(a) One month's privilege leave in a year with permission to accumulate such leave up to three months;

(b) casual leave with pay for 15 days in a year; and

(c) sick leave on half-pay for 15 days in a year, with permission to accumulate such leave up to 75 days?

(4) Should bonus equivalent to 6 months' salary be granted for strenuous work during the six years of war, and if so, on what terms and conditions?

(5) Should all workers who have put in more than three months' service be made permanent and should the probationary period in future not exceed three months?

(6) Should all the workers in the Engineering Departments be given the facilities of "S" rate system, particularly with regard to holidays?

(7) Should the distinction between the "Scheduled" and "non-scheduled" staff be abolished and should the latter be given the facilities given to the scheduled staff, particularly with regard to holidays, bonus, etc.?

(8) Should dearness allowance on the scale fixed by Mr. E. M. Nanavutty be given to all workers during privilege leave?

(9) Should the Bombay Electric Supply and Tramways Workers' Union, Bombay, be given facilities to collect subscriptions from members on the premises of the Company and near the place where the wages are paid? Should facilities also be given to the Union to put up notices, etc., on the notice boards of the Union, to be fixed on the Company's premises?

(10) Should point-boys and extra numbers be provided with uniforms, rain coats, badges, etc., as in the case of other employees in the Traffic Department?

(11) Should seniority be strictly observed in making promotions, and if so, what compensation, if any, be given to those whose claims might have been superseded?

(12) Should the employment of outsiders in higher grades be prohibited so long as competent persons are available among the staff?

(13) Should service period be reduced to ten years, and should employees be entitled to receive in full after five years' service the Company's contribution to the Provident Fund?

(14) Should a retired Judicial Officer be appointed to try cases against the workers at present tried by the Departmental Officers and to decide disputes regarding promotion, seniority and such

other matters which any worker may like to take before him for investigation and decision?

(15) What change or changes, if any, are necessary in the present Service Rules, Provident Fund Rules, etc., to suit changed conditions?

(16) Were all or any of the workers whose ticket numbers are mentioned in Annexure " B " wrongfully dismissed? If so is any order regarding their reinstatement and/or compensation necessary or desirable and if so what order?

The workers appeared before me through their Union and although notices were served for the information of those workers who are not members of the Union, there was no appearance for any of them.

2. I directed the Union to submit a statement of their demands and the Company to file its reply to the same. The statement and the reply have been duly filed.

3. There have been four previous adjudications with regard to the disputes between the B. E. S. T. and its workers. The first was by Mr. Justice Madgavkar who, acting as a Conciliator, made his award on the 4th of April 1940. The second was by Mr. Justice Broomfield who made his award on the 26th of June 1942. The third was by Mr. A. Latifi who made his award on the 3rd of September 1942; and the last was by Mr. E. M. Nanavutty who made his award on the 10th November 1944. The last three acted as Adjudicators under the Defence of India Rules.

4. The first and the most important demand of the workers is that there should be a revision of the existing scales of their salary or wages. In this dispute I am only concerned with the "non-scheduled" workers. They number about seven thousand, and their pay is a daily wage but payable at the end of each month for the actual number of days for which they have worked. Before the war the average basic wage which these workers received was Rs. 47. and Mr. Pardivala for the workers has conceded that that was a fair wage which was being paid to them by the Company. His demand really is that they should now be given a wage which in its purchasing power would be the same as the wage which the workers were receiving before the war. He in effect does not ask for an increase in the wage. He wants the real wage to be restored to the same level as it was before the war. Although the disputes between the Company and its workers have come up before one Conciliator and three Adjudicators as I have already stated, none of them decided to increase the basic wage. All that was done for the relief of the workers was the granting of a dearness allowance. It is not necessary to trace the history of how this dearness

allowance was increased; but the ultimate result of Mr. Nanavutty's award was that the workers are now getting the same dearness allowance as the Textile workers in Bombay get, and at present it roughly works out at an approximate flat rate of Rs. 33. The result is that the average pay inclusive of dearness allowance of the "non-scheduled" workers is Rs. 80 a month. In the case of the Textile workers the dearness allowance neutralises the rise in the cost of living to the extent of 76 per cent. whereas, as Mr. Nanavutty has pointed out in his award, in the case of the B. E. S. T. workers it is neutralised only to the extent of 51.8 per cent. Therefore although in terms of rupees, annas and pies the worker gets Rs. 80 a month, he does not in terms of real wage get what he was getting before the war, namely, Rs. 47 a month. In order fully to neutralise the cost of living and put him in the same position as he was before the war, he should really get Rs. 108. But I agree with Sir Jamshedji Kanga that it is not possible wholly to neutralise the rise in the cost of living. The suffering caused as a result of the war has to be borne by all sections of society, but it is only a fair and equitable principle that it should be inflicted as little as possible upon those who are least able to bear it. In this adjudication I am not concerned with the question whether the dearness allowance already granted is adequate or not. That is not a matter which had been referred to me. What I have to consider and decide is whether the workers have made out a case for an increase in the basic rate of wages.

5. The distinction between a dearness allowance and an increase in basic wages is very clear. Not only is dearness allowance temporary but also it does not permanently raise the level of wages. It also deprives the workers of many of the benefits which an increase in wages would confer upon them; for instance, the Company's contribution to the Provident Fund, the extent of the bonus, etc. If I am satisfied that the cost of living has at least to a certain extent permanently gone up and that the standard of wages should also be proportionately increased, then in my opinion it would be merely tinkering with the question by increasing the dearness allowance. The problem must be squarely faced and an attempt should be made to arrive at a more permanent and lasting solution.

6. The finding of the Textile Labour Inquiry Committee which has been often referred to was that an industrial worker in the City of Bombay should in normal times be paid between Rs. 50 and Rs. 55 per month in order to cover his minimum cost of subsistence. I agree that that was an ideal which the Textile Committee laid down, but I also feel that it is the duty of an Adjudicator whenever practicable to see that his decision conforms to that ideal. In considering the question of wages certain important

principles have to be borne in mind. While it is true that one gets tied up in a vicious circle if one tries to increase wages all round with the rise in the cost of living, on the other hand it would be equally disastrous to permit the rise in the cost of living to push the wages of workers below the subsistence wage. There are people who have no margin left whatever which could cover any increase in the cost of living. The second principle to be borne in mind is—and however revolutionary it might have sounded in days gone by, it has almost become axiomatic now—that profits are the result of co-operation between capital and labour, and while capital is entitled to a fair return, labour is equally entitled to some share in the profits produced by its contribution to the joint effort. The profits I am talking of are normal profits earned in normal times. With regard to abnormal profits, as I myself observed in the award I made in the dispute relating to the General Motors Limited, their distribution among workers is better achieved by the giving of an annual bonus rather than by a further increase in wages. Finally it has to be borne in mind that any ideal that might be laid down with regard to the payment of wages must inevitably be circumscribed by the capacity of the employer to pay those wages.

7. It has been pointed out to me that in this particular case I am dealing with a public utility company which cannot be solely actuated by the profit motive. It owes a duty to the public inasmuch as it is primarily concerned with rendering its services in a manner conducive to public safety. It also owes a duty to the public to see that its work is done as efficiently as possible, and in my opinion it cannot discharge its duties with efficiency unless the persons it employs are contented and properly remunerated for the work done by them. Mr. Pardivala has also impressed upon me the strain imposed upon these workers during the war years. He has emphasized the fact that the number of passengers travelling by tram have gone up from 9,81,00,000 in 1939 to 18,40,00,000 in 1945 and the passengers travelling by bus from 2,80,00,000 in 1939 to 7,40,00,000 in 1945, whereas the increase in the vehicles has only been in the case of trams from 407 in 1938 to 455 in 1945 and in the case of buses from 132 in 1938 to 184 in 1945. Of course it has got to be remembered that as against this there has been a considerable increase in the staff of the Company. To give only one figure, the number of Tram Conductors on the register in 1939 which was 1,196 has been increased to 1,871 in 1945 and the number of Bus Conductors on the register in 1939 which was 452 has been increased to 842 in 1945. A further point which Mr. Pardivala has urged in order to make out a case of increase claimed for the workers is that the roads have become bad, that there is heavy traffic on the road and that there are long queues both for trams and buses, etc. Although the

picture is slightly overcoloured, there can be no doubt that the workers in the B. E. S. T. like workers all the country over have suffered from the war strain. But to my mind this is not an argument for a permanent increase of wages. These are abnormal conditions which must be dealt with by specific remedies suitable to the occasion and one obvious method of compensating the workers is by the granting of bonuses. I shall deal with this question further when I come to demand for workers for an additional bonus.

8. Coming now to the financial position of the Company, the net receipts from the year's working have not varied considerably between the years 1938 and 1944.

In 1938 they were Rs. 84,43,000,
In 1939 they were Rs. 73,43,000,
In 1940 they were Rs. 72,97,000,
In 1941 they were Rs. 80,09,000,
In 1942 they were Rs. 75,98,000,
In 1943 they were Rs. 95,84,000, and
In 1944 they were Rs. 86,64,000.

It is true that the Company in 1938 had a free reserve of about Rs. 47,73,000 which has been wiped off owing to the increasing demands of the Taxing authorities; but the Company has wisely and prudently kept up the depreciation of its assets at the same rate. It has also maintained the rate of dividend it pays to its ordinary shareholders at the same rate, namely, 12 per cent. Mr. Pardivala has suggested that the rate of dividend in the case of a public utility company like the B. E. S. T. is much too high and those who have subscribed to its capital should not expect a higher dividend than what they would get in Government securities. I am not prepared to accede to that argument. When the B. E. S. T. Company was floated, those who subscribed to its capital undoubtedly were running a certain amount of risk and it was only the expectation of a higher dividend at a later stage in the Company's development that could have induced the shareholders to subscribe to its shares. Another obvious fallacy in Mr. Pardivala's contention is that the shareholders now on the Register of the Company are not necessarily the original shareholders. There must have been thousands of transactions in these shares not necessarily of a speculative character and one must also consider the subsequent shareholders who bought the shares at a higher rate accepting a very small dividend and being satisfied with it because of the security and stability of the Company in which they were investing their moneys. Mr. Pardivala would have had some grievance if the company had increased its dividend. But for the last many years the Company had maintained

its dividend at the same rate and I cannot say that that is an unreasonable rate of return for the capital invested.

9. But merely considering the net receipts of the Company does not give a true picture of the Company's financial position. In order to appreciate that, one must look at what the net income of the Company is before the Income-tax, Super-tax and Excess Profits Tax are paid; and when one looks at these figures, it becomes apparent how the income of the Company has grown in the last six years. In 1938 the Company's net income before payment of taxation was Rs. 64,51,000. There was a slight drop in 1939 and 1940 when the income was Rs. 56,90,000 and Rs. 57,77,000 respectively. Then from 1941 to 1944 the income gradually but unmistakably increased.

In 1941 it was	Rs.	71,05,000,
In 1942 it was	Rs.	75,09,000,
In 1943 it was	Rs.	1,04,21,000, and
In 1944 it was	Rs.	1,18,30,000.

Therefore in 1944 the Company was earning about Rs. 53,79,000 more than it was in 1938. The Company has filed a Statement giving figures showing that since 1938 it has been paying about Rs. 38,00,000 more to the workers for bonuses either given by it or under the various awards and also for other benefits like leave with pay, etc., also ordered under different awards. But it must be remembered that the increase in the net income of over Rs. 53,00,000, to which I have just referred, is arrived at after taking into consideration the payment of undoubtedly a much larger wage bill than what was paid by the Company in 1939. I am also not oblivious of the fact that under the Company's fairly liberal policy various benefits like free medical service, accident compensation, etc., had cost the Company in 1945 as much as Rs. 16,00,000. Mr. Pardivala's main argument—and I think there is considerable force in it—is that it is not right for the Company to show a net profit of over Rs. 53,00,000 and pay tax on it to Government when that net profit has been arrived at by depriving the workers of what is legitimately due to them. If a larger amount was paid to the workers, undoubtedly the net profit would be reduced and so would be the taxation. According to Mr. Pardivala, the first claim on the receipts of the Company is that of the workers and not of the State. Sir Jamshedji Kanga has also drawn my attention to the fact that the Company must maintain proper reserves because the prices of materials have gone up and that the Company will have to buy new vehicles and replace old ones at a much higher cost than what it had to pay before the War.

10. When the Textile Inquiry Committee's Report was pub-

lished and it made a recommendation of a minimum basic wage at Rs. 50 to Rs. 55, the cost of living was approximately 105. The cost of living has gone up to 242 in December 1945, and on that basis the minimum living wage would be in the neighbourhood of Rs. 121. I have carefully considered Sir Jamshedji Kanga's argument that if there is an increase in the cost of living, it should be offset by a dearness allowance and not by a permanent increase in wages. If the increase in the cost of living was solely due to war conditions and likely to go down with the termination of the war, there would have been considerable force in Sir Jamshedji's contention. But in my opinion at least to a certain extent the cost of living has gone up permanently and cannot possibly be neutralised by a mere increase in the dearness allowance. Even after the last war the Company continued to pay a war allowance and consolidated it with the basic wage only in 1944 as a result of the recommendations of Mr. Nanavutty. Therefore right up to 1944 although the workers went on getting a war allowance, they were deprived of the other advantages which would have accrued to them if it had been consolidated. I do not want the workers to suffer the same fate after this war. The dearness allowance which had been awarded to them by Mr. Nanavutty will fluctuate with the cost of living. I have nothing to do with that. But I feel that the time has come when there should be an increase in the basic wages so that they should be put on a permanent footing and the workers should reap all the benefits that go with an increase in wages.

11. Both in England and in America although the cost of living has not gone up in any measure as high as it has done in our country, in many cases the problem has been tackled not by merely giving a dearness allowance but by a permanent increase in the basic wages. The figures for Canada as appears from the *Labour Gazette* of October 1945 are very eloquent. In December 1944 the index of the cost of living in Canada was 17.6 higher than it was in August 1939 and the increase in the general average of wages for the same period was over 37.5 per cent.

12. In their demand the workers have suggested what the increase should be in the case of different kinds of workers. But this demand has not been supported on the ground of individual merits for workers in different grades. Mr. Pardivala has not taken me through the particulars of his demand but has rested it on the common plea which affects all of them, namely, that the cost of living has gone up and that all the workers have been affected by it and, therefore, the wages should be increased.

13. In the recommendation I am about to make with regard to the increase in wages I have kept one or two principles in mind.

The *first* is that I do not think any case has been made out for increase in wages of those earning more than Rs. 75 a month; *second* I do not think it will be fair and equitable to award an increase in wages at a fiat rate or on a percentage basis applying the same percentage to all the workers. I have, therefore, followed the gradation method granting a higher increase to those who are less paid than those who are paid a higher rate because those in the former class are more badly hit by the increase in the cost of living than those in the latter.

14. My award, therefore, is:

- (1) that all those who are drawing a wage below Rs. 13-8-0 a month should have an increase at the rate of six annas in the rupee;
- (2) those drawing between Rs. 13-8-0 and Rs. 25 should have an increase at the rate of five annas in the rupee;
- (3) those drawing between Rs. 25 and Rs. 35 should have an increase at the rate of four annas in the rupee;
- (4) those drawing between Rs. 35 and Rs. 40 should have an increase at the rate of three annas in the rupee; and
- (5) those drawing between Rs. 40 and Rs. 75 should have an increase at the rate of two annas in the rupee.

15. In working this out the Company should bear in mind that those who are falling in the higher class should in no event get less than the highest in the lower class. (To illustrate this, I have awarded 3 annas in the rupee to those earning between Rs. 35 and Rs. 40 so that a man earning Rs. 40 should get as a result of this award Rs. 47-8-0. A man drawing Rs. 41 should fall in the higher class and get an increase of two annas in the rupee which would be Rs. 5-2-0; so his salary would be Rs. 46-2-0. But as a result of what I have just said, even in this case he should get Rs. 47-8-0 and not Rs. 46-2-0 and the same would apply to those coming above him till the figure of Rs. 47-8-0 is reached.)

16. Sir Jamshedji Kanga has made an appeal to me not to launch upon a decision of this great importance because it would have very serious repercussions on all the industries in India. Every decision must depend upon the facts and circumstances on which it is based, and I have been careful in this decision of mine to point out the various circumstances which have led me to come to this conclusion. Strictly speaking, I am only concerned to decide this dispute and not to weigh in my mind what possible consequences or repercussions would come about as a result of my decision. But if other employers can draw a moral, but only a legitimate moral, from this award, no one would be more happy than I.

17. *Demand (1), (b), (c) and (d).*—The increments and the

time-scale in the various grades will be the same as at present. The increased wages that I have recommended should come into force with effect from the 1st of January 1946.

The Company has introduced a special grade in August 1945 and already 17 employees have received promotion into it and other cases are under consideration.

I do not think that the demand of the workers that the present dearness allowance should be consolidated with the basic wage is justified. Dearness allowance stands on a very different footing from the basic wage and, as I have already pointed out, is purely temporary in its kind.

18. *Demand (2).*—With regard to this demand, it really only relates to the Engineering Workshop because those in the Traffic Department already get one day off in a week with pay. In no Engineering industry in India is such a right given to the workers. I do not think any case has been made out why I should make a departure in the case of the B. E. S. T. Engineering workers.

19. *Demand (3).*—The Company at present gives all its “non-scheduled” employees fifteen days’ leave with pay per year which can be accumulated up to 45 days. I think this is quite fair and the demand of the workers to increase this leave to one month is not justified. Nor is there any justification for asking for casual leave with pay for fifteen days in a year. With regard to sick leave, I think there is some justification in the workers’ demand. I would recommend that sick leave on half-pay should be given for fifteen days in a year, but such leave should not be permitted to be accumulated. This should only be granted on medical certificate.

20. *Demand (4).*—This relates to bonus. The Company was giving fifteen days’ bonus to all its workers prior to 1940. In 1940 it gave one month’s bonus. From 1940 to 1944 it gave two months’ bonus, and in 1945 it gave one month’s extra bonus over and above the two months’ bonus as a victory bonus. Now a bonus is a deferred payment for past profits and, as I have already pointed out from the Balance Sheets of the Company, the Company after the necessary appropriations has not accumulated large profits which would justify such a demand. In no year has the Company carried forward more than rupees two lakhs to rupees three lakhs. Under the circumstances, in my opinion, the three months’ bonus given by the Company for 1945 and the two months’ bonus for the years 1941 to 1944 were fair and reasonable and I therefore reject this demand.

21. *Demand (5).*—There is no basis for this complaint. As the Company points out, none of the “non-scheduled” employees of

the Company are required to serve any probationary period. Mr. Pardivala has tried to extend the terms of my reference by asking me to call upon the Company to include in its permanent staff a large number of temporary workers who, according to him, had been serving the Company for a long period and were continued to be classified as "temporary". The Company points out that the number of temporary workers vary considerably and their employment depends upon the nature and extent of the work. In any case it is not competent to me to compel the Company to increase the number of its permanent workers.

22. *Demands (6) and (7).*—The demand covered by these two classes has been restricted to the question of holidays. The position is that the "S" rate workers of the Company get eight general and eight sectional holidays with pay; but the "S" class is now getting obsolete and there are very few employees left who belong to that class. But even with regard to the "C" rate workers, those who have served more than ten years get the same rights with regard to holidays as "S" rate workers. Those under ten years get only four general holidays with pay. In my opinion all the "non-scheduled" workers other than those working in the Traffic Department who are governed by their own rules should be given eight sectional holidays with pay.

23. *Demand (8).*—There is no justification whatsoever for the Company refusing this demand of the workers. Before Mr. Nanavutty gave his award, the Company itself used to give dearness allowance to its employees who were on privilege leave; but when Mr. Nanavutty increased the dearness allowance, the Company refused to give any dearness allowance whatever to its employees on privilege leave. The whole object of giving dearness allowance is that it should neutralise the effect of the increase in the cost of living. I fail to see how this can be done if workers are not given this allowance when they are enjoying leave which they have earned. I therefore direct that dearness allowance should be given on the scale fixed by Mr. Nanavutty to all workers during privilege leave. Sir Jamshedji Kanga has argued that by doing this I would be varying the terms of Mr. Nanavutty's award regarding dearness allowance which has not been terminated by the parties. There is no force in that contention. All that Mr. Nanavutty did was that he laid down the scale at which the dearness allowance was to be paid. The dearness allowance was already being paid by the Company and Mr. Nanavutty awarded a higher scale; but he did not in any way deal with the question of the mode of paying the dearness allowance, and the question whether the Company should change the mode which it itself was following, namely, paying the dearness allowance to its workers even when they were on privilege leave, was never before the learned Adjudi-

cator. In my opinion, therefore, I am within my rights in granting this demand to the workers.

24. *Demand (9).*—I thought it would lead to better relations between the employers and the employees if the Company and the Union were to co-operate to the extent that it was possible. But the Company was very adamant on this point and was of the opinion that giving facilities to the Union for collecting subscriptions and also for putting up notices on the notice boards of the Union to be fixed on the Company's premises would result in friction and bad blood. This is a matter which should be left to the good sense of both the parties, and I am not prepared to compel the Company to carry out this requisition of the workers. If the Union is really looking after the interests of its members, it should depend upon its own strength and should not ask for any facilities from the Company which are not willingly given.

25. *Demand (10).*—This is a very minor demand and I think the Company should give rain coats to the point-boys who are employed on out-door work and who certainly need these coats during the monsoon. In my opinion uniforms should also be given to the permanent members of the Company's staff who do out-door work as far as possible.

26. *Demand (11).*—It is impossible that seniority alone can be considered in making promotions. The Company concedes that, subject to considerations of efficiency, full weight should be given to seniority in granting promotions. No question of compensation arises to a person who has been passed over, if his claim to promotion is based solely on the ground of seniority.

27. *Demand (12).*—This demand is also conceded by the Company. It states that only when no suitable candidate is found in the Company's service should any post which may provide promotion for an employee already in its service be filled from outside.

28. *Demand (13).*—This demand refers to the payment of gratuity and the Company's contribution to the Provident Fund. At present one-third of the Company's contribution to the Provident Fund is paid to an employee who retires after putting in service exceeding five years but not exceeding ten years; for service exceeding ten years but not exceeding fifteen years he is paid two-thirds of such amount; and for service exceeding fifteen years he is paid the whole of such amount. The worker's demand is that he should be paid the full amount of the Company's contribution after five years' service. In my opinion the worker's demand is pitched too high. It is necessary, considering the nature of the work done by the Company's

employees, that there should be an incentive for them to continue in the service as long as possible. On the other hand, in my opinion, the present rule is much too drastic. The Trustees of the Provident Fund are not before me. But as the matter is referred to me, I would recommend that for service exceeding five years but not exceeding ten years, half the amount of the Company's contribution should be paid and for service exceeding ten years the full amount should be paid.

With regard to the gratuity which is an *ex gratia* payment, I think the present provision which entitles an employee to receive it is on the whole fair and reasonable. He gets three months' pay after seven years, six months' pay after ten years, nine months' pay after twelve years and twelve months' pay after fifteen years' service. I do not think any modification is necessary.

29. *Demand (14).*—In the interests of discipline and efficient working of the Company it is essential that the full control and management of the Company should be left in the hands of its officers. The workers' demand that a retired Judicial Officer should be appointed to try cases against the workers at present tried by the Departmental Officers and also to decide disputes regarding promotion, seniority and such other matters strikes me as undermining the disciplinary powers of the Company which must be preserved if proper and efficient work is to be done. If Departmental Officers in trying these cases observe the rule of natural justice and if a right of appeal is given to the General Manager as it is under the Rules, I do not think the workers are entitled to claim anything more. I therefore reject this demand.

30. *Demand (15).*—(a) The workers want one Trustee selected from among themselves to be on the Board of Trustees of the Provident Fund. I do not think the demand is unreasonable, and the Company has agreed to appoint one Trustee out of the employees.

(b) A further amendment suggested in the Provident Fund Rules is that all permanent members of the staff, whatever their salary may be, should be allowed to become members of the Provident Fund if they so desire. The Company agrees that this should be given effect to.

(c) A further amendment suggested was to Rule 8 of the Provident Fund Rules. This was that the subscription to the Fund should be calculated not merely on the basic salary but also on the dearness allowance. This is clearly untenable because dearness allowance is given in order to meet the increased cost of living and not for the purpose of saving something from that allowance.

(d) A similar amendment was suggested in Standing Order 38 with regard to the Saving Fund. This stands on the same footing

as the amendment I have just dealt with.

(e) Under Provident Fund Rule 17 (i) a Member of the Fund forfeits all claims to the Company's contributions, who is discharged or dismissed by the Company for negligence or incompetence or any other cause of a like nature not amounting to misconduct. In my opinion the expression "negligence or incompetence or any other cause of a like nature" is too wide. I recommend that the following expression should be substituted:

"negligence which in the opinion of the Trustees causes serious loss to the Company."

(f) Rule 18 of the Provident Fund Rules deals with the compulsory retirement of a member owing to illness certified by a Medical Practitioner nominated by the Company. Now a difficulty might be caused in the case of a person who is outside Bombay, and the amendment I recommend is that the certificate might be given by a Medical Board nominated by the Company or by a doctor whom the Company accepts as qualified.

(g) Rule 24 of the Provident Fund Rules deals with gratuities and among other things it provides that any officer or employee of the Company quitting his duty for the purpose of going on strike shall *ipso facto* forfeit all claim to any gratuity on retirement. In my opinion this particular provision is unnecessary because unless an employee is certified by the Head of the Branch in which he has served as having been good, efficient and faithful, he is not entitled to any gratuity. I think the latter provision is sufficiently wide to cover every case of serious misdemeanour. I would, therefore, recommend that the provision about an employee forfeiting his claim to gratuity for quitting his duty should be deleted.

(h) An amendment is suggested to Rule 30 of the Provident Fund Rules which provides that the consent of the Company has to be taken before the Provident Fund Rules can be repealed, varied or altered. The workers desire that the consent of the Company should not be made necessary to the alteration of the Rules. I do not agree. The Company contributes an equal amount to the contribution of the workers in the Provident Fund and I think it is essential that it should have some control over this Fund.

(i) Rule 1 (a) of the Traffic Rules provides that men failing to report for their second shift duty will be considered as absent and will not be entitled to any payment for work done in the first shift. I recommend that it should be provided in that rule that on reasonable grounds being shown to the satisfaction of the Senior Traffic Officers the absence may be condoned.

(j) Rule 1 (b) of the Traffic Rules provides that Depot Starters

may give leave only for one day to the staff in cases of emergency or sickness; and then only if they can be spared, otherwise the men concerned should apply to Senior Traffic Officers. The workers suggest that instead of one day, leave might be given for three days by the Depot Starters. I do not think this demand is justified especially as it is always open to the men in a proper case to apply to the Senior Traffic Officers.

(k) Under sub-rule (4) of Rule 2, drivers are entitled to a "No Accident Bonus" and under the rule as it stands at present they cease to be eligible for this bonus if they are on leave (sick or casual) or absent from duty for more than 31 days of the year under consideration exclusive of "offs". Although a driver can accumulate privilege leave up to 45 days under this rule, if he enjoys that accumulated leave he will be deprived of that bonus. This seems to me to be unfair. I would, therefore, suggest the following alteration:

"A driver should cease to be eligible for his bonus if he absents himself from duty for 15 days over and above the privilege leave which he is enjoying, or a period of 31 days in all, whichever period is longer."

But under sub-clause (b) of sub-rule (4) of Rule 2, the period will continue to remain 31 days; and under sub-clause (c) of that rule, the word "unnecessarily" should be changed to "without just cause".

(1) Rule 3 of the Traffic Rules deals with Calling Time and provides that such time must be marked in ink by the Starters on the time cards once a week in the case of permanent men, and daily in the case of extra men. The workers' suggestion is that even in the case of extra men it should be marked once a week and not daily. I do not think this demand is justified because extra men may be engaged for a day or for a period less than a week.

(m) With regard to Rule 5 of the Traffic Rules, I have already directed that all permanent members of the outdoor staff should get uniforms whenever practicable.

(n) Under Rule 6 of the Traffic Rules no conductor can take on duty more than four annas of his own money. If he finds it necessary to carry more, then he has got to get the excess amount entered on his memo by the Depot Starter before going on duty. The suggestion is that instead of four annas, twelve annas should be allowed. I cannot accept this suggestion because it causes no inconvenience to the conductor. He can carry any amount provided he declares it.

(o) The hours of duty laid down by Rule 8 of the Traffic Rules

are eight hours per day for Tram and Bus Drivers, Controllers, Special Inspectors and Depot Starters and $8\frac{1}{2}$ hours per day for Tram and Bus Conductors, Inspectors, District Starters, etc. The suggestion is that the working hours should be reduced to seven hours and seven and a half hours respectively; and it is also suggested that the duty hours should not be spread over a longer period than twelve hours. In my opinion, the hours of duty prescribed are not excessive. With regard to the period over which these hours are spread, the Company has assured me that in a large majority of cases the period is less than twelve hours. But the Company is quite willing that the Union should submit to them their concrete suggestions regarding adjustment of duty of the staff to fit in with the 'scheduled' services so that the period over which the hours of duty are spread is less than twelve hours; and if the Company finds the suggestion not impracticable, it undertakes to carry them out. With regard to the rates of pay for the eight and a half hours shift and the eight hours shift, the suggestion made by the workers is merely consequential on the suggested amendment with regard to the hours of duty. As I have rejected the latter, the former does not arise.

(p) With regard to Rule 10 (d) of the Traffic Rules, the Company has agreed not to deduct the first hour of waiting in respect of extra men called for duty and required to wait for work.

(q) The workers want special pay for men on special duty on festival days and in emergencies. The amendment suggested is to Rule 11 of the Traffic Rules. Now Rule 11 does not deal with the question of pay at all. It merely deals with special services which may come into operation on special festival days. As it is, men belonging to the Traffic Department only get off-days and they do not get holidays on special festival days. Therefore the question of any special pay does not arise.

(r) Rule 13 of the Traffic Rules deals with facilities given to members of the staff for travelling in the Company's vehicles. The Company agrees that all of them will get either a free pass or tram fare for one journey from their residence to their place of work and back.

(s) Standing Order 20-A deals with disciplinary action and it provides that except in cases of summary dismissal or offences of a petty nature, a certain procedure is to be followed which gives an opportunity to an employee to put forward his defence, if he has any, against the charge preferred. I feel that giving the power of summary dismissal without any inquiry at all is much too drastic. I was told that this was necessary in the interests of discipline. I entirely agree that discipline has got to be maintained. But I think that this can be done by instantly suspending the offender and then trying him for the offence by the procedure laid down in Standing Order 20-A. Dismissal of

an employee is the maximum penalty which the Company can inflict and it is one which has grave consequence for the employee. Whatever the nature of the offence, I think the employee is entitled to the benefit of a proper inquiry. I would, therefore, suggest that except in the case of a petty nature the procedure laid down in Standing Order 20-A should be followed in all cases.

(t) The workers wanted me to provide for a right of appeal to the Board of Directors. There is already a right of appeal to the General Manager from an order of dismissal passed by the Head of the Department. In my opinion that is adequate.

(u) Standing Order 24/8 renders an employee liable to a fine or immediate dismissal if he absents himself from duty on any unspecified holiday. Absence from duty in a concern like the B. E. S. T. is undoubtedly a very grave offence, and I do not propose to alter the Standing Order. But it will be understood that the provision with regard to dismissal will be subject to Standing Order 20-A amended as recommended by me, and the Company has agreed to modify this Standing Order by adding after the words "absenting himself" the words "without reasonable cause".

(v) Standing Order 37 deals with salaries to be paid in advance. The Company agrees that this should be made applicable to all employees proceeding on leave with pay.

(w) Standing Order 39/5 deals with termination of service. The Company agrees that instead of one day's notice as provided in that Standing Order, the notice given should be of fourteen days' duration.

(x) Under Standing Order 44 the Workshops open at 7-30 a.m. and work commences at 8 a.m. If men present themselves after 8-30 a.m. checks or cards are not issued to them, and checks or cards are also not issued to them if they present themselves after 1-30 p.m. after the mid-day interval. Mr. Pardivala wants that half an hour's grace should be given after the mid-day interval as is given in the morning. I do not think this demand is justified especially as if a person is unavoidably delayed, it is open to him to represent his special case to the Superintendent who decides whether, under the circumstances, he should be allowed to commence work or not.

(y) Under Standing Order 44/6 any worker who absents himself without leave is marked "absent". In the event of such absence extending to two days his check number and/or card is stopped and is only re-issued on the Superintendent satisfying himself as to the reason for his absence. I do not think any change is called for in this Standing Order.

(z) Standing Order 44/13 will be re-drafted to fit in with the

amended Standing Order 20-A.

31. *Demand* (16).—The workers' grievance is that several of them whose ticket numbers are given in Annexure "B" were wrongfully dismissed and that they should be reinstated or in any case compensation should be awarded for their wrongful dismissal. If I had gone into the matter at all, I should have been most reluctant to investigate the merits of each case. In my opinion it is entirely a matter for the officer who investigated the case and also for the Appellate Authority provided under the Standing Orders. The only thing I might have considered was whether the rules of natural justice were complied with in the departmental inquiry. But fortunately at my suggestion the workers have agreed to refer all these cases to the Acting General Manager, Mr. Guilford, who has consented to hear the workers on the merits of each case and to arrive at a decision which would be binding on the workers.

32. Certain amendments were suggested in the rules applicable to the night-shifts carried on in the Company's Workshops. But I have been informed by the Company that those night-shifts were in force only during the war and now they were discontinued, and so those rules have become obsolete. Night-shifts are still going on in the Company's Car Shed Depots and I have been informed that an arrangement was arrived at with regard to those shifts in consultation with the workers; and if the workers desire any change, the Company is quite agreeable to making it provided it is practicable. I have also been given an assurance by the Company that all night-shifts "non-scheduled" workers in the Car Sheds are given four days a month off with pay.

33. A grievance was made by the workers that those employed in the Workshops are liable to have their services terminated if the Assistant Medical Officer certifies that they are unfit for duty. They wanted a right of appeal to the Chief Medical Officer of the Company. The Company has given me an assurance that these cases would be governed by Standing Order 39/6-A to which the workers have no objection.

34. The workers want free medical advice and medicine which are supplied by the Company to its employees to be made available to the members of their family also. I do not think this demand is reasonable and I reject it.

35. The Company will give effect to all my above recommendations by making the necessary alterations in the Standing Orders, Provident Fund Rules, Traffic Rules and the Workshop Rules as early as possible. My attention has also been drawn to the

contract of service which the Company requires every employee to sign. I am sure the Company has not carefully considered it; otherwise it could not be couched in the terms in which it is. I hope the Company will immediately revise it and bring it in conformity with the Standing Orders and the various amendments and recommendations suggested by me.

36. In making this award I have kept one point clearly and consistently before me and that is that the settlement should be of a permanent character and that as a result of this adjudication the relations between the Company and its employees which have been very strained should again become cordial. I sincerely hope that both the Company and the employees will realize that they are jointly working an enterprise which renders great service to the public and in which the public is vitally interested. I do not think that the proposals made by me will cost the Company an excessive amount. I also sincerely hope that the lot of the workers will be materially improved by the increase I have suggested in the basic wage. Some people have almost come to think that friction between capital and labour is a necessary concomitant of modern trend of thought and modern ideas about the dignity and rights of labour. I do not hold that view. If both capital and labour realize their mutual responsibilities, there is no reason whatever why in co-operation they cannot successfully run an enterprise without having disputes from time to time and resorting to arbitrations and adjudications. But as I have already pointed out, this is the fifth adjudication which has dealt with the demands of the workers of the B.E.S.T. I sincerely hope that it will be the last.

M. C. CHAGLA,

Dated 5th February, 1946.

Adjudicator.



ANNEXURE "A"

(A) All unskilled labourers such as point boys, extra numbers, coolies, trade learners, etc., should receive a minimum wage of Rs. 52 per mensem with yearly increment of Rs. 2 for the first three years and thereafter Rs. 3 per year for next three years.

(B) Bus and Tram Conductors and Tram Drivers to start at Rs. 57 per month. Yearly increment—Rs. 2—for the first three years and thereafter Rs. 3 for next four years.

(C) Bus Drivers to start at Rs. 75 per mensem and the increment should be as follows:—First three years Rs. 5 per year and thereafter Rs. 10 per year for next three years.

(D) All Depot Starters, District Starters, Traffic Regulations, Ticket Examiners, Inspectors, etc., to get the salary of Bus Drivers as per the scale mentioned in (C) *Supra*.

(E) All non-traffic drivers attached to various sections should receive starting salary of Rs. 65 with yearly increment of Rs. 5 for the first three years and Rs. 10 per year for subsequent three years.

(F) All skilled and semi-skilled workers should receive the wages on the following scales:

	Starting wages per day.	Annual increment.	Up to
Chipper, Hammerman, Oiler, Car Sweeper and Washer, Assistant Controller hand.	2 0	2 0	3 4
Assistant Fitter, Assistant Turner, Assistant Carpenter, Assistant Winder, Assistant Wiremen, Crane Driver, Car Washer, Mukadam, Rough Painter.	2 4	2 6	3 8
Mukadam, Joiner I, Furnaceman, Mason, Controller-hand Comm. Builder, Wireman, Good Painter, Painter Line, Polisher.	2 8	3 0	4 0
Blacksmith, Roller-maker, Drillman, Fitter, Assistant Wagon Hand, Moulder, Oil Machinist, Sawyers, Turner, Tinman	2 10	3 0	4 2
Fitter, Elector Grade II Carpenter, Paint Waiter.	2 12	3 6	4 8
Pattern-maker	3 0	4 0	5 0
Assistant Arc Welder, Wagon, Hand, Joiner II Fitter Erector Grade I, Armature Winder.	3 8	5 0	6 0
Joiner III	4 4	5 0	6 12

Such of the workers who are not included in the above, should receive basic wages to be fixed on the above basis with appropriate graded periodical increments.

ANNEXURE "B"

Tram Conductors. Tram Drivers.		Bus Conductors	Bus Drivers.	Engineering Workers.
Ticket Nos.	Ticket Nos.	Ticket Nos.	Ticket Nos.	Ticket Nos.
71	126	536	7	57
276	143	771	477	273
230	453	783		495
536		831		1495
644		862		2074
933		1032		2667
1157		1043		
1491		692		
1699				
1736				
235				

(Bombay Castle, 26-4-1946, No. 5907/34-I Government Gazette
Part I. pp. 1316 to 1319.)

BOMBAY ELECTRIC SUPPLY & TRAMWAYS CO. LTD.

AND

ITS SCHEDULED EMPLOYEES

Adjudicator:—The Honourable Mr. Justice M. C. Chagla.

Appearances

Counsel Sir Jamshedji B. Kanga with Counsel Mr. R. J. Kolah instructed by Mr. A. S. Trollip, Mr. A. L. Guilford and Mr. M. S. Captain of Messrs. Captain and Vaidya, Solicitors, for the Company.

Counsel Mr. S. R. Tendolkar with Mr. N. V. Phadke and Mr. J. H. Vakil, instructed by Messrs. Ambubhai and Diwanji, Solicitors, for the Employees.

Dated 20th April 1946.

A w a r d

By an order of the Government of Bombay, dated the 8th of March 1946, I was appointed Adjudicator to adjudicate upon the dispute between the Bombay Electric Supply and Tramways Company Limited, Bombay, and its "scheduled" employees. The matters in dispute between the Company and its employees which have been referred to me are set out in that order and those are thirteen in number. They are as follows:

(1) Should there be a revision of the existing grades and scales of pay as mentioned in Annexure "A" and if so, from what date?

(2) Should dearness allowance on the scale fixed by Mr. E. M. Nanavutty be given for holidays, Sundays and for the period of leave with pay?

(3) Should all the employees be given, besides the special leave facilities granted at present, leave as follows:

- (a) One month's privilege leave in a year;
- (b) One month's sick leave in a year; and
- (c) Casual leave for twenty days in a year?

(4) Should the Provident Fund Rules be amended with a view to giving adequate representation to the employees on the Board of Trustees of the Fund?

(5) Should employees be entitled to receive in full, after completion of ten years' service, the Company's contribution to the Provident Fund?

(6) Should the Rules regarding gratuity be so amended as to enable the employees to get the full amount of gratuity after fifteen years of service?

(7) Should the leave rules of the employees of the Engineering and Drawing departments be brought into line with those of the clerical staff?

(8) Should the employees of the Engineering and Drawing departments be given the same holidays with pay as in the case of the clerical staff?

(9) Should the employees required to do night duty be given any Night-Duty allowance and if so, how much?

(10) Should the employees of the Ticket and Cash department be given half holiday without loss in earnings on Saturdays as in the case of the clerical staff?

(11) Should all Meter Readers and Bill Collectors be placed in the old scale of pay and the new scale abolished?

(12) Should seniority be strictly observed in making promotions, other things being equal?

(13) Should the Bombay Electric Supply and Tramway Scheduled Staff Union be recognised by the Company?

2. I directed the Union to submit a statement of their demands and the Company to file its reply to the same. The statement and the reply have been duly filed. Besides the statement of the Union, seven sheets of demands from employees of different Departments of the Company have also been filed and the Company has filed its reply to the same.

3. I have already referred at considerable length to the background of the dispute between the Company and its workers, the financial position of the Company and its capacity to pay in my Award dated the 5th of February 1946 which I made as Adjudicator in the trade dispute between the Bombay Electric Supply and Tramways Company Limited and its "non-scheduled" employees. I think it unnecessary to refer to it again in this Award. I should also like to point out in fairness to the Company that although that Award of mine strictly applied to the "non-scheduled" employees, the Company has voluntarily applied its provisions to the extent that they were applicable also to its "scheduled" employees with the result that all the benefits which the "non-scheduled" employees obtain under my Award have also become available to the "scheduled" employees.

4. The first and the most important demand of the employees is with regard to a revision of the existing grades and scales of pay as mentioned in Annexure "A" to the order appointing me Adjudicator. The main distinction between the "non-scheduled" employees and the "scheduled" employees of the Company is that whereas the "non-scheduled" employees receive a daily wage payable only for the number of days they work for each month, the "scheduled" employees are paid a monthly salary. The "scheduled" employees are in their turn divided into various schedules according to the nature of their work, and the most important demand is with regard to the employees classified under Schedule "C" headed "Clerical Staff". The employees in this Schedule are divided into fourteen grades:—Grades C-1 to C-14. Grades C-1, C-2 and C-3 consist of highly paid clerks. No objection has been taken by the employees to the scale of pay. The only grievance is that the ratio of those employed in these three grades is very small as compared to those who are employed in the remaining grades. I do not see any logic or justification in this complaint of the employees. It is impossible to dictate to the Company how many highly paid clerks it should have. That would depend upon the extent and nature of the work. In one concern the proportion of highly paid employees to lower paid employees may be high; in another it may be low. But no useful inference can be drawn from these varying proportions. It is not suggested that the Company deliberately keeps the number of superior posts at a low figure in order to prevent different persons from the lower grade aspiring to these higher posts and in due course of time obtaining these posts by promotion on merits. In my opinion, therefore, the present pay and the time-scale in these three grades do not require any revision.

5. The main controversy has centred round the next three grades—Grades C-4, C-5 and C-6. Grade C-4 comprises Clerks grade 4; Grade C-5 comprises Clerks grade 5, Bill Collectors grade 1, Meter Inspectors grade 2 and Meter Readers grade 1; and Grade C-6 comprises Clerks grade 6, Bill Collectors grade 2, Meter Inspectors grade 3 and Meter Readers grade 2. The demand of the employees is that these three grades should be consolidated into one grade and that a man starting from Grade C-6 should automatically rise to the top of Grade C-4. They have also demanded that the maximum of Grade C-4 should be raised. In the figures I am about to give the old war allowance given by the Company is included and is also included an average tram fare of Rs. 3-12-0 per month given to every employee. I might mention that this tram fare does not form part of the basic wage and is not taken into consideration for the purposes of bonus, Provident Fund or dearness allowance. Prior to the 1st of September 1945 the position was that a person entered the clerical staff of the

Company on probation for six months on a pay of Rs. 53; on confirmation he started getting a pay of Rs. 74-1-0 per month; by annual increments of Rs. 6-4-0 he went up to the top of that grade which was Rs. 103-10-0. He stopped there for the rest of his life unless he was promoted to the higher grade, Grade C-5. From the 1st of September 1945 in effect Grades C-6 and C-5 were consolidated with the result that the employee did not stop at the top of Grade C-6 on the pay of Rs. 103-10-0 but went on to the top of Grade C-5 which is Rs. 133. Now as the position stands at present, the employee reaches Rs. 133 after he has served fifteen years and then for the rest of his life he must continue on the same pay unless he is promoted to Grade C-4. I have been supplied with the figures of salaries paid by the Bombay Municipality and the Government of Bombay to their clerical staff and it is undoubtedly true that the Company pays much more handsomely to its staff in the beginning of their service than either the Municipality or the Government does. The Municipality starts a Clerk on a salary of Rs. 55 and the Government on a salary of Rs. 50 a month; whereas both the Municipality and the Government insist on the qualification of a Clerk being at least the passing of the Matriculation Examination, the Company does not insist on that qualification. But in the case of the Municipality, the increments do not stop after the fifteenth year; the increments go on till the employee reaches his twenty-first year of service when he reaches his maximum which is Rs. 140. In the case of Government, the increments go on till the employee reaches his twenty-ninth year of service when he reaches his maximum which is Rs. 160. Therefore it will be seen that both in the Municipal service and in the Government service the maximum reached by an employee is higher and also the increments continue for a much longer period. In my opinion it takes away all the impetus from an employee to stop his increments when he has done service for fifteen years and expect him to work on the same pay for the rest of his life. It must also be remembered that however well paid an employee may be to start with, as he grows older his needs increase and he always has a reasonable expectation of improving his lot by an increase in his salary. It has been pointed out to me by the Company that there are 291 employees in Grade C-5, 273 in Grade C-6 and only 27 in Grade C-4, and the contention of the Company is that Grade C-4 is a separate grade altogether consisting of men holding supervisory posts and men who have been promoted to this grade for extra meritorious services. While I agree with the Company that a case has been made out for the retention of a separate C-4 grade, I think that the maximum of Rs. 133 fixed by the Company should be raised so that the maximum should be reached at about the twenty-first year of the employee's period of service. In Annexure A to the reply given by the Company the rates of pay of the employees are given. Taking that as the

basis, I award that in the nineteenth year of service instead of Rs. 133, the pay should be Rs. 138-14-0; and in the twenty-first year of service it should be Rs. 144-12-0. In other words I am raising the maximum from Rs. 133 to Rs. 144-12-0. In this amount are included the old war allowance and the tram fare. The result is to approximate the salary received by a clerk in the Bombay Municipal service after twenty-one years' service with the pay that the Company would be giving to its employees in the Clerical Grade. With regard to the Grade C-4, it will start with Rs. 150-10-0 and the maximum will be the same as it is at present.

6. The next contention deals with Grades C-6 and C-7. While it is conceded on behalf of the employees that the Ticket and Cash Memo Clerks who fall in Grade C-7 have inferior qualifications which distinguish them from those who are placed in Grade C-6, it is pointed out that with regard to Bill Collectors and Meter-Readers who are also placed in Grade C-7, there is no reason why they should not be placed in Grade C-6 which also contains Bill Collectors and Meter-Readers. It is urged that the work done by Bill Collectors and Meter Readers, whether in Grade C-6 or Grade C-7, is of an identical character and there is no justification whatsoever for having two separate grades for employees who do the same kind of work. I am told that there are 36 Bill Collectors and Meter Readers in Grade C-6 and 19 in Grade C-7; these 19 were only recruited in 1940. The answer of the Company is that these Bill Collectors and Meter Readers in Grade C-7 have not the same qualifications as Bill Collectors and Meter Readers in Grade C-6. Many of them are not even literate in English. The Company has made an offer to the employees that any of these 19 Bill Collectors and Meter Readers can submit themselves to a test and if they pass that test, they would be promoted to Grade C-6. In view of this assurance given by the Company, I do not think that any case is made out for the revision of Grades C-6 and C-7.

7. With regard to Grade C-8 which consists of Ticket and Cash Box Fillers, the Company has given a similar assurance that anybody in that grade would be promoted to the higher grade if he passes the necessary test.

8. Grade C-9 has become obsolete and no question arises with regard to that grade.

9. With regard to Grades C-10, C-11, C-12, C-13 and C-14, they deal with the menial staff. The main grievance is with regard to Grade C-13 which is described as a grade consisting of "Boys". Now I am satisfied that this expression "Boys" is entirely a mis-

nomer because the ages of persons who answer to this description vary from 24 to 36. It is also not correct to say that these "Boys" do any different sort of work to that done by Sepoys or Hamals in the higher grade because in as many as fifteen Departments of the Company only "Boys" are employed and they have no Sepoys or Hamals. In my opinion these three grades—Grades C-12, C-13, and C-14—should be consolidated into one grade with a start of Rs. 26-11-6 rising to Rs. 42-13-0 with an annual increment of Rs. 1-4-0.

10. With regard to Grades C-10 and C-11, I think the Company's attitude is reasonable. The Company says that Grade C-10 is intended for Sepoys and Hamals who have been promoted to the higher grade and who are appointed as Head Sepoys and Hamals. I do not think that Grades C-10 and C-11 should be revised.

11. Coming to the Medical staff which the Company maintains for the welfare service of its employees, it is suggested, in the first place, that the grade of a Senior Compounder which is Rs. 90—5—110 (without war allowance) should be revised by the maximum being increased. In support of this contention it is urged that the Assistant Medical Officer who is a part-time qualified Doctor who was getting Rs. 100—10—200 now gets Rs. 150—10—250; and similarly the grades of the Superior Medical Officers have been revised in favour of the incumbents. No Hospital and no Medical Institution in Bombay pays its Senior Compounder as much as the Company does, and I think it is fallacious to compare the salary of a Senior Compounder with the honorarium paid to a part-time qualified Doctor. Even in Municipal Dispensaries all that a Compounder receives is Rs. 45—5—80. I think the present grade of the Senior Compounder is fair and reasonable; so is also the grade of the Compounder of Rs. 60—5—85. With regard to the Assistant Compounder whose grade is Rs. 30—3—55, he is not a qualified man and he can always get into the Compounder's grade if he becomes qualified. I do not think any case has been made out for the revision of his grade either.

12. With regard to the employees' demand for revision of the existing grades and scales of pay of the other staff mentioned in Annexure "A" to the order, no reason whatever was urged before me why the present grades are not satisfactory and why they should be revised. Excepting, therefore, the cases where I have recommended a revision of the existing grades and scales of pay, I reject the other demands of the employees. My recommendations with regard to the revision of the existing grades and scales of pay will come into force with effect from the 1st of May 1946. The increments are not to be retrospective.

13. *Demand (2).*—This deals with dearness allowance and what is asked for is that dearness allowance should be given for holidays, Sundays and for the period of leave with pay. Now following my Award in the case of the “non-scheduled” workers, the Company is already paying dearness allowance to its “scheduled” employees for the period of leave with pay. What is more it is also paying full dearness allowance for the period of sick leave which is given on half pay. The employees urge that they should be given dearness allowance even for holidays and Sundays. Mr. Tendolkar for the Union contends that the dearness allowance attaches to the wages earned and it is intended to neutralise the effect of the rise in the cost of living. As the “scheduled” employees are engaged on a monthly basis and as their salaries are also paid per month, the contention is that even on holidays and Sundays they are earning wages and, therefore, they are entitled to dearness allowance. Now it has got to be remembered that even the “non-scheduled” employees get holidays with pay and many of them also get an off-day a week with pay and yet no dearness allowance is given to them. The whole basis of the dearness allowance which was awarded by Mr. Nana-vutty is that for the days on which the employees actually work they draw dearness allowance. In conceding the demand of the employees not only will I be departing from that principle but also making a distinction between “non-scheduled” and “scheduled” employees. I therefore reject this demand.

14. *Demand (3).*—This deals with leave. “Scheduled” employees get 31 days’ privilege leave in a year and they are allowed to accumulate this for 93 days. What the “scheduled” employees want is that they should be allowed to accumulate it for 124 days; or, in other words, to accumulate leave earned for four years’ service. It has been pointed out to me that both the Bombay Municipality and the Government have now permitted this to be done. In my Award relating to the “non-scheduled” workers I have pointed out that the “non-scheduled” employees get fifteen days’ leave with pay per year which can be accumulated up to 45 days and I thought that that was quite a fair leave rule. If the “non-scheduled” employees can only accumulate leave earned during three years’ service, I see no reason why I should make a difference in the case of “scheduled” employees and allow them the further concession they ask for.

15. With regard to sick leave, only those in the officer’s grade used to get one month’s sick leave with full pay. But after I awarded fifteen days’ sick leave on half pay to the “non-scheduled” workers, the Company has extended that benefit to the “scheduled” employees also. What they now ask for is one month’s sick leave in a year. I do not think that that demand

is justified. The "scheduled" employees also ask for the casual leave for twenty days in a year. This seems to be a rather unusual demand bearing in mind that the Company is a trading and industrial concern and also bearing in mind the fact that every "scheduled" employee is entitled under the Standing Order to special leave for three months which he can enjoy after five years' service on half pay.

16. *Demand (4).*—The "scheduled" employees want to elect one trustee on the Board of Trustees of the Provident Fund. In my previous Award I had already asked the Company to appoint one trustee from among the "non-scheduled" workers. I think that the requirement of the case would be met if the Company were to appoint two trustees from among the "non-scheduled" workers and the "scheduled" employees. I see no reason to provide for a separate representation for "non-scheduled" workers and "scheduled" employees nor do I think it would be advisable to provide for the election of these two trustees. The interest of the workers and employees would be sufficiently represented if two out of their number sit on the Board of Trustees.

17. *Demand (5).*—At the date of the reference, there was no dispute with regard to this demand as the Company had already extended the benefit of my previous Award in this respect to its "scheduled" employees.

18. *Demand (6).*—Under the Provident Fund Rules a distinction is made between the employees belonging to the Traffic and Engineering staffs and the other employees with regard to the payment of gratuity. In the case of the former, the qualifying period is seven years' service and the maximum amount of gratuity is earned after fifteen years' service; in the case of the latter, the qualifying period is fifteen years' service and the maximum amount of gratuity is earned after twenty-five years' service. The "scheduled" employees desire that this distinction should be done away with and all employees should have the same benefit with regard to gratuity as the employees of the Traffic and Engineering staffs. Now it has been pointed out both by Mr. Nana-vutty and Mr. Justice Broomfield that the majority of the employees in the Traffic and Engineering Departments are not natives of Bombay. Many of them come from Northern India and they are anxious to return to their villages as soon as possible. In view of this, the Company has deliberately made a distinction in the case of these two classes of employees. In my opinion there is a reasonable basis for this distinction and I see no reason why I should ask the Company to change the rules in this respect.

19. *Demand (7).*—Those serving in the Engineering and

Drawing Departments only get 24 days' leave every year with full pay as against 31 days enjoyed by the "scheduled" employees in other Departments, and the demand is that the leave rules relating to the Engineering and Drawing Departments should be brought into line with the other Departments. Now the position with regard to the Engineering and Drawing Departments is peculiar and there are many persons employed in the Engineering Department who fall into the category of "non-scheduled" workers who only get fifteen days' leave with full pay. Some differences with regard to leave must exist between different classes of workers. I therefore reject this demand.

20. *Demand (8).*—The employees of the Engineering and Drawing Departments used to get only four days' holidays with pay during the year. After I had given my Award in the dispute relating to the demand of the "non-scheduled" workers, the Company has extended the benefit of my Award to these employees also with the result that they now get twelve days' holidays with pay during the year. I do not think there is any justification for a further demand that they should get the same holidays as the clerical staff.

21. *Demand (9).*—There are certain employees of the Company who are required to do night duty and Mr. Tendolkar for the Union has strenuously urged before me that these employees should either be given a special allowance or their hours of work should be reduced. My attention has been called to the Textile Labour Inquiry Committee's Report which discusses the question of work at night. The Report points out the deleterious effect of such work both on the health of the workers and also in other respects. But the Textile Labour Inquiry Committee was considering the case of permanent night shift workers in contra-distinction to those who work during the day. But the case before me is not that of permanent night workers. Some employees of the Company as a term of their service have to do night work by rotation along with the other employees. No employee is called upon to do night work permanently. In some cases an employee does one week's night duty as against three weeks' duty during day; in some cases he does night duty for two weeks per month; in some cases he does two days' night duty per month; and in some cases he does one week's night duty per month. But it is never continuous for any length of time nor is it permanent. As all the employees in a particular grade have got to do this work, I do not think that any case has been made out for a special allowance for those who are on night duty or for a reduction of hours. I therefore reject this demand.

22. *Demand (10).*—Clerks in the Ticket and Cash Department

have to work for six full hours on Saturdays as against the other Clerks who only work for three and a half hours. The demand of the employees is that the Clerks of the Ticket and Cash Department should not be asked to work for more than three and a half hours on Saturdays. The Company in its answer points out that all the Clerks in the Ticket and Cash Department are not made to work for six hours on Saturdays. Only a certain section by rotation is called upon to work for six hours on Saturdays. The very nature of the work requires this extra work to be done on Saturdays. But the Company has given an assurance that all these employees are protected by the Bombay Shops and Establishments Act and it also proposes to reorganize the work of the Ticket and Cash Department which will bring about a change in the present working hours. In view of this, I do not think that I can accept this demand of the employees.

23. *Demand (11).*—I have already dealt with this demand when I was dealing with demand No. (1).

24. *Demand (12).*—The Company says that it does observe seniority in making promotions, other things being equal. It further states that a Committee of two, one of whom is ordinarily a senior responsible officer of the Company, always considers those cases where the rule of seniority is departed from in making promotions. Under the circumstances there is really no dispute between the Company and its employees on this question.

25. *Demand (13).*—This demand relates to the recognition of the Bombay Electric Supply and Tramway Scheduled Staff Union by the Company. I asked Mr. Tendolkar what exactly he meant by "recognition" and he stated that he would be quite satisfied if the Company would intimate to the Union any change which it proposes to effect in the conditions of service of the employees which might prejudicially affect them. The present position of this Union is that out of 1,200 "scheduled" employees, 800 had joined the Union. Mr. Tendolkar further says that he only wants this recognition so long as the Union represents a majority of the "scheduled" employees. The Company is not prepared to concede this demand. I do not propose to compel the Company to do so; but, in my opinion, the Company would be well advised to accept the suggestion of Mr. Tendolkar. The Company is not likely to lose anything by doing so. All that it will have to do is to inform the Union of any changes it proposes to make in the conditions of service and discuss the matter with the representatives of the Union before it ultimately comes to a decision. The Company's discretion to make any changes in the conditions of service would remain unfettered, and I see no reason why the Company should fight shy of listening to the point of view of the Union put forward

on behalf of a majority of its employees.

26. With regard to the seven sets of other demands put forward by the "scheduled" employees who are not members of the Union, those which are covered by the reference I have already dealt with. There are several demands which are not covered by the reference and as such I have no jurisdiction to adjudicate upon the same.

M. C. CHAGLA,
Adjudicator.

Dated 20th April 1946.

ANNEXURE "A"

I. *Clerical Staff—*

Designation.		Grade	Scale.
Chief Clerks	...	C1	Rs. 250—10—325
Head Clerks	...	C2	Rs. 200—10—250
Senior Clerks	...	C3	Rs. 150—10—200
Clerks	...	C4	Rs. 55— 7—160
Clerks and Ticket and Cash Box Fillers	...	C5	Rs. 50— 5— 90

II. *Head Sepoys, Sepoys, Hamals, Attendants, Ordinary Peons, Boys, Office Coolies—*

Designation.		Grade.	Scale.
Head Sepoys, Hamals, Attendants, Liftman,	...	C6	Rs. 35—2½— 60
Ordinary Peons and Office Coolies	...	C7	Rs. 25—2½— 50

III. *Domestic Electrical Appliances and Repairs Staff—*

Designation.		Grade	Scale.
Chief Mechanic	...		Rs. 160—10—220
Head Mechanic	...		Rs. 120—10—160
Mechanic	...		Rs. 90— 5—120

IV. *Medical—*

Designation.		Scale.
Head Compounder	...	Rs. 110—10—150
Compounder	...	Rs. 50— 5—110
Dresser	...	Rs. 30— 3— 60

ANNEXURE "B"

V. *Bus Garage Staff*—

Designation		Scale
Foreman	...	Rs. 200—10—250
Assistant Foreman	...	Rs. 150—10—200
Charge Mechanic	...	Rs. 90— 6—150

VI. *Meter Testing Staff*—

Designation.		Scale.
Testing Assistant A	...	Rs. 200—25—300
Testing Assistant B	...	Rs. 130—10—180
Testing Assistant C	...	Rs. 60—10—120
Learner	...	Rs. 50

(Mechanic Section)—

		Scale
Foreman	...	Rs. 165—15—225
Assistant Foreman	...	Rs. 130—10—160
Instrument and Watch Repairer	...	Rs. 85—10—125
Meter Repairer and Shop Recorder	...	Rs. 50— 5— 85
Painters	...	Rs. 40— 5— 65
Coolies	...	Rs. 30— 5— 50

VII. *Drawing Department*—

Designation		Scale.
Tracers and Mains Drafts- men	... ...	Rs. 80— 7—150
Mechanical Draftsmen	... ...	Rs. 150—10—250
Architectural Draftsmen	... ...	
Artist	... ...	

(No. 5907/34-II, Bombay Government Gazette Extra.,
Nov. 27, 1947; p. 4504 to 4507).

THE BOMBAY ELECTRIC SUPPLY AND TRAMWAYS CO. LTD.

AND

THEIR WORKMEN

Industrial Tribunal.—Sir Harshidbhai V. Divatia, President
Industrial Court.

SUMMARY OF IMPORTANT DECISIONS

One of the demands in this dispute related to a 50% share in the surplus amount left over from the total net assets of the company including various reserves and the amount received from the Bombay Municipal Corporation, after paying the shareholders the actual paid-up amount on their shares.

Sec. 211, and Sec. 30, of the Indian Companies Act contained provisions for voluntary winding up and distribution of assets and the rights of members etc. The employees, not being members of the company, were held to have no legal claim on the assets and the capital.

It was urged on behalf of the employees that they were entitled to a half share in the property because it was acquired from the profits to which they had contributed by their labour.

Although, according to the current notions of Industrial relations, labour was being more and more treated like a partner in the concern, yet, its claim for an equitable share in the surplus profits in the form of a bonus, was accepted on the ground that even living wages were not generally sufficient to meet extraordinary expenditure; and to that extent it differed from ordinary partners who shared profits as well as losses. Labour was in a privileged position in so far as its wages and allowances were concerned while the shareholders were in a privileged position in the distribution of assets.

Besides, the company was in existence for 42 years, and during this period a large body of workers had worked and left service. The present employees did not represent the past employees either

in law or in equity. Even the suggestion to create a Trust in favour of present and future employees suffered from the defect that if the present employees were not entitled to the fund, much less were the future employees. And even assuming that the present employees were entitled to a share, they could have it only in profits and not in the appreciation of the company's capital which came about not by any effort on the part of labour, but by economic factors over which labour had no control.

The award of the Adjudicator in a dispute between the Cawnpore Electric Supply Corporation Ltd., and their Employees, granting a 50% share in the assets to employees, was quoted by labour in support of its claim. It was however held that the Cawnpore and Bombay cases were not on a par, in that the bonus in the Cawnpore concern had been linked with dividends since 1916, a fact from which the Adjudicator drew an inference of implied contract for share in profits, which were accumulated and set apart in reserves. Whether this inference was right or wrong was a different question and did not matter so far as this case was concerned, because in B.E.S.T. there was no such linking of bonus with dividends. And even assuming the existence of an equitable right, it was difficult to see how the present employees could be entitled to all the profits.

It was therefore held that the present employees were not entitled to a share in the company's reserves and assets. It was observed: "If such a claim is recognised, it is likely to lead to disputes as to the manner in which reserves are being spent and possibly to the disappearance of the reserves themselves. Instead of industrial peace there will be constant friction between the employers and employees with allegations of creation of secret reserves out of profits and extravagant use of reserve funds. Even in England the present socialist Government has recently nationalised the mining industry and the Bank of England, but in winding up the various companies concerned, so far as I know, no demand or grant has been made in favour of the employees for any share in their reserve funds or capital assets The workers' demand for a share in the reserve funds and capital assets on the winding up of a company is not only novel, but inconsistent with the provisions of law as embodied in the Indian Companies Act. The principle underlying the demand vitally affects the whole public of India including shareholders and workers. Such a far-reaching demand should not, in my opinion, be decided through the instrumentality of piecemeal adjudications for different industries in different centres, but can be appropriately dealt with by legislation. If the general opinion in the country is in favour of this ideology it is better that, in the interest of industrial stability and uniformity, it should be implemented by amending the

provisions of the Indian Companies Act or by separate legislation and not left to be decided by the individual opinions of different adjudicators. For all these reasons I recommend that this demand should be rejected."



(No. 5907/34-111, *The Bombay Government Gazette Extra.*,
Nov. 27, 1947. Pages 4507 to 4515).

THE BOMBAY ELECTRIC SUPPLY AND TRAMWAYS CO., LTD.,

AND

ITS NON-SCHEDULED EMPLOYEES

Adjudicator :—Sir Harshiddhai V. Divatia, President
Industrial Court.

SUMMARY OF IMPORTANT DECISIONS

One of the demands in this dispute related to a share by the employees in the goodwill amount receivable by the Company from the Bombay Municipal Corporation. According to the Deed of Concession made by the Municipality granting licence to the B.E.S.T. in 1905, one of the clauses contained a right to acquire the assets of the company at the end of 42 years, 56 years or 63 years and thereafter at the end of every 7 years, by payment of the then bona-fide value of the property and, as compensation for goodwill, premium, compulsory sale and other consideration, a sum of Rs. 40 lacs if the right of purchase was exercised at the end of 42 years, Rs. 20 lacs if the right was exercised at the end of 56 years, and nothing if the right was exercised at the end of 63 years. This additional payment, over and above the then bona-fide value, was agreed upon in consideration of the compensation of about Rs. 62 lacs which the B.E.S.T. had to pay its predecessors. In view of this, the Adjudicator held that the payment of Rs. 40 lacs could not be called "goodwill" in the ordinary sense of that term. There was therefore no question of a legal claim for a share in the "goodwill". Even on equitable grounds, it was not the present employees alone that could have any claim. The suggestion to create a trust of this money was no solution because there was nothing in the demand about creation of a Trust, and even if a trust could be created, past employees would derive no benefit from it, while the future employees could hardly be entitled, even in equity, to participation in this profit. The demand therefore was rejected.

Some of the demands made by the workers in this dispute were subject matters of previous adjudications and the periods of enforcements of the awards had not expired. Objection was therefore raised by the employers that these demands should not be adjudicated upon. Answering this, the Adjudicator observed :

“ Without going so far as to say that the employees are barred by *res judicata*, any demands which are made before me and are covered by any decision in the previous adjudications cannot be proceeded with now unless the employees prove any change of circumstances after the previous decision. If there has been no change of circumstances, the mere ground that the previous adjudicator had not granted a demand would not, in my opinion, justify the employees in repeating the same demand before a new adjudicator because that would be substantially asking one adjudicator to sit in judgement over the decision of another adjudicator. On principle one adjudicator should not change the previous award without proof of any new or altered circumstances.”

(*Bombay Castle, 28-7-1945, No. 8800/34-1, Government Gazette Part I, pp. 1935 to 1937*)

BANDRA BUS COMPANY LTD., SANTACRUZ

AND

ITS EMPLOYEES

Adjudicator :—E. M. Nanavutty, Esq., I.C.S., (Retired).

Mr. Camruddin G. Vakil, Advocate, and Mr. Shujatali G. Vakil, Advocate, with Mr. B. M. Banaji, Manager, for the company.

Mr. Rohit Dave, Vice-President of the Bandra Bus Co. Kamgar Union, Bombay, for the employees.

A w a r d

The Bandra Bus Company Ltd., Santacruz (hereinafter referred to as "the company"), started its passenger traffic service in the suburbs of Bombay in July 1938. In April 1939, the employees of the company went on strike on the eve of the Easter Holidays, and the dispute, at that time, was referred to Diwan Bahadur A. A. Chitre, Retired Chief Judge of the Court of Small Causes, Bombay, who, after hearing the case for about 2½ months, made his award in July 1939, holding "that the strike was not justified in the events that had happened". In the month of December 1944, the employees belonging to the traffic department and the workshop of the company submitted a memorandum to the managing director of the Company. The memorandum contained several demands of the employees, such as dearness allowance, provident fund, clothing, hours of work, etc. It appears that the management was not prepared to concede most of the demands. In April 1945, the Bandra Bus Co. Kamgar Union (hereinafter referred to as "the Union") on behalf of the employees of the company took up the grievances of the employees with the management of the company. As the company was not prepared to settle with the Union, intervention of the Labour Office, Bombay, was sought in this matter. The matter was discussed by that office. The company pointed out before the Labour Office that in view of the difficulties confronting the company, and its then financial position, it was not in a position to satisfy all the demands of the workers. The Union was, however, not satisfied with the company's reply and gave a notice of strike on 20th

April 1945. The actual cessation of work commenced on 9th May 1945. Discussions between the parties, however, continued in the office of the Commissioner of Labour. On 12th May 1945, it was agreed that the dispute should be referred to adjudication and that the workers should resume work. On 19th May 1945, Government referred the present dispute between the company and its employees to me for adjudication, by Government Order, Political and Services Department, No. 8800/34, dated the 19th May 1945, issued under sub-rule (1) of rule 81-A of the Defence of India Rules, read with Government of India, Department of Labour, Notification, No. L, 3005, dated the 20th May 1942. The said Order also directed that I was to exercise such powers as are conferred on, and follow such procedure as is prescribed for, a Board of Conciliation under the Trade Disputes Act of 1929 and Bombay Trade Disputes Rules of 1930. Consequently the strike was called off on 22nd May 1945.

2. The usual notices to the parties to file their respective written statements were issued on 23rd May 1945. On the 26th May 1945, I visited the company's depot at Santacruz. The written statement on behalf of the Bandra Bus Co. Kamgar Union was filed in the office of the Industrial Court on 4th June 1945 and the Company filed its reply on 25th June 1945. The hearing of this case was fixed at 11 a.m., on Monday, the 9th July 1945, in the Industrial Court. On that day the parties informed me that they were anxious to settle the entire dispute out of Court, and requested that the matter be adjourned so as to enable them to draft the terms of settlement. The case was, therefore, adjourned to 19th July 1945, when the parties appeared before me again and signed in my presence the memorandum of settlement attached herewith and marked as Annex "A". I, therefore, make an award in terms of the settlement and direct that the parties do comply with them. It is indeed a matter for gratification that this dispute has been settled in a spirit of mutual goodwill and trust, and the parties are to be congratulated thereon.

(Signed) E. M. NANAVUTTY,

Bombay, 20th July 1945.

Adjudicator.

ANNEX " A "

In the matter of the trade dispute between the Bandra Bus Co. Ltd., Santacruz, and its employees.

MEMORANDUM OF SETTLEMENT

As a result of meetings held between the representatives of the Bandra Bus Co. Ltd., Santacruz, and the officials of the Bandra Bus Company, Kamgar Union, the following agreement has been arrived at:

- No. 1. Do the existing scales of pay of different categories of employees require any revision and if so how?
- No. 2. Should the existing dearness allowance given to the workers be revised and if so how and from what date?
- No. 3. What bonus if any should be granted for the year 1st September 1943 to 31st August 1944 and on what terms and conditions?
- No. 4. Should the period of leave with pay granted annually to the employees be increased, and if so, by how much and on what terms and conditions?
- No. 5. Should a scheme of Provident Fund be introduced in the company, if so on what terms and conditions?
- No. 6. Should the traffic staff be given any additional clothing and if so what and how much?
- No. 7. Does the existing interval between the hours of work of drivers and conductors require any reduction and if so by how much?
- No. 8. Should the posts of ticket memo clerks and starters be filled by promotion and if so on what terms and conditions?
- No. 9. Should standing orders be framed and if so what?
- No. 10. Should (1) Mr. Chandrakant Laxman, (2) Mr. Hari Vasudeo Rane and (3) Mr. Dattaram Sitaram Sawant who have been dismissed by the Company be reinstated and if so on what conditions?

TERMS OF SETTLEMENT

1. (a) An increment to those employees who have been enrolled in the company's service prior to 30th June 1945,

be given as follows, effective from 1st July 1945 and thereafter those employees will be brought on in the scale prescribed in paragraph 1 (b) :—

			Rs.	a.	p.
Drivers	...	...	7	0	0
Conductors	...	...	5	0	0
Controllers	...	...	15	0	0
Inspectors	...	...	6	0	0
Starters	...	...	5	0	0

(b) The new scale of wages for the traffic staff, to be made effective from 1st July 1945, shall be as under:

Drivers	...	Starting pay	Rs. 48 rising to Rs. 66
Conductors	...	Starting pay	Rs. 28 rising to Rs. 40
Controllers	...	Starting pay	Rs. 48 rising to Rs. 66
Inspectors	...	Starting pay	Rs. 32 rising to Rs. 50
Starters	...	Starting pay	Rs. 30 rising to Rs. 42

The maximum in each case to be reached in nine years as per the following scale:

Salaries according to years of service: On completion of									
Designation	1st	2nd	3rd	4th	5th	6th	7th	8th	9th
	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
Drivers	50	52	54	56	58	60	62	64	66
Conductors	29	30	31	32	33	34	36	38	40
Controllers	50	52	54	56	58	60	62	64	66
Inspectors	34	36	38	40	42	44	46	48	50
Starters	31	32	33	34	35	36	38	40	42

(c) With regard to Workshop employees, a schedule will be prepared by the management showing the categories, the minimum and maximum wages and the scale of increment effective from 1st July 1945.

(d) A minimum increment of Annas two per day will be given to all employees of the Workshop who have been enrolled in the company's service prior to the 31st December 1944, provided that such increment shall not exceed the maximum of any particular grade.

2. The dearness allowance at present given to the members of the traffic and Workshop staff will be raised to the sliding scale of the dearness allowance fixed by the Millowners' Association, Bombay, effective from the 1st July 1945.

3. In view of the fact that the company has incurred a loss during the financial year 1st September 1943 to 31st August 1944, this demand is waived by the employees.

4. Members of the traffic and workshop staff will be entitled to fifteen days' casual leave without pay in addition to the 15 days' privilege leave with pay granted to them at present.

5. This demand is left to the discretion of the Board of Directors of the Company.

6. In addition to the two uniforms per year given to the employees up to now, the management has already decided and will accordingly issue one additional uniform of heavier material every year from the 1st November 1945. Over and above this, waterproof caps will be supplied now and thereafter every two years to drivers only.

7. No particular changes will be made in the present hours of duty and it will be left to the manager to adjust the schedule of duties taking into consideration the requirements of the service and the convenience of the employees as far as possible.

8. The present policy of the Company with regard to promotions being granted according to seniority and efficiency will be continued.

9. Standing Orders will be drafted as far as possible on the lines of the Bombay Electric Supply & Tramways Co. Ltd., Bombay, with such modifications as may be necessary to satisfy the requirements of this Company within three months from this date.

10. This is waived as a demand but Mr. Rohit Dave, the Vice-President of the Union, will go into the evidence with Mr. Banaji, the manager, and the matter will be settled between them.

It is noted that the Union agrees with the management that there should be no acts of pilferage, indiscipline, absenteeism and bringing in of buses to the Depot without valid reason and assures the management that it will use its influence to see that such things do not happen.

(Signed) AKBAR CHINYOY, Director.

(Signed) B. M. BANAJI, Manager.

(Signed) CAMRUDDIN G. VAKIL, Advocate.

(Signed) SHUJATALI G. VAKIL, Advocate.

For and on behalf of the Bandra
Bus Co. Ltd., Santacruz.

Verified before me,
(Signed) E. M. NANAVUTTY,
Adjudicator.
Bombay, 19th July 1945.

(Signed) ROHIT DAVE,
Vice-President.
For and on behalf of the Bandra
Bus Company Kamgar Union.

(Bombay Castle, 23-3-1944, No. 7607/34-1. Government Gazette
Part I. pp. 603 to 605).

BROACH ELECTRIC SUPPLY AND DEVELOPMENT CORPORATION LTD.

AND

ITS EMPLOYEES

Adjudicator.—R. R. Karnik, Esq., (District and Sessions Judge,
Broach and Panch Mahals).

Mr. F. J. Hecht, Representative of the Electric Supply and
Development Corporation Ltd.

Messrs. Shantilal C. Desai, N. V. Phadke, M.A., LL.B., and
A. R. Desai, B.A., LL.B., Representatives of the Employees.

A w a r d

By Government Order, No. 7607/34, Political and Services Department, dated 8th November 1943, I was appointed Adjudicator in the dispute between the Broach Electric Supply and Development Corporation, Ltd., Broach, (hereinafter referred to as "The Company"), and its employees under rule 81-A of the Defence of India Rules. The Government Order directed that I was to exercise such powers as are conferred on, and follow such procedure as is prescribed for, a Board of Conciliation under the Trade Disputes Act, 1929, and the Bombay Trade Disputes Rules, 1930. The parties requested for time to prepare their cases. Their request was allowed. They were heard on 10th, 11th and 12th January 1944. The hearing was further adjourned to 5th February 1944 as the employees wanted time to put in a statement to show how the classification of the workers should be made. The parties were finally heard on 5th February 1944.

2 The matters referred to me for adjudication are:

- (1) Revision of wages with fixed annual increments and grades.
- (2) Annual Bonus.
- (3) Adequate dearness allowance.
- (4) Sick leave privilege.
- (5) One month's leave with pay every year.
- (6) Uniforms to all employees.

- (7) Rain coats in the monsoon season.
- (8) One day off every week for the line men, Engine Department, and Switch Board Operation.
- (9) Head lights for line men.
- (10) Increase of Rs. 5 per month in cycle allowance.

3. The Demand No. 1 of the workers is for a "Revision of wages with fixed annual increments and grades". The workers suggested in their detailed statement (Exh. 5) before me that they should be granted an immediate increment of 25 per cent., in the present basic wages. There is no agreement about service and wages between the Company and the workers. There are no standing orders in the Company about increments, promotions, etc. No fixed scales are there for the different kinds of workers. The Manager Mr. Mody suggests the pay of a new entrant and the Directors of the Company fix it. It is urged for the Company that the number of workers is small and there is no need of any classification of the workers and a fixed scale which are necessary when the number of workers is very large. The employees of the Company, including the clerical staff, hardly exceed 50. That being so, there is some force in the contention put forth by the Company. However, a system where there are no definite grades and no regular increments is likely to create misunderstanding and jealousy among the employees. The workers may often suspect invidious distinctions even though the Manager has acted in a just and fair manner in allowing and recommending increments. The employees put in a statement (Exh. 42), to show how the classification should be made, how the maximum and minimum wages should be fixed and how the increments should be allowed. But they produced no materials as to how this classification was made in the other concerns having such workers. They did not put forth before me any information as to how the maximum and minimum wages were fixed elsewhere and how the increments were granted. The conditions at different places may differ and the maximum and minimum wages and increments granted at a particular place may not be useful in fixing the wages and increments at Broach. I went over the premises of the Company and obtained a first hand idea as to the work done by the various workers. I have made a classification of the workers, fixed the maximum and minimum wages of the workers in a particular class and fixed the increments to be granted to them as shown in the next paragraph.

4. The classification, the scales of pay and the increments of the workers of the Company should be as shown below. The clerical staff of the Company had not joined the workers in their dispute with the Company. Hence, the scales of pay of the clerical staff are not considered by me. I have not accepted the maximum and minimum wages suggested on behalf of the

workers in Exh. 42 as no evidence was adduced that such wages were allowed elsewhere in the Districts. The yearly increments suggested by them are not supported by any such instances elsewhere. Hence, I have not accepted them. The classification, the scales and increments recommended by me are:

SCALES OF PAY AND INCREMENTS

Class I—

Fitter	...	}	Rs. 35—5/2 (years)—60.
Switch board operator	...		
Engine Driver	...		
Linesman	...		
Blacksmith	...		

Class II—

Assistant or Acting fitter	...	}	Rs. 26—3/3 (years)—35.
Assistant or Acting Engine driver.	...		
Assistant or Acting Switch board operator	...		
Assistant or Acting Linesman	...		
	...		

Class III—

Oilman	...	Rs. 25—3/3 (years)—34.
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Class IV—

Coolies (including those working on the engines and under the line-men).	...	Rs. 20—2/2 (years)—26.
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Class V—

Office Peon	...	}	Rs. 16—3/3 (years)—28.
Watchman	...		
Mali	...		

Class VI—

Office boy	...	}	Rs. 10—3/3 (years)—19.
Store boy	...		

Class VII—

Sweepers	...	}	No scale to be fixed as they are part-time workers.
Meter readers	...		
Bill Collectors	...		

5. The company to give effect to the minimum wages suggested in paragraph 4 (*supra*) at once. As regards increments they may be allowed at the end of 2 or 3 years, as the case may be, from to-day. The classification, the scale of wages and the increments should remain in force till the duration of the War. They may be revised at the end of the War at the instance of either party.

6. The Demand No. 2 of the workers is in regard to bonus to the extent of two months' average pay with retrospective effect from 1940. If it is proved that the Company has made huge or increased profits since 1940, the case for a bonus must succeed. Mr. Justice Chagla in his award in the industrial dispute between the General Motors (India), Ltd., remarked:

"It is almost a universally accepted principle now that the profits are made possible by the contribution that both capital and labour make in any particular industry, and I think it is also conceded that labour has a right to share in increased profits that are made in any particular period."

The demand for bonus in the trade disputes between the Standard Vacuum Oil Company, and Caltex (India) Ltd., and their employees was granted. In the present case the demand for bonus is not justified by the profits made by the Company. The Company has made no increased profits during the period of the War. Owing to the shortage of Diesel Oil, Government have introduced a provisional rationing scheme covering all electrical undertakings in the Province using diesel fuel and has assigned to each undertaking a monthly quota of fuel reflecting the extent to which each undertaking is associated with the essential public services and other work directly connected towards furtherance of the War effort. With the object of conserving generating capacity and existing stock of electrical materials and equipment for essential needs, Government have prohibited the Company and other similar concerns from entering into contracts for electric supply to new consumers or furnishing additional supplies to existing consumers without prior sanction of Government. The Company has therefore no chance of making increased profits for the duration of the War. The net profits of the Company in 1939 were Rs. 35,384. In 1943, they were Rs. 16,380. I therefore cannot recommend any bonus to the workers at present.

7. The Demand No. 3 is for dearness allowance. The workers are getting at present dearness allowance at a flat rate of Rs. 16 per month. They demand at the increased rate of Rs. 50 per month. In August 1943, the cost of living index number for the working classes in Ahmedabad City on base August 1926 to July

1927 equal to 100, advanced by four points to 214 and was higher by 141 points as compared with August 1939, which is the pre-war month. See *Labour Gazette*, September 1943. The Mill-owners' Association at Ahmedabad, with the previous sanction of the Government of Bombay, have linked up the cost of living index figure at Ahmedabad, with the one at Broach. The Company began to grant dearness allowance at a flat rate of Rs. 2-8-0 up to Rs. 100 in March 1941. It was increased from time to time. It was raised to Rs. 13 in January 1943, to Rs. 15-5-6 in February 1943, to Rs. 15-10-6 in March 1943 and to Rs. 16 in April 1943. The workers are paid Rs. 16 as dearness allowance up to a salary of Rs. 200 since April 1943. It appears that the Company realised that it was necessary to pay dearness allowance as the cost of living had gone up. The workers demand dearness allowance at the rate of Rs. 50. They point out that the two local textile mills have been giving dearness allowance at the rate Rs. 45 to Rs. 50 per month. They are clearly wrong in taking into consideration the dearness allowance allowed by the textile mills. The textile mills have been making huge profits since the outbreak of the War. But concerns such as the Company are not making increased profits. On the contrary, the profits have decreased. The Company has been compelled to pay greater costs for the fuel and other materials. They must pay something more to the workers also in view of the increased cost of living. The Company's Manager Mr. Mody admits that the cost of living has increased since April 1943, but he is unable to say as to what extent. In my opinion the workers getting a wage up to Rs. 200 should be allowed a dearness allowance at the rate of Rs. 20 from May 1943 to March 1944 (both inclusive). I am unable to make any recommendation for the period after March 1944 for the following reasons. Government have controlled the prices of various articles including food stuffs and cloth. The measures taken by Government are bound to result in a fall in the prices of all commodities. To what extent the prices will go down will be seen in April 1944 and the subsequent months. I therefore decline to make any recommendations for the period commencing from April 1944. There is no doubt that the Company will pay the necessary dearness allowance having regard to the prices prevailing in April 1944 and the subsequent months.

8. The Demands Nos. 4 and 5 relate to sick leave and one month's leave with full pay every year. The Company allows at present leave for 20 days on full pay for service for 12 months. The workers demand one month on full pay and 15 days on full pay as sickness leave. It is not pointed out that other concerns doing similar business allow leave as demanded by the workers. I therefore decline to recommend any increase in the leave. It appears that leave for 20 days is allowed to accumulate for 3 years.

This rule is just and the Company must continue it.

9. The Demand No. 6 is about uniforms. The Company gives uniforms as required by the Factory Act. The only complaint of the workers is that those who are given rain coats are not supplied with headgears. The Company has no objection to supplying headgears. I would recommend the supply of headgears to those who are given rain coats.

10. The Demand No. 7 is about rain coats. The workers admit that they get rain coats. See Exh. 25. Hence, the question does not survive.

11. The Demand No. 8 is about a day off every week for the linemen, Engine department and switch board operators. The Engine drivers, the coolies working on the engines, oilmen and switch board operators are allowed holidays by the Company as laid down by the Bombay Factories Act. If engine drivers are allowed an off-day every week, the Company will have to engage an additional staff. They are unable to do so due to the present financial position of the Company. The linemen and coolies working under them get two days off per month. If they are to be allowed a day off per week, additional staff will have to be engaged. As regards switch board operators also, there is no need of making any recommendation. The Demand No. 8 is rejected.

12. The Demand No. 9 relates to Head lights for linemen. At present the linemen are provided with electric torches. They want head-lights. The Company has no objection to providing them. But they are not available at present. I recommend to supply head-lights when they are available.'

13. The Demand No. 10 relates to increase of Rs. 5 per month in the cycle allowance. Some of the workers are allowed a cycle allowance of Rs. 5 per month. They want it to be increased to Rs. 10 per month. The Company's Manager Mr. Mody admits that the prices of cycles and parts have gone up. But it cannot be said that the maintenance and repair expenses have gone up by 100 per cent. per month. Only some parts are to be replaced occasionally. The demand for increase of Rs. 5 per month is not justified. Government have recently controlled the prices of cycles and their parts. It would be sufficient if the cycle allowance is raised by 8 annas per month from May 1943 to March 1944 (both inclusive) I recommend accordingly.

(Signed) R. R. KARNIK,
Adjudicator

(Bombay Labour Gazette, February 1945, pp. 361-78).

THE POONA ELECTRIC SUPPLY CO. LTD., POONA

AND

ITS EMPLOYEES

Adjudicator:—E. M. Nanavutty, Esq., I.C.S. (Retired).

Mr. M. G. R. Aitken, of Messrs. Crawford Bayley & Co., Solicitors, with Mr. W. S. Nelson, Director, Mr. S. R. Choudhari, Manager, and Mr. B. R. K. Iyengar for the Poona Electric Supply Co. Ltd., Poona.

Mr. C. B. Agarwal, President, with Mr. N. S. Nayak, Secretary, and Mr. R. P. Mandavgane, of the Poona Electric Supply Co. Kamgar Sangh, for the employees.

A w a r d

By Government Order, Political and Services Department No. 8366/34, dated the 8th November 1944, issued under sub-rule (1) of rule 81-A of the Defence of India Rules, read with Government of India, Department of Labour, Notification No. L. 3005, dated the 20th May 1942, I was appointed adjudicator in the dispute between the Poona Electric Supply Co. Ltd., Poona (hereinafter referred to as "the Company") and its employees. The said Order also directed that I was to exercise such powers as are conferred on, and follow such procedure as is prescribed for, a Board of Conciliation under the Trade Disputes Act of 1929 and the Bombay Trade Disputes Rules of 1930.

2. The Poona Electric Supply Co. Kamgar Sangh (hereinafter referred to as "the Union"), which is the Union of the employees of the Company concerned in this dispute, was formed on 23rd January 1944. On 2nd February 1944, the President of the

*Mr. F. J. Hecht, Director, was present on the first day of the hearing, viz. 11th December 1944.

Union, wrote to the Managing Director of the Company requesting the latter to fix an appointment so that he could meet the Managing Director and place before him the grievances of the employees of the Company. At that time the Union was not registered under the provisions of the Indian Trade Unions Act of 1926. The management of the Company refused to recognise the Union or to meet its office-bearers in their self-styled official capacity, but were prepared to discuss with them in their individual capacity the grievances of the workmen. The suggestion of the management was not acceptable to the officers of the Union. Some correspondence followed between the Union and the management of the Company, between 2nd February 1944 and 23rd March 1944, on the right of the Union and its office-bearers to represent the grievances of the workers of the Company. On 23rd March 1944, the President of the Union forwarded to the Company for consideration a memorandum of demands, which were almost the same as form the subject matter of issues framed by Government in its Order appointing me as Adjudicator. The Company was not prepared to concede any of those demands made by the Union. On 11th April 1944, the President of the Union addressed a letter to the Commissioner of Labour, Bombay, requesting him to intervene in the dispute which had arisen, between the Company and its employees, and to bring about an amicable settlement, if possible. Mr. Ivengar, Assistant Commissioner of Labour, opened negotiations with the Company and held several meetings between the representatives of the Company and the Union, in order to bring about a satisfactory solution of the dispute. His efforts to bring about a settlement proved unsuccessful. On the 23rd October 1944, the Union gave 14 days' notice to the Company of their intention to strike work with effect from 8th November 1944. The Company thereupon withdrew all their offers made without prejudice in the course of the negotiations before the Assistant Commissioner of Labour, for an amicable settlement of the dispute. The Commissioner of Labour thereupon recommended to Government that the dispute be referred to adjudication. On the 7th of November 1944, the Union having learnt that an adjudication in this case had been recommended to Government by the Commissioner of Labour, passed a resolution to postpone going on strike till the 14th of November 1944. On the 8th November 1944, Government issued the above mentioned Order appointing me as Adjudicator.

3. On 13th November 1944, notices were issued to the parties, requesting them to file their respective written statements in this dispute. On the 23rd November 1944, one Mr. D. N. Malekar, an employee of the Company who was not a member of the Union, filed a statement in respect of his own personal grievances in as much as he had not been given any increments for some years past

and that he had in fact been demoted, and that his case might be considered favourably by the Adjudicator. I will discuss this man's case in detail separately at a later stage. On 24th November 1944, the written statement on behalf of the Union was filed. On 6th December 1944, the Company filed its written statements (1) in reply to the statement of the Union and (2) in reply to the statement of Mr. D. N. Malekar. A supplementary written statement was also filed by the Company on the 5th January 1945.

4. The preliminary hearing in this case was fixed on the 11th December 1944, in the Industrial Court at Bombay. As Mr. Agarwal, the President of the Union, could not be present on that day on account of his wife's sudden demise, further proceedings had to be adjourned by consent of the parties to 8th January 1945. In the meantime I went to Poona, and on the 18th December 1944, I visited the Receiving station and the stores of the Company at Raste Peth, with a view to observe the working conditions and the nature and character of the work done by the employees of the Company. On that day I also inspected the actual work in connection with the removal of D. C. current-over-head-lines at Sacha Pir Street and at the junction of Barne Road and Gaditar Road, in Mangalwar Peth. The show room of the Company and the head office on Asenal Road were also inspected that very day. The day-to-day proceedings were resumed at 11 a.m. on 8th January 1945, in the Industrial Court, Bombay, and continued on the 9th, 10th, 11th January and concluded on 12th January 1945. On the 10th January 1945, I met the representatives of the Union in chamber to explore the possibilities of a settlement of the entire dispute. But I found that the representatives of the Union were not willing to modify their demands with a view to effecting a compromise of the whole dispute. Only one issue was settled by consent of parties and that is issue (3) relating to promotions. The memorandum of settlement (annexed herewith) was drawn up on this issue and signed by the parties in my presence on 12th January 1945.

5. I will now proceed to discuss issue (1) relating to dearness allowance. The issue as framed by Government in its Order is as follows:

"Should the present rate of dearness allowance paid to employees be increased, and if so to what extent and from what date?"

The President of the Workers' Union, in the written statement filed by him on behalf of the employees of this Company, asked for an increase in the dearness allowance granted by this Company according to the following scale:

MONTHLY EARNINGS OF WORKERS	AMOUNT OF DEARNESS ALLOWANCE PER MENSEM
Workers earning below Rs. 70 a month.	Rs. 35 a month.
Workers earning from Rs. 71 to Rs. 100 a month.	50 per cent. of their monthly salary.
Workers earning from Rs. 101 to Rs. 150 a month.	35 per cent. of their monthly salary.
Workers earning from Rs. 151 to Rs. 200 a month.	20 per cent. of their monthly salary.
Workers earning above Rs. 200 a month.	10 per cent. of their monthly salary.

6. The President of the Union further demanded that the increased dearness allowance according to the above scale should be granted to the employees of the Company with retrospective effect from 1st January 1941, that is to say for the last four years, and in the event of a further rise in the cost of living, a further increase of dearness allowance should be allowed on the same liberal scale set forth above.

7. The Company in its written statement pointed out that it paid a war dearness allowance equivalent to 10 per cent. of the worker's basic salary subject to a minimum of Rs. 16 a month. The maximum amount of dearness allowance paid to any employee of the Company was (as stated by Mr. Aitken) Rs. 75 a month. The Company started paying a dearness allowance of Rs. 2-8-0 a month to its employees from the month of March 1941. I give below a table (exhibit 17) filed by the Company showing the progressive increases in dearness allowance granted by the Company from time to time since March 1941 to April 1943:

WAR DEARNESS ALLOWANCE PAID	AMOUNT.
	Rs. a. p.
From March to October 1941 ...	2 8 0 a month.
From November 1941 to May 1942.	... 3 8 0 a month.
In June 1942	... 3 8 0 a month.
In July 1942	... 5 14 0 (made up of Rs. 4-12-0 plus Rs. 1-2-0 of the previous month).

WAR DEARNESS ALLOWANCE PAID AMOUNT.

		Rs. a. p.			
In August 1942	...	5	4	0	
In September 1942	...	9	12	0	(made up of Rs. 8-8-0 plus Rs. 1-4-0 of the previous month).
In October 1942	...	8	8	0	
In November 1942	...	8	12	0	
In December 1942	...	11	7	0	
In January 1943	...	13	0	0	
In February 1943	...	14	14	0	
In March 1943	...	16	2	0	(made up of Rs. 15-10-6 plus Re. 0-7-6 of the previous month).
In April 1943	...	16	0	0	a month. (The Bombay cost of living index figure for that month was 208).

8. From the above table it will be seen that the Company started paying Rs. 16 a month as dearness allowance from the month of April 1943, and has continued paying the same amount of dearness allowance up to the present. The payment of dearness allowance to its employees by this Company is not linked up with the cost of living index figures, and no rational or recognised principle seems to have been followed by it in giving increases in dearness allowance to its workmen. The upward trend of the dearness allowance actually paid by the Company seems to be somewhat erratic up to April 1943, and thereafter all increase in dearness allowance has suddenly ceased.

9. The President of the Workers' Union strenuously argued that the employees of this Company should be granted such increases in dearness allowance as would completely neutralise to the full extent the cut in their real wages due to the rise in the cost of living in Poona. He further contended that the workers of this Company should at least get the same amount of dearness allowance as is paid to the mill-hands of the Raja Bahadur Motilal Poona Mills Ltd., Poona, or in the alternative they should be paid the same amount of dearness allowance as is paid to the employees in the cotton textile mills of Bombay according to the sliding scale

recommended by the Millowners' Association of Bombay.

10. The proprietors of the Raja Bahadur Motilal Poona Mills Ltd., are paying a certain amount of dearness allowance based on a sliding scale which is linked up with the Sholapur cost of living index numbers. I am given to understand that this Mill in Poona has accepted the principle of paying dearness allowance at the rate of nine pies a day for each worker for every rise of 5 points in the Sholapur cost of living index figures. According to this scale the amount of dearness allowance paid by the Raja Bahadur Motilal Poona Mills Ltd., for the month of December 1944 when the cost of living index number for Sholapur was 207 (*vide* figure for November 1944) comes to Rs. 33-11-6. As, however, no data have been placed before me from which I can determine the average wage of the employees of this mill, I cannot say to what extent the rise in the cost of living has been compensated for in the case of the employees of this mill. The dearness allowance paid to the employees in the cotton textile mills in Bombay for the month of December 1944 was Rs. 32-7-0, calculated on the index number of 242 for November 1944. It is common knowledge that the Bombay Millowners' scale of dearness allowance gives relief to the extent of 76 per cent of the rise in the cost of living, the average wage of a Bombay mill-hand being Rs. 32-8-0. In my opinion in awarding the amount of dearness allowance it is a good rule to introduce a sliding scale of dearness allowance linked up with the cost of living index numbers. Parties to this dispute fall in with my views in this matter, and agree that a sliding scale of dearness allowance may be introduced. They, however, point out that no separate figures of cost of living index numbers have been compiled by the Bombay Labour Office for Poona, but as the cost of living in Poona is almost the same as in Bombay, they would prefer to follow the Bombay working class cost of living index numbers in fixing the amount of dearness allowance for the employees of this Company. Since both parties agree to accept the Bombay cost of living index numbers, I think it right to introduce a sliding scale of dearness allowance to be paid to the workers of this Company on that index. I inquired from the parties to let me know to what extent, on the basis of the Bombay cost of living index numbers, the rise in the cost of living in Poona was neutralised by the grant of the dearness allowance at present paid by the Company. Implicit in this inquiry is the further question as to what is the average wage of the employees in this Company, since only when the figure of average wage is known can the figure of percentage neutralisation of the rise in the cost of living be worked out. On this point there was no agreement between the parties. The President of the Workers' Union filed exhibit (18) in which three figures for the average wage of a worker in this Company have been shown. If the salaries

of employees earning Rs. 150 a month and below that figure are taken into account, then the average wage, according to the Union, comes to Rs. 40.3. If, however, the salaries of all employees of the Company are taken into account, excluding only the salary of the manager, then the average wage comes to Rs. 48.1. If, on the other hand, the salaries of all employees including that of the manager are taken into account, then the average wage according to the Union, comes to Rs. 50.2. It follows, therefore, that the figures about the percentage neutralisation of the rise in the cost of living by the present amount of dearness allowance must differ in the case of these three different figures of average wages. The higher the average wage and the lower the dearness allowance, the smaller will be the percentage of neutralisation of the rise in the cost of living.

11. The learned Solicitor on behalf of the Company was not prepared to accept any of the three figures shown in exhibit (18) as the average wage of the employees of this Company; and on the materials placed before me, I had some difficulty in arriving at a figure for the average wage of the workers of this Company, without determining which I could not find out the percentage of neutralisation of the cut in real wages in fixing the scale of the increased dearness allowance with the rise or fall in the Bombay cost of living index numbers.

12. The learned Solicitor for the Company was prepared to accept the figure of Rs. 31-5-6 as the average wage of the employees of this Company. This figure was worked out by the officials of the Labour Office when this trade-dispute was being handled in that office during its preliminary stage. The President of the Union, however, was not prepared to accept that figure worked out by the Labour Office. He, however, was good enough to work out in Court another figure, viz., Rs. 34.2 as the average wage of the employees of this Company. To cut the matter short, and to put an end to all further arguments on this point and to facilitate my making the necessary calculations for fixing the increased dearness allowance, the learned Attorney for the Company was prepared to assume on behalf of the Company that the figure of Rs. 34.2 represented correctly the average wage of the employees of the Company. Apart from the agreement arrived at by the parties on this point, I find that the figure of Rs. 34.2 may well be assumed as the approximate average wage of the employees of this Company, since, according to exhibit (11) filed by the President of the Union, there are about 152 workers (i.e. about 50 per cent., of the total number of employees) drawing a salary below Rs. 30 a month. It will, therefore, be fairly correct to assume Rs. 34.2 as the average wage of the workers in this Company.

13. The Bombay cost of living index number for November 1944, which is the figure taken for payment of dearness allowance for the month of December 1944, is 242. It shows that compared with August 1939 when the cost of living index number was 105, the cost of living has risen to the extent of 130.48 per cent. If the average wage of the employees of this Company be taken to be Rs. 34.2 then the present dearness allowance of Rs. 16 granted by the Company to its workers neutralises the rise in the cost of living only to the extent of 35.85 per cent. It is, therefore, clear that the cut in the real wages of the workers due to the rise in the cost of living has not been made good by the existing rate of dearness allowance even to the extent of 50 per cent.

14. The learned President of the Workers' Union has boldly asserted that no award of any Adjudicator or of any Industrial Tribunal has laid down any principle as to what extent and by what percentage the cut in real wages should be neutralised by the grant of dearness allowance. This statement is not entirely correct. As pointed out by the learned Solicitor for the Company, there is a Full Bench ruling of the Industrial Court of Bombay in the dispute between the Textile Labour Association of Ahmedabad and the Ahmedabad Millowners' Association which affords guidance on the subject. On this question of dearness allowance the learned Judges of the Industrial Court of Bombay delivered themselves of the following weighty pronouncement:—"We are also not prepared, as at present advised, to accept the principle that the employers owe any duty to the employees to make good to them, to the full extent, the rise in the cost of living merely by reason of the fact that there has been such a rise. It is not every rise in the cost of living that entitles a worker to ask the employer for a proportionate increase in his wages." The learned Judges go on to say:—"In view of these considerations we are of opinion that the workers would not be entitled to a rise to the full extent of the rise in the cost of living, unless it could be shown that the industry has benefited to a corresponding extent by the very contingency which has occasioned the rise." (see *Labour Gazette* of May 1940 at page 780). If I were to order the Poona Electric Supply Co. Ltd., to pay the same amount of dearness allowance which either the Millowners' Association of Bombay or the Raja Bahadur Motilal Poona Mills Ltd., pays to its mill-hands, then this Company would have to pay nearly double the amount of dearness allowance it pays at present, and that would mean that I would impose upon this Company an additional burden of Rs. 50,000 a year besides the existing cost of dearness allowance which the Company is already paying. My sense of justice and

fair play naturally shrinks from imposing such a heavy burden upon, what after all can only be deemed, the generosity of a sympathetic and understanding Directorate of the Company. The President of the Workers' Union is, however, of opinion that the Company can easily stand the strain of this additional burden of half a lac of rupees, as the finances of the Company are in a very satisfactory condition, inasmuch as it distributes a dividend of 9 per cent., to its share-holders, and its nett profits have been allocated to various funds such as reserve, depreciation, etcetera; and for some years in the past the Company has been giving one share free to every share-holder holding five shares and that fact in his opinion is tantamount to a latent profit of 20 per cent. He further points out that the business of the Company has been recently expanding as it has received a number of contracts from the military authorities for the supply of electric power in the neighbourhood of Poona. On the other hand, on behalf of the Company it has been pointed out to me that the rates for the supply of electric energy are controlled by Government, and the fair prospects held out by the new orders received by the Company are but a temporary phase and will vanish shortly after the cessation of hostilities. After some discussion the learned Solicitor for the Company threw out a helpful suggestion that his Company was prepared to offer to its employees an increased dearness allowance of Rs. 25 for a month of 26 working days when the cost of living index number for Bombay stood at 242, and that if the cost of living index number rose higher, an additional rupee by way of dearness allowance would be given to its workmen for every rise of five points in the index figure.

15. In my opinion this is a very fair offer, and the Workers' Union should accept it with good grace. The increased dearness allowance at the rate proposed by Mr. Aitken on behalf of the Company will help to neutralise the rise in the cost of living index number to the extent of 56.24 per cent., when the average wage of the workers of this Company is taken as Rs. 34.2—the figure agreed upon by both parties. On behalf of the Company it has not been suggested as to what should be the dearness allowance if the cost of living index number fell below 242. Since the Company has offered to raise the dearness allowance from Rs. 16 to Rs. 25 a month, the same scale of reduction of rupee one for every fall of five points should also be followed when the cost of living index number falls below 242.

16. According to this scale, the employees of this Company would be entitled to get Rs. 16 only by way of dearness allowance when the cost of living index number fluctuates between 193 and 197. I, therefore, award that the Company shall adopt the following sliding scale of dearness allowance:

Cost of living index number for Bombay	Amount of dearness allowance for a month of 26 working days			Rs.
193 to 197	...	...	...	16
198 to 202	...	...	...	17
203 to 207	...	...	...	18
208 to 212	...	...	...	19
213 to 217	...	...	...	20
218 to 222	...	...	...	21
223 to 227	...	...	...	22
228 to 232	...	...	...	23
233 to 237	...	...	...	24
238 to 242	...	...	...	25
243 to 247	...	...	...	26
248 to 252	...	...	...	27
253 to 257	...	...	...	28
258 to 262	...	...	...	29
263 to 267	...	...	...	30
and so on.				

In the event of the cost of living index number falling below 193 a further revision of dearness allowance would become necessary, since the employees asked for a revision of dearness allowance only when the dearness allowance had remained stationary at the figure of Rs. 16 for several months from April 1943 onwards. According to the above scale the amount of dearness allowance will be paid by the Company to all its employees drawing Rs. 250 a month or less. As regards employees drawing Rs. 251 a month and above it is not necessary for me to prescribe a sliding scale or to make any order regarding dearness allowance.

17. The President of the Workers' Union in his written statement had asked that dearness allowance on the scale demanded by him should be granted to the workers of the Company with retrospective effect from 1st January 1941. Later on, he was pleased to reduce his demand and stated that the workers would be content if arrears of dearness allowance were sanctioned by

the Company with effect from 1st April 1944. Even if arrears on the above scale were granted from April 1944, I find that the Company would have to pay arrears of dearness allowance to the tune of roughly about Rs. 17,000. I have scrutinised the statements showing the Profit and Loss Accounts of the Company and the Balance-Sheets of the Company, filed under confidential cover, and I am not prepared to saddle the Company with this additional burden of paying arrears of dearness allowance in addition to the enhanced rate of dearness allowance already granted by me to the workers of this Company. The President of the Workers' Union no doubt realises that the generosity of the Company directorate should not be stretched to breaking point, lest perchance it may seriously impair the financial condition of the Company upon which ultimately depends the livelihood of the workers themselves.

18. For the reasons given above, I award that the revised scale of dearness allowance as set forth above should come into operation with effect from December 1944. The cost of living index number for November 1944 is 242, and this index figure is taken for the payment of dearness allowance for the month of December 1944. In calculating the dearness allowance for work done in a particular month, the cost of living index number for the previous month published in the Bombay Labour Gazette or announced by the Labour Office, shall be used. I, therefore, award that the employees of this Company should be paid Rs. 25 as dearness allowance for the month of December 1944. If the dearness allowance for the month of December 1944 has already been paid at the old rate, then the additional sum of Rs. 9 (the difference between Rs. 25 and Rs. 16) should be paid to the employees within a month from the date on which this award is published in the *Bombay Government Gazette*. I decide issue (1) accordingly.

19. I come next to decide issue (2) which runs as follows:

"Should any scales of pay and grades be introduced; if so what, for what categories of employees, and from what date?"

The President of the Workers' Union in his written statement (exhibit 2) makes the following demands in respect of this issue:

"There should be a regular scale of salary, gradations and promotions.

"Coolies, peons, gate-keepers, sweepers and others should get a minimum salary of Rs. 40 a month to start with and should get an annual increment of Rs. 5.

"Assistants to Linesmen, assistants to wiremen, assistants to fitters and fusemen should get a minimum salary of Rs. 50 a month to start with and should get an annual increment of Rs. 7.

"Linesmen, fitters, carpenters, turners, blacksmiths, moulders, typists, assistant store-keepers, meter-readers, meter-testers, assistant operators, bill-clerks, despatch clerks, filing clerks, 'adding machine-operators,' wiremen, motor drivers and assistant draughtsmen should get a minimum salary of Rs. 75 a month to start with, with an annual increment of Rs. 10.

"Supervisors, Operators, account clerks, steno-typists, cashiers, store-keepers, inquiry-clerks, head bill-clerks and draughtsmen, salesmen, and show-room machanics should get a minimum salary of Rs. 110 a month to start with and should get an annual increment of Rs. 15.

"Superintendents should get a minimum salary of Rs. 200 a month to start with and should get an annual increment of Rs. 25."

The above scales of salaries should be brought into effect immediately and increments be given immediately according to the number of years already served.

20. A mere perusal of these demands in exhibit (2) as well as of the detailed statement in exhibit (7) shows that there is no real classification of workers on a scientific basis, and all that the workers of the Company are keen on is to get enormous increases in wages. No valid grounds for demanding or for justifying such increases in wages, or for a system of incremental scales have been advanced before me.

21. It is admitted on all hands that job-analysis and job-evaluation are matters for the expert to handle and decide. The President of the Union of workers of this Company cannot claim to be an expert in matters dealing with the personnel of the Poona Electric Supply Co. Ltd.

22. Mr. Aitken on behalf of the Company strongly objects to this introduction of annual automatic promotions of the workers of the Company. His contention is that private industrial enterprises stand or fall on the efficiency of their workers and automatic promotion takes no notice of efficiency at all. This contention of the learned Solicitor for the Company receives strong corroboration from an American work on "Industrial Supervision—Organisation—Controls" by Dr. Vernon G. Schafer, Ph.D. and Willis Wissler and others. In this work the learned authors state that

“automatic promotions by annual increments are not advisable, because—

- (a) petty policies are formed, allowing for likes and dislikes;
- (b) men who do not deserve promotion are promoted because they are in the promotional channel;
- (c) there is an increasingly small number of positions as the jobs advance, yet every man is encouraged to think that he will be ultimately promoted to the top;
- (d) precedents and tradition are established, which make flexibility to meet unusual circumstances impossible.”

23. The demand for annual increments in the wages of all the workers must therefore be rejected at the very outset. In this connection the learned Solicitor for the Company invited my attention to certain broad principles and general observations made by Sir Govind Madgavkar, which are applicable to public utility companies (*vide* the report of the Board of Conciliation, presided over by Sir Govind Madgavkar, appointed to investigate the dispute between the Bombay Electric Supply & Tramways Co. Ltd., and their employees, published in the *Bombay Government Gazette* Extraordinary, Part IV-A, dated 8th April 1940, page 649 at pp. 652 and 657, paragraphs 8 and 21).

24. In the light of these general observations, the increments in pay in the present dispute proposed by the Union, and the fixing of minimum and maximum wages and the automatic annual rise in pay are all proposals which strike me as being rather fantastic. In the words of Sir Govind Madgavkar, “The solution of the question is first and foremost to be sought on grounds neither of morality or politics or law, but rather on grounds of finance and the practical working of the business of the Bombay Electric Supply & Tramways Co. Ltd.” Applying these words to the facts of the present dispute, I find that the President of the Union has not even attempted to show what would be the total costs of the increases in wages the workers want and whether the finances of the Company would be able to bear the very heavy burden sought to be imposed upon it.

25. For the reasons given above, no case in my opinion has been made out for altering the existing scales of pay and grades. I am further of opinion that this is a matter of internal management, and unless the workers can show any grave and palpably unjust treatment on the part of the Company, this matter of classification is best left to the good sense and discretion of the manager and the Directorate of the Company. I decide this issue (2) in favour of the Company and against its employees.

26. ISSUE (3) runs as follows.

“Are any rules necessary for governing promotions, and if so what?”

This issue has been compromised by parties. In terms of the compromise which has been verified before me and annexed to this award as annexure “A”, I decide this issue. This rule of promotion will apply to all the employees of the Company.

27. Issue (4) is as follows:

“Should any minimum living wage be fixed, and if so what?”

The President of the Union has strenuously argued that a minimum living wage of Rs. 55 a month should be fixed for every worker in an industrial concern in the Province of Bombay. He has offered no evidence on this issue, but relies solely upon the finding of the Textile Labour Inquiry Committee appointed by the Government of Bombay and presided over by the Honourable Mr. Justice H. V. Divatia (now Sir Harsidhbhai Divatia).

28. When I pointed out to the learned President of the Union that I was not competent in these adjudication proceedings to fix a minimum living wage for any worker in the Poona Electric Supply Co. Ltd., or for any other worker in any industry in this Province, Mr. Agarwal retorted by saying that if that had been the case, the Government of Bombay would not have framed this issue in the present dispute for my adjudication. I do not know why this issue (4) was framed. All I do know is that, following the dictum of Lord Amulree, I must “move in the rear rather than in the van of reform” (*vide* “Industrial Arbitration in Great Britain” by Lord Amulree, G. B. E. Oxford University Press, 1929, p. 186).

29. In the trade-dispute between General Motors (India) Ltd., and its employees (*Bombay Government Gazette*, Part I of 28th May 1942 at page 1900), Mr. Justice M. C. Chagla, declined to apply the minimum living wage standard fixed by the Divatia Committee, to the workers of the Company whose case was referred to him for arbitration.

30. Mr. Justice Divatia himself, when asked to increase the wages of the employees of Messrs. Lever Bros. (India) Ltd., in accordance with the recommendations of the Textile Labour Inquiry Committee, declined to do so (*vide* *Bombay Labour Gazette*, September 1941, p. 74).

31. In this connection the learned Solicitor for the Company in the present dispute invited my attention to a Press Note issued

by the Government of Bombay upon the Report of the Textile Labour Inquiry Committee, presided over by Mr. Justice H. V. Divatia, and published in the Bombay Labour Gazette at pp. 864 and 865. In that Press Note the Government of Bombay give very clearly their reasons for not giving effect to the findings and recommendations of the Divatia Committee. At the close of this Press Note the Government deliver themselves of the following weighty pronouncement:

"As a whole, the proposals aim at providing standards for workers at a considerable cost both to the Government and to the textile industry. Before they can be adopted in whole or in part, it is necessary to achieve some agreement with other industrial Provinces and States, since the adoption of higher standards in one Province only is likely to be a handicap to industry and employment in that Province. Bombay is already ahead of other Provinces in its labour-legislation and welfare-work, and the time has come to urge the advance of other parts of India, *pari passu*, with Bombay, if the industry in this Province is not to suffer from the imposition of burdens from which industries elsewhere are free."

These observations of the Local Government furnish a complete answer to issue (4).

32. The President of the Workers' Union in this case has not supplied me with any data which would enable me to fix a minimum living wage, nor, I fancy, is it expedient in the real interest of the workers of this Company or of any other industrial concern in the Province of Bombay alone, to have such a minimum living wage fixed. I decide this issue in the negative and hold that it is not necessary to fix any minimum living wage for the workers in this trade-dispute.

33. ISSUE (5) runs as follows:

"What additional bonus, if any, should be granted on the earnings of employees for the years 1942 and 1943 and on what terms and conditions?"

The President of the Workers' Union has couched his demand in respect of this issue in the following terms:

"Bonus should be given according to the following proportion to the dividends declared:

1 per cent. to 4 per cent. dividend	...	one month's bonus.
5 per cent. to 7 per cent. dividend	...	two months' bonus.
8 per cent. to 9 per cent. dividend	...	three months' bonus.
above 9 per cent. dividend	...	four months' bonus."

34. The learned Solicitor for the Company has argued that this demand for a bonus proportional to the rate of dividend sanctioned by the Company for its share-holders is "without any basis, sanction or authority." A demand for bonus can never be put on the same footing as the legal claim of the share-holders for a share in the profits of the Company by way of interest on the capital invested by them in the Company. Bonus is in the nature of a gift, a sort of "*bakhshis*" or "*pour-boire*" for the goodwill shown by the worker in these critical days in securing profits for his employer, and if there are no profits made by the Company then there are no bonuses to be granted to the employees. Looking to the financial condition of the Company and the profit and loss accounts for the years 1942 and 1943, I find that the bonus of one months' wages already granted is quite adequate.

35. Although in his written statement filed on behalf of the workers, the President of the Union has said not a word about terms and conditions on which bonus should be granted, yet after perusing my awards in the trade-disputes between the Bombay Electric Supply and Tramways Co. Ltd., and its employees, he has argued that overtime should be included in calculating bonus. Dearness allowance cannot be included as part of wages for the purpose of calculating bonus.

I decide accordingly issue (5) and hold that the workers are not entitled to any additional bonus for the years 1942 and 1943. In calculating bonus for the years 1944 overtime, in my opinion, should be included as part of wages but not dearness allowance.

36. Issue (6) is as follows:

"Should rules, if any, be framed regarding grant of privilege leave, sick leave and casual leave, and if so, what?"

The President of the Workers' Union in his written statement makes the following demand in respect of leave with pay:

30 days' privilege leave with full pay.

10 days' casual leave with full pay.

15 days' sick leave with full pay.

In case of prolonged illness sick leave for an additional month on half pay should be granted.

In the case of operators, meter-readers, street-light-attendants and servicemen, ten days' additional privilege leave with full pay should be given.

37. These demands in my opinion are really extravagant. In

the case of a Public Utility Concern like the Poona Electric Supply Co. Ltd., there can be no question of privilege leave or casual leave. On behalf of the Company Mr. Aitken has filed a tabular statement (exhibit 5) which shows that in the matter of granting leave to its workmen the attitude of the Company is very generous and far in advance of the proposed measure on this subject of leave to workmen in industrial concerns before the Legislative Assembly of the Government of India. The measure now before the Legislature only contemplates the grant of 7 days' leave with full pay. Even so, this modest measure is hotly contested by Indian capitalists in the Legislative Assembly. The President of the Union ought to make the workers in his Union realise how generous the Poona Electric Supply Co. Ltd., has been in this matter of granting leave to its employees. At any rate, following the dictum of Lord Amulree (quoted above), I, as an Adjudicator, cannot proceed in advance of the proposed legislation on this subject. I, therefore, reject this demand and decide issue (6) in favour of the Company and against its employees and hold that the quantum of leave of various kinds already granted by the Company to its employees is quite adequate and no further increase in the amount of leave already enjoyed by the workers is justifiable.

38. Issue (7) "Should overtime work be paid at a special rate, and if so at what?"

In respect of this demand, the President of the Union has asked that double salary should be paid to all employees for work done on off-days, that is on Sundays, holidays, etc., and also for overtime work on working days.

Now this demand, as pointed out by the learned Solicitor for the Company, is dead against the provisions of section 47 of the Factories Act (Act No. XXV of 1934). Neither under clause (1) nor under clause (2) of this section 47, is it permissible for a worker to demand double the amount of his ordinary rate of pay for any overtime work done. Under clause (1) of this section 47 a worker can be paid at the rate of one and a half times his ordinary rate of pay for any overtime work done by him, and under clause (2) of the said section he will be paid at the rate of one and a quarter times his ordinary rate of pay. I, as an Adjudicator, should not go beyond the provisions of the law of the land and the general practice in this respect, and I see no reason why I should grant the workers of this Company double their ordinary rate of pay for any overtime work done by them. I, therefore, decide this issue in favour of the Company and against its employees and hold that overtime will be paid at the usual rate prescribed in section 47 of the Factories Act (No. XXV of 1934).

39. Issue (8) is as follows:

"Should any more public holidays be granted to the employees, and if so which and on what conditions?"

In respect of this demand, the President of the Union has, in his written statement, asked that employees of this Company should be granted all public holidays. The reply of the Company is that 12 public holidays chosen by the employees themselves are at present enjoyed by them. Mr. Aitken on behalf of the Company pointed out that when Government granted 21 days as public holidays, the Company granted 15 days as public holidays in addition to 15 days' ordinary leave on full pay. Now when Government had reduced the number of public holidays from 21 to 15, the Company, in consultation with the workers and in agreement with them, granted 12 public holidays and gave in addition 21 days' leave on full pay. The workers cannot now change their minds and ask to be allowed to enjoy the full number of public holidays. If their wish were to be granted, the Company would be constrained to reduce the number of days leave on full pay from 21 to 18; and thus the workers would stand to gain nothing by this demand being granted. It would only prove that they do not stick to the verbal agreement made by them with the Company. It must be remembered that the Company is a Public Utility Concern and work has to go on for 24 hours every day without interruption, and so the workers can only enjoy their holidays turn by turn. I see no reason to grant this demand and accordingly decide this issue (8) in favour of the Company and against its employees.

40. Issue (9):

"Should rules, if any, governing gratuity in the form of leave with pay, or pay in lieu of leave be framed, and if so what?"

The President of the Union has in his written statement formulated this demand as follows:

For every five years' service one month's leave with pay should be given as gratuity. If no leave is taken as gratuity, pay should be given."

In his argument before me the President of the Union changed the character of his demand in respect of gratuities and wanted that the scheme of gratuities on retirement as laid down in paragraph 24 of the Standing Order No. 34 relating to Rules and Regulations of the Provident Fund Institution for the Staff of the Bombay Electric Supply & Tramways Co. Ltd., should be made applicable to the workers of the Poona Electric Supply Co. Ltd. On behalf of the Company Mr. Aitken pointed out that the Company did not concede the necessity for granting any gratuity-leave or pay in lieu

thereof, as the amount of leave already granted by the Company under other heads was reasonably sufficient. He further pointed out that the system of gratuities on retirement of a worker from the Company, adopted by the Bombay Electric Supply & Tramways Co. Ltd., was very different from the demand made by the workers of the Poona Electric Supply Co. Ltd. He also laid stress upon the fact that the rules regarding gratuities on retirement framed by the Bombay Electric Supply & Tramways Co. Ltd., were part of their Provident Fund Rules. No such Provident Fund Rules exist *separately* for the Poona Electric Supply Co. Ltd. Mr. W. S. Nelson, the Director of the Company, has kindly lent me his copy of the rules of the United Eastern Provident Fund. These Provident Fund Rules govern the several "employing companies" viz., the United Eastern Agencies Ltd., the Karachi Electric Supply Corporation Ltd., the Poona Electric Supply Co. Ltd., the Broach Electric Supply and Development Corporation Ltd., the Nasik-Deolali Electric Supply Co. Ltd., and any other Company of which the agents "The United Eastern Agencies Ltd.", may be or become the Managing Agents. No rules relating to gratuities on retirement have been framed under these Provident Fund Rules; and it seems to me that there is no necessity for the grant of a month's leave for every five years' service, in addition to the leave already enjoyed by the workers every year. This demand in my opinion is quite unreasonable. I, therefore, reject it and decide this issue (9) in favour of the Company and against its employees.

41. Issue (10):

I come now to the last issue framed in this case. It runs as follows:

"Should the Poona Electric Supply Co. Kamgar Sangh be recognised by the Company, and if so, on what terms and conditions?"

The President of the Workers' Union in his opening address before me stated that the Poona Electric Supply Co. Kamgar Sangh was formed on the 23rd January 1944 under the Indian Trade Unions Act and it was registered as a Trade Union on 12th December 1944.

42. The Company in its written statement (exhibit 3) expressed its willingness to recognise this Union if the latter was prepared to accept the eleven conditions laid down by the Company in its written statement. At the time of argument, neither party drew my attention to the Bill for the amendment of the Indian Trade Unions Act, No. XVI of 1926, sponsored by the Honourable Dr. B. R. Ambedkar, which is now pending before the Legislative Assembly since October 1943.

43. This Bill proposes the insertion of a new Chapter III-A in Act No. XVI of 1926. It makes provision for the recognition of the Trade Unions, and rights and liabilities of recognised Trade Unions. It further lays down that the appropriate Government may appoint a Board of Recognition consisting of one representative of such Government, one representative of employers and one representative of workmen, and to such a Board the executive of a trade union may apply for the recognition of the trade union, and if no Board has been appointed for this purpose, then application should be made to the Registrar of Trade Unions. Provision has also been made in the proposed Bill for conditions for recognition of a trade union by the employers whose workmen are members of such a trade union.

44. It is thus clear from the above brief 'resume' of the Indian Trade Unions (Amendment) Bill of 1943 that I, as an Adjudicator, cannot arrogate to myself in the present trade dispute the powers of a Registrar of Trade Unions or of the contemplated "Board of recognition" to compel the Poona Electric Supply Co. Ltd., to recognise the Union of its employees recently formed under the name and style of "The Poona Electric Supply Co. Kamgar Sangh". In my opinion, the President of the Union has been rather premature in making his demand in the present case that the Company be compelled to recognise his Union. He should have waited a few months more when the Indian Trade Unions (Amendment) Act of 1943 had come into force, and then automatically the Company would have been compelled by operation of law to recognise the Union of its workers.

45. In this view of the matter, it is quite unnecessary for me to discuss the conditions which the Company would like to impose upon the Union before it would recognise it. These conditions are in my opinion quite innocuous; nevertheless they have been hotly resented by the President of the Union. Had parties consented to enter into a compromise in respect of this issue (10) as they did in respect of issue (3), then things would have been on a different footing, and I would have felt myself justified in passing an order of recognition of the Union by the Company in terms of the settlement arrived at by parties. As it is, for the reasons given above, I am constrained to decide this issue (10) against the Union and to hold that I have no justification to compel the Poona Electric Supply Co. Ltd., to recognise the Union of its employees known as "The Poona Electric Supply Co. Kamgar Sangh". In this matter too, as in others decided above in the course of this award, I have felt myself bound to follow the wise dictum of Lord Amulree that an Adjudicator must remain in the rear of legislation and not in advance of it.

I have now decided all the issues framed by Government in response to the demands made by the Union of the workers of this Company.

46. There is, however, one small matter which I feel I am in honour to decide since it arises out of a general notice issued by the office of the Industrial Court, Bombay, under my signature calling upon all workers of the Poona Electric Supply Co. Ltd., who were *not* members of the Poona Electric Supply Co. Kamgar Sangh, to submit their representations, if any, separately, to me. In response to this general notice Mr. D. N. Malekar, an employee of the Company, sent me a petition dated 21st November 1944 (exhibit 1) praying that justice may be done to him and he may be restored to his original post of cashier and given the same pay as another cashier of the Company with retrospective effect from 1933.

47. In reply to this demand of Mr. Malekar the Company filed on the 6th December 1944 a written statement (exhibit 4) pointing out that Mr. Malekar's case did not fall within the scope of the reference made by Government and that I should not, therefore, even consider it. All the same, the Company produced before me ample evidence of the carelessness and incompetence of this quondam cashier of the Company so much so that the President of the Union, who kindly volunteered to argue the case on behalf of Mr. Malekar as "*amicus curiæ*" felt that he could not really support the contentions advanced by Mr. Malekar in his petition, and that the conduct of the Company towards this employee was manifestly just and right. I have, therefore, no hesitation in rejecting the petition of Mr. Malekar (exhibit 1). In fact, Mr. Malekar's retention in the employment of this Company has been really a concession to his long service, and he must not expect more favours from his old employers.

Bombay, 30th January 1945.

E. M. NANAVUTTY,
Adjudicator.

ANNEXURE "A"

In the matter of the trade dispute between the Poona Electric Supply Co. Ltd., Poona, and its employees.

MEMORANDUM OF SETTLEMENT

ISSUE

TERMS OF SETTLEMENT

No. 3. Are any rules necessary for governing promotions and if so what?

It is agreed that the following rule should be adopted for governing promotions:

"Promotions to higher posts will be considered as vacancies arise. Applications for such promotions will be entertained from employees having necessary qualifications and must be submitted through the Head of the Department in which the worker is employed. The Head of the Department will forward such applications with his remarks. In considering applications of candidates due weight will be given to seniority in service but service record and merit will also be taken into consideration. The best candidate having regard to all the relevant circumstances will be selected. Any attempt to bring influence to bear upon the officer dealing with the appointment will disqualify an applicant or candidate for promotion. If no suitable employee is found to fill the vacancy the appointment will be filled from outside the Company."

W. S. NELSON.

S. R. CHOUDHURI.

for and on behalf of the Poona
Electric Supply Co., Ltd., Poona.

C. B. AGARWAL.

President.

Before me,
E. M. NANAVUTTY,
Adjudicator.

N. S. NAYAK,
Advocate.

for and on behalf of the Poona
Electric Supply Co. Kamgar
Sangh, Poona.

Bombay, 12th January 1945.

(Bombay Castle, 1-11-1945, No. 8899/34-1, Government Gazette
Part 1. pp. 2704-A. to 2704-J).

MORRIS TRANSPORT SERVICE COMPANY, LTD., AHMEDABAD,

AND

ITS EMPLOYEES

Adjudicator.—D. V. Vyas, Esq., I.C.S.

Mr. S. R. Ginwala with Mr. P. H. Vakil, the Managing Director, and Sir Mehboobmiya I. Kadri, President of the Board of Directors for the Morris Transport Service Company, Limited, Ahmedabad.

Mr. S. R. Vasavda and Mr. N. H. Shaikh, Vice-Presidents, Mr. S. P. Dave, General Secretary, and Mr. C. G. Shah, Secretary of the Motor Drivers' and Motor Workers' Association, for the employees.

A w a r d

By the order of the Government of Bombay in the Political and Services Department No. 8899/34, dated 8th August 1945, issued in exercise of the power conferred by sub-rule (1) of rule 81-A of the Defence of India Rules read with the Government of India, Department of Labour, notification No. 3005, dated 20th May 1942, I am appointed adjudicator in the trade dispute between the Morris Transport Service Company Limited, Ahmedabad (hereinafter referred to as "the Company") and its employees. This is in supersession of the previous Government order in the Political and Services Department No. 8809/34, dated 12th July 1945, by which Mr. M. C. Shah, B.A., LL.B., was appointed to adjudicate the said dispute. I have been authorized by the above-mentioned order of my appointment to exercise such powers as are conferred on and follow such procedure as is prescribed for a Board of Conciliation under the Trade Disputes Act, 1929, and the Bombay Trade Dispute Rules, 1930, and have been asked to specify to which class or classes of employees my decisions will extend.

2. The matters which the Government of Bombay has referred to me for adjudication are as follows:

(1) Should the drivers and conductors be given uniforms and if so how many and at what intervals?

(2) Should the existing dearness allowance given to the workers be revised and if so how and from what date?

(3) What standing orders, if any, should be framed for regulating the imposition of fines and other penalties on workers?

(4) What bonus, if any, should be granted on the earnings of the employees for the year 1944 and on what terms and conditions?

(5) Should the existing practice of calling the employees some hours after their regular hours of duty for giving them instructions regarding the work on the following day be continued?

3. By notices dated 14th July 1945 the parties were called upon to file written statements. The written statements were filed on 20th July 1945. The Company filed a supplementary written statement on 25th July 1945. On 8th August 1945 I was appointed adjudicator. Parties were called upon to state whether they wished to adhere to the written statements already filed by them or desired to file fresh statements. They agreed that the statements already submitted by them should be taken as filed before me. On 20th August 1945 the employees put in their rejoinder to the supplementary written statement, dated 25th July 1945 of the Company. On 3rd September 1945 the Company filed additional written statement to which the employees put in their reply on 5th September 1945. The contentions of the parties are embodied in these various written statements.

4. Originally there were three motor companies plying buses along different routes in Ahmedabad. Those were the Morris Transport Service Limited, the Munshi Bus Service Company Limited and the Ahmedabad Bus Corporation Limited. The present Morris Transport Service Limited, Ahmedabad, is the result of the amalgamation of all these three companies. It may be incidentally noted that the Company's learned Advocate has brought it to the notice of the Adjudicator that the correct title of this Company is "the Morris Transport Service Limited Ahmedabad". It has always been the same. It has never changed. Of course, it is a limited company and therefore in that sense there is nothing seriously wrong with the designation "the Morris Transport Service Company Limited", which is to be found in the order of the Adjudicators' appointment. Reverting to the question of amalgamation, the amalgamation of the Morris Transport Service Limited and the Munshi Bus Service Company Limited took place on 1st April 1944. The Ahmedabad Bus Corporation Ltd. came in later on and was amalgamated in November 1944. This took place on 20th November 1944. In other words, the present Morris Transport Service Limited, Ahmedabad, which consists of the three original companies amalga-

ted together, came into existence on 20th November 1944. The seeds of trouble which has culminated into the present trade dispute between the parties were sown as far back as early 1943. The Motor Drivers' and the Motor Workers' Association, Ahmedabad, hereinafter referred to as "the Union" or "Association", is a registered trade union of the motor drivers and motor workers of the various motor services of the city. Certain employees of the Morris Transport Service Limited, Ahmedabad, joined this Union and represented their grievances to them in the matter of uniforms, insufficiency of wages, disciplinary actions of the Company, weekly holidays and certain other points touching and relating to the conditions of their employment under the Company. Thereupon the Secretary of the Union started correspondence with the Managing Director of the Company. The Managing Director resented this interference, which he called an outsider's interference, in the internal administration of the Company. He pointed out to the Secretary of the Union that the employees of the Company were given an increase of pay in March and April 1943 and challenged the Union's claim to look after the interests of these men better or more sympathetically than the Company itself. He also wrote and informed the Secretary that his Union was merely anxious to swell its numbers and funds by inducing the employees of the Company to join them on a payment of Rs. 2 only. He emphasized that the employees had put in eight to ten years' service under the Company, that the Company had always been looking after them to their entire satisfaction, that the relations between them and the Company had always been peaceful and harmonious and wondered how an outside agency such as the Union could justifiably pretend to guard their interests better than the Company itself. On the question of uniforms the Managing Director informed the Secretary of the Union that although the uniform was promised to the employees there was a delay in the supply thereof owing to circumstances beyond the control of the Company. A request for khakhi cloth had been made to the Deputy Director General, Cotton Textile, Bombay, but had been turned down. Eventually however cloth was obtained at a much higher price from the local market and one pair of uniform was given to all the drivers and conductors of the Company who had been in the Company's employment for more than six months from 1st January 1943. The Managing Director of the Company reminded the Secretary of the Association that from March 1943 the Company had started giving a dearness allowance of Rs. 5 per month to its employees and that this had been done without the employees even asking for it. As far as disciplinary actions against the employees were concerned the Managing Director contended that the punishment was always meted out after proper enquiry and due consideration of evidence. The Secretary of the Union was reminded that whereas several businesses and concerns

had profited during the War, the Company's difficulties had increased and that their profits had decreased during the War. This was due to the increased prices of petrol, tyres, tubes and other accessories. It was also due to the increased price of the vehicles. In spite of all this correspondence between the Managing Director of the Company and the Secretary of the Union the discontent of the employees of the Company, at any rate some of them, continued. A new scale of daily wages for drivers and conductors was introduced by the Company with effect from 1st July 1943, according to which the drivers were to be paid Rs. 1-12-0 per day as wages, 0-4-0 per day as dearness allowance and 0-4-0 per day for nasta allowance. The conductors were to be paid 0-12-0 per day as wages, 0-4-0 per day as dearness allowance and 0-4-0 per day as nasta allowance. According to this new scale the drivers got Rs. 2-4-0 per day and the conductors got Rs. 1-4-0 per day. The Company contended that its employees were quite satisfied with this. The Union maintained otherwise. Ultimately the employees threatened to go on strike in October 1943, which called for the intervention of the District Magistrate, Ahmedabad, the District Superintendent of Police, Ahmedabad, and the Executive Officer of the Gujarat Regional Transport Board. One of the demands of the employees was that the daily wage system should be abolished and a monthly wage system be introduced. In November 1943 the Company agreed to fix the drivers' pay at Rs. 50 per month. They also agreed to give dearness allowance at the rate of 0-12-0 per working day, that is Rs. 19-8-0 for twenty-six working days in a month. The conductors' pay was fixed at Rs. 26 per month. In their case also a dearness allowance of Rs. 19-8-0 for twenty-six working days in a month was agreed to be given by the Company. The Company however insisted that in lieu of the aforesaid monthly wage system and dearness allowance they would withdraw the various concessions which used to be previously given to the employees. After a certain amount of discussion and consideration the District Magistrate, Ahmedabad, in a letter to the Managing Director of the Company, dated 7th November 1943, made the following suggestions:

"I. The allowance of 0-4-0 a working day for tea and biscuits, called nasta allowance, should be continued.

II. The dearness allowance should be paid at the rate of 25 per cent. of that paid by the Millowners' Association subject to a maximum of Rs. 20 and a minimum of Rs. 10 per month of twenty-six working days."

The Company was agreeable to these modifications. In the meantime the Assistant Commissioner of Labour acting on behalf of the employees informed the District Magistrate, Ahmedabad, that the workers were agreeable to the above-mentioned terms sub-

ject to an exception that they desired dearness allowance at a fixed sum of Rs. 18 per month instead of a sliding scale. The District Magistrate thereupon wrote to the Managing Director hoping that the Company would have no objection to meet the wishes of the workers. Eventually there came into existence a settlement or agreement on the 19th November 1943 between the Morris Transport Service Limited, Ahmedabad, and the employees of the said Company. It is not necessary to reproduce here the full text of this settlement, but important items of it were as follows:

"I. The Company will introduce a monthly wage system for their drivers and conductors from 1st December 1943.

II. The scale of pay for the drivers on the basis of twenty-six working days shall be Rs. 50 per month and that of the conductors Rs. 26 per month.

III. The scale of dearness allowance will be raised from 0-4-0 per day to Rs. 18 per month of twenty-six working days. Drivers and conductors will be paid dearness allowance on the same scale. It is understood that dearness allowance is a temporary measure till the duration of the War.

IV. The tea or nasta allowance of 0-4-0 per day which is paid by the Company to its drivers and conductors will be continued."

After this settlement nothing of particular note-worthiness seems to have taken place between the Company and its employees in the year 1944. But on 5th February 1945 the Honorary Secretary of the Motor Drivers' and Motor Workers' Association gave a notice to the Managing Director of the Morris Transport Service Limited, Ahmedabad, formulating the following eight demands on behalf of the drivers and conductors of the Company:

"I. The conductors of the Ahmedabad Bus Corporation group are not given weekly holidays in majority of cases. As this constitutes a breach of the Motor Vehicles Act the grievances should be removed immediately.

II. The drivers of coal gas plant buses find it difficult to work continuously for a long period. This is a special grievance of a Morris group.

III. All drivers and conductors should be given two sets of khakhi uniforms every year.

IV. Since hotel charges have been increased the batha allowance paid to the employees should be increased from 4 annas to 8 annas per day and employees who are not on bus duty should also be paid allowance except on days when they are absent.

V. The present scale of dearness allowance should be revised and a suitable increase should be given in view of the high cost of living in Ahmedabad.

VI. Since there are no Standing Orders regulating fines and other punishments the drivers and conductors have to put up with all arbitrary and *ex-parte* decisions of the management. Definite procedure should be laid down taking into consideration the Payment of Wages Act and analogous Standing Orders in other establishments.

VII. The drivers and conductors should be paid bonus *pro-rata* to their attendance during the year 1944.

VIII. The practice to call employees after their hours of work are over is objected to and should be discontinued."

The Company paid no heed to these demands. On 15th March 1945 the Secretary of the Association wrote to the Commissioner of Labour, Bombay, asking him to intervene. This letter pointed out amongst other things that the Company was plying about a hundred passenger buses on the principal routes in the City and had the monopoly of the entire bus traffic of the City since the amalgamation of the original three motor companies into the present Morris Transport Service Limited, Ahmedabad. It stated further that although a request had been made to the Company for a revision in the scale of dearness allowance and nasta allowance and for payment of bonus and for certain other matters relating to the conditions of employment, the Company was paying no attention to it and was even refusing to negotiate with the office-bearers of the Union. It was pointed out to the Commissioner of Labour that unless the attitude of the Company was changed the inevitable course left open to its employees would be to go on strike after due notice under the Defence of India Act. As the employees were anxious to avert a strike which might paralyse the bus traffic of the City the Commissioner of Labour was requested to intervene and bring about a settlement either by referring the matter to adjudication or in any other suitable manner. The Secretary concluded the letter by saying that the employees would wait for a period of three weeks in the hope of some settlement being reached and that if the deadlock continued even thereafter there would be strike. The Commissioner of Labour referred the dispute to his Assistant who tried hard to bring about a settlement as conciliator but failed. On 18th June 1945 he closed the proceedings and informed the Managing Director of the Company accordingly. On the same date the Association requested the Company once again to refer the dispute to an impartial arbitrator, but the Company did not agree. On 25th June 1945 the Secretary of the Association gave a notice to the Managing Director of the Company under rule 81-A of the Defence of India Rules. Here is the text of that notice :

"We hereby communicate to you the decision of your employees to go on strike within a month of the date of this

notice, but not before fourteen days, in connection with the trade dispute which arose out of the demands of your employees conveyed to you by this Association in their letter of 5th February 1945. Please construe this notice as an intimation by your employees of their intention to go on strike in connection with the aforesaid trade dispute between the Morris Transport Service Company Limited and their employees. The decision to strike is in pursuance of a resolution passed by the extraordinary general meeting of the Motor Drivers' and the Motor Workers' Association, etc., etc."

On 12th July 1945, the District Magistrate, Ahmedabad, wrote a letter to the Secretary of the Association requesting him to postpone the date of the threatened strike by a week as the orders of Government were expected in the meantime. This is how the District Magistrate's letter reads:

"With reference to your letter of 26th June 1945 giving a notice of strike to the Morris Transport Service Company Limited, I have the honour to state that Government have already been moved to refer the dispute of your Association to the Adjudicator under rule 81-A of the Defence of India Rules. But the orders of Government are not yet known. In the meantime I would request you to move the Association to postpone the date of the threatened strike for a week more in the interests of the convenience of the public of Ahmedabad City. I expect that the Government orders in the matter will be received by that time".

On the same date the Government of Bombay by its order in the Political and Services Department No. 8899/34 appointed Mr. M. C. Shah, B.A., LL.B., an adjudicator on the points in dispute. The said order was superseded subsequently by another Government order in the Political and Services Department No. 8899/34, dated 8th August 1945, appointing me to adjudicate on the matters in dispute. This is the history of events which have led up to these adjudication proceedings.

5. On the issue of uniforms the contention in the written statement of the Union is that it is usual and customary for the employer to supply uniforms to his employees and that even this Company used to give two sets of uniforms to its employees every year till September 1944. One set of uniforms was supplied to the employees in March 1944, and the set due in September 1944 was not given. It is further contended that the withdrawal by the Company of this privilege of the employees amounts really to a reduction in their earnings. It is also submitted that the employees of the Bombay Electric Supply and Tramway Company of Bombay and

the Ahmedabad Electricity Company Limited and the staff of the various departments such as the Police, the Railways, Posts and Telegraphs are all given uniforms and that on similar considerations the motor drivers and conductors of this Company should also be supplied with them. On the other hand the Company's submission is that there is nothing in the contract of employment or conditions of service to justify a claim for uniforms by the employees. The Adjudicator's attention is invited to rule 83 (iv) of the Bombay Motor Vehicles Rules, 1940, and it is argued that this would show by implication that the duty of supplying himself with the uniform is of the driver himself. Any such custom or usage as is alleged by the Union on this subject is denied by the Company.

6. Another bone of serious contention between the parties is the question of dearness allowance. It would appear that the Company started giving dearness allowance to its employees at the rate of Re. 0-4-0 per working day from August 1943. The workers were not satisfied with this and eventually an agreement was reached on this question between the Company and its employees on 19th November 1943, through the intervention of the then District Magistrate, Ahmedabad, and the then District Superintendent of Police, Ahmedabad. Accordingly the dearness allowance to be paid to the motor drivers and conductors was raised to a lump sum of Rs. 18 per month. The workers were not agreeable to linking it up with any sliding scale and therefore a lump sum was fixed. It is now contended by the Union that this dearness allowance of Rs. 18 per month is low, inadequate and does not sufficiently neutralise the rise in the cost of living. It is further submitted that the workers had agreed to the dearness allowance of Rs. 18 per month only in order to avoid a strike and that the figure had not been fixed with any relation to the cost of living index. It is argued that this ad hoc figure of Rs. 18 being an inadequate relief, the capacity of the workers has been deteriorating. The Adjudicator is further reminded that since January 1945, the Government of India, the Provincial Governments, the Railways, the Postal Department and the Local Bodies have increased the rates of dearness allowance to be paid to their men. We are also told that even in the case of the employees of the Bombay Electric Supply and Tramways Company Limited the dearness allowance has been increased by the Adjudicator from December 1944 and that the said employees are now getting it on the same scale as the textile workers of Bombay. Our attention is also drawn to the agreement dated 6th April 1943 between the Carters' and Carriers' Association, Ahmedabad, and the Union according to which the said Association agreed to pay dearness allowance to its workers at the rate of 50 per cent. of the sum payable to the textile workers of Ahmedabad, subject to the mini-

mum of Rs. 15 and the maximum of Rs. 25 per month. Even this was revised in February 1945 with the result that now each worker of that Association is getting Rs. 20 per month in addition to the abovementioned dearness allowance. In other words, each employee of the Carters' and Carriers' Association, Ahmedabad, is receiving at present a sum of Rs. 35 to Rs. 45 per month in addition to his usual wages. Lastly it is contended that the Company has made larger profits in the year 1944-45 than in the previous year and that therefore also the dearness allowance paid to its workers should be enhanced. On these considerations the Union has based its claim for revising the dearness allowance which the Company is paying at present to its employees. The allowance is sought to be increased.

7. On the other hand the claim for any increase whatsoever in the present amount of the dearness allowance which is paid to the workers is stoutly opposed by the Company. It is argued that the workers having definitely agreed on 19th November 1943 to receive dearness allowance at the rate of Rs. 18 per month of twenty-six working days as a temporary measure till the duration of War, they have really no case to ask for an increase now. We are further reminded of the fact that whereas the cost of living index figure stood at 239 in November 1943 it was only 195 in February 1945, in which month the Union gave a notice of eight demands to the Company. In March, April, May, June and July 1945 it stood at 187, 187, 191, 192 and 195 respectively. The argument of the Company from these figures is that the cost of living has considerably gone down since November 1943 at which date the workers were quite agreeable, and in fact agreed, to receive dearness allowance at a fixed sum of Rs. 18 per month. The Adjudicator's attention is particularly drawn to the fact that since March 1945 the Company has increased the nasta allowance of its employees from Re. 0-4-0 a day to Re. 0-8-0 a day, that is to say by Rs. 6-8-0 per month of twenty-six working days. It is argued that this has been an appreciable increase of relief to the workers as far as the cost of living is concerned. It is contended that the Company has been always alive to its responsibilities of mitigating the distress of its employees. We are told by the Company's learned Advocate that as War went on and prices began to rise, the Company went on giving increasing relief to the workers. Before the settlement of 19th November 1942 the Company used to pay Rs. 58-8-0 per month to the drivers and Rs. 32-8-0 per month to the conductors inclusive of dearness and other allowances. In the year 1942 the earnings of the workers were even less. By the agreement of November 1943 however the monthly wage of the drivers was fixed at Rs. 50 and that of the conductors at Rs. 26. In addition, the drivers and conductors both received a dearness allowance of Rs. 18 per

month. They were already receiving a nasta allowance of Rs. 6-8-0 per month of twenty-six working days. This was continued by the agreement of November 1943 and was even further increased by Rs. 6-8-0 in March 1945. Relying on these facts the Company's learned Advocate has strenuously submitted that the Company has always been doing its best to give as much relief as possible to its workers.

8. The next dispute between the parties is as to the necessity for Standing Orders. It is the complaint of the Union that the employees of the Company are being unjustifiably fined, suspended, dismissed or otherwise ill-treated by the Company. We are told that in all establishments in which a large number of workers are employed it is necessary to have well-defined standing orders in the interests of efficiency and safety of the workers. It is further submitted that the absence of suitable standing orders produces corruption and inefficiency. On the other hand the Company's contention is that standing orders are uncalled for. The charge of unjust fines, suspensions or dismissals is denied. On the contrary it is submitted that before any action is taken against an employee a proper enquiry is held and the decision is always recorded according to the evidence in the case. To put it in the words of the Company's learned Advocate "the Company could not allow the employees to take the management of the Company into their hands nor would they tolerate any such interference in the interest of the public and the efficiency of the Company. The Company has its own rules regarding fines and penalties on workers if found guilty. The cases that were objected to by the employees in 1943 were put up before the Regional Transport Authority for checking and enquiry and the decisions of the Company were confirmed in all cases". On these grounds it is contended for the Company that no standing orders are necessary at all.

9. Another hotbed of dispute is the matter of bonus. The Union contends that the basic wages of the conductors and drivers even when supplemented by the dearness allowance are not sufficient to take them to a pre-war living standard. The Company is not prepared to entertain a demand for increased wages for the obvious reason that it would entail a recurring burden. It is submitted that on account of the conditions prevailing as the aftermath of War the employees have a right to ask for a share in the profits of the Company's business to narrow down the gulf as far as feasible between the actual earnings and the living wage. The Adjudicator's attention is invited to the balance-sheet of 1944-45 which the Company has made available for the use of the Adjudicator and the Union for the purpose of these proceedings and it is argued that since the Company has made a good profit

of over Rs. 3,50,000 subject to the provision for taxation, a bonus equal to three months' pay should be given to its employees. At the hearing however the Union's Secretary submitted that he would be content if the workers were given a bonus equal to two months' pay.

10. The Company's learned Advocate has disputed the Union's claim to any bonus whatever for the employees. It is contended that bonus is purely a gratuitous payment. Whenever it is paid, it is always on account of the employer's free will. When the profits of a business are such as to enable the employer to make a gift of a certain sum by way of bonus to his employees, it is done as a matter of reward to the workers and not as a matter of right of the workers. Bonus is not a wage. It is an *ex gratia* payment. The workers have no claim to it. The Company's employees have been getting adequate wages and dearness allowance and other allowances. It is finally submitted for the Company that its profits of the last year are not such as to justify any gratuitous payment to the employees.

11. Lastly we come to the fifth point which is one of the subject-matters of the present adjudication. The Union makes a grievance of the present practice of the Company which is to take work from its employees for eight hours at a stretch from morning and then call them again to the Company's premises for one hour in the evening for instructions for the next day. The suggestion of the Union is that the employees should be made to work for nine hours at a stretch but should not be requested to come back for one hour in the evening. The Company on the other hand contends that it is unlawful to compel the workers to work for nine hours at a stretch. It is quite agreeable to divide the work into two shifts of four hours and five hours each. However the Union is not agreeable to this. It would rather prefer to have the present practice continued.

12. It is to be noted that during the adjudication proceedings the parties have arrived at a settlement (see Appedix "B") in respect of matters (1), (3) and (5) out of the five points sent down to me for adjudication. This settlement is to the following effect:

ISSUES

TERMS OF SETTLEMENT

- | | |
|--|--|
| <p>(1) Should the drivers and conductors be given uniforms and if so how many and at what intervals?</p> | <p>The Company agrees to give to the drivers and conductors two uniforms before the 15th December 1945. These uniforms shall remain the property of the Company and shall be kept by</p> |
|--|--|

ISSUES

TERMS OF SETTLEMENT

the said employees on the Company's premises. The said employees shall be bound to change them at the premises when on or off duty.

- (3) What standing orders, if any, should be framed for regulating the imposition of fines and other penalties on workers?

It is agreed that the accompanying standing rules regarding dismissals, fines, damages be added as an appendix "A" to the Award. No standing orders are necessary on this subject.

- (5) Should the existing practice of calling the employees some hours after their regular hours of duty for giving them instructions regarding the work on the following day be continued?

The employees do not press this matter as the Company has shown that the number of hours of work does not exceed nine. The existing practice might continue.

Therefore, on these points, my award will be in terms of this Settlement.

13. There remain now the questions of dearness allowance and bonus. As to dearness allowance, it has already been shown that the dearness allowance of Rs. 6-8-0 per month of twenty-six working days, that is at the rate of 0-4-0 per day, which was given by the Company to its drivers and conductors from August 1943, was increased to an *ad hoc* figure of Rs. 18 per month from December 1943. This was by virtue of an agreement between the Company and its staff of drivers and conductors. This agreement took place on 19th November 1943 and was signed by Sir Mehboob I. Kadri on behalf of the Company and by Mr. Datar, the Assistant Commissioner of Labour, on behalf of the employees. During the negotiations which preceded this settlement the District Magistrate, Ahmedabad, had proposed to the Managing Director of the Company that the dearness allowance should be paid to the workers "at the rate of 25 per cent. of that paid by the Ahmedabad Millowners' Association subject to a maximum of Rs. 20 and a minimum of Rs. 10 per month of twenty-six working days". The workers obviously did not like these fluctuations and desired a fixed dearness allowance of Rs. 18 per month. This was accepted by the Company and so took place the agreement of 19th November 1943 which amongst other things also introduced

a monthly wage system for drivers and conductors and fixed the drivers' pay at Rs. 50 and the conductors' pay at Rs. 26 per month. The Company's learned Advocate contends that in view of this agreement there is no justification to increase the dearness allowance now, especially as it was "a temporary measure till the duration of War". Indeed in paragraph 5 of its written statement dated 20th July 1945 the Company submits that the dearness allowance of Rs. 18 per month hitherto paid to the workers should be reduced. Mr. Dave for the Union argues that the agreement of 19th November 1943 should not be construed to disable the workers from asking for an increase in the dearness allowance. He submits that an agreement is one of the most effective and helpful weapons in the armoury of conciliation proceedings and that if such a rigid view adverse to the interests of the employees be taken of it, it will inevitably lead to multiplicity of strikes and disturb the smooth running of the society. It is contended that even with the help of Rs. 18 per month in addition to the wages, the employees are not able to live up to the pre-war standard and should therefore be assisted further by a rise in the dearness allowance. I quite agree with Mr. Dave that the agreement of 19th November 1943 should not operate as a bar to a future demand for more dearness allowance. Indeed it was arrived at "without prejudice to the rights and contentions of either party". It is therefore clear that the right of the workers to ask for further assistance in future was not limited by the settlement of 19th November 1943. Nevertheless, the settlement is quite an important and relevant circumstance in this case. It is an index to the workers' mind in November 1943. I feel no doubt that they did consider a sum of Rs. 18 per month an adequate relief for neutralizing to an appreciable extent the rise in the cost of living, and the Company can certainly use it to show that fact. It is quite clear to me that if the workers had thought that the figure of Rs. 18 was low or insufficient they would not have suggested it themselves. It was they who had desired "the dearness allowance to be fixed at Rs. 18". (*Vide* the District Magistrate, Ahmedabad's letter, dated 16th November 1943 to the Managing Director of the Company). If they did not agree to a certain proposal they expressed their mind accordingly. For instance, they did not hesitate to say that they did not like a sliding scale and did not approve of fluctuations between any maximum and minimum. Similarly, if they had thought that an *ad hoc* figure of Rs. 18 per month was not sufficient to mitigate substantially the increase in the cost of living they would not have agreed to it. I quite appreciate Mr. Dave's argument that the workers wanted to avert a strike and therefore agreed. But at the same time I do not believe that they would have agreed anyhow irrespective of whether the relief proposed was really an appreciable help or not. The correspondence of the year 1943 between the Union and the Company would show that they did

not suffer from any inferiority complex and did not hesitate to put forward their demands, but on the contrary threatened to strike when the Company did not yield. The point is that we could safely conclude that they agreed to the figure of Rs. 18 in November 1943 as they believed that it was an adequate addition to their wage earnings to meet the higher cost of living. It is scarcely necessary to make more comments on this subject, since it is particularly pertinent to note that in spite of the abovementioned agreement of 19th November 1943 the relief which was granted to the workers from December 1943 was appreciably increased in March 1945. The nasta allowance of Re. 0-4-0 per day was raised to Re. 0-8-0 per day in March 1945 and has been continued since then. This amounted to a notable rise of Rs. 6-8-0 per month of twenty-six working days in the income of the workers. It is true that as far as mere words go, this was not an increase in dearness allowance as such. It was an increase of nasta allowance. But why should there be any quarrel over words? The increase of Rs. 6-8-0 per twenty-six working days in a month was certainly an additional payment, a further help, to the workers, and that is where the importance of the increase lies. At this juncture another important point to be remembered is that the wage earnings of the Company's drivers and conductors are being supplemented at present not only by Rs. 18 + Rs. 6-8- = Rs. 24-8-0 per month, but by Rs. 31 per month. The nasta allowance which they are getting at present is to the extent of Rs. 13 per month. It is true that half of this (Rs. 6-8-0 at the rate of 0-4-0 per working day) was being paid to them even before November 1943. But this should not detract from the fact that it was at all times an additional payment, an extra help, to the workers. It was never paid as a part of their wages. It was that much money more paid to them to mitigate to that extent the cost of living. There is nothing to show that any other motor Companies pay such nasta allowance to their employees. It is hardly necessary to labour on this subject. The point is that *over and above their wage earnings* the drivers and conductors of this Company are actually receiving Rs. 31 per month as an extra help at present. Surely, for a conductor whose pay is Rs. 26 per month an extra Rs. 31 per month is a very substantial relief. Also, a driver whose salary is Rs. 50 per month cannot complain with any sense of reasonableness that an extra allowance of Rs. 31 per month is not a very good help to him.

14. A further rise in the dearness allowance to be paid to the workers is opposed by the Company on another ground also. It is to be noted that in November 1943 when the workers agreed to a dearness allowance of Rs. 18 per month the cost of living index figure stood at 239. The following is the history of the cost of living index since then:

Month			Year	Cost of living
December	...	...	1943	232
January	...	...	1944	214
February	...	...	1944	210
March	...	...	1944	206
April	...	...	1944	203
May	...	...	1944	203
June	...	...	1944	205
July	...	...	1944	211
August	...	...	1944	222
September	...	...	1944	220
October	...	...	1944	221
November	...	...	1944	213
December	...	...	1944	211
January	...	...	1945	206
February	...	...	1945	195
March	...	...	1945	187
April	...	...	1945	187
May	...	...	1945	191
June	...	...	1945	192
July	...	...	1945	195

It is quite evident from this tabular statement that the cost of living index figure in February 1945, in which month the Union gave a notice of eight demands to the Company, was much lower than that in November 1943. This would certainly mean that the cost of living in February 1945 was relatively cheaper than in November 1943. Even in July 1945 the cost of living index figure stood at a much lower level than in November 1943. In these circumstances the Company contends that there is no real justification for the Union to claim more dearness allowance than that which satisfied the workers themselves in November 1943. To this the rejoinder of Mr. Dave for the Union is that when the agreement of November 1943 was arrived at, the cost of living index figure was not taken into consideration at all and that therefore the relatively lower cost of living at present should be no ground for refusing to raise the dearness allowance. It is impossible to accept this contention. It is true that the dearness allowance agreed to be accepted by the workers in November 1943 was not correlated to the cost of living index figure. But this could not mean that the cost of living was not a relevant factor at all at that date or was not in the minds of the workers at all. In fact the increased cost of living is the very basis of the dearness allowance. There could have been no dearness allowance but for the increase in prices of commodities. The very expression "dearness allowance" means an allowance to mitigate dearness. The very fact that the District Magistrate, Ahmedabad, proposed by his letter

of 7th November 1943 to the Managing Director of the Company that the dearness allowance should be paid at the rate of 25 per cent. of that paid by the Millowners' Association, Ahmedabad, subject to a maximum of Rs. 20 and a minimum of Rs. 10 per month of twenty-six working days is sufficient to show that the cost of living was a governing consideration in the negotiations between the Company and its employees. It is common knowledge that the dearness allowance paid to the textile workers of Ahmedabad is varied according to the variations in the cost of living index. A proposal to correlate the dearness allowance to these workers to the sliding scale of the dearness allowance paid to the textile workers is a sufficient proof of the fact that the cost of living was a prime factor present in the minds of the Company and its workers. After a full and anxious consideration of the submissions of Mr. Dave I feel constrained to reject his argument that the cost of living had nothing to do with the fixation of the dearness allowance to be paid to the workers of this Company at a sum of Rs. 18 per month and that therefore the lower cost of living at present than what it was in November 1943 should be no ground for refusing to enhance the dearness allowance.

15. The next submission of Mr. Dave is that the textile workers of Ahmedabad are receiving much larger dearness allowance than Rs. 18 per month, that the employees of the Bombay Electric Supply and Tramways Company Limited, Bombay, are also receiving dearness allowance on the same scale on which the textile workers of Bombay are getting it (by which the rise in the cost of living is neutralized to the extent of 76 per cent.) and that even the workers of the Carters' and Carriers' Association, Ahmedabad, are having it at a much higher rate than the employees of this Company. It is to be noted that at the present moment the employees of the Carters' and Carriers' Association, Ahmedabad, are receiving Rs. 35 to Rs. 45 a month in addition to their wages. Relying on these comparisons, the submission of the Union is that the dearness allowance of the drivers and conductors of this Company should also be raised. In the first place it must be pointed out that comparisons are not always happy. At any rate any comparison with the dearness allowance of the textile workers of Ahmedabad will not be a correct thing to do and must be avoided. That allowance is undoubtedly larger than that of the employees of this Company. But the initial reason for it lies in the agreement at one stage between the Millowners' Association, Ahmedabad, and the Textile Labour Association, Ahmedabad, by which the Millowners themselves agreed to neutralize the rise in the cost of living by 96 per cent. They soon realized the consequences which followed the agreement and moved the Industrial Court for a reduction of the dearness allowance. The Court, however, turned down their request for the obvious reason that in

that particular year the profits of the textile industry were much larger than ever before. The point to be noted is that the dearness allowance of the textile workers in Ahmedabad stands at a higher figure than probably the dearness allowance paid to any other class of workers simply because of the initial agreement at one particular stage between the Millowners' Association, Ahmedabad, and the Textile Labour Association, Ahmedabad, to neutralize the rise in the cost of living by 96 per cent. Obviously therefore we cannot draw any comparison with that dearness allowance. Nor can we justifiably draw comparison with the dearness allowance paid to the employees of the Bombay Electric Supply and Tramways Company Limited, Bombay. The conditions under which those people are working are very different from the conditions prevailing in Ahmedabad. For instance, the Bombay buses have a capacity of carrying 45 passengers, whereas motor vehicles in Ahmedabad have a varying capacity of carrying 15 to 30 passengers only. Moreover, motor buses in Bombay are double-deckers as contrasted with those in Ahmedabad. Bombay buses are worked with crude oil, a different kind of mechanism altogether. In Ahmedabad they are worked on petrol. Traffic regulations in Bombay are much more stringent than those in Ahmedabad. They entail greater strain on drivers and conductors than in Ahmedabad. Distances of the routes in Bombay are much larger than those in Ahmedabad. These are only some of the features which substantially distinguish the conditions of service in Bombay from those in Ahmedabad. With these differences before our minds it is easy to understand that a comparison between the dearness allowance of the workers of the Bombay and Ahmedabad motor companies is not a happy one. Turning to the Carters' and Carriers' Association, Ahmedabad, it is to be borne in mind that it has got one set of drivers only which necessarily involves greater strain on those drivers. Moreover, the profits of that Association depend upon their contracts with the mills. Everybody knows that the mills have made enormous profits during the war and probably pay the Carters' and Carriers' Association quite handsomely. This in turn would react on the payments made by the Association to its employees. In the case of this Company its profits depend upon Government rates. Without going further into the question of these comparisons, be it sufficient to say that the conditions of service in each case are so fundamentally different that it is hardly any use to adopt the analogy mechanically.

16. Moreover the Company's learned Advocate submits that if any comparison on the question of dearness allowance is to be made, it should be made with the dearness allowance paid by the Gujarat Transport Company and the Wadia Transport Company to their employees. The Gujarat Transport Company runs

its buses in the City of Ahmedabad and also in rural areas. The basic wages of the drivers and conductors of the Company are Rs. 40 per month and Rs. 25 per month respectively. The dearness allowance of these drivers and conductors is Rs. 10 per month only. Of course in addition to this dearness allowance the drivers get a batha of Re. 1 per every hundred miles of the journey done by them and the conductors get a batha of Re. 0-12-0 per every hundred miles. The basic wages of the drivers and conductors of this Company (Gujarat Transport Company) in rural areas are Rs. 36-8-0 per month and Rs. 21 per month respectively. The dearness allowance paid to these drivers and conductors is Rs. 7 per month and Rs. 10 per month respectively. Added to this the drivers are paid a batha of Re. 1 per every hundred miles of the journey and the conductors a batha of Rs. 0-12-0 per every hundred miles. Adverting to the Wadia Transport Company, its drivers are paid Rs. 75 per month inclusive of dearness allowance. They are also paid Re. 1 per every out-station night. Relying on these figures an argument is made by the Company's learned Advocate that the dearness allowance and the nasta allowance of the drivers and conductors of the Morris Transport Service Limited, Ahmedabad, when put together, constitute quite a sufficient and reasonable addition to their salaries. A comparison is next drawn between the income of the drivers and conductors of this Company and that of the drivers and cleaners in the employment of the Ahmedabad Municipality. The scale of pay of the municipal drivers is Rs. 40—2—60—5—90. Their dearness allowance is Rs. 22 per month. The scale of pay of the cleaners of the municipal buses in Ahmedabad is Rs. 25—1—30. Their dearness allowance is Rs. 20 per month. From these figures it is argued by the Company's learned Advocate that the total earnings of the drivers and conductors of the Company, inclusive of the dearness allowance and nasta allowance, are quite handsome as compared to the total earnings of the drivers and cleaners of the Ahmedabad municipal buses. I have considered this aspect of the matter from the point of view of the various comparisons, but I am constrained to say that the nature and conditions of employment not being equal in all cases we cannot usefully rely on these comparisons. All that I would add, while on the subject of these comparisons, is that even after a careful consideration of the arguments advanced on behalf of both parties on the basis of the comparisons, I am not satisfied that the addition of Rs. 31 per month to the wage earnings of the drivers and conductors of this Company is at all an unfair or insufficient or an unduly low relief to them.

17. The next argument of Mr. Dave for the Union is that the Company made larger profits in the year 1944-45 than in the previous year and that therefore also the dearness allowance of

its drivers and conductors should be increased. In the first place I must point out that it is not entirely correct to link up the question of dearness allowance solely with that of the profits of the Company. Dearness allowance is a relief to neutralize the rise in the cost of living. Putting it differently, it is a help to mitigate as far as possible the distress arising out of dearness. That being so, when the dearness itself is admittedly less than what it was when Rs. 18 per month was presumably considered an adequate relief by the workers themselves, it is obviously not quite a correct thing to ask for an increase simply because the profits of the Company have gone up. Apart from this, however, the argument of Mr. Dave based on the profits of the Company for the year 1944-45 is not entirely sound. We cannot really compare the profits of a single concern with those of a combination of three concerns. We have already seen that the present Morris Transport Service Limited, Ahmedabad, is the result of the amalgamation of the three original motor companies. Till April 1944 the Morris Transport Service Limited was doing business quite independently of the other two concerns. In April 1944 the Munshi Bus Service Company Limited was amalgamated with it and later on in November 1944 the third company namely the Ahmedabad Bus Corporation Limited also joined. In these circumstances it is obviously an incorrect thing to compare the profits of the Morris Transport Service Limited for the year 1943-44 with the profits of the present Company for the year 1944-45. The profits of the combination of three companies are bound to be better than those of a single concern for the obvious reason that they have a larger number of vehicles to ply and the expense of their business is also greater. We do not understand how the employees of the Ahmedabad Bus Corporation Limited who joined the present Company in November 1944 could legitimately expect a benefit on the basis of the whole of the last year's profits of this Company with which they had nothing whatever to do before November 1944. Similarly, the rest of the employees also cannot expect a benefit on the basis of the whole of the last year's profits of the Company. There would not have been the profits at all but for the amalgamation in November 1944 of the Ahmedabad Bus Corporation Limited with which the employees of the other two original concerns had nothing to do. The point therefore is that any argument on the question of increase in the dearness allowance based on larger profits of the Company in the year 1944-45, is really not quite a sound argument.

18. The average earning of the drivers and conductors of the Company in November 1943 was Rs. 32-8-0 per month. The drivers were receiving a daily wage of Rs. 1-12-0 and the conductors were getting a daily wage of Re. 0-12-0. In other words the drivers were getting Rs. 45-8-0 for twenty-six working days and

the conductors' wage earning was Rs. 19-8-0 for the same number of days. The average wage of the drivers and conductors therefore at that time was Rs. $\frac{45-8-0 + \text{Rs. } 19-8-0}{2} = \frac{65}{2} = \text{Rs. } 32-8-0$ per month. On the basis of that average wage, an addition of Rs. 31 per month will neutralize the rise in the cost of living by 57 per cent. Mr. Dave for the Union argues that the average wage of the drivers and conductors should not be taken at Rs. 32-8-0 but should be taken at Rs. 38, since the present pay of the drivers is Rs. 50 per month and that of the conductors is Rs. 26 per month. I am afraid the argument is not quite a good one. The drivers started getting Rs. 50 per month and the conductors Rs. 26 per month from 1st December 1943 as the result of the agreement between the parties. In other words the Company agreed to these scales of pay. The effect of this consideration which the Company gave to the cause of its drivers and conductors should not be construed against the Company itself in every possible aspect of the case. If the Company had not agreed to the present scales of pay of its drivers and conductors the average wage of these people would still have been Rs. 32-8-0. Nevertheless, let us calculate the extent of neutralization of the rise in the cost of living on the basis of the average wage being at Rs. 38. Even so, the addition of Rs. 31 per month will neutralize the rise in the cost of living by 50 per cent. I am of the opinion that it is a handsome neutralization, and looking to the fact that the cost of living index figure at present is very much lower than what it was in November 1943 I do not think any further increase in the dearness allowance of the drivers and conductors is warranted at all.

19. The next remaining question for adjudication is about the bonus. Mr. Dave for the Union originally claimed that bonus equivalent to three months' pay should be given to the drivers and conductors of the Company. However at the hearing of these proceedings he submitted that the drivers and conductors would be quite content with the bonus equivalent to their two months' pay. The point for decision therefore is whether bonus equivalent to two months' pay or less or none at all should be given to the drivers and conductors of this Company.

20. As it was necessary to look into the Profit and Loss Account and the Balance-Sheet of the Company for the period ending on 31st March 1945 for determining this issue of bonus, the Managing Director of the Company made this material available to the Adjudicator and to Mr. Dave. The Profit and Loss Statement for the year ending on 31st March 1945 shows the net profit of Rs. 1,60,427. But Mr. Dave contends that there are in this statement certain items of expenditure, for instance depre-

ciation, obsolescence, Managing Directors' remuneration, commission and Income Tax, which should not be construed as admissible business expenses but should be looked upon as parts of the profits. In other words he argued that the figure of the net profit of the Company for the year ending on 31st March 1945 should be considered at Rs. 4,99,652 and presses his submission for bonus equivalent to at least two months' pay. The further contention of Mr. Dave is that since the shareholders have already been paid a dividend of Rs. 7-8-0 per share on the profits for a period of seven months and nineteen days only, that is about 12 per cent on the total paid up capital there is no reason for the Managing Directors to withhold the abovementioned bonus.

21. Mr. Ginwala for the Morris Transport Service Limited, Ahmedabad, submits that the Company's financial position is not as is pictured by Mr. Dave, that the Company has not been in a position so far to make an adequate provision for taxation, that the necessary reserves have still not been set aside for depreciation and taxation for the last two years and that the depreciation and taxation to the tune of Rs. 1,07,202 which ought to have been accounted for in the accounts of the last two years but have not yet been taken into consideration require to be accounted for and adjusted against the profit as shown on 31st March 1945. It is also argued that the Company has to wipe off an amount of Rs. 1,00,000 every year to cover the total goodwill of Rs. 19,69,551 as appearing in the Balance-Sheet. This means a spreading over of the goodwill to wipe off for the next nine to ten years. It is finally contended for the Company that the total tangible assets diminished by the liabilities leave a balance of Rs. 4,54,790 only out of which the Company has still to pay Income Tax and Super Tax to the tune of Rs. 1,90,000 and has also to set aside some reserve for depreciation. On these grounds, Mr. Ginwala submits that the Company's funds are not sufficient to grant any bonus whatever to its drivers and conductors.

22. The question therefore is whether in view of these rival comments of the parties on the Profit and Loss Statement and the Balance-Sheet of the Company for the year ending on 31st March 1945, any bonus and if so how much should be granted to the drivers and conductors of the Company. We must first dispose of the items about the Managing Directors' remuneration, Rs. 8,510, the Managing Agents' motor allowance Rs. 2,761 and the Managing Agents' commission Rs. 10,838. I have no reason to disbelieve the statement made before me by the Company's learned Advocate that these items have been calculated according to the agreement between the Company and the Managing Directors. Accordingly I do not think we could question the correctness of these figures.

23. The next item objected to by Mr. Dave relates to depreciation of Rs. 95,323. The point is whether this has been rightly charged to the Profit and Loss Account before determining the net profit. In *Crabtree Thomas vs. Crabtree Cosmo Hardy J.*, has made the following pertinent observations: "Now in the ordinary course of ascertaining the profits of a business.....it is in my opinion essential that in addition to all sums actually expended in repairing the machinery or in renewing the parts, there should also be written off a proper sum for depreciation and that sum ought to be written off before you can arrive at the net profit of the business, and it is not profit until the proper sum varying with the class of machinery has been written off for depreciation." Another reason why depreciation should be taken into consideration is that unless the shrinkage in the value of the assets due from any cause whatsoever is provided for, the value of the assets will be overstated in the balance sheet. As in the case of the Managing Agents' remuneration, so in the case of depreciation also, I am satisfied that the depreciation figure arrived at has been properly calculated (according to the scheduled rates laid down in the Income Tax Rules of 1922) on the basis of the written down value of the assets. Therefore this item of expenditure has also been rightly deducted before arriving at the figure of the net profits.

24. As regards the obsolescence allowance of Rs. 31,793 the experts on accounts and audits agree that this being a loss item must be set off against other business profits. This figure of loss represents the difference between the cost of machinery as reduced by the depreciation allowed in previous years and the sale value of that machinery or its scrap value. It is only fair and just that such losses should be charged to the Profit and Loss Account before computing the figure of divisible profits. As far as the figure itself is concerned, I have no reason to doubt its correctness. Its correctness as such has not been even challenged.

25. The Profit and Loss Account contains a provision for taxation to the tune of Rs. 1,90,000. Now it must be remembered that taxation on an individual or a firm can only be ascertained after arriving at the net profit. You cannot deduct the taxation and then calculate the net profit. The reason for this is obvious, namely that it is the net profit which is to be taxed and which therefore must be ascertained first before determining the taxation on it. Clearly therefore the debit item of Rs. 1,90,000 must be deleted, and when that is done, the actual profits would work out at Rs. 3,50,427.

26. In the Balance Sheet there is an item on the assets side namely "goodwill Rs. 19,69,551". Goodwill unlike Plant or Machinery does not undergo wear and tear. Therefore the ques-

tion of depreciation does not arise in the case of goodwill. Though goodwill does not depreciate it becomes liable to constant fluctuations. Where the profits are unusually constant the value of goodwill once brought on the record is always deemed to exist; and though there may exist circumstances when it may be desirable to write it off from surplus profits, the very fact that there are earnings sufficient to wipe it off would justify its retention in the books. On the other hand when the profits are on the decline goodwill automatically diminishes in value. As a matter of fact there is so much uncertainty as to the exchangeable value of goodwill that it is considered wise not to make an attempt to adjust its amount from year to year. In this case it is a point for consideration whether this amount of goodwill could be said to be just and fair when looked at in the light of the capital of Rs. 30,00,000 as per Balance Sheet for the year ending on 31st March 1945. It would appear that the plying rights, that is goodwill could fairly be estimated not at Rs. 19,69,551 as it appears on the Balance Sheet, but at a round figure of Rs. 5,00,000 only. This would mean that the capital employed in the business is approximately brought down to Rs. 15,00,000 or so and the Company's profit of Rs. 3,50,427 as stated in paragraph 25 cannot be deemed inadequate.

27. The Balance Sheet as on 31st March 1945 shows a capital of Rs. 30,00,000. This capital comprises the capital of Rs. 22,18,300 for one full year ending on 31st March 1945 and also the capital as introduced in November 1944 (20th November 1944) by the Ahmedabad Bus Corporation Limited to the tune of Rs. 7,81,700. Assuming that 6 per cent. is a reasonable return on these two items of capital, the return would amount to Rs. 1,50,165. To this must be added the provision for taxation to the extent of about Rs. 1,70,000. Calculation made in this manner would result in a surplus of Rs. 30,262, that is Rs. 3,50,427 minus Rs. 1,50,165 minus Rs. 1,70,000 = Rs. 30,262. Accordingly, I adjudicate that it would be reasonable to allow bonus equivalent to one month's salary to the drivers and conductors of the Morris Transport Service Limited and *pro rata* (that is proportionate to the period from 20th November 1944 to 31st March 1945) bonus to the drivers and conductors of the Ahmedabad Bus Corporation Limited. This bonus should be paid off by or before the 15th December 1945.

28. In the result I record the following findings or give the following decisions on the following five matters referred to me for adjudication:

MATTERS FOR ADJUDICATION

FINDINGS

- | | |
|--|---|
| <p>(1) Should the drivers and conductors be given uniforms and if so how many and at what intervals?</p> | <p>The Company should give to its drivers and conductors two uniforms before 15th December 1945. These uniforms will remain the property of the Company and shall be kept by the said employees on the Company's premises. The said employees shall change them at the Company's premises when on or off duty.</p> |
| <p>(2) Should the existing dearness allowance given to the workers be revised and if so how and from what date?</p> | <p>The existing dearness allowance which the Company gives to its workers should not be revised.</p> |
| <p>(3) What standing orders, if any, should be framed for regulating the imposition of fines and other penalties on workers?</p> | <p>No standing orders are necessary for regulating the imposition of fines and other penalties on the workers. But standing rules contained in Appendix A to this Award should be framed for regulating dismissals, fines and damages.</p> |
| <p>(4) What bonus, if any, should be granted on the earnings of the employees for the year 1944 and on what terms and conditions?</p> | <p>Bonus equivalent to one month's salary should be given to the drivers and conductors of the Morris Transport Service Limited and <i>pro rata</i> bonus, that is proportionate to the period from 20th November 1944 to 31st March 1945, should be given to the drivers and conductors of the Ahmedabad Bus Corporation Limited. This bonus should be paid off by or before the 15th December 1945.</p> |
| <p>(5) Should the existing practice of calling the employees some hours after their regular hours of duty for giving them instructions regarding the work on the following day be continued?</p> | <p>The existing practice might continue. The employees do not press this matter as the Company has shown satisfactorily that the number of hours of work does not exceed nine.</p> |

29. It must have been clear from the aforesaid findings that my decisions extend to the drivers and conductors of the Morris Transport Service Limited, Ahmedabad.

Ahmedabad, 15th October 1945. (Signed) D. V. VYAS,
Adjudicator.

APPENDIX "A"

STANDING RULES REGULATING DISMISSALS, FINES AND DAMAGES

1. Service of drivers and conductors can be terminated without assigning any reason by 14 days' previous notice or 14 days' wages in lieu of notice. No notice or compensation shall be necessary in case of dismissal for misconduct. This rule shall not apply to cases of victimization.

2. In cases of dismissals without notice or notice-pay in lieu thereof, the dismissal order shall be passed only after a full and proper inquiry by the management. If the dismissed employee is dissatisfied with the orders passed by the management in such cases he can appeal to the Managing Director through the Union Official for revision or cancellation of the order.

3. In matters of fines, damages and such grievances representation may be made by the employee to the management through the Motor Drivers' Association.

APPENDIX "B"

In the matter of the Trade Dispute between the Morris Transport Service Company Limited, Ahmedabad, and its employees.

MEMORANDUM OF SETTLEMENT

ISSUES

TERMS OF SETTLEMENT

- | | |
|--|--|
| 1. Should the drivers and conductors be given uniforms and if so how many and at what intervals? | The Company agrees to give to the drivers and conductors two uniforms before the 15th December 1945. These uniforms shall remain the property of |
|--|--|

ISSUES

TERMS OF SETTLEMENT

- the Company and shall be kept by the said employees on the Company's premises. The said employees shall be bound to change them at the premises when on or off duty.
3. What standing orders, if any, should be framed for regulating the imposition of fines and other penalties on workers? It is agreed that the accompanying standing rules regarding dismissals, fines, damages be added as an Appendix A to the Award. No standing orders are necessary on this subject.
5. Should the existing practice of calling the employees some hours after their regular hours of duty for giving them instructions regarding the work on the following day be continued? The employees do not press this matter as the Company has shown that the number of hours of work does not exceed nine. The existing practice might continue.

(Signed) P. H. VAKIL,
 Managing Director,
 The Morris Transport Service Ltd.
 for and on behalf of the Morris
 Transport Service Company,
 Limited, Ahmedabad.

(Signed) C. G. SHAH,
 Secretary,
 for and on behalf of the Motor
 Drivers' and Motor Workers'
 Association, Ahmedabad.

Before me,
 (Signed) D. V. VYAS,
 Adjudicator.
 Ahmedabad, 15th September 1945.

(Bombay Castle, 22-11-1946, No. 306/46-1, Government Gazette
Part 1. pp. 3522 to 3525).

BOMBAY SUBURBAN ELECTRIC SUPPLY LTD., BANDRA,

AND

ITS EMPLOYEES

Adjudicator:—Sir Harsidhbhai V. Divatia, President, Industrial Court.

Counsel Sir Jamshedji B. Kanga, instructed by Mr. A. E. O. Lucas of Messrs. Craigie, Blunt & Caroe, Solicitors, for the Bombay Suburban Electric Supply Ltd., Bandra.

Mr. B. K. Desai and Mr. L. Goes, General Secretary, Bombay Suburban Electric Supply Employees' Union, with Mr. S. H. Jhabvala, Adviser, for the employees.

A w a r d

This is a dispute between the Bombay Suburban Electric Supply Ltd., Bandra, and its employees, referred to me for adjudication by Government of Bombay Notification, Political and Services Department, No. 306/46, dated the 29th August 1946, issued under sub-rule (1) of rule 81-A of the Defence of India Rules, read with Government of India, Department of Labour, Notification No. L. 3005, dated the 20th May 1942. The dispute comprises the following matters:

(1) Should there be a revision of the existing scales of pay and if so, how and from what date?

(2) Do not Provident Fund Rules in force in the Company require any modification and if so, in what respects?

(3) Should the employees be granted casual leave every year and if so, how much and on what terms and conditions?

(4) Should all the employees be given an increase in pay in lieu of additional dearness allowance similar to that granted in October 1945 to the employees drawing a salary of Rs. 175 and above and if so, how much and on what terms and conditions?

2. A preliminary hearing between the parties was held before me on 16th September last when the Union of the employees, viz., Bombay Suburban Electric Supply Employees Union, represented

by Mr. B. K. Desai and Mr. L. Goes, General Secretary, with Mr. S. H. Jhabvala, Adviser, was directed to file its written statement of the demands on 19th September and the Company was to file its reply on the 23rd September. The hearing took place on the 25th and 27th September 1946.

3. The dispute between the parties began in October 1944 when the union of the employees wrote a letter to the Company on the 10th October 1944 stating that certain grades of service of the employees of the Company suggested by the Union should be brought into force from 1st November. The Company by an order of 28th May 1945 fixed certain grades as from the 1st June 1945. But the Union was dissatisfied with those grades and by its letter of the 30th April 1946 demanded new grades and also made further demands about reducing the period for the payment of the provident fund of the employees, grant of casual leave of 15 days per year, grant of victory bonus and grant of increments in the pay of the inferior staff in lieu of additional dearness allowance as was done in the case of some members of the higher staff. The Company by its letter dated 14th June 1946 informed the Union that Company's Board would consider the question of new grades but the Victory Bonus matter would be deferred till the accounts for the year ending 31st March 1946 were ready. The other demands the Company was not prepared to grant. We are not concerned in this adjudication with the Victory Bonus. A meeting of the officers of the Union and the Company took place on the 26th July 1946 for discussing the matters in dispute and thereafter on the 8th of August 1946 the Company forwarded its replies to the demands made by the Union. As regards the grades the Company modified the previous concessions offered in grades fixed in 1945 and fixed certain grades for the employees. As regards the change in rule 11 of the Provident Fund Rules for reducing the period for payment of provident fund to the employees, the Company offered a sliding scale fixing the Company's contribution on a *pro rata* basis between the 5th and 15th years of an employee's service in the Company, and rejected the Union's demand for casual leave as well as the increment in pay to the inferior staff. The Union rejected the Company's offer made in the letter of the 8th August on the ground that the grades proposed by the Company fell far short of the reasonable expectations of the members of the Union, and decided to bring about strike notice of which they had previously given to the Company on the 29th July 1946. Thereafter the intervention of the Government was requested by the Union and the Company and as a result the order referring the present dispute to the adjudication was made on the 29th August 1946.

4. The discussion about the demands at the hearing before me has been based upon the notice of the Union dated the 30th April

1946 containing the grades demanded by them and the Company's offer of the 8th August 1946. I now take up these demands in their order.

DEMAND No. 1.—Should there be a revision of the existing scales of pay and if so, how and from what date?

This demand relates to the pay of the following classes of employees:

- (a) Clerks (34).
- (b) Meter Readers (9).
- (c) Engineering (20)=Mechanics (19) plus Meterchanger (1).
- (d) Stenographers and typists (3).
- (e) Tracer (1).
- (f) Motor car drivers (4).
- (g) Garden Supervisor (1).
- (h) Jamadar—(none at present, one may be employed in future).
- (i) Sepoys (including watchmen, hamals, delivery peons and coolies (36).
- (j) Office boys (5).
- (k) Gardeners and sweepers (6).

(Note.—Figures to the right indicate number of employees in the Company).

The Union has suggested the following four grades of clerks:

(a) Clerks (34)—

Grade I—Rs. 90—5—120.
 Grade II—Rs. 127—7—155.
 Grade III—Rs. 170—10—200.
 Grade IV—Rs. 215—15—320.

The Company's latest proposal about the grades is as follows:

Apprentices:

Grade—Rs. 50—5—60.

Clerks:

Grade I—Rs. 65—5—85—E. B.—90—5—120.
 Grade II—Rs. 95—7½—132½—E. B.—132½—7½/2—155.
 Grade III—Rs. 140—10—190—E. B.—190—10/2—220.
 Grade IV—Rs. 200—12½—300.

At present there are no grades amongst the clerks. The Company takes some persons as apprentices who are to work as such for not more than two years in any case and then they are taken up

as clerks on a salary varying from Rs. 40 to Rs. 60 and rising up to Rs. 105. As against this the Union suggests the abolition of the class of apprentices or in any case its separation from the category of clerks and with an initial start of Rs. 90 for the clerk or the lowest grade. The Company stated before me that it had no objection to abolish the separate class of apprentices from that of the clerks or even to do away with the apprentices altogether and we have therefore proceeded on the basis that there should be four grades amongst the clerks, who are at present 34 in number, including assistant accountant who is also regarded as a clerk. According to the Company a clerk would now start with an initial salary of Rs. 65 per month and would rise up to Rs. 85 with an annual increment of Rs. 5. Thereafter if he is allowed to cross efficiency bar he would automatically go to the next higher grade and start with a salary of Rs. 95 per month and rise up to Rs. 132½ with an annual increment of Rs. 7½. If on the other hand he is not efficient he would continue to receive increments in his original grade starting from Rs. 90 per month and rising up to Rs. 120 with an increment of Rs. 5 per annum. If, however, he went into the higher grade after rising up to the grade of 132½ per month, he would go to the next higher grade No. III if there is no efficiency bar against him and if there is vacancy in the posts of that higher grade. According to the Company although the number of posts in the first and the second grade would not be fixed at present, the number of posts in grade III should be fixed at 8 and 4 in grade IV. Thus a clerk who has risen up to Rs. 132½ in grade II would be taken up to the higher grade No. III if there is no efficiency bar against him and if there is vacancy among the 8 posts in that grade. If, however, he cannot be taken up in the higher grade he would continue to receive increments in his own grade at Rs. 7½ every two years rising up to Rs. 155 per month and while in that grade he would be promoted to the higher grade when vacancy occurs. Similarly a clerk in grade No. III would start with Rs. 140 per month and rise up to Rs. 190 with an annual increment of Rs. 10 and if there is no efficiency bar against him and there is a vacancy in one of the four posts in the highest grade, viz. grade No. IV he would start with Rs. 200 per month in that grade and rise up to Rs. 300 with an annual increment of Rs. 12½. If there is an efficiency bar and till there is a vacancy in the highest grade he would rise up to Rs. 220 with a biennial increment of Rs. 10. It would thus appear that a clerk starting with Rs. 65 per month would go up to Rs. 300 if there is no efficiency bar against him and there are vacancies in the last two grades.

5. The principal difference between the Union's grade and the Company's grade is the starting salary. The Union's scale of Rs. 90 for the starting salary is, in my opinion, too high. The

Company does not employ only graduate clerks. In fact at present all clerks except one are non-graduates and some may be even non-matriculantes. If this Company is to be compared with any other company it would be the Bombay Electric Supply and Tramways Co. Ltd. No doubt the Bombay Company is a bigger concern than this company which only supplies electricity to a part of Salsette, while the Bombay Electric Supply and Tramways Company not only supplies electricity to the whole of Bombay but also runs trams and buses, and has, therefore, a much larger income. The cost of living in the Bombay Suburban area would not exceed the cost of living in the Bombay City. If there is some difference the cost of living would be somewhat less in the Suburbs. Still the starting pay for clerks who are included among the scheduled employees in the Bombay Electric Supply and Tramways Company comes to about Rs. 63-8-0 on the average. A clerk starts with Rs. 53 per month while on probation and on confirmation he gets Rs. 74-1-0. On the average during the first year he gets Rs. 63-8-0 per month which includes the old war allowance and tram fares. (See Schedule "A" to Exhibit "2", in the trade dispute between the Bombay Electric Supply and Tramways Company and its "scheduled" employees.) Even in that adjudication Mr. Justice Chagla did not recommend increase in the starting pay given at that scale. The question was about the maximum amount and the period of the increments. In my opinion, therefore, the proposed starting pay offered by the Company in the present case compares very favourably with the starting salary given to the clerks by the Bombay Electric Supply and Tramways Company. In the Bombay Municipality a clerk starts on a salary of Rs. 55 per month and in Government service the starting salary is Rs. 50 per month for a person who has passed the matriculation examination. As regards the maximum amount there is not much difference between the Union's demand and the Company's offer. While according to the Union the clerk's salary would rise up to Rs. 320 according to the Company it would be Rs. 300 per month. But even then the Company employs certain covenanted servants who are engaged on an agreement for three years and these covenanted servants are generally taken from the clerks who have risen to the highest grades. There is therefore the possibility of a clerk reaching the maximum of Rs. 300 getting more pay if he is taken up in the covenanted service thereafter. I am, therefore, of the opinion that the proposed grades for clerks suggested by the Company are quite liberal and I, therefore, fix the grades of clerks according to that scale with liberty to the Company to revise the number of posts in each grade according to the amount of work to be done by the clerks in that grade.

(b) *Meter Readers* (g).—The next class is that of meter-readers. At present the meter-reader starts on Rs. 40 and goes up to

Rs. 110 per month by an annual increment of Rs. 5. The Union wants to fix the scale of meter-readers at Rs. 75—5—125 while the Company has proposed the start of Rs. 50 with the grades of (1) Rs. 50—5—80—E. B.—5/2—100 and (2) Rs. 85—5—125. Thus a meter-reader starting with Rs. 50 per month and reaching up to Rs. 80 per month after 6 years, would get Rs. 85 if there is no efficiency bar against him and rise up to Rs. 125 with an annual increment of Rs. 5 and even if he is not efficient he would rise up to Rs. 100 per month. There is no difference between the Union and the Company about the maximum amount which the meter-reader is to get, viz. Rs. 125 but as regards the starting salary the figure of Rs. 75 put by the Union is too high. The work of the clerk of the last grade is superior to that of a meter-reader and if the clerk is to start on Rs. 65, the figure of Rs. 50 per month proposed by the Company for the meter-readers cannot, in my opinion, be regarded as low. I, therefore, fix the meter-reader's scale as proposed by the Company.

(c) *Engineering* (20).—This class includes inspectors, assistant inspectors, technicians, assistant superintendents, and other senior officers in the engineering department. The Union has proposed three grades in this class starting from Rs. 100 and rising up to Rs. 325 while the Company has proposed a scale of Rs. 65—5—75 for apprentices in the engineering section and three grades rising from Rs. 80 to Rs. 300 per month as follows:—(1) Rs. 80—7½—125—E. B.—125—7½/2—155, (2) Rs. 135—10—185—E. B.—185—10/2—225, and (3) Rs. 200—12½—300 (2 posts). The rise in this department is on the same principle as the rise in the clerical department mentioned above. The Company has agreed to abolish the apprentice class from the other grades in this section. A start of Rs. 80 in the last grade is, in my opinion, quite liberal having regard to the work to be done and the highest rise of Rs. 300, and as in the case of clerks a person getting Rs. 300 in the engineering department would have the chance of entering the covenanted service. I, therefore, accept the scale proposed by the Company.

Mechanics (19) and *Meter-changer* (1).—The Union has proposed Rs. 90—5—140 while the Company has proposed (1) Rs. 65—5—95—E. B.—5/2—105 and (2) Rs. 100—5—140. The maximum amount is the same in both the proposals. The proposed start of Rs. 90 by the Union is too high. I do not think that the work done by the persons in this class is in any way superior to that of the clerks. I, therefore, accept the start of Rs. 65 proposed by the Company and also the scale of subsequent increments.

(a) *Stenographers and Typists* (3).—The Union has proposed

a grade of Rs. 75—5—125 for a typist and three grades (1) Rs. 105—7—140, (2) Rs. 150—10—180 and (3) Rs. 190—10—220 for a stenographer while the Company has proposed the following grades: (1) Rs. 70—5—100—E. B.—105/2—120. (2) Rs. 110—7½—170—E. B.—170—7½/2—200 and (3) Rs. 180—10—220. Thus the maximum is the same according to both the scales, viz. Rs. 220. Having regard to the last scale fixed for clerks, I think the starting salary of Rs. 70 and subsequent increments proposed by the Company are quite fair and I, therefore, accept the starting salary and the grades proposed by the Company. But I award that the efficiency bar in the first grade will be allowed to be crossed and an employee stepped up to the starting salary of grade two, provided the employee concerned attains a speed of more than hundred words a minute in shorthand. Similarly a speed of more than one hundred and thirty words a minute in shorthand will entitle a stenographer to cross the efficiency bar in grade two and go up to grade three. Typists who do not know shorthand will be put in grade (1) only without the efficiency bar.

(e) *Tracer (1).*—There is only one man in this class who really does the work of a tracer and not of draftsman. The Union's proposal for a starting salary of Rs. 90 rising up to Rs. 190 per month in two grades (1) Rs. 90—5—120 and (2) Rs. 127—7—190 is too high. The work of a tracer is not in any case more exacting than that of a clerk and is simpler than that of a draftsman. The initial salary of Rs. 65 proposed by the Company seems to me to be quite fair. I, therefore, accept the grade fixed by the Company, viz. Rs. 65—5—100—E. B.—100—5/2—125.

(f) *Motor car drivers (4).*—The Union has proposed a scale of Rs. 90—5—140 while the Company has proposed (1) Rs. 55—3—70—E. B.—70—3/2—79 and (2) Rs. 75—5—100. Having regard to the fact that the motor car driver also gets the same dearness allowance which is given to all the other employees, which comes to about Rs. 35 at present, a start of Rs. 90 proposed by the Union exclusive of dearness allowance seems to me to be too high. In the Bombay Electric Supply and Tramways Company the start after probationary period is Rs. 44 per month in the lower grade and Rs. 52 in the higher grade exclusive of dearness allowance. The scale proposed by the Company with a starting salary of Rs. 55 exclusive of the dearness allowance is quite fair and so also the maximum of Rs. 100 per month. I, therefore, accept the Company's proposal.

(g) *Garden Supervisor (1).*—The Union has proposed the scale of Rs. 90—5—140 exclusive of dearness allowance. That scale is, in my opinion, too high for a person who has merely to supervise the garden. The Company had proposed the scale of Rs. 40—3—

70 but it has agreed now to raise the scale to Rs. 50—3—71. I think that scale is quite fair. I, therefore, approve of that scale.

(h) *Jamadar* (1).—There is no person working as jamadar at present, but it is regarded as probable that one may be employed in the future. The Union has proposed the scale of Rs. 50—3—80 while the Company has proposed Rs. 40—2½—60. I approve of the scale fixed by the Company.

(i) *Sepoys including watchmen, hamals, coolies and delivery peons* (36).—The Union has proposed the scale of Rs. 45—2½—70 (for hamals and coolies) and Rs. 50—3—80 (for watchmen and delivery peons) while the Company has proposed (1) Rs. 28—1½—38½—E. B.—38½—1½/2—41½ and (2) Rs. 40—2—50. At present these persons start with Rs. 26 and go up to Rs. 45. I think the starting pay of Rs. 28 proposed by the Company exclusive of dearness allowance is quite fair having regard to the salaries of this class of service elsewhere and I approve of the scale proposed by the Company.

(j) *Office boys* (5).—The Union has proposed the scale of Rs. 45—2½—70 while the Company has proposed Rs. 20—1—25. These boys are only minor workers in the office and I think the starting salary of Rs. 20 exclusive of dearness allowance as proposed by the Company is quite fair. Office boys if efficient should be promoted to the category of delivery peons included in the class of sepoy.

(k) *Gardeners and Sweepers* (6).—The Union has proposed Rs. 45—2½—70 while the Company has proposed (1) Rs. 26—1½—35—E. B.—35—1½/2—38 and (2) Rs. 37—2—45. At present these persons start with Rs. 20 and rise up to Rs. 45. I think the scale proposed by the Company is quite fair.

It may be stated here generally that in all the proposed grades the scales are exclusive of dearness allowance to be paid to these employees according to the rise or fall in the cost of living.

DEMAND No. 2.—Do the Provident Fund Rules in force in the Company require any modification and if so, in what respects?

6. Although this demand relates to all the provident fund rules in force according to the notification, the parties have agreed before me that the demand is restricted to modification of rule 11 of the provident fund rules of the Company. According to that rule a member of the Fund leaving the service of the Company shall not be entitled to claim payment of the full amount standing to the credit of his account in the Fund until after approved meri-

torious and continuous service of not less than fifteen years. The case for the Union is that the period of fifteen years is too long and it unduly restricts an employee in the service of the Company up to the end of that period. The demand of the Union is that the members of the fund should be entitled to withdraw the whole amount including the Company's contribution at any time after confirmation. The Company is prepared to waive the rule as follows:

After 5 years' service ...	...	Payment to the employee of	1/3rd of the Company's contribution.
" 6 " " "	...	6/15th of the Company's contribution,	
" 7 " " "	...	7/15th " " "	
" 8 " " "	...	8/15th " " "	
" 9 " " "	...	9/15th " " "	
" 10 " " "	...	2/3rd " " "	
" 11 " " "	...	11/15th " " "	
" 12 " " "	...	12/15th " " "	
" 13 " " "	...	13/15th " " "	
" 14 " " "	...	14/15th " " "	
" 15 " " "	...	Full.	

The case for the Company is that the object of the provident fund is to give a reasonable sum to the member after a certain period of continued service in order that there may be some provision for the employee and his family at the time of his retirement. The Company therefore proposes that although 1/3rd of the Company's contribution may be paid after 5 years' service, the whole of the contribution made by the Company should not be made payable before the end of fifteen years' service. I accept the general principle that the object of the provident fund is to provide for the member and his family after he leaves the service. Although it is true that an employer's contribution to the provident fund is an incentive for employees to remain in service as long as possible, in my opinion the qualifying period to get full amount should not be too long so as to fetter down the employee in the service even though he might wish to leave the service for a more remunerative job elsewhere. The employee should have certain amount of freedom to leave the service and to get better employment elsewhere, and the period of fifteen years appears to put unduly long check upon their freedom. In the Bombay Electric Supply and Tramway Company's award, Mr. Justice Chagla has recommended that for service exceeding five years but not exceeding ten years, half the amount of the Company's contribution should be paid and for service exceeding ten years the full amount should be paid. In my opinion ten years' period is a fairly reasonable period but instead of paying only half the amount of the Company's contribution for service exceeding five

years but not exceeding ten years, I would prefer a graduated scale. I, therefore, hold that rule 11 of the Provident Fund Rules should be so modified as to provide for the following:

A member of the fund leaving the service shall not be entitled to claim payment of full amount standing to his credit in the provident fund before the end of his ten years' continuous service and that if he leaves the service of the Company after five years he shall get the Company's contribution as follows:

At the end of 5 years' service	...	1/6th	of	Company's	contribution.
" " 6 " "	...	1/5th		"	"
" " 7 " "	...	2/5th		"	"
" " 8 " "	...	3/5th		"	"
" " 9 " "	...	4/5th		"	"
" " 10 " "	...	Full amount.			

The words "approved, meritorious and continuous service" should be replaced by the words "continuous service". In my opinion it is not necessary to lay down a condition for the purpose of withdrawing the amount of provident fund due to a member that his service must be approved and meritorious. That might be a weapon in the hands of the employer to withhold the Company's contribution in an arbitrary manner. It was urged by Sir Jamshedji Kanga on behalf of the Company that the words "approved, meritorious and continuous" are to be found in a number of provident fund rules and under the income-tax rules also for exemption from income-tax it was necessary that the withdrawal should be after approved, meritorious and continuous service. I have not been referred to any such rules nor do I know of any. On the other hand these words are not there in the Bombay Electric Supply Company's provident fund rules and I do not see any reason why they should remain in these rules. Of course the word "continuous" must be retained because the Company's full contribution in the provident fund cannot be claimed unless the service is continuous. Rule 11 should, therefore, be modified as directed above.

DEMAND No. 3.—Should the employees be granted casual leave every year and if so, how much and on what terms and conditions?

7. The Union has demanded that 15 days' casual leave should be given to the employees over and above the privilege leave of 21 days in a year. Their case is that in the absence of any casual leave, to meet sudden calls of social obligations, the present rule of 21 days and sick leave on medical certificate do not enable

them to enjoy that leave at a stretch for a long period, and therefore, they demand casual leave for an aggregate period of 15 days in a year. The case for the Company is that casual leave is not granted to employees in similar concerns and that the provision for privilege leave of 21 days with sick leave on medical certificate is quite ample. They further say that although there is no standing order about granting leave of absence for one or two hours for private business during any working day, it is invariably granted without deduction of salary or privilege leave. It is further urged that in the Bombay Electric Supply and Tramways Company no casual leave is allowed and the demand of the employees for casual leave in the last adjudication was negatived. On behalf of the employees it is contended that in a number of concerns in Bombay, privilege leave is allowed for four weeks or sometimes 31 days and in addition to that in some cases casual leave is granted for 7 or 15 days.

8. I find that in almost all important concerns in Bombay privilege leave for at least one month is granted to clerks and other employees doing similar work as of the employees in the present case. In the Bombay Electric Supply and Tramways Company the scheduled employees get 31 days' privilege leave in a year. The demand of the scheduled employees for casual leave for 20 days was rejected on the ground that every scheduled employee was entitled under the standing orders to a special leave for three months which he could enjoy after 5 years' service on half pay. (See *Bombay Government Gazette*, Part I, dated 29th April 1946, p. 1317, paragraph 15). There is no such rule in the Bombay Suburban Electric Supply Ltd. I am told that in the Imperial Chemical Industries the employees get privilege leave for four weeks and casual leave for 7 days. In the Associated Cement Company, the employees get one month's privilege leave and 10 days' casual leave. So also 30 days' earned leave is given to servants in Government departments and casual leave for at least 20 days in a year. The analogy of the Government service cannot be applied to an industrial trading company or a public utility concern like the present, but in my opinion privilege leave for one month for clerks is a general rule prevailing in all big companies. If the present Company were giving one month's privilege leave to its employees, I would have rejected the demand for casual leave altogether. But having regard to the fact that they get only 21 days' leave in a year I think they should be entitled to casual leave for an aggregate period of 10 days in a year which will of course be given according to the exigencies of service. This grant of 10 days' casual leave will apply to clerks, meter-readers, engineers, motor car drivers, stenographers, typists and tracers, because they are like the scheduled employees in the Bombay Electric Supply and Tramways Com-

pany. It would not apply to the rest of the employees whose cases are covered by this award.

DEMAND No. 4.—Should all the employees be given an increase in pay in lieu of additional dearness allowance similar to that granted in October 1945 to the employees drawing a salary of Rs. 175 and above and if so, how much and on what terms and conditions?

9. This demand for increase in pay in lieu of dearness allowance is made under a special circumstance. It appears that seven employees of the senior clerical staff in the Company drawing a salary of Rs. 175 and over were granted an increase in the basic pay in 1945 in lieu of additional dearness allowance. Formerly the Company was paying dearness allowance to its employees drawing less than Rs. 50 per month. But from June 1942, dearness allowance is paid to all employees at a flat rate in which there was a progressive increase according to the rise in the cost of living. In October 1945, these seven members of the senior clerical staff made a demand for additional dearness allowance for themselves because they were put to a loss on account of the dearness allowance at a flat rate. The Company refused their demand but instead granted an increase in their basic pay to cover the additional dearness allowance. The Union's case now is that all the other employees should be paid an increase in their basic pay to the same extent which was given to these seven persons. The Company's case is that this increase in the basic salary was granted under special circumstances. The Company did not want to differentiate between its employees in the payment of dearness allowance and as the Company was of the opinion that these seven persons were put to a loss when the flat rate of dearness allowance was introduced, they compensated them by an increase in their basic salary. But the rest of the employees were not put to any loss when the flat rate was introduced and, therefore, their demand for increase in the basic wage is unjustified. Whether the Company was justified or not in increasing the pay of these seven persons in lieu of additional dearness allowance, I do not think the employees can compel the Company to convert that additional dearness allowance into a rise in the basic pay. It does appear that some loss was incurred by the seven employees when the dearness allowance was converted into a flat rate and the Company thought that it was proper not to depart from the flat rate rule and give additional dearness allowance to these employees. The other employees are receiving the additional dearness allowance and it is not proved that they have suffered any loss on account of dearness allowance being given at a flat rate. I do not think, therefore, that this demand is justified. Accordingly I reject the demand.

10. In the result, therefore, my decision is as follows:

(1) that the existing scales of pay should be revised to the extent proposed by the Company in Ex. 8 annexed to the Company's written statement and as discussed and approved by me in paragraphs 4 and 5 above. The employees shall be placed in the corresponding stages in the time scales according to the number of years service they have put in up to the date on which this award comes into force. This will be subject to their record of service for crossing the efficiency bars;

(2) that Rule 11 of the Provident Fund Rules of the Company shall be amended as per the discussion in paragraph 6 above. The Company will move the Income-tax authorities for necessary sanction and approval;

(3) that the clerks, meter-readers, engineers, motor car drivers, stenographers, typists and tracers should get casual leave for ten days every year in addition to privilege leave and sick leave. The Company will make the necessary addition in the standing orders and the leave rules;

(4) that the demand of the employees for increase in pay in lieu of additional dearness allowance is rejected.

The award shall come into effect from 1st September 1946.

Bombay, 11th November 1946

(Signed) H. V. DIVATIA,
Adjudicator.

*(Bombay Castle, 26-2-1947, No. 377/46-1, Government Gazette
Part I, pp. 709G to 709K)*

DIRECTOR, GOVERNMENT TRANSPORT SERVICE, BOMBAY,

AND

THE DRIVERS AND WARNERS IN THAT SERVICE

Adjudicator:—Sir Harsidhbhai V. Divatia, President, Industrial Court B.

Counsel Mr. C. K. Daphtary, Advocate General, instructed by Little & Co., Solicitors, Major H. Savage, Director and Mr. G. K. Murthi Rao, Assistant Director for the Government Transport Service.

Mr. K. T. Sule, Advocate, with Mr. P. B. Donde, Secretary of the Lorry Drivers and Workers Union and Mr. V. C. Mendon for the drivers and warners.

A w a r d

This is a dispute between the Director, Government Transport Service, Bombay (hereinafter referred to as G. T. S.), and the Drivers and Warners employed in that service. It has been referred to my adjudication under rule 81-A of the Defence of India Rules read with Government of India, Department of Labour, Notification No. L-3005, dated 20th May 1942. The dispute comprises various demands by the Drivers and Warners relating to revision of their scales of wages, overtime payment, lunch allowance, leave with pay, mileage allowance and bonus. The other demands include the reinstatement of Mr. M. S. Kulkarni, Assistant Depot Vehicle Operator, and wages for the period during which the drivers and warners went on strike.

2. The Government Transport Service was constituted from the 1st of April 1944 for carrying out the transport work of the Civil Supplies Department. That work was previously done by the A. R. P. Service which was established in April 1942 but which ceased to exist before April 1944. A number of employees belonging to the A. R. P. Transport Services were taken over in the Government Transport Service. Originally the pay of the Drivers was fixed at Rs. 50 per month with a bonus of Rs. 10 per month and free quarters or Rs. 5 per month for rent allowance. Thereafter the scale was revised with effect from 1st of May 1945 and the pay of the drivers was fixed at Rs. 60 per month in the time-scale of Rs. 50—60—3—72. This starting salary of Rs. 60 was given to the old drivers but the new recruits started with Rs. 50 per month with an increase to Rs. 60 after one year's service in the scale of Rs. 60—3—72. New amenities were introduced in the shape of lunch, overtime and holiday allowances. In the case of warners their salary which was Rs. 31 per month before the 1st of May 1945 was raised to Rs. 40 per month and they were also entitled to receive overtime and holiday allowances. In the first week of June 1946 some of the G. T. S. drivers and warners joined the Lorry Drivers and Workers Union, Bombay, which was founded in 1944. Shortly thereafter the Union made various demands for the G. T. S. drivers and warners in a letter addressed to the Director of the G. T. S. on the 13th June 1946. The demands briefly were, that the wages of the drivers should be raised to Rs. 100 per month with retrospective effect from the 1st of May 1945 and that their yearly increment of Rs. 5 should be given till the pay reached Rs. 150 per month. The demand for the warners was that their pay should be revised to Rs. 60 per month

and an increment of Rs. 3 should be given till the warners reached Rs. 90. Both these demands were exclusive of the Dearness Allowance which the drivers and warners got, as Government servants. There were other demands also relating to the rate of overtime work and work on Sundays and other holidays, lunch allowance, etc. The letter of the 13th June which was received by the Management on the 17th of June was acknowledged on the 21st. As the Union did not hear further from the Management, a notice of strike was given by the Union on 2nd July 1946 under rule 81-A of the Defence of India Rules which reiterated all the previous demands, as also the re-instatement of Mr. Kulkarni who was served with a discharge notice on the 18th June. On the 17th of July the management replied, after the matter was referred to Government for orders, expressing their inability to comply with the demands. As a result the drivers and warners went on strike on the 18th of July 1946. After some negotiations the strike was called off on the 24th of August 1946, on an assurance that the dispute would be referred to Adjudication. Accordingly the notification was issued by the Government on the 14th of September 1946 referring the dispute to my adjudication.

DEMAND No. 1

3. The first and principal demand relates to revision in the scales of wages. It is as follows:

Should the present wages of drivers and the warners employed in the G. T. S. be revised? If so, (a) what should be the scales of their wages exclusive of dearness allowance? and (b) should the revised scales of wages be introduced retrospectively from the 1st of May 1945?

According to the Union, after the G. T. S. was started the drivers were employed on a pay of Rs. 75 per month but within two months that pay was reduced to Rs. 50 and that after one year the increment of Rs. 10 was given to those drivers who had completed one year's service, with the result that at present a large number of drivers are getting the pay of Rs. 60 per month whereas some are drawing Rs. 70 per month. This is denied by the Director of the G. T. S. According to him the pay of drivers was not fixed at Rs. 75 per month when the G. T. S. was originally started nor was it brought down to Rs. 50 per month. The pay was fixed in the beginning at Rs. 50 per month with a bonus of Rs. 10 per month to be paid after a satisfactory service and with free quarters or Rs. 5 per month in lieu thereof. It was further contended on behalf of the director that the drivers voluntarily joined the G. T. S. on this scale without making any protest. One of the drivers, V. C. Mendon, who is the President of the Depot Committee of the workers, stated in his evidence that they

did not object to be taken over to the G. T. S. and that when he joined the G. T. S. his salary was the same which he used to get in the A. R. P. service, namely, Rs. 50 per month plus Rs. 10 by way of bonus which was kept in reserve and Rs. 5 as house rent allowance. It appears, therefore, that all the drivers who joined the G. T. S. after the termination of the A. R. P. Services began with a basic salary of Rs. 50 per month with an addition of bonus of Rs. 10 per month and that the pay was not fixed initially at Rs. 75 per month and after two months brought down to Rs. 50 per month. It appears that this bonus of Rs. 10 was sanctioned when the scales were revised from 1st May 1945, and the bonus was accumulated till it was paid to the employees. The principal ground urged by Mr. Sule on behalf of the Union for increasing the basic salary is that, in similar services in Bombay like the R. I. N., Royal Navy, R. A. F. as well as Ordnance Depot, the starting salary for drivers was Rs. 100 with a dearness allowance of Rs. 22 per month. The Union has examined Mr. N. George, the Transport Officer of the Royal Indian Navy. He says that in the R. I. N. the drivers of trucks under 5 tons get Rs. 100 per month for the first six months. The drivers of staff cars get Rs. 90 and new drivers get a salary of Rs. 80 per month for the first six months. This is exclusive of dearness allowance of Rs. 22 per month or $17\frac{1}{2}$ per cent. whichever is greater. There are no warners in the R. I. N. The drivers have to work for 8 hours a day from 8-30 to 17-30 hours including 1 hour recess. They are paid a conveyance allowance beyond 5 miles, the maximum allowance being Rs. 10. The drivers are given free uniforms, two at the time of entering service and new uniforms after six months if necessary. For every one year's complete service they get 16 days' privilege leave with full pay, 15 days' medical leave on half pay and 20 days' casual leave. There is, however, no overtime payment nor free quarters or rent allowance nor is there any lunch allowance. The drivers are required sometimes to clean cars and they are also sometimes sent out of Bombay for work. On behalf of the management the learned Advocate General has contended that although the drivers of the R. I. N. get Rs. 100 per month as their salary, the conditions of service and the other allowances which the G. T. S. drivers enjoy would compare favourably with the increased salary of the R. I. N. drivers. It is also contended that while the dearness allowance in the R. I. N. is Rs. 22 per month, the G. T. S. Drivers and warners get Rs. 26 per month. There are no free quarters nor is there any rent allowance nor is there any lunch allowance nor overtime payment to the R. I. N. drivers. There is also the liability of being sent out of Bombay or even Bombay Province for work whereas the G. T. S. drivers generally work in the Bombay City and are not sent out of Bombay. The director of the G. T. S. has put in a comparative table (Exhibit "N") showing

the emoluments of the G. T. S. drivers on the one hand and those of the R. I. N. and Ordnance Depot drivers as well as the drivers of some private concerns. It shows that with the temporary increase of Rs. 10 which was recently sanctioned by the Government of Bombay, most of the drivers are getting Rs. 73 per month as their pay and Rs. 26 as dearness allowance plus an average of Rs. 10 for lunch and overtime allowance, free quarters or Rs. 5 for house rent. In addition to these there is the privilege of going on leave with pay according to Government rules. The emoluments of the R. I. N. drivers come to Rs. 122 including dearness allowance, while the total emoluments of the G. T. S. drivers come to Rs. 114 a month, but it is contended that on the whole the G. T. S. drivers are better off as they are not liable to be sent abroad. It is also urged that although the G. T. S. is Government Service and is intended to be run as a business proposition, from the amounts which it gets from the Civil Supplies Department for doing its work of transport, the balance sheets of the G. T. S. show a very meagre net profit, namely, about Rs. 1,885 in 1944-45, and about Rs. 600 in 1945-46. It is further contended on behalf of the G. T. S. that the emoluments of the G. T. S. drivers compare very favourably with the drivers of some private transport concerns in the City of Bombay, and the managers of such concerns have been examined to prove it. They are the representatives of the three firms, namely, Messrs. Mangatram Brothers, M. K. J. Company, and Singh Transport Co. Ltd. The table (Exhibit "N") shows the comparative emoluments of the drivers of these three concerns along with the G. T. S. drivers. In the concern of Messrs. Mangatram Brothers, the drivers get Rs. 90 per month with a dearness allowance of Rs. 10 per month and an annual bonus of one month's pay in addition. There is no lunch or overtime allowance, but there is an allowance in the nature of a commission of Re. 1 per day to a driver provided the daily return on his truck is more than Rs. 30 per day. There is, however, no leave or other type of allowance, and no payment is made when the driver is sent out of Bombay. There is, also no rent allowance. In the concern of M. K. J. & Co., the driver of a lorry of 3 tons gets Rs. 70 per month as pay, and a dearness allowance which comes to about 40 per cent. of the pay. The drivers also get a commission which comes to an average of Rs. 30 per month. The driver, however, does not get any overtime allowance when he gets the commission but he gets either overtime or commission if he works for more than 8 hours. A senior driver gets Rs. 120, i.e., Rs. 80 pay plus Rs. 40 as dearness allowance, and he gets Rs. 135 per month if he works on a heavy vehicle, excluding the commission. There is, however, no lunch allowance. The working hours are from 8 a.m. to 6 p.m. and for overtime work the drivers get annas 4 per hour. Ordinarily one month's pay is given as bonus, but a bonus of two months' salary

was given in 1945-46. There are no paid holidays. In the third concern of Singh Transport Co., the drivers are not monthly paid servants but daily rated employees. They are paid at the rate of Rs. 2-15-6 per day including Sunday up to 12 noon and there is a further allowance of Re. 1 in case the day's return is over Rs. 45. If the day's return goes beyond Rs. 80 the driver gets an allowance of Rs. 2. There is an overtime allowance of Rs. 2-8-0 when the driver works up to 12 midnight. There is no other allowance and according to the Manager of the Company the actual earnings of the driver come to Rs. 110 per month. No bonus was paid till now but it is proposed to give a bonus of about Rs. 90 to Rs. 100 to the drivers for 1946.

4. On a comparison of the earnings of drivers in these three concerns with the earnings of the drivers in G. T. S., I do not think that the earnings of the latter can be said to be unfair. Although the department is temporary in the first instance the drivers have got the privileges of Government service and the benefit of its leave rules. At present most of the drivers are getting Rs. 63 per month on the graduated scale and they would be entitled to a maximum of Rs. 72 at the end of 3 years. The starting pay of Rs. 60 for these drivers along with the other amenities is quite fair but the maximum in the grade should, in my opinion, be increased from Rs. 72 to Rs. 75 and the increment per year should be raised from Rs. 3 to Rs. 5. The scale, therefore, would work out as follows:

Basic Pay—			Rs.
1st of May 1945 to 1st of May 1946	...	...	60
1st of May 1946 to 1st of May 1947	...	...	65
1st of May 1947 to 1st of May 1948	...	...	70
1st of May 1948 onwards	...	...	75

This would be exclusive of the recent temporary increase of Rs. 10 per month in their salary as well as the dearness allowance along with the amount of Rs. 5 per month for rent in lieu of free quarters. Their earnings by way of salary, dearness allowance and rent allowance would come to Rs. 116 per month after the top of the grade is reached in May 1948. This scale is in my opinion quite fair and I would, therefore, award accordingly. For the new entrants also the scale should be Rs. 60—5—75 *plus* the temporary increase of Rs. 10, the dearness allowance and house rent or free quarters.

As regards the Warners their pay was Rs. 31 per month and it was raised to Rs. 40 on the first of May 1945. They are also in receipt of Rs. 10 per month as temporary allowance and the dearness allowance of Rs. 26 per month and they are also entitled to leave under the Government regulations. There are no warners in the

R. I. N. but Messrs. Mangatram Brothers and M. K. J. & Co. have got warners and their salary *plus* dearness allowance comes to about Rs. 65, exclusive of the commission which comes to about Rs. 15 per month. In the G. T. S. the Warners get Rs. 76 per month including temporary increase and dearness allowance. Ordinarily there are two warners in each truck. They are sometimes required to clean the vehicles and assist in loading and unloading the articles from and to the lorry. They get extra remuneration if they have to work overtime. In my opinion, that salary is quite fair and compares favourably with the warners in private concerns. I do not think, therefore, that any change is necessary in their present basic salary.

DEMAND No. 2

5. Dispute No. 2 is whether the drivers and warners be paid overtime wages or other compensation for work done in excess of 8 hours on any day and public holidays, and if so, at what rate?

The workers' working period is 9 hours a day including the lunch interval. If a driver or warner works beyond that period the driver gets an overtime allowance of 8 annas per day and the warner, 4 annas per day. This allowance is paid if the overtime period consists of at least one extra hour after the ordinary work period of 9 hours of duty including the lunch interval. The demand of the Union is that the drivers and warners should be paid overtime at the rate of one and one-half times the normal rate per hour and it should be calculated on the basis of total working hours in the month, a day being equal to 8 hours on the normal pay fixed per month. According to the G.T.S. authorities the extra payment of annas 8 per day for the drivers and annas 4 per day for the warners in case of overtime work is quite generous, and as ordinarily most of the Government employees are expected to work overtime without any additional remuneration, the demand of the Union that the overtime payment should consist of one and a half times the normal rate per hour seems to me exaggerated. At the same time I think that although the overtime payment of 8 annas and 4 annas for the drivers and warners for the 10th hour is quite fair, the payment of the same amount even if the overtime period consists of more than one hour per day seems to me rather unfair. It is true that ordinarily the period hardly exceeds one hour but if they are required to work longer at the fag end of the day when they might be exhausted the payment should be made according to the extra time put in. In my opinion, therefore, for every complete half hour of overtime after 9 hours' work, including lunch interval on week days, the driver should get at the rate of 4 annas per half hour and the warner at the rate of 2 annas per half hour.

As regards work on Sundays and holidays the driver and warner is paid 6 annas and 3 annas per hour subject to a maximum of Rs. 2 and Re. 1 respectively in addition to their normal wages. According to the management they are not compelled to come on Sundays and holidays but if they are willing to come they are paid at this rate. The demand of the Union is that if they are required to work on Sundays and holidays they should be paid full day's wages at the normal rate *plus* one and a half day's extra wages in addition to the fixed monthly salary. It is further contended that the drivers are compelled to come on Sundays and sometimes they are sent back if there is no work for them. This is denied on behalf of the management and witness Mendon on behalf of the Union has admitted that he has never been penalised if he was called for duty on Sundays and remained absent. Witness Balu Bala Bhade, a lorry driver, has deposed that those who put up near the depot are generally required to come on Sundays and those who stay away from the depot come to work on Sunday if they are compelled to attend. Witness Satpute, Depot Vehicle Operator, at Mahim, has deposed that on Saturdays or on the previous day to holidays the despatcher is asked to take the names of workers who are willing to work on holidays and those who are willing are called for duty on Sundays and holidays. If there is no work they are not called. He says further that it is not true that workers are called on Sundays and are told that there is no work for them. Looking to the important nature of the work which they are doing, namely transport of essential supplies of grains and other things, it is not unnatural that they have got to work even on Sundays and holidays, if it is so necessary. I find on the evidence that ordinarily the drivers who are living near the depot are asked to attend on Sundays and I do not think there is any unnecessary hardship to the drivers and warners in that respect. The allowance of 6 annas and 3 annas per hour on Sundays and holidays in addition to their normal wages seems also to be quite fair and I do not think that any case has been made out for increase in their demands. My answer to this part of the demand is that the drivers and warners should be paid the same rate as at present when they are required to work on Sundays and Holidays.

DEMAND No. 3

6. Dispute No. 3 is whether the leave salary payable to the drivers and warners on leave should be calculated on the basis of average pay as at present or on the basis of pay drawn at the time of proceeding on leave. I do not think the employees have any good ground or grievance as regards this dispute. According to the rules applicable to all Government servants leave salary is

calculated on the basis of average pay and no case has been made out for departing from this practice. I, therefore, reject this demand.

DEMAND No. 4

7. This demand is whether there should be any increase in the lunch allowance at present sanctioned to the drivers and, if so, to what extent and whether the warners also should be given any lunch allowance, and, if so, at what rate? According to the Management the practice is that both the drivers and warners are given one hour's recess between 12 noon and 1 p.m. and if due to circumstances it is not possible to relieve any of them at that time for going to their residence for lunch they are paid a lunch allowance of annas 8 per day. As regards the warners, they usually carry their lunch with them and no lunch allowance is paid to them. The demand of the Union is that this allowance is inadequate and that an allowance at the rate of Re. 1 per working day should be paid both to the drivers as well as the warners. Government has sanctioned this allowance along with the overtime allowance by Government resolution on the 12th of November, 1945 and according to that resolution 8 annas per day is to be paid to each driver on production of a certificate from the officer that on account of pressure of urgent work, the driver could not be relieved during the usual lunch time. There is no satisfactory evidence that the drivers have to spend more than 8 annas for lunch whenever they are on duty away from home. In none of the 3 private concerns mentioned above is any lunch allowance paid and I do not think, therefore, that the Union has made out any case for increasing the amount of the lunch allowance. As regards warners, the practice has been that they generally carry their lunch with them and there is no evidence to show that they incur any expense for lunch when they are on duty away from their homes. In my opinion, therefore, the drivers should get the lunch allowance as they are getting at present and the warners are not entitled to any.

DEMAND No. 5

8. This demand is whether the drivers and warners when they are required to go on duty out of Bombay be given any mileage allowance, in addition to the daily allowance which they are getting at present, and if so, at what rate? It is admitted on behalf of the Union that the mileage allowance which is demanded is a misnomer and what is really wanted is an increase in daily allowance when the drivers and warners are sent out on duty. According to the management when the drivers and warners go on duty out of station they generally travel in Government vehicles

and they are paid daily allowance at Re. 0-14-0 to Re. 1 per day according to their pay to cover their out of pocket expenses. There is no evidence to show that this amount paid to them is insufficient and that they have to incur additional expense when they go out of station. I, therefore, reject this demand.

DEMAND No. 6

9. This demand relates to the change in the present system of payment to the drivers and warners on or before the 10th of each month. It is agreed before me by the parties that the payment to drivers and warners should be on the 3rd, 4th and 5th of each month in the three depots of Colaba, Sewree and Mahim respectively and I, therefore, award accordingly.

DEMAND No. 7

10. The next two demands Nos. 7 and 8 relate to the payment of bonus equivalent to one month's wages every year and a grant of the same to a driver or warner who is discharged from the service. Although some bonus was paid to the drivers before the 1st of May 1945, it was abolished after the revision of the scales of pay when the pay of the drivers was revised from Rs. 50 to 60 and of the warners from Rs. 31 to Rs. 40. According to the management the drivers and warners are not entitled as such to any annual or victory bonus. It is further urged that if any temporary worker is discharged from service, he is entitled to his earned leave which is due to him. The Union demands the bonus on the ground that the G. T. S. is run as a commercial concern and that in the 3 private concerns mentioned above, the practice of granting bonus has been recently started. It may, however, be noted that on the 6th of January 1947 the Government of Bombay have announced (*vide* Finance Department G. R. No. 6261/33) non-recurring interim bonus to low-paid Government servants (1) on pay below Rs. 40 and (2) to those earning between Rs. 40 and Rs. 250. The former will get Rs. 60 and the latter Rs. 120 by way of bonus. I understand that the drivers and warners of the G. T. S. are also entitled to this bonus. In these circumstances, I do not think that the drivers and warners are entitled to any additional bonus as of right. The demand of the employees for bonus on discharge is rejected.

DEMAND No. 9

11. This demand is whether the discharge of Mr. N. S. Kulkarni, Assistant Depot Vehicle Operator, is justified and if not, should he be reinstated? This demand relates to the order passed by the Director of the G. T. S. discharging Mr. Kulkarni from the

service with one month's notice given on 18th June 1946. It is alleged on behalf of the Union that Mr. Kulkarni was victimised because he took part or assisted in the strike of the employees and that he should, therefore, be reinstated. The management denies this and says that Mr. Kulkarni was discharged not because he had taken any active part in the strike but because there were several complaints against him from his superior officers as to neglect of duty, etc., and the explanations given by Mr. Kulkarni were found to be unsatisfactory. On this point the management have examined Major Savage, the Director of the G. T. S. and other officers. Major Savage says that Mr. Kulkarni's job was to regulate the drivers at DeLisle Road and manage the distribution of grain in conjunction with the godown staff. He received a number of complaints against Mr. Kulkarni from persons who are directly connected with him and he did not improve although he was duly warned. On the 1st of June he signed the muster roll and went away without permission. The correspondence and copies of office notes produced on behalf of the management, Exhibits "K", "L", "U" and "V" clearly show that Mr. Kulkarni had neglected duties and had not given satisfactory explanation to the charge against him. In his evidence Mr. Kulkarni says that he did not sign the muster roll on the 1st. From the evidence of Mr. Satpute, Depot Vehicle Operator, Mahim, it is clear that he did sign the muster roll and went away without permission. There was also a complaint against him for issuing double lunch allowance certificates to drivers and he had not given any satisfactory explanation about that. I am quite satisfied on the evidence led by the management that Mr. Kulkarni was discharged because of gross neglect of duties and not because he had taken any part in the strike. It may be that he might have advised the workers to form a union and addressed the meeting but it is clear to me that he was not discharged for that reason but for his neglect of duties. It is urged that the discharge is improper as no opportunity was given to him for explaining his conduct but if that is so, he ought to have appealed to the proper higher authority concerned as prescribed in the Bombay Civil Services Conduct Discipline and Appeal Rules. The question of reinstatement would arise only if he had been victimised and it is clear that there has been no victimisation. In fact it was admitted on behalf of the Union that Mr. Kulkarni had not taken part in making demands of the workers or conducting the strike. I hold that Mr. Kulkarni is not entitled to be reinstated, and his discharge was justified.

DEMAND No. 10

12. Lastly there is demand No. 10 (a) as to whether the drivers and warners who went on strike be paid their wages for the period

of strike. The case for the management on this point is that under the Government rules, Government servants are not allowed to join any union which is conducted by others although, they may form their own union. For that reason the management did not recognise the outside union namely, the Lorry Drivers and Workers Union, Bombay, although the G.T.S. authorities acknowledged the Union's letters. But the employees were not justified in going on strike because the demands were not conceded. It is further contended that the strike was not a peaceful one at all and that a good deal of violence was used while conducting it with the result that the military had to be called to assist in the distribution of grain to the several centres. Major Savage has deposed that one lorry was burnt and some drivers were prosecuted and that one of the prosecutions is still pending. It is urged on behalf of the Union that in the prosecution in which the strikers were concerned, they were simply fined and that, therefore, the offences were not serious but the test is not whether a fine or a sentence was imposed but the main test is whether the strike was justified and peaceful. There is no doubt on the evidence that the strike was not peaceful at all and that it was not justified because it took place merely on account of the rejection of demands made by the employees through a union which the Government was not bound to recognise unless certain conditions prescribed in rule 31-A of the Bombay Civil Services Conduct, Appeal and Discipline Rules were fulfilled. The employees could have formed their own union or they could have made their demands separately without joining any union. I am, therefore, of the opinion that as the strike was not justified and as it was not also peaceful the strikers are not entitled to the wages for the period of the strike. As regards demand No. 10 (b) the learned Advocate General has admitted before me that there is no intention on the part of the management to penalise any driver or warner for going on strike.

13. In the result, therefore, I award on the 10 demands as follows:

Demand No. 1.—The scale of the drivers should be Rs. 60-5-75. This should be with effect from first May 1945. The new entrants will start on Rs. 60 in the above scale. This should be exclusive of the recent temporary increase of Rs. 10 per mensem, dearness allowance, and the amount of Rs. 5 for rent in lieu of free quarters. The wages of the Warners need not be revised.

Demand No. 2.—(a) For every half an hour of overtime after 9 hours of work including lunch interval on week days, a driver should get at the rate of 4 annas and the warner at the rate of 2 annas.

(b) The drivers and warners should be paid the same rate as present when they are required to work on Sundays and Holidays:

Demand No. 3 is rejected.

Demand No. 4.—The drivers should get the same lunch allowance as they are getting at present and the warners are not entitled to any lunch allowance.

Demand No. 5 is rejected.

Demand No. 6.—The monthly wages of the drivers and warners should be paid on the 3rd, 4th and 5th of each month in the three depots of Colaba, Sewree and Mahim respectively.

Demands No. 7 and 8 regarding bonus are disallowed.

Demand No. 9.—Mr. Kulkarni is not entitled to be reinstated and his discharge was justified.

Demand No. 10.—The drivers and warners are not entitled to their wages for the period of strike from 18th July 1946 to 24th August 1946 and that no driver and warner should be penalised for going on strike.

H. V. DIVATIA,
Adjudicator.

Bombay, 27th January 1947.

(*Bombay Castle, 31-1-1947, No. 495/46-1, Government Gazette Part I. pp. 505 to 510*)

56 OWNERS OF MOTOR SERVICES

AND

THEIR EMPLOYEES IN WEST KHANDESH

Adjudicator:—Sir Harsidhbhai V. Divatia, President, Industrial Court.

Mr. S. B. Kotwal, Advocate, for the members for the West Khandesh Motor Operators' Federation, Dhulia.

Mr. K. T. Sule, Advocate, with Mr. R. K. Koke, President, and Mr. D. N. Shah, General Secretary of the West Khandesh Motor Workers' Union, Dhulia, for the employees.

A w a r d

By Political and Services Department Notification No. 495/46, dated 23rd October 1946, issued in pursuance of the provisions of rule 81-A of the Defence of India Rules as continued in force by section 2 of the Emergency Provisions (Continuance) Ordinance, 1946, the trade dispute between 56 owners of Motor Services and their employees in West Khandesh was referred to me for adjudication. The dispute consists of about 15 demands relating to pay,

hours of work, holidays, bonus, provident fund, uniforms, etc., of Bus Drivers, Truck Drivers, Cleaners, Agents, Mechanics and Blacksmiths employed by the Motor Owners.

2. The preliminary hearing of the dispute was fixed on the 23rd December 1946. On that day Mr. S. B. Kotwal appeared for the Motor Operators' Federation of Dhulia, representing 37 members (as per Annexure B) and Mr. K. T. Sule, instructed by the President and Secretary of the West Khandesh Motor Workers' Union for the employees. At that time counsel on both the sides informed me that the dispute was almost settled between the Owners' Federation and the Workers' Union and that the draft of the settlement was intitialled by representatives of both sides and filed in the Court. They, however, asked for some time to settle finally the terms of the settlement and also to induce the non-member owners to give their consent to the settlement. I, therefore, adjourned the proceedings till the 21st January 1947. In the meantime notices were issued to 19 non-member owners (*vide* Annexure C) that they may file their written statements on or before the 20th January provided the terms of the draft settlement between the Federation and the Union were not acceptable to them. Till 21st January no separate written statements were received from the non-members nor had any one appeared on their behalf before me. The Memorandum of Settlement was finally drawn and signed before me on 23rd January 1947 by the representatives of the Federation and the Union. I make an award in terms of the settlement, a copy of which is attached herewith and marked Annexure A. The settlement shall bind the members of the Federation and the Workers' Union.

3. Since none of the employees mentioned in Annexure C or the non-member employees of the Workers' Union appeared before me, by implication it follows that the terms of the memorandum of settlement were also acceptable to them. I therefore, award that the terms of the settlement shall also apply to the non-member employers mentioned in Schedule C and also to other employees who are not members of the West Khandesh Motor Workers' Union.

H. V. DIVATIA,

Adjudicator.

Bombay, 27th January 1947.

ANNEXURE "A"

MEMORANDUM OF SETTLEMENT

The following terms of settlement are arrived at between the West Khandesh Motor Operators' Federation, Dhulia (on behalf of 37 members mentioned in Annexure B) and their employees represented by the West Khandesh Motor Workers' Union Dhulia:

DEMANDS

Demand No. 1.—Should the employees be given fixed pay as follows:

Bus Drivers	...	...	Rs. 90 per mensem.
Truck Drivers	...	...	Rs. 100 per mensem.
Cleaners	...	...	Rs. 60 per mensem.
Agents	...	...	Rs. 80 per mensem.
Mechanics	...	...	Rs. 150 per mensem.
Blacksmiths (Lohars)	...	...	Rs. 120 per mensem.

If not, what other pay should be fixed and from what date?

DEMAND No.2.—Should the employees when on duty outside the municipal limits be given daily allowance as follows:

Drivers	...	...	Rs. 3 per day.
Cleaners and Agents.	...	...	Rs. 2 per day.

If not, what other allowance should be fixed?

TERMS OF SETTLEMENT

The pay of the different categories of employees should be as follows:

(1) Bus Drivers	...	...	Rs. 45—2—85.
(2) Truck Drivers	...	...	Rs. 50—2—90.
(3) Cleaners	...	...	Rs. 25
(4) Conductors and Agents	...	...	Rs. 40

The demand regarding the scale of pay of mechanics and blacksmiths (Lohars) is not pressed and is, therefore, withdrawn.

The scales of pay of the employees of Dhulia-Chalisgaon Motor Union, Nandurbar-Dondaicha Motor Union, Dondaicha-Shahada Motor Union, Nandurbar-Taloda Motor Union, Nandurbar-Sakri Motor Union, Pimpalner-Sakri Motor Union,

Shahade-Khetia Motor Union and Shahade-Dondaiche Motor Union will be as follows:

(1) Bus Driver	...	...	Rs. 30—3/2—60.
(2) Cleaners	...	...	Rs. 20— —
(3) Conductors and Agents	...	...	Rs. 25

The scale of pay of employees of Shirpur Transport Motor Union and Shirpur-Shendba Motor Union will be as follows:

(1) Bus Drivers	...	...	Rs. 35—2—65.
(2) Cleaners	...	...	Rs. 22
(3) Conductors and Agents	...	...	Rs. 30

The employees should be given daily allowance as under:

The bus drivers should draw daily allowance at the rate of one quarter of an anna per each mile of the distance over which he has to drive his bus outside the municipal limits subject to a maximum of Rs 1-8-0 for any one day.

A truck driver should get Rs. 2 per day within the district and Rs. 2-8-0 per day outside the district. A truck driver shall be deemed to have gone outside the district if he goes beyond a distance of 75 miles except when he has to go to Jalgaon in which case he shall be deemed to have gone outside the district.

The cleaners should draw daily allowance at the rate of one quarter of an anna for each mile of the distance over which he goes with the bus on duty subject to a maximum of Rs. 1-4-0 per day.

The conductor and agent should draw daily allowance at the rate of one quarter of an anna for each mile of the distance over which he goes with the bus on duty subject to a maximum of Rs. 1-8-0 per day.

A bus driver or bus cleaner should get an extra allowance of 0-8-0 a day whenever he has to halt for the night at any place not being the place of his residence.

Bus drivers, cleaners, conductors and agents of Dhulia-Chalisgaon Motor Union, Nandurbar-Dondaiche Motor Union, Dondaiche-Shahada Motor Union, Nandurbar-Taloda Motor Union, Nandurbar-Sakri Motor Union, Pimpalner Sakri Motor Union, Shahade-Khetia Motor Union and Shahade-Dondaiche Motor Union shall be paid daily allowance of Re. 0-12-0 per day if they are required to take at least one meal outside and Re. 0-8-0 per day in all other cases.

The employees of Shirpur Transport Motor Union and Shirpur-Shendba Motor Union will be given daily allowance as under:

Drivers, conductors and agents Re. 1-0-0 if required to take meal outside and Re. 0-8-0 in all other cases. Cleaners 12 annas per day if required to take one meal outside and 8 annas in other cases.

DEMANDS

N. 3.—Should the hours of duty be fixed at eight hours per day?

No. 4.—Should the employees be granted holidays with pay on "Sundays" and festival days?

No. 5.—Should the employees be granted one month's privilege leave with pay for every year of service and if so, on what terms and conditions?

No. 6.—Should the employees be granted over-time wages at one and half times the ordinary rate of pay for work done on holidays and in excess of eight hours on working days?

No. 7.—Should the employees be given free medical aid and leave with full pay during period of sickness?

No. 8.—Should the employees be given bonus equivalent to one month's pay for each year since 1939 and if so, on what terms and conditions?

No. 9.—Should the employees be given an annual bonus equivalent to one month's pay every year and if so, on what terms and conditions?

TERMS OF SETTLEMENT

No. 3. The hours of work are fixed at nine hours a day, subject to the Motor Vehicles Act (Act No. IV of 1939) and the rules made thereunder.

No. 4. The employees should be given a holiday once a week and on the following festival days, viz.:

(1) Diwali day, (2) Dassara, (3) Holi day, (4) Ganesh Chaturthi—for the Hindus.

and

(1) Ramzan Id, (2) Bakri Id and (3) Moharum day—for the Mohammedans,

and

(1) Easter day, (2) Christmas day and (3) New Year's day—for Christians.

No. 5. The employees should be given leave with full pay for a period not exceeding fifteen days.

No employee shall go on leave without having his leave previously sanctioned by the employer. An employee shall be given an acknowledgment of his leave application. If no orders are passed on his application within four days of the receipt thereof, the leave applied for shall be deemed to have been sanctioned.

Every employee shall apply for leave at least eight days before the day on which he wants to proceed on leave except in *bona fide* cases of emergency and sickness.

An employee shall not be entitled to fake leave at any one time for a period exceeding seven days. Absence from duty

for any period beyond the period of seven days mentioned above shall be considered as leave without pay.

Any holiday permissible to the employee under clause (iv) of the Memorandum of Settlement falling within the said period of seven days shall be included in the said leave period. Likewise an employee shall not be entitled either to prefix or to suffix any of the said holidays to the above mentioned period of leave.

The period of leave shall not be subject to accumulation except to the extent of one month.

No. 6. The employees should be given over-time pay for extra work done by them on Holidays or in excess of the period of nine hours of work per day. This over-time pay being fixed on the basis of his monthly pay calculated proportionately for the extra hours of work done by them.

No. 7. A fixed sickness allowance of Rs. 25 per year should be given to each employee, the allowance being payable in the first week of June every year.

No. 8. This demand is waived.

No. 9. The owners should pay to every permanent employee an annual bonus not exceeding one month's pay every year.

DEMANDS

No. 10.—Should the employees be provided with three uniforms every year?

No. 11.—Should a Provident Fund Scheme be introduced and if so, on what terms and conditions?

No. 12.—Should the employees be granted dearness allowance on the scale given to Government employees and if not, what other scale should be fixed?

No. 13.—Should the employees with three month's service be made permanent?

No. 14.—Should the cases of permanent employees to be discharged be referred to the arbitration of the representatives of employers, and union?

TERMS OF SETTLEMENT

No. 10. The drivers should be given, at the cost of the employers, two Uniforms every year.

The uniforms shall remain the property of the employers and shall be kept by the employees, on the employer's premises. The employees shall be bound to change them at the premises when on or off duty.

Any uniform or uniforms that may be required by any employee over and above the two uniforms which employers have agreed to give shall be made by the employee at his own expense.

No. 11. A provident fund scheme should be introduced as per the following terms and conditions:

Only a permanent employee shall be eligible to join the Provident Fund scheme. A permanent employee desiring to join the scheme shall have to subscribe towards the said fund one anna in the rupee on an amount not exceeding the amount of his monthly salary and the employer shall contribute an equal amount towards the fund every month.

If any subscriber-employee discontinues or fails to pay his subscription to the fund continuously for two months he shall not be entitled to get any part of the employer's contribution to the fund, provided that he will be entitled to get the employer's contribution if he pays up the arrears in respect of which he had been in default.

Subscriber to the fund shall be entitled to a share of the employer's contribution in accordance with the following scales, viz.:—

	Percentage of the employer's contribution.
(1) Subscribers of less than three years' standing.	Nil.
(2) Subscribers of three but less than six years' standing.	50 per cent.
(3) Subscribers of six but less than nine years' standing.	75 per cent.
(4) Subscribers of nine or more years' standing.	100 per cent.

Subject to what is stated above a subscriber when leaving the service of his employer shall be entitled to get the full amount of his own subscription to the fund.

No. 12. The employees should be given dearness allowance at the rate of Rs. 18 per month.

The employees of Dhulia Chalisgaon Motor Union, Nandurbar Dondaiche Motor Union, Dondaicha Shahada Motor Union, Nandurbar Taloda Motor Union, Nandurbar Sakri Motor Union, Pimpalner Sakri Motor Union, Shahade Khetia Motor Union and Shahada Dondaiche Motor Union will be paid dearness allowance at the rate of Rs. 12 per month.

The employees of Shirpur Transport Motor Union and Shirpur, Shendbā Motor Union will be paid dearness allowance at the rate of Rs. 15 per month.

This allowance will be stopped as soon as the Provincial Government stops paying dearness allowance to their employees in the lower grade of service.

No. 13. An employee with six months' continuous service should be made permanent.

No. 14. All disputes including the question of discharge of permanent employees, viz. drivers, cleaners, agents of conductors—arising between the employer or employers on the one hand and drivers, cleaners and agents or conductors on the other, should, as provided for in the resolution dated 15th October 1946, mutually agreed to in the presence of Mr. Shankarrao Deo, be referred to the arbitration of the following persons, viz. three elected representatives from amongst the drivers, cleaners and agents or conductors, and the three elected representatives from amongst the West Khandesh Motor Operators' Federation, Dhulia. In case of a tie between the two sets of representatives mentioned above the dispute shall be referred to the arbitration of an umpire agreed to by both the parties. The decision of the umpire on a reference so made to him shall be final and binding on both the parties.

DEMAND No. 15.—Should the permanent employees to be discharged be given one month's notice or one month's pay in lieu of notice?

TERMS OF SETTLEMENT

- (a) One month's notice or one month's pay in lieu of notice should be given to the permanent employees who have completed six months' continuous service before discharge.
- (b) An employee shall give to the employer at least fifteen days' previous notice before leaving his employment. Failure to give such notice shall make him liable to forfeit the amount of pay that may have accrued due to him till the time of his leaving the employment without notice.
- (c) An employee shall do such work as is assigned to him by the employer falling within the scope of his employment.
- (d) Subject to the provisions of clause (f) below, a permanent employee may be dismissed by the employer without notice or any pay or compensation in lieu of notice if he is found guilty of misconduct.
- (e) The following acts and omissions shall be treated as misconduct:
 - (i) Wilful insubordination or disobedience to any lawful and reasonable orders of the employer or of a superior while on duty. The term "superior" shall mean and include a manager or an assistant manager, as well as the president or the vice-president or any other person who is in charge of the management of the union for the

time being.

- (ii) Participating in or inciting others to an illegal strike.
- (iii) Theft, fraud, dishonesty or tampering in connection with the employer's business, property or premises.
- (iv) Habitual rudeness or insolence in behaving with the passengers.
- (v) Habitual absence without leave or habitual late attendance.
- (vi) Unauthorised collections or appropriation of money during the course of employment.
- (vii) Drunkenness or riotous disorderly behaviour during working hours or any acts subversive of discipline or efficiency.
- (viii) Habitual negligence in work.
- (ix) Habitual breach of any rules or instructions more particularly in regard to the running and maintenance of the bus or truck service of the employer.
- (x) Causing damage by the rash or negligent act to any property entrusted to his care.
- (xi) Refusal or failure to do the work assigned to him by the employer.
- (xii) Rash or negligent driving or driving under the influence of liquor.
- (xiii) Breach of any provision pertaining to the employees of the Motor Vehicles Act, 1939, or the rules framed thereunder.
- (xiv) Overloading or overseating.
- (xv) Conviction for any offence under the Indian Penal Code.
- (f) For the first default an employee is liable to fine; for the second default he will be liable to suspension; and for any subsequent default he is liable to dismissal.
- (g) Before an order of dismissal is passed, the employee concerned should be given an opportunity to explain the circumstances alleged against him. The reason or reasons of dismissal shall be communicated to the employee concerned in writing.
- (h) In awarding punishment under this paragraph the employer shall take into account the gravity of the misconduct, the previous record, if any, of the employee and any other extenuating or aggravating circumstances that may exist.
- (i) Whenever an employee is either discharged or dismissed he shall be informed in writing as to the cause of his discharge or dismissal.

N. B. No. 1.—The terms of settlement against demands Nos. (1), (2) and (12) will not apply to the employees of the service between Sindkheda Town and Sindkheda Station run by Shirpur Transport Motor Union.

N. B. No. 2.—The terms of this settlement shall be deemed to have come into force with effect from 1st October 1946.

N. B. No. 3.—All arrears of payment due to the employees shall be paid before 31st March 1947.

(Signed) S. B. KOTWAL,
For and on behalf of the West
Khandesh Motor Workers
Federation, Dhulia.

(Signed) R. K. KOKE,
President.

Before me,
(Signed) H. V. DIVARIA,
Adjudicator.
23rd January 1947.

(Signed) D. N. SHAH,
General Secretary,
for and on behalf of the West
Khandesh Motor Workers'
Union, Dhulia.

ANNEXURE "B".

- (1) Dhulia Ner Sakri Motor Union.
- (2) Dhulia Jalgaon Motor Union.
- (3) Dhulia Dondaiche Motor Union.
- (4) Dhulia Nardane Motor Union.
- (5) Dhulia Chalisgaon Motor Union.
- (6) Malegaon Dhulia Motor Transport.
- (7) Nandurbar Dondaiche Motor Union.
- (8) Dondaicha Shahada Motor Union.
- (9) Nandurbar Taloda Motor Union.
- (10) Shirpur Transport Motor Union.
- (11) Nandurbar Sakri Motor Union.
- (12) Pimpalner Sakri Motor Union.
- (13) Shirpur Shendha Motor Union.
- (14) Shahade Khetia Motor Union.
- (15) Shahade Donaiche Motor Union.
- (16) Messrs. Badgujar & Co.
- (17) M. K. Hajee Devpur, Esquire.
- (18) Haji Ahmedissa, Esquire.
- (19) Messrs. Chimanlal & Sons.
- (20) Mohanlal Ranchhoddas, Esquire.
- (21) Jagannath Bachhulal, Esquire.
- (22) Messrs. Ayub Khudabaksh & Co.
- (23) Shankerlal Kevalram, Esquire.

- (24) Sujauddin Phidaalli, Esquire.
 - (25) D. K. Adjani, Esquire.
 - (26) Dhulia United Transport Owners' Union.
 - (27) Khandesh Motor Transport Company.
 - (28) Mohamed Shakur Mohamedshaphi, Esquire.
 - (29) Hanif Mohamed Shafi, Esquire.
 - (30) S. G. Kapse, Esquire.
 - (31) N. S. Talathi, Esquire.
 - (32) Papalal Shivchand, Esquire.
 - (33) Shantilal Mulchand, Esquire.
 - (34) Jethalal Shivalal, Esquire.
 - (35) Shaikh Vazir Shaikh Masum, Esquire.
 - (36) Kanaiyalal Shivnath, Esquire.
 - (37) R. N. Kulkarni, Esquire.
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APPENDIX "C".

- (1) Dhulia Amalner Motor Union.
 - (2) Musa Mechanic Mussa Garrage.
 - (3) Bijeram Dedraj, Esquire.
 - (4) B. B. Bavat, Esquire.
 - (5) Dwarkadas Vithaldas, Esquire.
 - (6) Bansilal Kanhaiyalal Esquire.
 - (7) Suvalal Ramchandra, Esquire.
 - (8) Suleman Sheth, Esquire.
 - (9) Dwarkadas Stores.
 - (10) Gulabchand Panachand, Esquire.
 - (11) Shankar Mistry, Esquire.
 - (12) Velji Shivji, Esquire.
 - (13) Shaikh Yasin Shaikh Bannu, Esquire.
 - (14) Chaganlal Bhagvandas, Esquire.
 - (15) Gulabchand Bhagwandas, Esquire.
 - (16) B. G. Patil, Esquire.
 - (17) Siddik Abdulla, Esquire.
 - (18) Khandesh Saw Mills.
 - (19) R. K. Cavasji Tadiwala, Esquire.
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(Bombay Castle, 16-10-1942, No. 6215/34. Government Gazette

Part I, pp. 3709 to 3724).

STANDARD VACUUM OIL COMPANY, BOMBAY,

AND

ITS EMPLOYEES

Adjudicator.—E. M. Nanavutty, Esq. I.C.S., (Retired).

Mr. M. G. R. Aitken of Messrs. Crawford Bayley & Co., 'Solicitors with Mr. C. A. Osborn, Manager, for the Standard Vacuum Oil Company.

Mr. Chimanlal C. Shah of Messrs. Manchershaw B. Chothia & Co., Solicitor, with Mr. G. K. Vaze, Advocate for the National Oil Workers' Union.

Mr. N. A. Mehrban, M.B.E., Assistant Commissioner of Labour, was also present.

A w a r d

By Government Notification, Political and Services Department, No. 6215/34-A of the 26th August 1942, I was appointed by the Government of Bombay, Adjudicator under sub-rule (1) of rule 81-A of the Defence of India Rules in the matter of the trade dispute between the Standard Vacuum Oil Company, Bombay, and its employees.

By a separate Government Notification, Political and Services Department, No. 6215/34-B of the same date, I was also appointed Adjudicator in the trade dispute between the Caltex (India) Ltd., Bombay, and its employees. For the purpose of adjudicating these two disputes I was authorised to exercise such powers as are conferred on, and follow such procedure as is prescribed for, a Board of Conciliation under the Trade Disputes Act, 1929, and the Bombay Trade Disputes Rules, 1930.

Upon the request of both parties these two trade disputes were tried by me separately, and separate adjudication Awards have therefore been submitted to the Government. In the present case I will be dealing solely with the dispute between the Standard Vacuum Oil Company and its employees.

Upon the receipt of Government orders, the usual notices were issued to both parties, and 15th September 1942 was provisionally fixed for the hearing of the case before me, but before that date the Standard Vacuum Oil Company through their firm of Solicitors,

Messrs. Crawford Bayley & Co., applied for extension of time and the hearing of the case was postponed to 22nd September 1942. Arguments of both sides were heard on the 22nd and 23rd September 1942, and the hearing of the case was adjourned to 1st October 1942, after a local inspection of the factories of the Oil Companies had been made by me on the 30th September 1942, in the presence of the parties and their lawyers. Arguments were again heard on the 1st October 1942, and the case was adjourned for the preparation and dictation of the Award.

At the commencement of the hearing of the case Mr. Aitken, on behalf of the Standard Vacuum Oil Company, raised a preliminary objection, that the National Oil Workers' Union for whom Mr. C. C. Shah appeared was not representative of the workers of the Standard Vacuum Oil Company, that the total membership of the Union was only 148 out of a total number of workers employed in all the oil companies in Bombay aggregating to 2,230. Mr. Aitken, therefore, submitted that the demands formulated by the Union were not representative of the workers employed by the Standard Vacuum Oil Company. Mr. C. C. Shah, on behalf of the National Oil Workers' Union, urged that out of the total number of about 500 workers employed by the Standard Vacuum Oil Company, nearly 262 workers were members of the National Oil Workers' Union, and that the Union therefore substantially represented the workers of the Standard Vacuum Oil Company. Mr. Aitken in reply referred to sections 3 (29) and 75 of the Bombay Industrial Disputes Act, 1938. Mr. Mehrban, Assistant Commissioner of Labour, intervened and pointed out that the Bombay Industrial Disputes Act did not apply in the present case and that under the orders of the Government of Bombay, I, as Adjudicator, was to be guided by the Trade Disputes Act of 1929. The contention of Mr. Aitken though ingenious, has, to my mind, no substance. The very Government Notification appointing me Adjudicator in this case states that the dispute is between the Standard Vacuum Oil Company and its employees, and makes no mention of the National Oil Workers' Union. The latter are simply representing the body of employees belonging to the Company just as Messrs. Crawford Bayley & Co., are representing the Standard Vacuum Oil Company. Mr. Aitken has not been able to bring forward a single worker of the Company to come and state before me that he and other workers like him have no dispute of any kind with the Company. For the reasons given above I overrule the preliminary objection and hold that the National Oil Workers' Union does represent the workers of the two contesting Oil Companies and that the parties are duly represented before me.

I do not propose to discuss the preliminary general observations made by Mr. C. C. Shah in his opening address, for that would take me too far afield into the thorny subject of labour legislation and the true principles of political economy; and, moreover, that

would be entirely outside the scope of the work entrusted to me as Adjudicator.

I will now proceed to discuss the demands of the workers one by one.

DEMAND No. 1.—runs as follows:

“Pension and Death Benefit Scheme.—Some of the companies have a scheme of pension and death benefit with which the workers are not satisfied. The other companies have not even these unsatisfactory schemes for the benefit of their workers. The workers, therefore, demand that the companies having, at present, such schemes should revise them so that the workers may derive from them such benefit as they deserve and the workers also demand that the other companies should adopt these revised schemes so that all the companies may have a uniform and progressive scheme of pension and death benefit.”

So far as the Standard Vacuum Oil Company is concerned, this demand has been made in ignorance of the Pension and Death Benefit Scheme prepared by it. This Company had and still has in effect an Annuity and Death Benefit Plan to which the workers make no contribution whatsoever and which is financed entirely by the Company. The operation of the Plan is as follows:

The regular retirement age is 55 years, provided the employee has had a minimum of 20 years' service. In the case of an employee leaving the Company's service through "Regular Retirement" the employee receives an annuity for the balance of his life on the basis of $1\frac{1}{4}$ per cent. of each individual year's income. For example should an employee serve the Company from 20 years of age to 55 years of age he would receive an annuity for the rest of his life equivalent to 43.75 per cent. of his average wages during his term of service. Should the employee serve but 20 years and retire at the age of 55 he would receive an annuity equivalent to 25 per cent. of his average salary. At the option of the Company an employee at the age of 50 years with a minimum of 20 years' service may be retired on an annuity for life on a reduced basis as compared to "Regular Retirement". An employee not eligible for retirement under the foregoing provision of "Regular Retirement" or optional retirement, who has completed 15 years or more of active continuous service and who on physical examination is shown to be permanently and totally incapacitated for service, or whose retirement on account of advanced age or for other reasons is, in the judgment of the Company advisable, may be retired on a special allowance, the amount, duration, and method of payment thereof to be determined by the Company according to the merits of each individual case.

The Death Benefit Plan ensures that the declared beneficiary of a deceased worker is given one month's wages for each year the

worker was in the service of the Company with a maximum limit of 12 months' salary.

Mr. Aitken on behalf of the Standard Vacuum Oil Company has argued that the above scheme is very generous and has worked successfully in practically all countries of the world except the United States of America and Canada where a similar plan but requiring contributions by employees is in force.

Mr. Shah on behalf of the National Oil Workers' Union has frankly conceded that the above scheme is very generous and he gratefully accepts it on behalf of the workers. The only modification he would like to see made in it, would be to give to the declared beneficiary of a deceased worker one month's wages for each year the worker was in the service of the Company and that the clause fixing the maximum limit of 12 months' salary should be deleted from the Death Benefit Plan devised by the Company. Mr. Shah's contention on this point is that it is not fair that the heir of a worker who has served the Company for more than 12 years should get the same lump sum by way of death benefit as the heir of one who has served the Company only for 12 years. I think it is always easy to pick holes in a scheme of this nature. Mr. Shah forgets that the scheme is a purely gratuitous one and depends upon the generosity of the Company and not upon any principle of logic or mathematics. A worker who retired from service will get his pension while he lives, and after his death his beneficiary will get a lump sum equivalent to 12 months' wages of the deceased worker. In my opinion the Pension Scheme and the Death Benefit Scheme set forth above are extremely generous, and this is conceded by Mr. Shah himself, and I am not prepared to recommend any modification in the existing Pension and Death Benefit Plan of the Company. That disposes of Demand No. 1.

I come next to Demand No. 2 which is as follows:

"Gratuity Scheme.—The pension and death benefit scheme come into operation upon a worker completing a certain number of years' service. No arrangement or pension provision is made for such workers as are compelled to leave the service of the Company on account of ill health, old age or such other circumstances beyond his control, before he puts in the requisite length of service in order to become eligible for pension and death benefit scheme. The workers feel that a gratuity scheme must be introduced to give relief in such cases."

The Standard Vacuum Oil Company has fully met this demand of its workers by introducing from the 1st September 1942, a gratuity scheme whereby it has decided to put into effect a schedule of special termination allowances in the case of employees of good standing, who are not entitled to benefits under the Annuity and Death Benefit Plan and whose employment is terminated

through no fault of their own, on the basis of the undernoted formula, which is used by the Company in America :

$$\frac{(\text{Age of employee})^2 \times (\text{Length of his service})^2}{12800} \times 2 = \text{Special Termination}$$

Allowance in number of weeks of full pay.

The Company has filed with its written statement a table and formula of special termination allowances made up on the basis of the above formula. The table and the formula are attached as appendices I and II respectively so as to form part of my Award. The termination allowance will not apply to the case of an employee who has less than one year's service; the maximum termination allowance will be for 52 weeks. Furthermore, any wages required to be paid in lieu of notice of termination of employment are to be considered as forming part of the termination allowance.

Mr. Shah on behalf of the National Oil Workers' Union gratefully accepted the gratuity scheme now brought into operation from the 1st of September 1942. He, however, objected to the wages in lieu of notice of termination of employment being considered as forming part of the termination allowance. Here again Mr. Shah has overlooked the fact that this gratuity scheme is purely gratuitous and he cannot, therefore, ask me to coerce the Company to be more liberal than what it chooses to be in the grant of its favours. I disallow this objection. This disposes of Demand No. 2.

I come next to discuss Demand No. 3 which runs as follows :

*"Immediate and free medical aid in cases of accidents and free medical aid to all the employees of the Company.—*The workers feel that it is really unfortunate in such progressive times and in such advanced factories that there is as yet no provision made for free medical aid to all the employees of the Company even in cases of accident, etc. arising out of the work. In view of the unsatisfactory wages paid to the workers and the daily rise in the cost of living the workers say that they are not in a position to meet the expenses involved in such emergencies and they feel that all companies should make arrangements for free medical aid to all the employees of the company."

In reply to this demand for free medical aid to employees it is urged on behalf of the Company that the procedure followed by the Company is that accident cases are immediately sent to the King Edward Memorial Hospital for attention, and workers are paid from the time of the accident full "ex-gratia" pay until such time as a discharge certificate is issued to the worker by the

Hospital authorities or until his case has been determined by the Company or the authorities under the Workmen's Compensation Act.

In addition, the Company provides "First Aid Boxes". All medical expenses incurred in connection with accidents which arise out of, and in the course of the employment, are paid for by the Company. The Company has further arranged from the 15th September 1942, for the services of a qualified doctor who is to visit each of its installations on every working day for the benefit of its installation workers.

Mr. Shah on behalf of the National Oil Workers' Union has once more to express his thanks to the Company for granting so generously this Demand No. 3 of the workers for free medical aid. This disposes of Demand No. 3.

DEMAND No. 4.—is as follows:

"Full pay for absence of work on account of an injury arising from an accident in the course of employment.—The workers feel that if they are compelled to remain absent from work on account of injuries received in the course of their work, they should be given full pay for such period on production of proper medical certificate testifying to their inability to work."

The reply of the Company to this demand is that in terms of section 3 of the Workmen's Compensation Act the Company is not in law obliged to pay compensation in respect of any injury which does not result in total or partial disablement of the workman for a period exceeding seven days. Notwithstanding this section 3 of the Workmen's Compensation Act, the Standard Vacuum Oil Company has all along "ex-gratia" paid wages in full to injured employees from the actual day of the accident.

Mr. Shah had nothing to urge in respect of this demand, and it is obvious that the workers have in fact no grievance in respect of this demand for wages to injured employees. Demand No. 4 is thus satisfactorily met.

I come next to Demand No. 5 which is the chief bone of contention between the parties. Demand No. 5 is worded thus:

"Grant of Bonus.—The workers have not been given any bonus for even in the last three or four years, when the factories have made gigantic profits on account of the war. It is admitted on all hands that the workers are entitled to a share of these extra profits made by the Company mainly on account of their exertion. The majority of the workers in other industries in Bombay have already been given this benefit and the workers of your Companies feel that they must get the same with retrospective effect."

In support of this demand Mr. Shah urged that most of the

oil companies may be presumed to have made huge profits during war time, and that workers in several other industries have been paid bonus. In this connection he cited the Award of Mr. Justice Chagla in the industrial dispute between the General Motors (India), Ltd., and its employees and quoted from it the following passage:

"It is almost a universally accepted principle now that the profits are made possible by the contribution that both capital and labour make in any particular industry, and I think it is also conceded that labour has a right to share in increased profits that are made in any particular period."

(*Bombay Government Gazette*, Part I, of May 28, 1942, at the bottom of page 1900).

Mr. Shah further quoted the following passage from the Award of Sir Robert Broomfield in the dispute between the Bombay Electric Supply & Tramway Co., Ltd., and its employees:

"It is the usual practice when bonuses are paid to the employees of a Company out of profits, to pay them in terms of the monthly wages, half a month's, one month's, two months' wages, as the case may be.....But the claim that in future the war allowance should be treated as part of wages in the calculation of bonuses is in my opinion a reasonable one and should be conceded."

(Vide *Bombay Government Gazette* Extraordinary. Part I, dated 10th July 1942, paragraph 25, at page 2533).

In this connection Mr. Shah desired that the Standard Vacuum Oil Company should be asked through their local Manager Mr. Osborn to furnish statements of accounts showing the profits made during the years 1938, 1939 and 1940; and he stated that if these statements showed that the profits of the Company were not more than what they used to be prior to the present world war, then the workers of the Company did not wish to press their claim for bonus.

Mr. Aitken on behalf of the Company consented to file the required statements for the years 1938, 1939 and 1940 in a sealed cover and claimed that these Balance Sheets submitted to the Adjudicator should be treated as confidential information under section 13 of the Trade Disputes Act of 1929. This assurance was given to him by me, and accordingly he filed in a confidential cover the required statements.

In opposing this demand for the grant of bonus Mr. Aitken urged that the demand was unreasonable and unjustified and that no case whatsoever was made out for the payment of bonus to the workers of the Company. He denied that the Company was

making huge profits; he pointed out that not only were the prices of the Company's major products controlled by the Government but also deliveries of such products had been reduced considerably owing to rationing and to Government's requirement for stock conservation. Petrol rationing was introduced in 1941 and kerosene too is at present rationed and in all probability will continue to be rationed to the extent of 50 per cent. of the normal consumption. Moreover deliveries of lubricating oils, diesel and furnace oils are also controlled by Government.

In the installations in Bombay the work involved is mainly that of storage. The Company has a grease plant and an emulsion plant and also a can-manufacturing plant. These are small plants in which comparatively few workers are employed. With the exception of these plants no process of manufacture is carried on in connection with the Company's installation and depots. The process of manufacturing of cans is mechanical and does not involve any high technical skill. The cans are not sold apart from the product and are merely used as receptacles for certain of the products. In Bombay and in other installations and depots in India all the work that is done is a mere prelude to distribution. The products are not changed from an unfinished article into a finished one. It is therefore urged on behalf of the Company that the contention of the Union that the employees are entitled to a share of the alleged extra profits made by the Company mainly on the ground of the special exertions of the workers is not well founded.

Mr. Aitken admitted that in the textile and a few other concerns in Bombay a bonus of varying amounts had been paid to employees in the year 1941. In some of these cases, however, the scale of wages paid to the employees is lower than the wages paid to those engaged in the oil industry. It was further urged by Mr. Aitken on behalf of the Company that the Company had recently allowed cash advances to the majority of its employees for the purpose of assisting them to evacuate their families, such advances being repaid in small instalments spread over a period of 12 months. The Standard Vacuum Oil Company is at present also paying dearness allowance on the scale followed by the Millowners' Association and approved of by Government. The dearness allowance at present payable to the installation worker amounts to Rs. 14-15-0 per mensem. This amount makes adequate provision against the increased cost of living of the employees. The Company has also guaranteed to each worker wages for 26 full days in every month. Overtime is allowed and paid for by the Company at one and a half times on all overtime worked in any one day in excess of 8½ hours during week days (i.e. Mondays to Fridays) and in excess of 5½ hours on Saturdays. It is urged on behalf of the Company that according to the Factories Act no overtime is payable at all since the total hours of work are less than 54 hours a week. Moreover, even if overtime were payable, it was argued that it would

under the Factories Act be at the rate of time and a quarter only per hour in excess of 54 hours up to 60 hours.

On behalf of the Standard Vacuum Oil Company Mr. Aitken further contended that the advantages given to the majority of the Company's employees (excluding new employees engaged for shop service since the outbreak of the war) exceeded the grant of one month's bonus. He argued that one month's bonus was equivalent to 8.33 per cent. of a year's wages and that during the current year the Company had (with few individual exceptions) given the installation employees monetary advantages greater than 8.33 per cent. of a year's wages. The Company had also guaranteed 26 days' pay in every month. Under this guarantee the majority of the workers would work for 296 days this year (less the days absent on privilege leave with pay and sick leave with pay) and would receive pay for 313 days (inclusive of 17 days for notified holidays this year). This was argued as being tantamount to an increase in earnings of approximately 5.75 per cent.

The Company has also made increases in pay on 1st January 1942, based on the maximum rates of pay current at that time, and with effect from 1st March 1942, the Company also raised the maximum rates of pay in most grades of employment, and this resulted in a considerable increase of wages in respect of a large number of the Company's employees from the date of fixing of the new maximum rates of pay. These increases in wages, Mr. Aitken argued, were of a far more substantial and lasting nature than any cash bonus of a month's wages demanded by the workers and their Union; and in view of this special benefit so recently granted to the employees of this Company, Mr. Aitken submitted that his clients were not prepared to accede to this new demand of bonus made as a matter of right.

I have listened with great interest to the arguments on both sides and have pondered long and anxiously over this question of bonus.

The New Oxford English Dictionary in twelve large volumes gives three meanings to the word "Bonus". These are:

- “(a) Money or its equivalent given as a premium or as an extra or irregular remuneration in consideration of offices performed;
- (b) An extra dividend paid to shareholders in a joint stock company from surplus profits;
- (c) A gratuity paid to workmen, masters of vessels and others over and above their stated salary.”

It is this third meaning that is applicable to the contentions of the parties to this dispute. It is thus clear that bonus is a free and voluntary gift made by the employer to his workmen of his own

sweet will.

In the *Labour Gazette*, Volume III, No. 7 of March 1924, at page 15, there is an illuminating report of the Bonus Dispute Committee appointed by the Government of Bombay, and presided over by the then Chief Justice of the High Court of Bombay the Honourable Sir Norman MacLeod. The report considers the nature and basis of the bonus which had been granted to the employees in the cotton mills of Bombay since 1919. After an elaborate discussion, the Committee came to the conclusion that such a claim for bonus would not be upheld in a court of law, and that the results of the working of the mill industry as a whole for the year 1923 were such as to justify the contention of the millowners that the profits did not admit of the demand of bonus.

Since the outbreak of the present world-war, however, the position in the mill industry and of all other industries brought under the operation of the "Essential Services (Maintenance) Ordinance" has changed considerably. It is expedient from the point of view of the owners themselves of industrial concerns, essential for the due prosecution of the war, that the workers in such industries should be kept contented and happy. Industrial peace at this juncture is of supreme importance; and if, as a result of these abnormal war-conditions, some of these concerns, like the Standard Vacuum Oil Company and the Caltex (India), Ltd., are making large profits, it seems but fair to me that an infinitesimal fraction of these profits may well be given, by way of bonus, to the workers in these Companies, without whose labour and co-operation these unusually large profits could not have been made available to these Companies. In this matter, the enlightened self-interest of the Directors of such Companies seems to me to march *pari passu* with the patriotic effort of the country to win the war, and is naturally in consonance with the war-policy of the Government of India.

I have examined the statements of accounts submitted by both these oil companies under two separate confidential covers, and I find on perusal that these two Companies have in fact made large profits during these war-years. I can, therefore, confidently assert that they can well afford to pay their workers a bonus of a month's wages out of the profits made by them during these war-years.

The fact that the managers and the superior American staff of these two Companies do not receive bonus is not a sufficient reason for refusing the grant of bonus to the workmen of these two Companies. There can be no manner of comparison between the wages of the Indian workman and the pay and emoluments and other amenities of a substantial and valuable nature on a liberal scale, exclusively enjoyed by a member of the superior American staff of these two Companies.

For the reasons given above I would recommend to Government that Demand No. 5 should be granted and that the employees

of the Standard Vacuum Oil Company upon whose threat to go on strike the present proceedings were initiated, should be each granted a month's wages by way of bonus. The bonus should in my opinion be calculated on basic wages excluding dearness allowance.

I come next to discuss Demand No. 6 which runs as follows:

*“Regular classification of employees: revision of minimum and maximum of wages; and fixing of regular annual increments.—*In some of the factories there is at present a sort of classification of employees but the workers feel that the said classification is highly unsatisfactory. They demand, therefore, a revision of the said classification and also of the minimum and maximum wages fixed. Besides, at present, workers are given increments from time to time but there is no system regulating these increments and the system is worked according to the whims and prejudices of the management. As a result of this, conscientious and intelligent workers are victimised with a view to make examples of them. Hence the workers demand that besides the revision of classification and of minimum and maximum wages, the companies should fix a system of regular annual increments. The workers further demand that those companies where these systems are not prevalent at present should adopt the revised scheme now to be framed by the other companies.”

I have heard the contentions of both parties and have on the 30th September 1942, in the presence of parties and their lawyers inspected the factories and installations of both the Standard Vacuum Oil Company and the Caltex (India), Ltd. Mr. Mehrban, Assistant Commissioner of Labour, accompanied me and helped me in understanding the working of the various installations and factories, and I am greatly indebted to him for his valuable expert help in enabling me to decide this Demand No. 6.

This demand resolves itself into three parts, namely:

- (a) correctness of the existing classification of employees;
- (b) fixed graded scale of annual increments in wages;
- (c) reduction in the number of years within which the maximum wages fixed for a certain class of workers can be attained by any particular employee.

As regards the classification of employees, it seems to me, after hearing both sides, that no change is called for in the classification itself as fixed by the Company. It has been suggested by Mr. Mehrban, Assistant Commissioner of Labour, that certain skilled trades like those of black-smiths, fitters, machinists (turners) and carpenters should be removed from the existing classification. On

mature reflection I am not prepared to interfere with the discretion exercised by the managers of these two Companies in this matter.

Equally unwilling am I to interfere with the minimum and maximum rates of wages fixed by the Companies. These rates appear to me to be on a fairly generous scale.

Mr. Shah on behalf of the employees of the Standard Vacuum Oil Company has, however, brought to my notice the special hardships borne by the soldermen who are required to sit in a circle round a blazing furnace in the centre, while they are doing their work for several hours. He has urged that these "handle-soldermen", as they are called, should receive 2 annas a head per diem more than their basic rate, so long as they are required to do this work under present conditions. He has also argued that the soldermen in the "filling department" where the fumes from the oil are responsible for the chronic cough which troubles these employees should also get extra wages of 2 annas a head per diem over and above the basic rate fixed for such employees.

After hearing all that Mr. Aitken had to say against these proposals on behalf of the workers, I feel that Mr. Shah's suggestion should be accepted. Although additional pay is no real substitute by way of compensation for the workers undertaking grave risks to health and life, as wisely and pertinently observed by Mr. Justice Broomfield in his award in the Bombay Electric Supply and Tramways Co., Ltd., dispute, still the employees will feel a sense of satisfaction that the extra hazard in the nature of the work undertaken by them is rewarded by the Company by granting them an extra 2 annas a day in addition to their wages. This sense of satisfaction will make for contentment amongst the employees and for the smooth and efficient working of the Companies' factories with the depth and silence of a strong tide at night.

Apart from these specific cases pointed out to me by Mr. Shah I do not think that the rest of the employees of the Standard Vacuum Oil Company require any special treatment.

I come next to the demand for a fixed graded scale of annual increments in wages. I have heard the parties at great length on this point. As a matter of principle I am loth to interfere with the internal management of the Company's affairs, but I must confess that increments granted on no fixed rule cannot command the respect of the workers. Even when there is no foundation in actual fact, the employees often suspect invidious distinctions, if the management of the Company order increments in the wages of particular workers on no fixed rule and at irregular intervals. This naturally creates jealousy amongst the employees themselves and leads to a lot of heart-burning. I am, therefore, in favour of the contention that there should be a fixed graded scale of annual increments in wages.

I now come to the vexed question as to the number of years within which a worker should reach his maximum wage fixed for

his kind of work. The Standard Vacuum Oil Company has fixed 16 years as a period for any workman in their Company attaining the maximum rate of pay fixed for his particular kind of work. Mr. Shah on behalf of the National Oil Workers' Union has argued that this period of 16 years is far too long and has suggested that a period of six years ought to be fixed instead. After giving the contentions of both sides my best consideration I have come to the conclusion that 16 years is a goodly slice out of a man's life after he has attained majority. Moreover, the nature of the work done by these employees requires no special skill or judgment on the part of the employees. Taking everything into consideration, I think that a period of eight years during which an employee may reach the maximum wages fixed for his class of work would meet the ends of justice.

The difference between the minimum and maximum wage for each class of employee would be thus divided into eight equal parts, and annual increments would be granted by adding each year $1/8$ th of the difference between the minimum and maximum wage to the wage to which the workman would be entitled that year. These annual increments will take effect from 1st January 1943 and thereafter from the 1st of January of every succeeding year. Those workmen who have been recruited by the Company after 1st July 1942 will get their increase in wages only on 1st January 1944; those employees who are in the service of the Company before 1st July 1942 will get their increase in wages on 1st January 1943. I would, therefore, recommend that Demand No. 6 may be granted in terms of my findings set forth above.

I come next to Demand No. 7 which is as follows:

*"Extension of privileges to all employees working in 'Temporary Occupations' and others falsely called temporary workers although they have put in the requisite service of two months.—*The workers say that the system classifying workers employed in 'Temporary Occupations' irrespective of the length of the service as temporary workers is as extraordinary as it is unfair. In all industries after a worker has put in two months' service as 'Probationary period' he is classified as a permanent worker and is treated as such. The basis of his classification is the period of service put in by him and not the euphemistic description given to the occupation in which he is employed. It is also not understood how any particular occupation going on for indefinite period of time can be regarded as 'Temporary Occupation'. The workers, therefore, demand that all the privileges which are now available to the permanent worker may be extended to those others who are falsely called temporary although they have in fact attained the status of permanent workers."

This demand, as would appear from the Company's written state-

ment, is based upon a complete misapprehension of the true state of affairs. All employees of the Company at installations irrespective of their occupations are on joining the service of the Company classified as "temporary employees". This classification only lasts for three months. As and when each employee serves the Company for a continuous period of three months he is immediately classified as a permanent employee. The Company makes no distinction between temporary and permanent workers in so far as pay, allowances such as dearness allowance, etc., leave with pay, and other privileges granted by the Company to its employees are concerned. There is, therefore, no substance in this Demand No. 7.

Equally pointless is Demand No. 7-A which runs as follows:

"The workers are particularly keen to bring to the notice of the Companies that the employees in Construction and Fire Departments, although most of them have worked for considerable time are not given dear food allowance and such other benefits as privilege leave, etc."

To this demand the reply of the Company is that there is no employee serving in the Company with the designation of fire workers. If by "fire workers" is meant the Company's watch and ward staff, namely, Jamadars and watchmen, the services of these employees are on the same basis as all other employees. They are paid in accordance with the minimum and maximum rates of pay established for men of such designations; they receive dearness allowance and all other benefits to which other employees of the Company are eligible. In addition, these men are enrolled in the A. R. P. and receive an additional sum of Rs. 5 per mensem from the time of signing up. They are also given free quarters within the installations.

For the reasons given above, I recommend that these two Demands Nos. 7 and 7-A be rejected as frivolous and as having no foundation in fact.

DEMAND No. 8.—is as follows:

"*Conditions of work.*—The workers feel that the conditions of work in which they are required to fulfil their duties are none too satisfactory. In particular, the workers point out that in certain departments the space provided between two machines is so narrow that not only free movement is impossible but there are unreasonably greater chances of meeting with accidents."

Upon my pointing out to Mr. Shah that this was hardly a matter upon which I ought to have been called upon to adjudicate, he very readily withdrew this demand reserving to the workers the right at some future date to bring up this matter before the proper

authorities and through the right channel. I will, therefore, refrain from making any comments upon the reply given by the Company to this demand. I will leave the matter "*res integra*", to be decided by the Chief Inspector of Factories or any other proper person who is authorised to deal with it.

I come next to deal with Demand No. 9 which is as follows :

"One month's leave without pay.—There is at present a practice of giving annually leave for 17 days with pay. The workers feel that the period of leave is not long enough to enable them to go to their native places as a great majority of them come from Northern India. The workers, therefore, demand over and above the present privilege leave of 17 days with pay that they should be given every year one month's leave without pay."

In reply to this demand Mr. Aitken on behalf of the Standard Vacuum Oil Company pointed out that the privilege leave on full pay given annually could be accumulated for 3 years and so an employee whose home was in Northern India could easily go to his home on 51 days' leave on full pay. He further pointed out that the Second Conference of Labour Ministers, held in New Delhi in January 1941, only recommended the compulsory grant of 6 days' leave with full pay for every year of service. He also brought to my notice the fact that before the outbreak of the present war it was the custom of the Company to grant casual leave without pay during the slack season. Such casual leave without pay could be extended up to a period of 6 weeks. Owing to the present war conditions it is obviously not possible to grant this privilege to all employees of the Company. In individual cases, however, if a worker submits valid and substantial reasons for the grant of such leave, the management are always prepared to decide each application on its merits. The workers are also given sick leave on liberal terms as set forth in the Standing Orders of the Company.

Mr. Shah on behalf of the National Oil Workers' Union expressed his satisfaction at the above exposition of leave without pay made by the Standard Vacuum Oil Company and had no further grievance in this respect. This satisfactorily disposes of Demand No. 9

DEMAND No. 10.—is as follows :

"Co-operative Credit Society.—In view of the fact that the present wages given to the workers are barely enough to keep their body and soul together, the workers have now and then to take resort to borrowing moneys from Pathans and Marwaries in order to meet the emergencies. It is well known that these money-lenders charge exorbitant rates of interest with the result that the workers often find themselves in unavoidable plight and

their work in the factory also suffers. Taking these facts into account the management of some of the progressive factories have started Co-operative Credit Societies in order to help the workers with small loans in emergency. The workers of the Company desire that such a Co-operative Credit Society should be established for their benefit."

It is a pity that the workers were so ill-advised by their leaders as to threaten the management of their Companies with a strike when they in fact wanted the help and co-operation of that very management to start a scheme mainly for their own benefit. When this subject was first broached by the Union, the Standard Vacuum Oil Company verbally suggested to the Union officials that they should submit to the Company for consideration a definite scheme for the establishment of a Co-operative Credit Society; but up to now the National Oil Workers' Union has failed to submit to their oil companies any such clearcut definite scheme for inaugurating a Co-operative Credit Society for their benefit.

Mr. Shah on behalf of the Union urged that it was the duty of the two oil companies to move in the matter. This, in my opinion, is a mistaken view of the situation. It is the duty of the workers themselves to take the initiative for organising themselves into a Co-operative Credit Society and to get such help from the management of the Company as the latter can legitimately offer. Mr. Osborn on behalf of the Standard Vacuum Oil Company has stated that in principle he is not opposed to the establishment of a Co-operative Credit Society, but that his Company is not prepared to undertake any financial obligations either in starting such a society or in maintaining it subsequently. This is a very fair attitude to take up on the part of the Company. It is of course open to the workers to start such a Co-operative Credit Society for their own benefit whenever they like. But they cannot demand, under threat of going on strike, to coerce their oil company to start such a society for their benefit. In my opinion, this demand, as framed by the Union, is misconceived, and I would recommend its rejection by Government.

In conclusion, I wish to place on record my appreciation of the ability and scrupulous care with which the lawyers on both sides have placed the contentions of their respective clients. I have also to tender my grateful thanks to Mr. N. A. Mehrban, M.B.E., Assistant Commissioner of Labour, for the valuable help he has given me throughout this enquiry and in particular in deciding Demand No. 6. It is a matter of deep regret to me that where there was so much goodwill and mutual forbearance on both sides, parties were not able to arrive at a satisfactory compromise, thereby obviating the necessity for an adjudication by me. If, however, I have not been able to induce the parties to come to an amicable settlement acceptable to both of them, it is not because

of any lack of sympathy on my part for the aspiration of labour, not because of any lack of understanding of the difficulties and worries under which the Companies labour, not because of any lack of industry or want of insight on my part to grasp the inner meaning of this conflict between the oil companies and their workers, but because, as in the world of politics so in that of economics,—

“There is a mystery—with which relation
Durst ne’er meddle—in the soul of state,
Which hath an operation more divine
Than breath or pen can give expression to.”

APPENDIX II

Industrial Relations

Socony-Vacuum Oil Company, Inc.

FORMULA—SPECIAL ALLOWANCES

Referring to the Table of Special Allowances, interpolations can be readily made by inspection, but if a more accurate result is necessary, the following formula applies:

$$\frac{(\text{Age})^2}{40^2} \times (\text{Service})^2 + 2 = \text{Special Allowance in number of weeks at full pay.}$$

This may be simplified as follows:

$$\frac{\text{Age}^2 \times \text{Service}^2}{12800} + 2 = \text{Special Allowance in number of weeks at full pay.}$$

The maximum number of weeks given in any one case has been arbitrarily limited to 52, since the majority of cases which would run more than 52 weeks are taken care of by the Annuity Plan.

As a matter of information, this formula came about through the following reasoning:

1. A year's pay for 20 years service seemed to be in line with the practice of other companies, and was felt to be generally satisfactory.
2. 2 weeks's pay is the usual practice for people of short service.
3. Employees of intermediate years of service should have

something less than a proportionate amount based on 52 weeks and 20 years, that is, for ten years of service a man should have less than 26 weeks, perhaps 13 weeks. This suggested the idea of squares in years of service.

4. Squaring the years of service gives 100 at 10 and 400 at 20, which is obviously too large a number, and hence the division by 8 which brings the numbers down to $12\frac{1}{2}$ and 50 respectively.

5. The addition of 2 not only gives 52 weeks for the 20-year figure, but gives a decent amount in the lower years, and also provides the minimum of 2 when the service is so small that the answer otherwise would be negligible. Incidentally, the results below 5 years of service are approximately 1 week for each year of service which is in line with the practice of many companies.

6. The question arises as to how this whole line of results over a range of service from 1 to 20 years should vary with age. It was felt that the above figures should apply to an average man of about 40 years of age, and should be decreased for younger men and increased for older men. Hence the fraction

$\frac{\text{Age}}{40}$ —was adopted, which means that this factor becomes 1 when

the age is 40. However it seemed reasonable that older people should be treated better than in a direct proportion to their ages, hence the idea of squaring the age. Squaring the age, of course necessitates squaring the number 40 so that this whole fraction reduces to 1 in cases where the age is 40 years.

THE CALTEX (INDIA), LTD., BOMBAY, AND ITS EMPLOYEES

- Mr. M. G. R. Aitken of Messrs Crawford Bayley & Co., Solicitors, with Mr. N. J. Ford, Acting District Manager and Mr. J. R. Price, Terminal Superintendent, for Caltex (India), Ltd.,
- Mr. Chimanlal C. Shah of Messrs. Manchershaw B. Chotia & Co., Solicitors, with Mr. G. K. Vaze, Advocate for the National Oil Workers' Union,
- Mr. N. A. Mehrban, M.B.E., Assistant Commissioner of Labour was also present.

A w a r d

By Government Notification, Political and Services Department No. 6215/34-B of the 26th August 1942, I was appointed by the Government of Bombay. Adjudicator in the trade dispute between the Caltex (India) Ltd., Bombay, and its employees.

Upon the receipt of Government orders, the usual notices were issued to both parties, and 15th September 1942 was provisionally fixed for the hearing of the case before me, but before that date the Caltex (India) Ltd., Bombay, through their firm of Solicitors. Messrs. Crawford Bayley & Co., applied for extension of time and the hearing of the case was postponed to 22nd September 1942. Arguments of both sides were heard on the 22nd and 23rd September 1942 and the hearing of the case was adjourned to 1st October 1942, after a local inspection of the factories of the Oil Companies had been made by me on the 30th September 1942, in the presence of parties and their lawyers. Further arguments were heard on the 1st October 1942 and the case was adjourned for the preparation and dictation of the award.

I now proceed to discuss the demands of the workers one by one.

DEMAND No. 1.—runs as follows:

"Pension and Death Benefit Scheme.—Some of the Companies have a scheme of pension and death benefit with which the workers are not satisfied. The other Companies have not even these unsatisfactory schemes for the benefit of their workers. The workers, therefore, demand that the Companies having, at present, such schemes should revise them so that the workers may derive from them such benefit as they deserve and the workers also demand that the other Companies should adopt these revised schemes so that all the Companies may have a uniform and progressive scheme of pension and death benefit."

The Caltex (India) Ltd., does not at present have a Pension and Death Benefit scheme for its daily paid workers. The Company through its legal representative Mr. Aitken has agreed to start, as soon as possible, Pension and Death Benefit Schemes analogous as far as possible to those that are in force in the Standard Vacuum Oil Company of Bombay, and subject of course to the approval and sanction of the Directors of that Company.

DEMAND No. 2.—runs as follows:

"Gratuity Scheme.—The pension and death benefit scheme come into operation upon a worker completing a certain number of years' service. No arrangement or pension provision is made for such workers as are compelled to leave the service of the Company on account of ill-health, old age or such other circumstances beyond his control, before he puts in the requisite length of service in order to become eligible for pension and death benefit scheme. The workers feel that a gratuity scheme must be introduced to give relief in such cases."

At present the Caltex (India) Ltd., has no gratuity scheme for the benefit of its workers. But Mr. Aitken on behalf of the Caltex (India) Ltd., has agreed that this Company will start a gratuity scheme similar to that framed by the Standard Vacuum Oil Company. Mr. Shah on behalf of the National Oil Workers' Union has accepted this offer. I would, therefore, recommend that Government should direct the Caltex (India) Ltd., to frame a gratuity scheme analogous to that which is in existence in the Standard Vacuum Oil Company, subject of course to the approval and sanction of the Directors of the Caltex (India) Ltd.

DEMAND No. 3:

"Immediate and free medical aid in cases of accidents and free medical aid to all the employees of the Company.—The workers feel that it is really unfortunate in such progressive times and in such advanced factories that there is as yet no provision made for free medical aid to all the employees of the company even in cases of accident, etc., arising out of the work. In view of the unsatisfactory wages paid to the workers and the daily rise in the cost of living the workers say that they are not in a position to meet the expenses involved in such emergencies and they feel that all companies should make arrangements for free medical aid to all the employees of the company."

The procedure followed by this Company is that accident cases are immediately sent to the King Edward Memorial Hospital for attention, and workers are laid off from the time of the accident on full pay until such time as a discharge certificate is issued to

the worker by the Hospital authorities or until his case has been determined on by the Company or by the authorities under the Workmen's Compensation Act. All medical expenses in connection with accidents which might arise out of and in the course of the employment are paid for by the Company. This Company has also recently—since 1st September 1942—made provision for a doctor who gives free medical aid to employees and their families.

Mr. Shah on behalf of the National Oil Workers' Union has expressed his satisfaction at the way in which the Company has met this Demand No. 3. This satisfactorily disposes of Demand No. 3.

DEMAND No. 4:

*"Full pay for absence of work on account of an injury arising from an accident in the course of employment.—*The workers feel that if they are compelled to remain absent from work on account of injuries received in the course of their work, they should be given full pay for such period on production of proper medical certificate testifying to their inability to work."

The reply of the Company to this demand is that in terms of Section 3 of the Workmen's Compensation Act, the Company is not in law obliged to pay compensation in respect of any injury which does not result in total or partial disablement of the workman for a period exceeding 7 days. Nevertheless the Caltex (India) Ltd., has all along "ex gratia" paid wages in full to injured employees from the actual date of the accident.

Mr. Shah on behalf of the Union has nothing further to urge in respect of this demand, and it is obvious that the workers have in fact no grievance in respect of this demand for full pay during absence from work on account of injuries received. This Demand No. 4 is thus satisfactorily met.

DEMAND No. 5.—runs as follows:

*"Grant of Bonus.—*The workers have not been given any bonus even for the last three or four years, when the factories have made gigantic profits on account of the war. It is admitted on all hands that the workers are entitled to a share of these extra profits made by the Company mainly on account of their exertion. The majority of the workers in other industries in Bombay have already been given this benefit and the workers of your Companies feel that they must get the same with retrospective effect."

The same contentions that were urged on behalf of the Standard Vacuum Oil Company were also urged by Mr. Aitken on behalf of the Caltex (India) Ltd. It is true that bonus is a free and voluntary gift made by the employer to his workers of his own

sweet will. In the *Labour Gazette*, Volume III, No. 7 of March 1924, at page 15 there is a full report of the Bonus Dispute Committee, appointed by the Government of Bombay, and presided over by the then Chief Justice of the High Court of Bombay, the Honourable Sir Norman Macleod. The report considers the nature and basis of the bonus which was granted to the employees in the cotton mills of India since 1919, and the Committee came to the conclusion that such a claim for bonus would not be upheld in a court of law.

Since the outbreak of the present world-war, however, the position in the mill industry and of all other industries brought under the operation of the "Essential Services (Maintenance) Ordinance" has changed considerably. It is expedient from the point of view of the owners themselves of these industrial concerns, essential for the due prosecution of the war, that the workers in such industries should be kept contented and happy. Industrial peace at this juncture is of supreme importance; and if, as a result of these abnormal war-conditions, some of these industrial concerns like the Standard Vacuum Oil Company and the Caltex (India) Ltd., are making unusually large profits, it seems but fair to me that an infinitesimal fraction of these profits may well be given, by way of bonus, to the workers in these Companies without whose labour and co-operation these profits could not have been made available to these Companies. In this matter the enlightened self-interest of the Directors of such Companies seems to me to march "pari passu" with the patriotic effort of the country to win the war, and is naturally in consonance with the war-policy of the Government of India. I have examined the statements of accounts submitted by the Caltex (India) Ltd., in a confidential cover, and I find on perusal that the Company has in fact made unusually large profits during these war-years. I have, therefore, no hesitation in asserting that it can well afford to pay its workers a bonus of a month's wages out of these huge profits made by it during these war-years. For the reasons given above I would recommend to Government that Demand No. 5 should be granted, and that the employees of the Caltex (India) Ltd., on whose threat to go on strike the present proceedings were initiated should be each granted a month's wages by way of bonus. The bonus should in my opinion be calculated on basic wages excluding dearness allowance.

I come next to discuss Demand No. 6 which runs as follows:

"Regular classification of employees: revision of minimum and maximum of wages; and fixing of regular annual increments.

—In some of the factories there is at present a sort of classification of employees but the workers feel that the said classification is highly unsatisfactory. They demand, therefore, a revision of the said classification and also of the minimum and maximum

wages fixed. Besides, at present, workers are given increments from time to time but there is no system regulating these increments and the system is worked according to the whims and prejudices of the management. As a result of this, conscientious and intelligent workers are victimised with a view to make examples of them. Hence the workers demand that besides the revision of classification and of minimum and maximum wages, the companies should fix a system of regular annual increments. The workers further demand that those companies where these systems are not prevalent at present should adopt the revised scheme now to be framed by the other companies."

I have heard the contentions of both sides and have on 30th September 1942, in the presence of the parties and their lawyers, inspected the factories and installations of both the Standard Vacuum Oil Company and the Caltex (India) Ltd. Mr. Mehrban, Assistant Commissioner of Labour, accompanied me and helped me in understanding the working of the various installations and factories, and I am obliged to him for his valuable help in deciding this Demand No. 6.

This demand resolves itself into three parts, namely:

- (a) correctness of the existing classification of employees;
- (b) fixed graded scale of annual increments in wages;
- (c) reduction in the number of years within which the maximum wages fixed for a certain class of workers can be attained by any particular employee.

As regards the classification of employees, it seems to me, after hearing the contentions of both sides, that no change is called for in the classification itself. It has been suggested by Mr. Mehrban, Assistant Commissioner of Labour, that certain skilled trades like those of blacksmiths, fitters, machinists (turners) and carpenters should be removed from the existing classification.

After careful consideration I am not prepared to interfere with the discretion exercised by the managers of these two Companies in this matter.

Equally unwilling am I to interfere with the minimum and maximum rates of wages fixed by the Company. These rates appear to me to be on a fairly generous scale.

Mr. Shah on behalf of the employees of the Caltex (India) Ltd. has, however, brought to my notice the special hardships borne by the soldermen who work with gas masks on their faces while they are fixing the tops and bottoms of cans and has argued that they should get 4 annas a day more than the wages fixed for other solder-

men. He also urged that the coolies who are employed to stack the barrels on the iron racks should get an extra wage of two annas a day on account of the greater risk incurred by them in doing this kind of work. I have heard Mr. Aitken on behalf of the Caltex (India) Ltd. on these two proposals made by Mr. Shah on behalf of the employees of the Caltex (India) Ltd. In my opinion there is no reason to grant any extra wages to the coolies who stack the barrels on the racks. I have myself seen these racks and the barrels placed on them, and I do not think that the coolies employed in doing this work were incurring a greater risk than that incurred by all coolies in doing their work. As a matter of fact Mr. Shah has not been able to quote any incident in which a worker was injured in doing this special kind of work. I would, therefore, disallow this proposal of Mr. Shah.

As regards the soldermen who are made to work with gas masks on their faces while they are fixing the tops and bottoms of cans I think their position is much the same as that of the soldermen in the Standard Vacuum Oil Company who are required to sit in a circle round a blazing furnace while they are doing their work. Although additional pay is no real substitute by way of compensation for the workers undertaking grave risks to health and life as wisely and pertinently observed by Mr. Justice Broomfield in his award in the Bombay Electric Supply and Tramways Co. Ltd., dispute, still the employees of the Caltex (India) Ltd., will, I fancy, feel a sense of satisfaction that the extra hazard in the nature of the work undertaken by them is rewarded by the Company by granting them an extra two annas a day in addition to their wages. This sense of satisfaction is a valuable asset to the Company and makes for the smooth and efficient working of the Company's factory. Apart from this specific case I do not think that the rest of the employees of the Caltex (India) Ltd., require any special treatment.

I come next to the demand for a fixed graded scale of annual increments in wages. I have heard the parties at great length on this point, and although I am unwilling to interfere with the internal management of the Company's affairs, I must confess that increments granted on no fixed principle cannot command the respect of the workers. Even when there is no foundation in actual fact, the employees often suspect invidious distinctions if the management of the Company order increments in the wages of particular workers on no fixed principle and at irregular intervals. This naturally creates jealousy amongst the employees themselves and leads to a lot of heart-burning. I am, therefore, in favour of the contention that there should be a fixed graded scale of annual increments in wages.

I now come to the question as to what should be the number of years within which a worker should reach his maximum wages fixed for his class of work. The Caltex (India) Ltd., has fixed 16 years as the period for any workman in their Company attaining the maximum rate of pay fixed for his particular class of work. Mr. Shah on behalf of the National Oil Workers' Union has argued that this period is far too long and has suggested that six years ought to be fixed instead. After giving the arguments on both sides my best consideration, I have come to the conclusion that 16 years is a large span out of a man's life after he has attained majority. Moreover, the nature of the work done by these employees requires no special skill or judgment on the part of the workers. Taking everything into consideration I think that a period of eight years during which an employee may reach the maximum wages fixed for his class of work would meet the ends of justice.

The difference between the minimum and maximum wage for each class of employee would be thus divided into eight equal parts and annual increments should be granted by adding each year $\frac{1}{8}$ th of the difference between the minimum and maximum wage to the wage to which the workman would be entitled that year. These annual increments will take effect from 1st January 1943 and thereafter from the 1st of January of every succeeding year. Those workmen who have been recruited by the Company after 1st July 1942 will get their increase in wages only on 1st January 1944; those employees who are in the service of the Company before 1st July 1942 will get their increase in wages on 1st January 1943. I would, therefore, recommend to the Government that Demand No. 6 may be granted in terms of my findings set forth above.

DEMAND No. 7.—runs as follows:

*“Extension of privileges to all employees working in ‘Temporary Occupations’ and others falsely called temporary workers although they have put in the requisite service of two months.—*The workers say that the system classifying workers employed in ‘Temporary Occupations’ irrespective of the length of the service as temporary workers is as extraordinary as it is unfair. In all industries after a worker has put in two months’ service as ‘Probationary period’ he is classified as a permanent worker and is treated as such. The basis of his classification is the period of service put in by him and not the euphemistic description given to the occupation in which he is employed. It is also not understood how any particular occupation going on for indefinite period of time can be regarded as ‘Temporary Occupation’. The workers, therefore, demand that all the privileges which are now available to the

permanent workers may be extended to those others who are falsely called temporary although they have in fact attained the status of permanent workers."

The Company's reply to this demand is that all its employees irrespective of their occupation are on joining the service of the Company classified as "temporary employees". This classification only lasts for 3 months and not, as stated by the Union, for any longer period. As and when each employee serves the Company for a continuous period of three months he is immediately classified as a permanent employee. So there is no distinction made between the temporary and permanent workers in so far as pay and dearness allowance are concerned. Leave with pay and other privileges are granted by the Company to those of its workers who have been in continuous service for one year. Demand No. 7 is thus fully complied with by the Company and the Union has really no grievance in respect thereof.

DEMAND No. 7-A:

"The workers are particularly keen to bring to the notice of the Companies that the employees in Construction and Fire Departments, although most of them have worked for considerable time, are not given dear food allowance and such other benefits as privilege leave, etc."

DEMAND No. 7-A—has also got no force. There are 12 watchmen employed by the Company. They are paid on the same scale as that applicable to other employees of the Company and they are also given dearness allowance at the rate of Rs. 14-15-0 a month. These watchmen are also paid an additional A.R.P. allowance of Rs. 5 per mensem. These watchmen are not considered to be on the Company's permanent or regular staff because they are employed for A.R.P. purposes. They are, however, allowed the privileges given to permanent workers such as dearness allowance, leave with pay and sick leave and casual leave in accordance with the Standing Orders of the Company.

For the reasons given above I recommend that the grievances referred to in Demands Nos. 7 and 7-A be rejected as frivolous and as having no foundation in fact.

DEMAND No. 8:

"*Conditions of work.*—The workers feel that the conditions of work in which they are required to fulfil their duties are none too satisfactory. In particular, the workers point out that in certain departments the space provided between two machines is so narrow that not only free movement is impossible but there are unreasonably greater chances of meeting with accidents."

This demand has been withdrawn by Mr. Shah on my pointing out to him that this was hardly a matter upon which I ought to have been called upon to adjudicate. He, however, made it a condition of his withdrawal of the demand that the workers should have the right at some future date to bring up this matter before the proper authorities. I will, therefore, refrain from making any comments upon the reply given by the Company to this demand. As this Demand No. 8 has been withdrawn nothing more need be said about it by me.

I come next to Demand No. 9 which runs as follows:

"One month's leave without pay.—There is at present a practice of giving annually leave for 17 days with pay. The workers feel that the period of leave is not long enough to enable them to go to their native places as a great majority of them come from Northern India. The workers, therefore, demand over and above the present privilege leave of 17 days with pay that they should be given every year one month's leave without pay."

In reply to this demand Mr. Aitken on behalf of the Caltex (India) Ltd. pointed out that the position of this Company in respect of this demand was the same as that taken up by the Standard Vacuum Oil Company.

Mr. Shah on behalf of the National Oil Workers' Union expressed his satisfaction at the privileges granted by the Company and stated that this demand had been fully met with by the Company. This satisfactorily disposes of Demand No. 9.

DEMAND No. 10:

"Co-operative Credit Society.—In view of the fact that the present wages given to the workers are barely enough to keep their body and soul together the workers have now and then to take resort to borrowing moneys from Pathans and Marwaries in order to meet the emergencies. It is well known that these money-lenders charge exorbitant rates of interest with the result that the workers often find themselves in unavoidable plight and their work in factory also suffers. Taking these facts into account the management of some of the progressive factories have started Co-operative Credit Societies in order to help the workers with small loans in emergency. The workers of the Company desire that such a Co-operative Credit Society should be established for their benefit."

Mr. Aitken on behalf of the Company stated that the Caltex (India) Ltd., was not opposed to the establishment of a Co-operative Credit Society by the workers if they so desired, but

that if such a society was started by the National Oil Workers' Union it should be started in such a way as not to impose any financial obligations upon the Company. This is a very fair attitude to take up on the part of the Company, and in my opinion this demand, as framed by the Union, is misconceived and I would recommend its rejection by Government.

In conclusion I would like to place on record my appreciation of the ability and scrupulous care with which the lawyers of both parties have placed the contentions of their respective clients. I would also like to tender my grateful thanks to Mr. N. A. Mehrban, M.B.E., Assistant Commissioner of Labour, for the valuable help he has given me throughout this enquiry.

Bombay, 6th October 1942.

E. M. NANAVUTTY,
Adjudicator.

(Bombay Castle, 10-12-1942, No. 6215/34-1. Government Gazette
Part I. pp. 171 to 173.)

STANDARD VACUUM OIL COMPANY, BOMBAY

AND

ITS EMPLOYEES

Adjudicator:—E. M. Nanavutty, Esq., I.C.S., (Retired).

Mr. M. G. R. Aitken of Messrs. Crawford Bayley & Co., Solicitors, with Mr. C. A. Osborn, Manager, for the Standard Vacuum Oil Company.

Mr. Chimanlal C. Shah of Messrs. Manchershaw B. Chothia & Co., Solicitors, with Mr. G. K. Vaze, Advocate for the National Oil Workers' Union.

Mr. N. A. Mehrban, M.B.E., Assistant Commissioner of Labour, was also present.

F i n a l A w a r d

By Government Order, Political and Services Department, No. 6215/34, dated 26th November 1942, the Government of Bombay was pleased, at my own request, to refer back to me for reconsi-

deration the Awards in the disputes in the Standard Vacuum Oil Company and the Caltex (India), Ltd., made by me on 6th October 1942, in order to complete and clarify the said Awards and to make them determinate and enforceable generally, and with special reference to the disputes regarding—

(a) the grant of bonus; and

(b) the gratuity, pension and death benefit schemes to be prepared by Caltex (India), Ltd., for its workmen.

On receipt of this Government Order, I fixed 7th December 1942. for hearing arguments of both parties and informed all concerned of the date of hearing.

On this date, the 7th December 1942, I heard the contentions of Mr. Osborn on behalf of the Standard Vacuum Oil Company and of Mr. Aitken on behalf of the Companies and of Mr. C. C. Shah on behalf of the National Oil Workers' Union. Mr. N. A. Mehrban, M.B.E., Assistant Commissioner of Labour was present and helped in elucidating the contentions of both parties.

The Standard Vacuum Oil Company had, already, before the case came to me for adjudication, granted demands Nos. 1, 2, 3 and 4 of the National Oil Workers' Union. This Company is, therefore, only concerned with the clarification of my Award in respect of Demand No. 5 which relates to the grant of bonus.

After hearing the contentions of the learned lawyers of both parties, I think it fair to adjudicate that the one month's bonus awarded by me in my award of 6th October 1942, should be paid on the following basis:

One-twelfth of the total earnings (excluding dearness allowance), received by each workman of the Company during the whole of the year ending 31st December 1941, should be paid to each such workman who was actually in the service of the Standard Vacuum Oil Company on the 14th of July 1942, which is the date on which notice of strike was given by the workmen in this dispute. No further elucidation in respect of Demand No. 5 was called for by either party.

In respect of Demand No. 6, relating to classification of employees, and revision of minimum and maximum of wages, there was a discussion in Court in my presence between the parties with regard to the manner in which my finding regarding the granting of increments would operate in actual practice. Mr. Shah contended that the number of years which each workman had served in the employment of the Company should be considered in bringing the wages of that workman up to the maximum of the scale fixed for the occupation in which that workman was employed. For example, if a workman in any particular scale had already put in eight years of service and more, he should be brought on to the maximum of his scale straightaway. This was the meaning which Mr. Shah read into my finding on this point.

Although it was clear to me that the position of no operative should be worsened as a result of my Award, it was never my intention to grant accelerated increments in respect of mere length of service already put in.

As there appeared to be some doubt in the minds of the contesting parties as to the true effect of my finding in respect of Demand No. 6, I now specifically award that increments as fixed by me in my Award of 6th October 1942, should be given on the existing rates of wages.

I also award that the Company should put up a notice on its notice board showing the minimum and maximum wages and the incremental scale for each occupation in its classification of workmen, and the increments that will be granted in respect of each employee on the 1st of January 1943; and the same procedure should be followed in subsequent years, a fortnight before the increments are to be paid.

In my Award of the 6th October 1942 (printed in Part I of the *Bombay Government Gazette* of 22nd October 1942, at top of page 3715), I had stated that I had not accepted the suggestion of Mr. Mehrban, Assistant Commissioner of Labour, for the removal of certain skilled workmen from the classification of workmen submitted by the Company. In this connection I had said that I was not prepared to interfere with the discretion exercised by the managers of these two Companies in this matter. Mr. Osborn, Manager of the Standard Vacuum Oil Company, wanted to know whether the Manager of the Company could at his discretion remove these skilled workmen from the existing classification. I never meant that the position of these skilled workmen should be worsened by removing them and their trades from the existing classification. These skilled trades should, therefore, stand in the classification of workmen already prepared by the Company.

No further elucidation in respect of any other demands of the workers of the Standard Vacuum Oil Company was demanded of me by the lawyers of either party.

In conclusion, I will now briefly sum up my Award in respect of each demand made by the employees of the Standard Vacuum Oil Company. The numbering of these demands is as set forth in my original Award published in the *Bombay Government Gazette*, Part I, dated 22nd October 1942, at pages 3709-3719.

DEMAND No. 1.—I award that the employees shall get the benefit of the Pension and Death Benefit Scheme prepared by their Company and set forth in the written statement of the Company with reference to Demand No. 1.

Similarly, in respect of Demands Nos. 2, 3 and 4, I award that the benefits of the measures set forth by the Company in their written statement with reference to these Demands Nos. 2, 3 and 4 as given in my original Award published at pages 3709 to 3719

of the *Bombay Government Gazette*, dated 22nd October 1942, be awarded to the employees of the Company.

DEMAND No. 5.—I award the workmen of the Standard Vacuum Oil Company a bonus of a month's pay. The bonus awarded by me should be paid on the following basis:

One-twelfth of the total earnings (excluding dearness allowance) received by each workman of the Company during the whole of the year ending 31st December 1941, should be paid to each such workman who was actually in the employment of the Company on the 14th July 1942, the date on which notice of strike was given in this dispute.

DEMAND No. 6.—I award that the demands of the workmen in respect of regular classification of employees and the revision of minimum and maximum of wages and the fixing of regular annual increments should be granted to them in terms of my findings as given in my Award of 6th October 1942, and subject to the clarification of these findings by my Award of to-day's date.

DEMAND Nos. 7 and 7-A.—I award that these demands of the employees be disallowed.

DEMAND No. 8.—I make no Award in respect of this demand.

DEMAND No. 9.—I award the workers the benefits claimed by them under this demand and which have already been granted to them by the Company as set forth in the latter's written statement quoted by me in my original Award, published at pages 3709 to 3719 of the *Bombay Government Gazette*, Part I, dated 22nd October 1942.

DEMAND No. 10.—I adjudicate that this demand be disallowed.

E. M. NANAVUTTY,
Adjudicator.

Bombay, dated 10th December 1942.

CALTEX (INDIA), LTD., BOMBAY, AND ITS EMPLOYEES, IN THE
MATTER OF THE AWARD DATED 6TH OCTOBER 1942.

Mr. M. G. R. Aitken of Messrs. Crawford Bayley & Co., Solicitors, with Mr. N. J. Ford, Acting District Manager and Mr. J. R. Price, Terminal Superintendent, for Caltex (India) Ltd.

Mr. Chimanlal C. Shah of Messrs. Manchershaw B. Chothia & Co., Solicitors, with Mr. G. K. Vaze, Advocate for the National Oil Workers' Union.

Mr. N. A. Mehrban, M.B.E., Assistant Commissioner of Labour, was also present.

F i n a l A w a r d

By Government Order, Political and Services Department, No. 6215/34, dated the 26th November 1942, the Government of Bombay was pleased, at my own request, to refer back to me for reconsideration the Awards in the disputes in the Standard Vacuum Oil Company and the Caltex (India), Ltd., made by me on 6th October 1942, in order to complete and clarify the said Awards and to make them determinate and enforceable generally, and with special reference to the disputes regarding—

- (a) the grant of bonus; and
- (b) the gratuity, pension and death benefit schemes to be prepared by Caltex (India), Ltd., for its workmen.

On receipt of this Government Order, I fixed 7th December 1942, for hearing arguments in both cases and informed the parties of the date of hearing.

On this date I heard the contentions of Mr. Aitken on behalf of both Companies, while Mr. C. C. Shah argued on behalf of the National Oil Workers' Union. Mr. N. A. Mehrban, M.B.E., Assistant Commissioner of Labour, was also present and helped in elucidating the arguments of both parties.

In this order I will confine myself to the case of Caltex (India) Ltd., and its employees. The numbering of these demands is the same as set forth in my original Award published at pages 3719 to 3724 of the *Bombay Government Gazette*, Part I, dated 22nd October 1942.

Demand No. 1.—I see no reason why Caltex (India), Ltd., should not prepare a Pension and Death Benefit Scheme for the benefit of its employees on lines similar to that which exists already in the Standard Vacuum Oil Company. I, therefore, award that the Caltex (India), Ltd., should bring into operation within a period of three months from the date of the publication of this Award

in the *Bombay Government Gazette*, a Pension and Death Benefit Scheme similar to that already in existence in the Standard Vacuum Oil Company. This scheme has been fully set forth in my Award dated the 6th October 1942, published in the *Bombay Government Gazette* of 22nd October 1942, Part I, page 3710.

Demand No. 2.—In respect of this demand, I award that Caltex (India), Ltd., should introduce a gratuity scheme similar to that which obtains in the Standard Vacuum Oil Company, within one month from the date on which this Award is published in the *Bombay Government Gazette*. Incidentally I may note here that Caltex (India), Ltd., informed me by a letter dated the 4th December 1942, that the General management of the Company had approved the institution of a Special Termination allowance (which is referred to in the workers' demand No. 2 as a gratuity scheme) similar to that which the Standard Vacuum Oil Company had instituted on 1st September 1942.

Demands Nos. 3 and 4.—I award that these demands should be granted to the workers of the Company as the latter has already conceded them.

Demand No. 5.—The one month's bonus awarded by me should be paid on the following basis:

One-twelfth of the total earnings (excluding dearness allowance) received by each workman of the Company during the whole of the year ending 31st December 1941, should be paid to each workman who was actually in the employment of the Company on the 14th July 1942, the date on which notice of strike was given in this dispute.

Demand No. 6.—I award that the demands of the workmen in respect of regular classification of employees and the revision of minimum and maximum of wages and the fixing of regular annual increments should be granted to them in terms of my findings as given in my Award of 6th October 1942, published in the *Bombay Government Gazette*, Part I, dated 22nd October 1942, pages 3719 to 3724.

Demands Nos. 7 and 7-A.—I award that these demands of the employees be disallowed.

Demand No. 8.—I make no Award in respect of this demand.

Demand No. 9.—I award the workers the benefits claimed by them under this demand, and which have already been granted to them by their Company as set forth in the latter's written statement quoted by me in my original Award published in the *Bombay*

Government Gazette, Part I, of 22nd October 1942, at pages 3719 to 3724.

Demand No. 10.—I award that this demand be disallowed.

E. M. NANAVUTTY,
Adjudicator.

Bombay, dated 10th December 1942.

(Bombay Castle, 13-11-1943 No. 6215/34-1. Government Gazette 18-11-43, Part I, pp. 2573 to 2576.)

THE STANDARD VACUUM OIL CO. LTD., BOMBAY,

AND

ITS EMPLOYEES

Adjudicator.—E. M. Nanavutty, Esq., I.C.S. (Retired).

Mr. C. A. Osborn, Manager, for the Standard Vacuum Oil Company.

Mr. Chimanlal C. Shah of Messrs. Manchershaw B. Chothia & Co., Solicitors with Mr. G. Mapara and Mr. S. G. Athavale for the National Oil Workers' Union.

A w a r d

By Government Order, Political and Services Department, No. 6215/34-1, dated the 10th August 1943, I was appointed Adjudicator in the trade dispute between the Standard Vacuum Oil Company, Bombay, and its employees. The Order directed that I was to exercise such powers as are conferred on, and follow such procedure as is prescribed for, a Board of Conciliation under the Trade Disputes Act of 1929, and the Bombay Trade Disputes Rules of 1930.

2. The sole question for determination in this dispute runs as follows:

“Whether the Company should grant a bonus and, if so, on what terms and conditions?”

3. The usual notices to parties to file their respective statements in this dispute were issued on 13th August 1943. The National Oil Workers' Union by its letter No. O. 29/43, dated the 25th August 1943, intimated to the Secretary of the Industrial Court that it did not intend to file any written statement in this case. The Company, however, filed its written statement on 31st August 1943. The first hearing of the case was fixed on 2nd September 1943, at 11 a.m. in the Industrial Court.

4. The demand of the employees for bonus came to be made under the following circumstances:

On 14th July 1942, the employees of the said Company made certain demands on the management. As the demands were not conceded, the employees gave a formal notice of strike on 29th July 1942. The matter was then referred to me by Government for adjudication under Government Notification, Political and Services Department, No. 6215/34-A, dated 26th August 1942.

One of the demands in that dispute was as follows:

"Grant of Bonus.—The workers have not been given any bonus for even the last three or four years, when the factories have made gigantic profits on account of the war. It is admitted on all hands that the workers are entitled to a share of these extra profits made by the Company mainly on account of their exertion. The majority of the workers in other industries in Bombay have already been given this benefit and the workers of your Companies feel that they must get the same with retrospective effect."

I made an award on 6th October 1942, and recommended that the employees should be granted a month's wages by way of bonus and that the bonus was to be calculated on basic wages, excluding dearness allowance. The said award was, at my own request, referred back to me by Government Order, Political and Services Department, No. 6215-34, dated the 26th November 1942, in order to complete and clarify certain matters relating to the grant of bonus and other questions involved in the dispute. The parties were again heard on 7th December 1942, and a final award was given on the 10th of December 1942. As regards the demand for bonus, I directed in my final award that the bonus should be paid on the following basis, namely, "One-twelfth of the total earnings (excluding dearness allowance), received by each workman of the Company during the whole of the year ending 31st December 1941, should be paid to each such workman who was actually in the employment of the Company on the 14th of July 1942, the date on which notice of strike was given in this dispute." The Company paid the bonus according to this award on the 29th January 1943.

5. On 27th April 1943, the National Oil Workers' Union demanded a bonus equivalent to two months' earnings of the year

1942 for the employees of this Company. The Company rejected this demand. The Union then approached the Commissioner of Labour on 17th July 1943, and as the matter could not be decided before him, the dispute was referred to me for adjudication as stated above.

6. On 2nd September 1943, I heard parties to this dispute on the question of bonus and adjourned the hearing of this case to 20th September 1943, to enable Mr. Osborn, Manager of the Company, to furnish under confidential cover certified copies of the Company's Profit & Loss Accounts for the years 1938, 1939, 1940 and 1941. I have examined these statements of accounts and find that the profits of the Company for the year 1941 do not fall short of those of the previous years.

7. Before I proceed further I may note here that parties to this dispute did not desire that I should inspect the installations and business premises of the Company in order to decide the matter in dispute, and I, therefore, refrained from inspecting the Company's premises and workshop.

8. At the outset, it has been argued before me on behalf of the Standard Vacuum Oil Company that the form in which the question is based in the Government Order is too vague and does not specify the year in respect of the profits of which bonus is claimed by the employees of the Company. There is to my mind no force in this objection, in view of the contentions raised before me by the employees of the Company in the present case as well as in the case between the same parties decided by me in 1942. The bonus claimed in the present case is obviously in respect of the profits of the year following that for which bonus was claimed and granted in the previous awards of 1942.

9. I turn now to discuss the main contentions urged before me on behalf of the Standard Vacuum Oil Company. In the first place it was argued that bonus being "a free and voluntary gift made by the employer to his workmen of his own sweet will", it could not be claimed as a matter of right in the present case and should not be extorted from the Company against its wishes.

In the second place, it was contended that looking to the excellent terms of service which the workers of the Standard Vacuum Oil Company enjoyed, it was preposterous on the part of the workers to claim in addition bonus as well. In this connection stress was laid upon the high rate of wages paid by the Company and the large increase in wages resulting from the benefits granted to the employees by my awards in the previous dispute between the parties. It was further pointed out that the guarantee of 26 days' wages each month to each workman also resulted in a considerable increase in wages. Overtime pay, dearness allowance, privilege leave with pay, sick leave with pay, the Company's plan for annuities and death benefits, free medical attendance for workers, cheap grain shop for employees and other amenities were laid

stress upon by the Manager of the Company as grounds for refusing in the present case the grant of any bonus to the employees of his Company.

In the third place, it was urged that bonus having been paid by the Company to its employees on the 29th January 1943, under the Orders of the Government of Bombay, dated the 18th January 1943, no further bonus should be demanded by its workmen during the current year.

In the fourth place, Mr. Osborn, Manager of the Standard Vacuum Oil Company, strenuously argued that increased profits made by his Company during the present world-war could not be held to justify an award being made in favour of the demand for a further bonus to the workmen of his Company. His reasons for maintaining this proposition may be stated practically in his own words as follows:

(a) The Company had invested in its business in India since the war started, a large amount of additional capital which could only be justified by a corresponding increase in earnings.

(b) The selling prices of practically all products of the Company were controlled by Government on the basis of a reasonable profit only.

(c) As regards excess profits, if any, made, as determined by the Central Government, after taking into consideration and allowing for additional capital invested, the greater part was payable to the Central Government.

(d) The payment of a bonus to workmen had the effect either of reducing the legitimate revenues of the Central Government or of increasing the cost of the Company's products to consumers, and it was submitted that there could be no justification for either in the case of workers who received such excellent remuneration and benefits as were given by the Company.

(e) The Central Government had expressed concern regarding the tendency to inflation. The payment of bonus to workers, who were otherwise well remunerated in all respects had a strong inflationary tendency.

(f) Finally the definition of bonus as "a free and voluntary gift made by the employer to his workmen of his own sweet will"—should rule out any question of any other than a voluntary bonus.

10. I will now take up *seriatim* each of the points urged before me on behalf of the Standard Vacuum Oil Company.

The contention that labour had no right to share-in the extra profits made by a business-concern was accepted as axiomatic some fifty years ago and more. During the 19th century, when the principle of "laissez faire" held the field, there existed a state of competition amongst the employers as well as amongst the employed. The newly-acquired ideals of freedom and liberty introduced into the field of industrial relation in their widest applica-

tion led to the keenest and most unrestricted competition, the fruits of which were richly gathered in the exploitation of men, women and children, long hours of work for the factory-hands and low wages. The sordid conditions under which labour had to eke out its existence turned the scale of public opinion against the policy of "laissez faire", and legislation had to be introduced in various countries to remedy the evil plight of workers in various industries. The transition from conflict between capital and labour to collaboration between the two was gradually brought about in the present century by State legislation, for the due adjustment of industrial relationship in conformity with present-day ideals. This is the trend of modern economic thought due to the spread of communistic and socialistic ideals all over the world. The old idea of controversy between capital and labour is now completely obsolete, and co-operation between all engaged in business-concerns is deemed to be the only salvation for industrial enterprises. As a result of this fundamental change of attitude a movement has been started in the world of economic thought in the present century, which has led to the idea of co-partnership in industry and to profit-sharing between the capitalists and organisers of industry on the one hand, and their workmen on the other. No longer is industry looked upon merely from the business point of view but also from the human side. The demand today for "peace in industry" is emphasized. Co-partnership in industry and profit-sharing make for peace, and harmony and efficiency in industry with the depth and silence of a strong tide at night. This demand for "peace in industry" is all the more urgent and pressing when there is a world-war raging. Profit-sharing or the demand for bonus may not be a legal right; it may not be capable of enforcement in a Court of law; but capitalists and organisers of industry have, after a long, bitter, and chequered experience, found it expedient in their own enlightened self-interest to grant this demand as being just and equitable. As I pointed out in my award of 6th October 1942, between the same parties, industrial peace is of supreme importance at this juncture when a dreadful world-war is ruining all mankind; and petroleum, it may be further noted, is a commodity essential for the effective prosecution of this war. The Standard Vacuum Oil Company is an American business-concern; and that great and powerful nation—the United States of America—is as vitally concerned in the successful prosecution of the present war as the Government of India, and should, therefore, have no hesitation whatsoever in keeping Indian workmen in its employment contented and happy by granting them a very small share in the unusually large profits made by its Company in India during war-time. That disposes of the first contention urged before me by Mr. Osborn on behalf of the Standard Vacuum Oil Company. I have discussed this point at some length because it is my own definition of bonus which is quoted and used against

me to argue that the employees of the Company were not entitled to any bonus.

I come next to the second contention placed before me by the Manager of the Standard Vacuum Oil Company namely, that the excellent terms of service and all the amenities and benefits conferred on the employees of the Company by my awards of 1942 should be a valid ground for rejecting the present demand for bonus. I confess I do not quite follow the reasoning involved in this argument. The bonus claimed by the workers of the Standard Vacuum Oil Company arises out of special circumstances and is founded on the increased profits made by the Company in unusual war-conditions in the year 1941 in respect of which bonus is demanded. Improvements in the permanent terms of service of the workers have, therefore, no direct bearing on, and no casual connection with, the demand for the grant of bonus made by them. Moreover, this increase in wages and other benefits conferred on the workmen of the Standard Vacuum Oil Company by my awards of 1942 were sanctioned a year later than the year in respect of which bonus is claimed in the present dispute. It is clear, therefore, that the profits of the Company for the year 1941 were in no way affected by the awards of 1942, and the benefits conferred on the workmen under these awards cannot, therefore, be legitimately taken into account in deciding the present trade dispute. It was conceded by Mr. Shah, Solicitor for the National Oil Workers' Union, that if the Company had made no unusual profits during the year in respect of which bonus is claimed, then the demand for bonus in the present dispute automatically fell to the ground. I, therefore, hold that there is no force in the second ground urged before me on behalf of the Standard Vacuum Oil-Company.

The third ground argued before me on behalf of the Standard Vacuum Oil Company is to the effect that Company having paid bonus to its employees on 29th January 1943, under the Orders of the Government, dated 18th January 1943, no further bonus should be demanded by them during the current year. The bonus of a month's pay awarded by me to the workmen of the Standard Vacuum Oil Company by my final award on 10th December 1942 is in the following terms:

"One-twelfth of the total earnings (excluding dearness allowance), received by each workman of the Company during the whole of the year ending 31st December 1941, should be paid to each such workman who was actually in the employment of the Company on the 14th of July 1942, the date on which notice of strike was given in this dispute."

I have heard arguments of both parties on this point. My finding on demand No. 5 regarding bonus in the award, dated 10th December 1942, was based on the profits made by the Company for the calendar year 1940, as shown in the audited profit and

loss account of that year submitted to me under confidential cover by the Company. The demand for bonus in the present dispute is therefore, obviously in respect of the share in the profits made by the Company for the calendar year 1941. The contention of Mr. Osborn on behalf of his Company that as bonus equivalent to a month's pay had been paid to each employee as late as 29th January 1943, no further bonus should be ordered to be paid by the Company, has to my mind no force. If the Standard Vacuum Oil Company has in fact made unusual profits in any particular year, then its employees are entitled to a share in these profits by way of bonus, according to the reasoning I have set forth above. The only question of fact for determination in the present dispute, therefore, is whether from the profit and loss account for the year 1941, again submitted to me by the Company under confidential cover, the Standard Vacuum Oil Company is shown to have made large profits in which the workmen of the Company can well claim to have a share by way of bonus. I have examined the profit and loss accounts for the years 1938, 1939, 1940 and 1941 submitted to me by the Company. These accounts, with the exception of the 1941 profit and loss account, are the same accounts that were shown to me in 1942, and upon the basis of which I had awarded bonus to the workmen in respect of the profits made in the year 1940. The profits earned during the year 1941 are also unusually large and in my opinion entitle the workmen of the Company to a share therein on the same grounds upon which I based my awards of 1942.

Finally, I come to discuss the last contention advanced by Mr. Osborn that increased profits made by his Company cannot justify the grant of any further bonus to its employees. Here too I regret that I cannot find myself in agreement with the Manager of the Standard Vacuum Oil Company. The fact that the Company had invested large sums of money in its business in India would be no ground for refusing its employees a share by way of bonus in the unusually large profits made by the Company in any particular year. Equally irrelevant to my mind is the fact that the selling prices of all products of the Company are controlled by Government on the basis of a reasonable profit only, if, in spite of that fact, unusually large profits have been actually made by the Company in any given year.

II. As regards excess profits made by the Company and payable to the Central Government by way of Excess Profits Tax, I may point out that these are matters not germane to the present inquiry and it is clear from the fact that the Government of Bombay appointed me as Adjudicator in this dispute that it did not consider that any vital interest of the Government of India was at stake in the decision of the present trade dispute by me. In my opinion there is no question of the reduction of the legitimate revenues of the Central Government involved in the present dispute.

12. As regards the alleged tendency towards inflation of prices if bonus is paid in cash, I am of opinion that there is really not much force in this contention seeing that thousands of mill-hands of Bombay and Ahmedabad receive considerable sums of money in cash by way of bonus and no attempt at interference is made by Government in their case. The executive officers of the Standard Vacuum Oil Company would, I fancy, themselves find it a great inconvenience and a weariness of the flesh if they had to look after the petty accounts of hundreds of their workmen relating to war-bonds and other Government securities if the payment of bonus were to be made in the shape of Post Office Cash Certificates or Defence Saving Certificates.

13. As regards the contention set forth in Mr. Osborn's letter No. 1054, dated 20th September 1943, forwarding in a confidential cover copies of the Profit and Loss Accounts of the years 1938, 1939, 1940 and 1941, to the effect that "the extra profits made by the Company during the years 1941, 1942 have already been taken care of", I can only repeat that these extra profits did in fact accrue to the Company, and that the fact that they did accrue to the Company gives to the workmen of the Company a claim based on expediency to a small share therein, in whatever manner these profits may have been subsequently disposed of.

14. I have now discussed at length all the arguments urged before me on behalf of the Standard Vacuum Oil Company concerning this troublesome question of bonus, which, I fear, still entangles the feet and vexes the hearts of men.

15. Mr. C. C. Shah, Solicitor for the National Oil Workers' Union, based his claim for bonus, on behalf of the employees of the Standard Vacuum Oil Company, on my awards dated 6th October 1942 and 10th December 1942. I need not, therefore, repeat his arguments. He further pointed out that the Standard Vacuum Oil Company had not granted bonus to the clerks working in its office, when it paid bonus to its workmen on 29th January 1943. Mr. Shah argued that the term "workman" as defined in section 2, sub-section (k) of the Trade Disputes Act of 1929 included clerks as well as workmen and other employees, and these clerks were as much entitled to the grant of bonus as other workmen and employees of the Company. Again by section 3, sub-section (10) of the Bombay Industrial Disputes Act of 1938, the term "employee" is made to include a member of the clerical staff of an industry. Mr. Shah stated that many clerks serving in the Standard Vacuum Oil Company were members of the National Oil Workers' Union, and he was, therefore, entitled to speak on their behalf and claim bonus for them too. He has submitted to me under confidential cover a list of clerks serving in the Standard Vacuum Oil Company, who are members of the National Oil Workers' Union. The Order of the Government of Bombay, appointing me as Adjudicator in this dispute lays down that I was

to exercise such powers as are conferred on, and follow such procedure as is prescribed for, a Board of Conciliation under the Trade Disputes Act of 1929 and the Bombay Trade Disputes Rules of 1930. I am, therefore, bound to give effect to this contention of Mr. Shah and to decide that the clerical staff of the Standard Vacuum Oil Company is as much entitled to a share in the profits of the Company as any other workman or employee.

16. For the reasons given above, I decide that the Standard Vacuum Oil Company should grant a bonus to its workmen, including the clerical staff of the Company as set forth below:

Bonus will be paid in cash. This bonus is granted in respect of the profits earned by the Company during the year 1941. One-twelfth of the total earnings, excluding dearness allowance, received by each workman or clerk of the Company who was in the service of the Company on 31st December 1941 as well as on 31st December 1942, and who is in service now, should be paid to each such workman or clerk as bonus. This bonus should be paid by the Company to its workmen and clerical staff on or before the 31st December 1943.

Bombay, 30th September 1943.

E. M. NANAVUTTY,
Adjudicator.

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(Bombay Calle, 13-11-1943. No. 6215/34-I. Government Gazette, 18-11-43 Part I. pp. 2576 to 2578)

THE CALTEX (INDIA) LTD., BOMBAY

AND

ITS EMPLOYEES

Adjudicator:—E. M. Nanavutty Esq., I.C.S. (Retired).

Mr. M. G. R. Aitken of Messrs. Crawford Bayley & Co., Solicitors, with Mr. N. J. Ford, District Manager, for Caltex (India) Ltd.

Mr. Chimanlal C. Shah of Messrs. Manchershaw B. Chothia & Co., Solicitors, with Mr. G. Mapara and Mr. S. G. Athavale for the National Oil Workers' Union.

A w a r d

By Government Order, Political and Services Department, No. 6215/34-II, dated the 10th August 1943, I was appointed Adjudicator in the trade dispute between Caltex (India) Ltd., Bombay, and its employees to adjudicate upon the following matter:

"Whether the Company should grant a bonus and, if so, on what terms and conditions?"

The Government of Bombay was further pleased to direct that for the purpose of adjudicating the said trade dispute I was to exercise such powers as are conferred on, and follow such procedure as is prescribed for, a Board of Conciliation under the Trade Disputes Act of 1929 and the Bombay Trade Disputes Rules of 1930.

2. The usual notices to the parties to file their respective statements were issued in due course. But the National Oil Workers' Union by its letter No. O. 29/43, dated the 25th August 1943, intimated to the Secretary of the Industrial Court, that it did not intend to file any written statement in this case. The Company, however, filed its written statement on 1st September 1943. The first hearing of the case was fixed on 2nd September 1943, but this case was not taken up on that day as the cognate case of the Standard Vacuum Oil Company was taken up first, and this case was adjourned to 20th September 1943. On this latter date, Mr. M. G. R. Aitken of Messrs. Crawford Bayley & Co., Solicitors, along with Mr. N. J. Ford, District Manager, appeared on behalf of the Caltex (India) Ltd., while Mr. C. C. Shah of Messrs. Manchershaw B. Chothia & Co., Solicitors, appeared for the National Oil Workers' Union along with Mr. G. Mapara and Mr. S. G. Athavale.

I have heard the arguments of the learned Solicitors of both sides and have taken time to consider my award in this dispute.

3. At the outset Mr. Aitken argued that as the National Oil Workers' Union had not filed any written statement in the present case and had given no notice to Government terminating the awards of 6th October 1942 and 10th December 1942, made by me in the previous dispute between the same parties, as required by Government Order, Political and Services Department, No. 6215/34-III, dated 18th January 1943, this fresh demand for two months' bonus on the part of the employees of Caltex (India) Ltd., was misconceived and ought not to be granted and should be thrown out "in limine". It seems to me that this argument itself is based upon a misconception of the Government Order of 18th January 1943, referred to by the learned Solicitor for Caltex (India) Ltd. The workmen of Caltex (India) Ltd., are in no way dissatisfied with the awards made in their favour in 1942, and have not the least intention or desire to terminate a state of affairs entirely in their favour. The present demand for bonus is in respect of the profits alleged to have been made in the year following that in respect of which

bonus was granted to them by my awards of 1942. I am not aware of any legal bar to the workmen of Caltex (India) Ltd., bringing this fresh demand for bonus based upon their claim to a share in the profits made by the Company in a year different from that in respect of which bonus was granted in the previous litigation. There is thus no force in the technical objection raised by Mr. Aitken on behalf of Caltex (India) Ltd.

4. The contention that as no notice of strike had been served on the Company by its workers or by the National Oil Workers' Union, the referring of the present dispute to an Adjudicator was irregular, has been fully answered in the letter of the Commissioner of Labour No. L. O. 7352 of 20th August 1943. On this point, writing to the District Manager of Caltex (India) Ltd., the learned Commissioner of Labour made the following pertinent observations:

"When Rule 81-A was promulgated by Government, a Press Communique was issued assuring labour of a fair deal in return for the limitation upon strikes. It is by no means the case that a dispute should go as far as a notice of strike before adjudication is ordered; such a principle would tend to cause rather than diminish strikes. I may remind you that last year strikes in fact took place."

This effectively answers the objection raised by the Company in this connection.

5. As regards the complaint that the National Oil Workers' Union did not file any written statement in the present case when called upon by me to do so, all I can say is that the employees of the Company were not bound to file the same if the Solicitor on behalf of their Union decided to argue the case orally without the help of a written statement. This procedure on the part of the National Oil Workers' Union, though unusual and not to be commended in every case, has not, in my considered opinion really prejudiced the Company in its defence on the merits. The only matter in dispute between the parties was the question of bonus, and here I fancy, Mr. Shah has inadvertently over-reached himself by not specifying clearly anywhere the particular year in respect of which bonus was sought to be claimed by the National Oil Workers' Union. Mr. Shah had first argued that the claim for bonus in the present dispute was in respect of the profits for the calendar year 1941 but when it was pointed out to him that the profit and loss account of Caltex (India) Ltd., for the year 1941, filed last year, was taken into account by me in making my award in the previous dispute between the parties, then he shifted his ground and argued that the bonus claimed in the present dispute was in respect of the profits made in the year 1942. Thus Caltex (India) Ltd., has paid only a month's bonus in respect of the profits for the years 1938, 1939, 1940 and 1941, and has thus gained an advantage over its sister-company—the Standard Vacuum Oil Company—which is

asked to pay bonus out of the profits of the year 1941 in this year's dispute. It has, therefore, no legitimate grouse against the conduct of the National Oil Workers' Union in not filing any written statement in the present trade-dispute.

There is thus no force in all the technical objections raised on behalf of Caltex (India) Ltd., Bombay, against the demand made by the National Oil Workers' Union.

6. It was next argued that the excellent terms of service which the workers of Caltex (India) Ltd., enjoyed are themselves sufficient to rule out any question of the demand of a bonus. Mr. Shah does not dispute the fact that the awards of 1942 did grant substantial benefits to the workers of the Company but he contends briefly that he bases his claim for bonus solely on the ground that if the Company is proved to have made unusually large profits in 1942, then as a matter of justice and fair play the workers who have helped the Company to earn these unusually large profits should be granted a very small share of these profits by way of bonus. If no such unusually large profits were in fact made by the Company in the year 1942 then the claim for bonus on the part of the workers must automatically fail. I have examined the Profit and Loss Account for the year 1942 sent to me under confidential cover and I find that notwithstanding the increase in wages and other benefits granted to the workmen by my awards of 6th October 1942 and 10th December 1942, the profits made by the Company in that year are still unusually large; and that being the case the claim for bonus in the present dispute must be upheld on the same grounds as those stated by me in my award of 6th October 1942 between the same parties.

7. The trend of present-day economic thought is towards co-operation between all engaged in business-concerns. The demand for "peace in industry" is being emphasized all round; and this demand for "peace in industry" is all the more urgent and pressing when there is just now a world-war raging. As I pointed out in my award of 6th October 1942, between the same parties, industrial peace is of supreme importance at this juncture, and petroleum is a commodity with which Caltex (India) Ltd., deals, and is an article essential for the effective prosecution of this world-wide war, Caltex (India) Ltd., is, like the Standard Vacuum Oil Company, an American business-concern. And surely that great and powerful nation—the United States of America—is as vitally concerned in the successful prosecution of the present war as the Government of India, and should, therefore, have no hesitation whatsoever in keeping Indian workmen on its staff contented and happy by granting them by way of bonus a very small share in the unusually large profits made by its Company in India during the present world-war.

8. The contention that because bonus was paid to its workmen on 13th February 1943, as directed under Government Notification,

Political and Services Department, No. 6215/34-III, dated 18th January 1943, no further bonus should be demanded now, overlooks the principle relied upon by Mr. Shah that whenever in any particular year the Company had made unusually large profits, then the workmen were entitled, as a measure of policy and expediency, to a share in those profits by way of bonus. The workers received their share of profits by way of bonus in the previous dispute of 1942, in respect of profits accruing during the years prior to 1942; but that is no reason for refusing them the grant of bonus in the present case out of the unusually large profits made in 1942. Suffice it to say that Caltex (India) Ltd., Bombay, has only paid up to now a month's bonus out of the unusually large profits made by it in two successive war-years 1940 and 1941, and can, therefore, have no legitimate grievance if it is now asked to give to its workmen a very small share by way of bonus out of the profits of 1942. In fact it has scored a substantial advantage out of the mistake of the National Oil Workers' Union in not specifying clearly in their demand the year out of the profits of which bonus was sought to be claimed in the previous dispute as well as in the present case.

9. The further contention that increased profits can have no bearing on the question of demand for any bonus cannot for a moment be sustained, if industrial peace is to be maintained at all costs in times of war, and if the war-effort of the Government of India is not to be interfered with in the least. I have discussed at length in the analogous case of the Standard Vacuum Oil Company my reasons for rejecting this argument; and it would unnecessarily lengthen out this already lengthened award if I were to repeat them here once more. I may add that this contention was not seriously pressed before me by the learned Solicitor for the Company.

10. Finally Mr. Aitken argued that as no member of the clerical staff of Caltex (India) Ltd., had threatened to go on strike and as no bonus was demanded by any of them these clerks of the Company were not entitled to get any bonus out of the excess profits made by the Company in the year 1942. Unfortunately for this contention of Mr. Aitken, the term "workman" as defined in section 2 sub-section (k) of the Trade Disputes Act of 1929 and in section 3 sub-section (10) of the Bombay Industrial Disputes Act of 1938, is made to include the clerical staff of the Company as well. I can, therefore, find no valid reason for excluding the clerks of Caltex (India) Ltd., from the benefit to which in my opinion the other employees of the Company are entitled.

11. Much stress was laid by Mr. Aitken on behalf of Caltex (India) Ltd., upon the definition of bonus given by me in my award of 6th October 1942, and it was argued that it would be quite wrong to coerce the Company to make a compulsory payment of bonus when it had no intention of doing so. It is true

that bonus in its essence is a volutary gift, but under the stress of a world-wide war, and in order not to hamper the war-effort of the United States of America and of the Government of India, it seems to me that the Directors of Caltex (India) Ltd., (who are I take it, patriotic citizens of America) would be well advised, as a matter of policy and expediency in their own enlightened self-interest, to grant to their Indian workmen working in their installation out in India a very small share by way of bonus out of the unusually large profits made by the Company out here during these war-years. To act otherwise is in my opinion to court disaster and to jeopardise the victory of the 'Allies in this frightful war. Thus bonus is not granted by me to the workmen of Caltex (India) Ltd., and to those of its sister-company—the Standard Vacuum Oil Company—as a matter of right, but only as a measure of expediency necessitated by the dire circumstances under which the whole world is labouring.

12. It is true that the capitalist system in the West has changed and is still changing before our eyes; collectivism is in many spheres replacing individualism, conscription and education and wider distribution of property are breaking down class-distinction in England and other countries of Europe. Co-partnership in industry and profit-sharing are ideas which are gaining ground even in capitalistic countries, and are being given effect to in certain British industries. But we in India are but remotely affected by those revolutionary changes. The demand for bonus in the present case made on behalf of the National Oil Workers' Union is based solely upon the unusually large profits made by the Company in these war-years; and Mr. Shah frankly conceded that if no unusually large profits were actually made by the Company during recent years, then the claim for bonus must be rejected categorically. I wish to emphasize this point and make it quite clear that only because these oil companies are making unusually large profits owing to abnormal war conditions are the workmen of these companies being paid bonus to ensure their willing co-operation in the efforts of the Governments of India and of America to bring this world-war as soon as possible to a successful termination. Once the war is over, the workmen of these companies will have to be content with their wages and other amenities and benefits so generously granted to them by their companies. Rule 81-A of the Defence of India Rules, itself makes this quite clear. It is only because it is necessary for securing the efficient prosecution of the present world-war that an Adjudicator is appointed under rule 81-A of the Defence of India Rules, to decide such trade disputes as the one before me. I trust these observations will remove any apprehensions lurking in the minds of the officials of these American oil companies that their companies will be liable to pay bonus every year to their workmen.

13. For the reasons given above I decide that Caltex (India)

Ltd., should grant a bonus of one month's pay to its workmen including its clerical staff. The bonus will be paid in cash. This bonus is granted in respect of profits earned by the Company during the year 1942, to all workmen and clerks who were in the service of the Company during that year and who continue to be in service up to now. One-twelfth of the total earnings, excluding dearness allowance, received by workmen and clerks of the Company during the whole of the year ending 31st December 1942, should be paid to each such workman and clerk as bonus. This bonus should be paid by the Company to its workmen and clerks on or before the 31st December 1943.

E. M. NANAVUTTY,
Adjudicator.

Bombay, 30th September 1943.

(Bombay Castle, 21-8-1944, No. 6215/34-1. Government Gazette
Part I. pp. 2017 to 2022).

STANDARD VACUUM OIL CO., BOMBAY,

AND

ITS EMPLOYEES

Adjudicator:—E. M. Nanavutty, Esq., I.C.S., (Retired).

Counsel Sir Jamshedji B. Kanga, instructed by Mr. M. G. R. Aitken of Messrs. Crawford Bayley & Co., Solicitors, with Mr. M. M. Bowman, manager, for the Standard Vacuum Oil Company.

Mr. Chimanlal C. Shah of Messrs. Manchershaw B. Cothia and Co., Solicitors, instructed by Mr. G. Mapara and Mr. S. G. Athavale of the National Oil Workers' Union, Bombay, for the employees.

A w a r d

The trade dispute regarding bonus between the Standard Vacuum Oil Company, Bombay, and its employees (other than clerical employees) in its installations in the City of Bombay, was referred to me for adjudication by Government Order, Political and Services Department, No. 6215/34-A, dated the 20th June 1944,

issued under sub-rule (1) of rule 81-A of the Defence of India Rules read with Government of India Department of Labour, Notification No. L. 3005, dated the 20th May 1942. The said Order also directed that I was to exercise such powers as are conferred on, and follow such procedure as is prescribed for, a Board of Conciliation under the Trade Disputes Act of 1929 and the Bombay Trade Disputes Rules of 1930.

2. A trade dispute regarding bonus between the said Company and its employees was referred to me for adjudication in the month of August 1943. I made an award on the 30th September 1943. That award was published by Government in the *Bombay Government Gazette*, Part I, on 18th November 1943, and it was enforced and made binding on the Company and its employees for a period up to 15th January 1944, by Government Order No. 6215/34-II, dated the 13th November 1943. In that award I made the following order:

"Bonus will be paid in cash. This bonus is granted in respect of the profits earned by the Company during the year 1941. One-twelfth of the total earnings, excluding dearness allowance, received by each workman or clerk of the Company who was in the service of the Company on 31st December 1941 as well as on 31st December 1942, and who is in service now, should be paid to each such workman or clerk as bonus. This bonus should be paid by the Company to its workmen and clerical staff on or before the 31st December 1943."

3. The National Oil Workers' Union by its letter dated 21st January 1944, addressed to the Standard Vacuum Oil Company, demanded for the employees of the Company bonus for the years 1942 and 1943. On 1st April 1944, the Union wrote another letter to the Company repeating the demand for bonus for 1942 and 1943. The Commissioner of Labour endeavoured to bring about a settlement between the parties, but the Company was not prepared to concede the demand. The Union, therefore, served on 7th June 1944, a notice to strike work cancelling the previous notice of 23rd May 1944, which was wrongly issued by its Treasurer. The dispute was, therefore, referred to me for adjudication by Government on 20th June 1944, as stated above.

4. The usual notices to the parties calling upon them to file their respective statements were issued on 22nd June 1944. I visited the installations of the Company on 28th June 1944, to observe for myself the welfare measures and other amenities provided by the Company for the benefit of its employees. On the 30th June 1944, the Union wrote to the Secretary of the Industrial Court, informing him that it had made a representation to Government on 23rd June 1944, for a revision of the terms of reference, and that it desired to postpone the filing of its written statement till it had received a reply from Government to its representation. The Union was, however, directed to file its written statement in time

without waiting for a reply from Government to its representation, on the assurance that it would be permitted to file later on a supplementary statement, if necessary. The Union accordingly filed its written statement on 6th July 1944, and the Company submitted its written statement in reply to it on 7th July 1944. The arguments in this case were heard on Monday, the 10th July 1944, at 11 a.m. in the Industrial Court.

5. The issue referred to me for adjudication in this dispute is as follows:

“What bonus, if any, should be granted on the earnings of the years 1942 and 1943 and on what terms and conditions?”

6. I have heard with great interest the able arguments advanced by the learned counsel for the Standard Vacuum Oil Company. I had fondly hoped that after the elaborate reasoning set forth by me in my two previous awards between the same parties, the abstract question, whether the Company should, as a matter of policy and expediency, grant a bonus to its workmen, had become a dead issue. The Directors of the Company are, however, adamant on this point; and so, out of deference to the contentions advanced by the the eminent counsel who appeared before me on behalf of this Company, I will review this question afresh. In my two previous awards I had rescued this trade-dispute concerning bonus from the sordid antipathies, inevitable and tacitly inherent in every relationship between capital and labour, and had lifted it on to the clear and serene atmosphere of broad economic and political considerations. Whether we like it or not, for good or for evil, socialistic and communistic ideas are gaining ground all over the world. Labour is on the march, out to avenge past wrongs. As a modern English poet has vividly described:—“How slow, far off, taps onward the crutch of Nemesis!” But few there are who see the coming storm, and fewer still who have the wisdom and the foresight to meet it half-way by arranging for a wise compromise with labour. As, however, the Directors of this American Standard Vacuum Oil Company are not prepared to give weight to the above considerations, and are still of the same opinion that bonus cannot be justly demanded of them, so I will now try to tackle this question of bonus from a more practical point of view, if happily perchance I may be able to win them over to my view of the matter.

7. Over the civil contract originally entered into by every workman with the Standard Vacuum Oil Company has been now superimposed by the Essential Services (Maintenance) Ordinance of 1941, as amended by the Essential Services (Maintenance) Amendment Ordinance of 1942 (No. XXVI of 1942) and Essential Services (Maintenance) Second Amendment Ordinance (No. XXXVIII of 1942), a criminal liability. No workman can leave the service of the Company at his own sweet will. If he does so, he is guilty of an offence under this Ordinance,

punishable with imprisonment for a term which may extend to one year and be also liable to a fine. So long as the war lasts, this Ordinance will remain in force and the workmen of this Company must remain, body and soul, tied to it.

8. Again under rule 81-A of the Defence of India Rules a strike or a lock-out in connection with any trade-dispute is prohibited, if in the opinion of the Government of India it is necessary or expedient so to do for securing the defence of British India, the public safety, the maintenance of public order, or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community. Once more the freedom of the workman to do what he considers best in his own interest is thus severely curtailed. In these special circumstances arising out of this dreadful world-war, an Adjudicator, appointed by Government to see that the war-effort of the Government of India is not hindered in any way might well think it prudent and equitable to grant to the workmen of these American Oil Companies a "war-bonus" so as to keep them up to the mark and prevent them from slacking or doing anything to jeopardise the war-effort of the Government. In support of this contention of mine I may appropriately cite here a Press Note issued by the Government of Bombay on 21st November 1942, in connection with the grant of a war-bonus announced by the Bombay Millowners' Association to the Cotton Textile workers in Bombay, for the year 1942:

"Last year the Millowners' Association, Bombay, paid to its cotton textile workers in the city and island of Bombay a cash bonus equivalent to one-eighth of their total earnings (exclusive of dearness allowance) for the period from January 1 to December 31, 1941. The Millowners' Association, Bombay, has now decided to pay to the Workers for the year 1942 a cash bonus equal to one-sixth of their total earnings (exclusive of dearness allowance) for that year.

"The Government of Bombay again desires to record its appreciation of the action taken by the Millowners' Association and its opinion that the bonus now announced is fair and reasonable. The Government also trusts that labour will reciprocate this gesture of good will on the part of the employers."

9. Mr. C. C. Shah on behalf of the National Oil Workers' Union has all along argued both in the present trade-dispute as well as in the two previous ones that if these American Oil Companies have not made larger profits during these war years than what they did in pre-war years, then the demand for bonus on the part of the National Oil Workers' Union must automatically fail. On the other hand, the learned counsel for the Standard Vacuum Oil Company has strenuously argued that the grant of bonus has nothing whatsoever to do with the profits of the Company in any given year. I cannot for a moment accept this contention of the eminent counsel appearing for the Standard Vacuum

Oil Company. His contention is not supported by any authority. As against counsel's contention there is the weighty pronouncement of Mr. Justice Chagla of the Bombay High Court in the industrial dispute between the General Motors (India) Ltd. and its employees to the following effect:

' "It is almost a universally accepted principle now that the profits are made possible by the contribution that both capital and labour make in any particular industry, and I think it is also conceded that labour has a right to share in increased profits that are made in any particular period."

(*Bombay Government Gazette*, Part I, of 28th May 1942, at the bottom of page 1900).

10. Again, Sir Robert Broomfield, another learned Judge of the Bombay High Court in his award in the dispute between the Bombay Electric Supply and Tramways Co. Ltd., and its employees made the following pertinent observation:

"It is the usual practice when bonuses are paid to the employees of a Company *out of profits*, to pay them in terms of the monthly wages, half a month's, one month's, two months' wages, as the case may be."

(*Bombay Government Gazette* Extraordinary, Part I, dated 10th July 1942, paragraph 25, page 2533).

It is, therefore, clear that bonuses to workmen can only be paid to them out of the profits made by their Company, although any such bonus need not necessarily be linked with the profits of any particular year.

11. I think I have said enough to show that in my opinion the workmen of these American Oil Companies have a moral and equitable claim to a very small fractional share in the unusually large profits which these Oil Companies have been making in India during these abnormal war years. Economic and political considerations as well as their own enlightened self-interest as shrewd business men ought to induce the Directors of these American Oil Companies to grant some bonus to their workmen during these war years when they are themselves making unusually large profits. So much for the abstract question whether on principle any bonus should be granted by the Company to its workmen.

12. I turn next to discuss whether the workmen of the Standard Vacuum Oil Company are entitled to a bonus in respect of the year 1942. I think this demand is misconceived. On the 27th April 1943, the National Oil Workers' Union demanded a bonus equivalent to two months' earnings of the year 1942 for the employees of the Standard Vacuum Oil Company. This demand for bonus in respect of the year 1942 was granted by my

award dated the 30th September 1943 (See *Bombay Government Gazette*, Part I, dated 18th November 1943, page 2573). I had, however, in granting this bonus linked it with the profits earned by the Company during the year 1941 as the profit and loss account of the Company for the year 1942 was not available then. In other words I based the grant of the bonus to the workmen of the Standard Vacuum Oil Company on the assumption that the profits for the year 1942 were not less than those of the year 1941 for which figures were then available. The quantum of bonus was fixed with reference to the earnings of the workmen of the Company for the year 1942.

13. Mr. C. C. Shah has read into the operative part of my award of 30th September 1943 a meaning which it was never intended to convey and has cleverly asked in the present trade-dispute for another bonus, on behalf of the National Oil Workers' Union, equivalent to two months' earnings of the workmen for the year 1942. The workmen of the Company have already enjoyed a bonus of a month's wages in respect of their earnings for the year 1942. This fresh demand for a bonus equivalent to two months' earnings of the workmen in respect of the year 1942 is, therefore, in my opinion frivolous and must be rejected summarily.

14. Finally, I come to discuss the demand for bonus in respect of the year 1943. The learned counsel for the Standard Vacuum Oil Company opposes this demand vigorously on the ground that already this Company has paid two bonuses to its workmen up to date, and if the Burmah Shell Oil Company cannot be called upon to pay any more bonus before 1945 upon the earnings of its workmen for 1944, then the Standard Vacuum Oil Company and Caltex (India) Ltd., should also not be called upon now to pay any additional bonus for the year 1943. Sir Jamshedji Kanga dwelt eloquently upon the necessity for uniformity of treatment in respect of all three oil companies which were companies doing exactly the same kind of business. If this contention is advanced as an abstract proposition of law and common sense, I am in complete agreement with the learned counsel for the Standard Vacuum Oil Company. Unfortunately, however, the circumstances under which Burmah Shell Oil Company escaped paying bonus in respect of the years 1940 and 1941 are quite peculiar, as will be seen from my award dated 3rd March 1944 (published in *Bombay Government Gazette*, Part I, dated 6th April 1944, page 646). Major Bacon, the Labour Officer attached to Burmah Shell Oil Storage and Distributing Company of India Ltd., Bombay, succeeded in persuading the workmen of that Company to give up their demand for bonus in respect of the years 1940 and 1941. The Company voluntarily paid a bonus for the year 1942 to its work-

men on 26th February 1943, and on 1st December 1943, it voluntarily offered to pay a bonus of a month's earnings to each of its workmen who had been in its service throughout the calendar year 1943. Far different were the circumstances under which the Standard Vacuum Oil Company and Caltex (India) Ltd., had to pay two bonuses under my awards of 6th October 1942 and 30th September 1943.

15. It is clear from my award of 30th September 1943 that the bonus of a month's wages awarded to the workmen of the Standard Vacuum Oil Company was not, and could not be, in respect of the earnings of the workmen for the year 1943. In fact the year 1943 had not come to a close when I made my award, and obviously only bonus in respect of the earnings of the workmen for 1942 had been considered in that award, the profits of the Company for that year 1942 being deemed to be not less than those of the previous year 1941. It is thus clear that neither the Standard Vacuum Oil Company nor Caltex (India) Ltd., paid any bonus to its workmen in respect of the earnings of the workmen for that year 1943 nor was the bonus made referable to the profits of the Companies for that year. This point is made still clearer in my award of 30th September 1943, in the case of Caltex (India) Ltd., where I state clearly in paragraph 13 that bonus is granted in respect of the profits earned by the Company during the year 1942, to all workmen and clerks who were in the service of the Company during that year. The profit and loss account for 1943 had not been prepared by Caltex (India) Ltd., and could not, therefore, be taken into consideration in that trade-dispute.

16. No evidence of any kind has been adduced before me in support of the new contention urged in the present dispute that because the workmen of the Standard Vacuum Oil Company were guaranteed a minimum of twenty-six days' pay for each month, so they gave up their demand for bonus in respect of the years 1940 and 1941. Sir Jamshedji Kanga, counsel for the Standard Vacuum Oil Company, has examined no witness in support of this contention, nor has any documentary evidence been filed by the Company to corroborate this story which has seen the light of day at this belated juncture. It is only the defence set up by Burmah Shell in its dispute with its workmen that has inspired the Standard Vacuum Oil Company to set up this plea of constructive estoppel. I have no hesitation in rejecting it as frivolous.

17. Stress has been laid by the Standard Vacuum Oil Company on the amenities and favours conferred by it on its workmen. I have taken this factor into consideration in awarding the amount of bonus for each year to the workmen of the Company; but I do not think it fair to the workmen to refuse to grant them any bonus

at all on this ground during these war-years when the Company has been making unusually large profits. It is contended before me that the profits of 1943 for the Standard Vacuum Oil Company are estimated to be less than those of 1942. I can hardly accept this estimate as correct; and even if I were to accept it as correct it would not show that this Company had made no profits whatsoever. I may note here that Caltex (India) Ltd., has in its profit and loss account for 1943 shown even a considerably larger profit for the year 1943 over that of 1942. The learned counsel for the Standard Vacuum Oil Company has himself laid stress upon uniformity of treatment in respect of all three oil companies, and if Burmah Shell has been made to pay for the year 1943 bonus of a month's wages to its workmen, then there seems no reason why the Standard Vacuum Oil Company and Caltex (India) Ltd., should not be asked to pay a similar bonus of a month's wages to their workmen in respect of the same year 1943.

18. Finally, I may note here that objection has been taken to the frame of the issue in the present dispute. The issue framed by Government runs thus:—"What bonus, if any, should be granted on the earnings of the years 1942 and 1943, and on what terms and conditions?" In my opinion there is no ambiguity in the issue as framed by Government. The issue lays stress upon the earnings of the workmen for the years 1942 and 1943, and leaves undetermined the year or years out of the profits of which the Company may have to meet this demand for bonus if it is ordered by the Adjudicator that it should pay any such bonus to its workmen in the present dispute.

19. In my first award dated 6th October 1942, as clarified by my final award of 10th December 1942, the workmen of the Standard Vacuum Oil Company were granted a bonus of a month's wages in respect of their earnings for the calendar year 1941. In my second award dated 30th September 1943, the workmen of this Company got a bonus of a month's wages in respect of their earnings for the calendar year 1942. And now in the present dispute, these workmen of the Standard Vacuum Oil Company cannot be granted bonus a second time in respect of their earnings for that same year 1942, but they can legitimately claim bonus in respect of their earnings for the year 1943.

20. On the 26th July 1944, I received copies of the orders of Government passed on the separate representations made by the two Oil Companies and their employees. In each case the Government declined to revise its Order directing an adjudication. I summoned parties to attend the Industrial Court on 31st July 1944, to hear if they had anything further to urge as regards their res-

pective contentions. I heard parties on that date, but neither Mr. Aitken nor Mr. Shah had anything fresh to urge, and I need, therefore, say nothing more as regards the frame of the issue in this case and as regards the exclusion of the clerical staff from the present trade-dispute.

21. For the reasons given above, I decide that the Standard Vacuum Oil Company, Bombay, will grant a bonus of a month's wages equivalent to $1/12$ th of the earnings (excluding dearness allowance and such amount as has already been paid by way of bonus in pursuance of the orders contained in the previous awards) to each of its workmen (excluding the clerical staff) working in its Bombay Installations, who was in the service of the Company throughout the calendar year 1943 and who has continued to be in its service up to 7th June 1944, i.e., the date on which notice of strike was given in this case by the National Oil Workers' Union. This bonus will be paid in one single instalment in cash, and payment will be made by the Company to its workmen within a month after the date of publication of this award in the *Bombay Government Gazette*. I disallow the claim for bonus made by the workmen of the Company in respect of their earnings for 1942, as the workmen have already received a bonus equivalent to $1/12$ th of their earnings for that year.

Bombay, 5th August 1944.

E. M. NANAVUTTY,
Adjudicator.

(*Bombay Castle*, 21-8-1944. No. 6215/34-II. *Government Gazette* 24-8-1944, Part I., pp. 2020-22.)

CALTEX (INDIA) LIMITED,

AND

THEIR EMPLOYEES

Adjudicator:—E. M. Nanavutty, Esq., I.C.S., (Retired).

Mr. M. G. R. Aitken of Messrs. Crawford Bayley & Co., Solicitors, with Mr. N. J. Ford, District Manager, for the Caltex (India) Ltd.

Mr. G. Mapara and Mr. S. G. Athavale of the National Oil Workers' Union, Bombay, for the employees.

A w a r d

The trade dispute regarding bonus between Caltex (India) Ltd., Bombay, and its employees (other than clerical employees) in its installations in the City of Bombay, was referred to me for adjudication by Government Order, Political and Services Department, No. 6215/34-B, dated the 20th June 1944, issued under sub-rule (1) of rule 81-A of the Defence of India Rules read with Government of India, Department of Labour, Notification No. L. 3005, dated the 20th May 1942. The said Order also directed that I was to exercise such powers as are conferred on, and follow such procedure as is prescribed for, a Board of Conciliation under the Trade Disputes Act of 1929 and the Bombay Trade Disputes Rules of 1930.

2. A trade dispute regarding bonus between the said Company and its employees was referred to me for adjudication in the month of August 1943. I made an award on the 30th September 1943. That award was published by Government in the *Bombay Government Gazette*, Part I, on 18th November 1943, and it was enforced and made binding on the Company and its employees for a period up to 15th January 1944, by Government Order No. 6215/34-III, dated the 13th November 1943. In that award I made the following order:

“.....I decide that Caltex (India) Ltd., should grant a bonus of one month's pay to its workmen including its clerical staff. The bonus will be paid in cash. This bonus is granted in respect of profits earned by the Company during the year 1942, to all workmen and clerks who were in the service of the Company during that year and who continue to be in service up to now. One-twelfth of the total earnings, excluding dearness allowance, received by workmen and clerks of the Company during the whole of the year ending 31st December 1942, should be paid to each such workman and clerk as bonus. This bonus should be paid by the Company to its workmen and clerks on or before the 31st December 1943.”

3. The National Oil Workers' Union by its letter dated the 1st April 1944, addressed to the District Manager of Caltex (India) Ltd., demanded for the employees of the Company bonus for the year 1943. The Commissioner of Labour endeavoured to bring about a settlement between the parties, but the Company was not prepared to concede the demand. The Union, therefore, served on 7th June 1944, a notice to strike work cancelling the previous notice of 23rd May 1944, which was wrongly issued by its Treasurer. The dispute was, therefore, referred to me for adjudication by Government on 20th June 1944, as stated above.

4. The usual notices to the parties calling upon them to file their respective statements were issued on 22nd June 1944. I visited the installations of the Company on 29th June 1944, to observe for myself the welfare measures and other amenities provided by the Company for the benefit of its employees. On the 30th June 1944, the Union wrote to the Secretary of the Industrial Court, informing him that it had made a representation to Government on 23rd June 1944, for a revision of the terms of reference, and that the Union desired to postpone the filing of its written statement till it had received a reply from Government to its representation. The Union was, however, directed to file its written statement within the time allotted to it without waiting for a reply from Government to its representation, on the assurance that it would be permitted to file later on a supplementary statement, if necessary. The Union accordingly filed its written statement on 6th July 1944, and the Company submitted its written statement in reply to it on 8th July 1944. The arguments in this case were heard on Tuesday, the 11th July 1944, at 11 a.m. in the Industrial Court.

5. The issue referred to me for adjudication in this dispute is as follows:

“What bonus, if any, should be granted on the earnings of the year 1943 and on what terms and conditions?”

6. I have heard the learned Solicitors of parties. Mr. Aitken of Messrs. Crawford Bayley & Co., Solicitors, has strenuously argued that the Directors of Caltex (India) Ltd., have never at any time agreed to pay any bonus to their workmen, and have never willingly paid any bonus to their workmen, although under the terms of the awards in two previous adjudications between the same parties, Caltex (India) Ltd., had been twice compelled to pay bonus to their workmen. He further contended that profit-sharing between the employers and the employees in any Company working in the United States of America was a thing unknown in that country, and that an American Company doing business in India should not be compelled to share the profits it makes with its Indian workmen out here. I confess I have no accurate or intimate knowledge of industrial conditions in the United States of America, but I do know that in England co-partnership in industry and profit-sharing are ideas which have been given effect to by various English capitalists in certain British industries. It was never my intention nor my idea to put the poor Indian more or less illiterate workman on a footing of equality with his highly-trained American employers. In this connection I cannot do better than quote paragraph 12 of my award dated 30th September 1943, in the previous Caltex case in order to emphasize once more the argument I advanced therein. Paragraph 12 runs thus:

"It is true that the capitalist system in the West has changed and is still changing before our eyes; collectivism is in many spheres replacing individualism, conscription and education and wider distribution of property are breaking down class-distinction in England and other countries of Europe. Co-partnership in industry and profit-sharing are ideas which are gaining ground even in capitalistic countries, and are being given effect to in certain British industries. *But we in India are but remotely affected by those revolutionary changes.* The demand for bonus in the present case made on behalf of the National Oil Workers' Union is based solely upon the unusually large profits made by the Company in these war years; and Mr. Shah frankly conceded that if no unusually large profits were actually made by the Company during recent years, then the claim for bonus must be rejected categorically. *I wish to emphasize this point* and make it quite clear that only because these oil companies are making unusually large profits owing to abnormal war conditions are the workmen of these companies being paid bonus to ensure their willing co-operation in the efforts of the Governments of India and of America to bring this world-war as soon as possible to a successful termination. Once the war is over, the workmen of these companies will have to be content with their wages and other amenities and benefits so generously granted to them by their companies. Rule 81-A of the Defence of India Rules, itself makes this quite clear. It is only because it is necessary for securing the efficient prosecution of the present world-war that an adjudicator is appointed under rule 81-A of the Defence of India Rules, to decide such trade disputes as the one before me."

I cannot put the case for the workmen of the Company more clearly and succinctly than what I have done in the above paragraph.

7. On perusing the profit and loss account filed by Caltex (India) Ltd., for the year 1943, under a confidential cover, I find that the Company has made a larger profit in 1943 than what it did in 1942, and so there is no reason whatsoever for refusing the workmen of this Company bonus for 1943.

8. It is unnecessary for me to repeat here all the arguments I have set forth in my award of to-day's date in the trade dispute between the Standard Vacuum Oil Company and its employees, although they apply with equal force to the present dispute as well.

9. I will, therefore, only take up the special points argued before me by Mr. Aitken on behalf of Caltex (India) Ltd.

10. It has been contended before me that the terms under which this trade dispute between Caltex (India) Ltd., and its employees (other than clerical employees) has been referred to adjudication by Government, require further elucidation and amplification, and that the word "employee" is misleading. There is to my mind no force in this contention. The clerical staff has been expressly excluded by Government, and their claim for bonus advanced in the present case in the written statement filed by the National Oil Workers' Union cannot be considered by me in these adjudication proceedings. This is a matter distinctly in favour of Caltex (India) Ltd. The Company knows better than anybody else who its workmen are, and it is these workmen who are to get the bonus for 1943 and not any member of the supervising staff. No such person is included in the term "workman" as defined in the Trade Disputes Act of 1929. In my opinion there is nothing misleading or ambiguous in the term "employees" as used by Government in its Order referring this trade-dispute to adjudication.

11. It was further argued before me that the present adjudication proceedings are concerned with the question of whether or not a bonus should be paid on the workmen's earnings, and any ambiguity that the profits of the Company are involved, should be removed. I confess I find some difficulty in grasping the line of reasoning involved in this contention. The quantum of bonus awarded to each workman is measured by the earnings of that workman (excluding dearness allowance) for a given definite period, but the money to pay the bonus has necessarily to come out of the profits or gains of the Company. The term "earnings" in these industrial disputes is generally applied to the emoluments of workmen, while the word "profits" is used for the gains or financial income derived by the proprietor from the business of his company or firm.

12. The issue framed in the present case may be paraphrased as follows so as to bring out its full meaning and leave no room for ambiguity:—"What amount of bonus, if any, should be granted to the workmen of Caltex (India) Ltd., measured with reference to the earnings of the workmen of that Company for the year 1943, and to be paid out of the profits of the Company for that year 1943; and if so, on what terms and conditions should such bonus be awarded?"

13. In the two previous disputes between the same parties the quantum of bonus was measured with reference to the earnings of the workmen for the years 1941 and 1942, and the Company paid the total amount of bonus out of its profits for 1941 and 1942. In the present dispute the measure of bonus will be the earnings of

each workman (excluding dearness allowance) for a specific period of the year 1943, and the total amount of bonus will necessarily have to come out of the profits of 1943. I think that makes the position quite clear and leaves no room for any ambiguity. It was further submitted that in view of the terms of the Government Order referring this dispute to adjudication the question of payment of a bonus to the employees and clerks of the Head Office of Caltex (India) Ltd., does not arise. That contention is in my opinion self-evident on the face of the Order of Government and Mr. Shah admitted it freely.

14. Finally, it was argued that if Burmah Shell Company paid only two bonuses up to date in respect of the years 1942 and 1943, Caltex (India) Ltd., and the Standard Vacuum Oil Company, who have already paid two bonuses up to date, should not be ordered to pay a third bonus. In this connection stress was laid upon the principle of uniformity of treatment of all three oil companies. This contention overlooks two cardinal facts which distinguish the case of Burmah Shell from those of the two other oil companies. As a matter of fact Burmah Shell has paid two bonuses to its workmen in respect of the earnings of those workmen for the years 1942 and 1943 out of the profits of those two years, whereas the Standard Vacuum Oil Company and Caltex (India) Ltd., have paid bonuses to their workmen in respect of the earnings of their workmen for the years 1941 and 1942 and have not paid any bonus in respect of the earnings of their workmen for the year 1943. In the second place, Burmah Shell was lucky in having the services of its Labour Officer Major Bacon who somehow managed to persuade the workmen of their company to give up their demand for bonus in respect of the years 1940 and 1941. No such lucky plea of estoppel by conduct can be urged on behalf of the Standard Vacuum Oil Company and of Caltex (India) Ltd. On the contrary, both these companies have been compelled to pay bonus to their workmen for the year 1941 by my award in the first trade dispute between the parties. I am, therefore, unable to accept this argument founded on uniformity of treatment of all three oil companies.

15. On the 26th July 1944, I received copies of the orders of Government passed on the separate representations made by the two oil companies and their employees. In each case the Government declined to revise its Order of 20th June 1944, referring to me these two trade disputes for adjudication. I fixed 31st July 1944, for another hearing. I heard parties on that date, but neither Mr. Aitken nor Mr. Shah had anything fresh to urge, and I need therefore say nothing more as regards the frame of the issue in this case and as regards the exclusion of the clerical staff from the present trade dispute.

16. For the reasons given above, I decide that Caltex (India) Ltd., Bombay, will grant a bonus of a month's wages equivalent to 1/12th of the earnings (excluding dearness allowance and such amount as has already been paid by way of bonus in pursuance of the orders contained in the previous awards) to each of its workmen (excluding the clerical staff) working in its Bombay Installations, who was in the service of the Company throughout the calendar year 1943 and who has continued to be in its service up to 7th June 1944, i.e., the date on which notice of strike was given in this case by the National Oil Workers' Union. This bonus will be paid in one single instalment in cash, and payment will be made by the Company to its workmen within a month after the date of publication of this award in the *Bombay Government Gazette*.

Bombay, 5th August 1944.

E. M. NANAVUTTY,
Adjudicator.

(*Bombay Castle, 29-3-1944, No. 6215/34-1, Government Gazette Part I, pp. 645 to 647.*)

BURMAH-SHELL OIL STORAGE AND DISTRIBUTING CO., OF INDIA LTD.

AND

ITS EMPLOYEES

Adjudicator.—E. M. Nanavutty, Esq., I.C.S. (Retired).

Counsel Sir Jamshedji B. Kanga, with Mr. Alfred E. O. Lucas of Messrs. Craigie, Blunt & Caroe, Solicitors, instructed by Mr. A. W. Percy, Assistant Manager, and Mr. W. V. Agnew, Senior Accountant, for the Burmah-Shell Oil Storage and Distributing Co., of India Ltd.,

Counsel Mr. Nanubhai K. Desai, with Mr. G. Mapara and Mr. S. G. Athavle, of the National Oil Workers' Union, Bombay, for the employees.

A w a r d

The trade dispute between Messrs. Burmah-Shell Oil Storage and Distributing Co., of India, Ltd., Bombay (hereinafter referred to as the Company) and its employees was referred to me for adjudi-

cation by Government Order, Political and Services Department, No. 6215/34, dated the 5th January 1944. The said Order also directed that I was to exercise such powers as are conferred on, and follow such procedure as is prescribed for, a Board of Conciliation under the Trade Disputes Act of 1929 and the Bombay Trade Disputes Rules of 1930. The issue referred to me by the Government Order is, "whether the Company should grant a bonus, and, if so, on what terms and conditions?"

2. The usual notices to the parties calling for their written statements were issued on 8th January 1944. The National Oil Workers' Union filed a written statement on behalf of the employees on 21st January 1944, but the Company asked for extension of time to file its written statement. As desired by it, time was extended to 21st February 1944. On that day it filed its written statement through its Solicitors. The hearing commenced on 24th February 1944, and was concluded the next day. For two days I privately discussed with both parties the chances of an amicable settlement of the dispute; but I failed to bring about a compromise acceptable to both parties.

3. The dispute regarding payment of bonus in this Company has a somewhat long history. On the 11th of December 1941, some of the employees of the Company made certain demands, viz., (1) 26 days' guaranteed wage each month, (2) yearly increments, (3) increased dearness allowance equal to that given by General Motors, and (4) the gift of a bonus equal to what other Companies were then paying. The Company gave no reply till 24th February 1942. On the 25th of February 1942, the employees of the Company struck work. The Labour Officer of the Company Major William D. Bacon, who was then on military duty was recalled by the Company and he was able to persuade the workers to give up their demand for bonus and in lieu thereof accept other concessions which the Company was willing to grant. A notice (Ex. B attached to the written statement of the Company) was accordingly drawn up on 27th February 1942 to the following effect:—“(1) minimum and maximum rates of pay would be posted on the notice-board on 1st March 1942, (2) 26 days' guaranteed pay a month for permanent labour, subject to 'the laying-off' clauses was agreed to, and that was to commence from 1st February 1942, provided work was resumed on that day, (3) all increments were to be given in the same month, (4) temporary labour would not be made to suffer on account of the strike, and (5) in consequence of items 1 and 3 all permanent labour would be entitled to qualify for an increase in that year commencing from the month of March 1942, of not less than one anna.” Although this was not a compromise in the strict sense of the word, inasmuch as signatures of the employees were not taken, Major William

Bacon, the Labour Officer of the Company, who has been examined as a court-witness, has deposed that the workers unreservedly gave up their demand for bonus, and accepted instead the other concessions the Company was willing to grant. The workers then resumed work on the same day.

On 27th of May 1942, on behalf of the workmen of the Company an anonymous petition was sent to the Company in which there were 15 demands one of which was for a bonus, amounting to two months' wages. A similar petition was also sent to the Company on the 20th July 1942, which also contained a demand for bonus. As both these petitions were anonymous, the Company ignored them.

On the 14th of July 1942, the National Oil Workers' Union sent a circular letter embodying 10 demands to the Burmah-Shell Oil Company, the Standard Vacuum Oil Company, and Caltex (India) Ltd. The 5th demand in this circular letter, related to the grant of bonus. The Burmah-Shell Oil Company by its letter dated 21st July 1942, replied that as a majority of the demands made were inapplicable to the case of that Company's labour, it was presumed that the copy was sent for information only. Some correspondence passed between the Company and the National Oil Workers' Union, but no demand made in the circular letter of the 14th July 1942, was granted by the Company. On 26th February 1943, the Company paid a bonus equivalent to $1/12$ th of the wages earned during the year 1942 to such of its employees as were in its employment on 31st December 1942. That bonus was accepted by the employees without demur. The National Oil Workers' Union by its letter, dated 27th April 1943, thanked the Company on behalf of the employees for the offer of one month's bonus for the year 1942, and further demanded an additional payment of two months' wages as bonus on the assumption that the Company had made "handsome" profits and because no bonus was paid in respect of the profits of the year 1941. The Company made no further concessions as regards bonus; a good deal of correspondence passed between the National Oil Workers' Union on the one hand and the Company on the other relating to the demand for bonus and as to the representative character of the Union. For the sake of securing "peace in industry" the Company on 1st December 1943, declared that it would pay a bonus equivalent to $1/12$ th of the earnings of the employees to such employees as were in its service on 31st December 1943, and that the payment of bonus would be made as early as possible in January 1944. It appears that the Union was not content with this offer of the Company for one month's bonus for the year 1943, and made demands for bonus for each of the years 1940, 1941, 1942 and 1943, mainly on the ground that the Standard Vacuum Oil Company and Caltex (India) Ltd., had granted annual bonuses as a result of the awards of the Adjudicator in those cases. That

letter also contained a notice to strike work under rule 81-A of the Defence of India Rules if the demands of the employees of the Company were not granted. On the 5th of January 1944, Government issued the abovementioned Order referring the dispute to me for adjudication. In consequence of this Order, on the 8th January 1944, the Company withdrew its offer of one month's bonus for the year 1943 as the matter, in its opinion, had become "*sub-judice*".

4. In the written statement filed by the National Oil Workers' Union the employees of the Company made a claim for a consolidated bonus for all previous years beginning from 1940 and based their claim on the assumption that the Company had made "*huge*" profits during those years. In the course of the argument, Mr. Nanubhai K. Desai, Counsel for the Union, modified this demand and stated that the employees wanted a month's bonus for the profits made by the Company for each of the years 1940 and 1941, that an additional bonus of one month's wages be granted to them in respect of the profits made by the Company in 1942, and that a bonus equivalent to two months' earnings be given to them in respect of the profits of the year 1943. It appears that the demands of the employees regarding bonus have been changing from time to time. Sir Jamshedji B. Kanga, who appeared for the Company in this case argued that the Company never made any "*huge*" profits as alleged by the Union. The Company has filed in support of this argument its confidential Balance Sheets and Profit & Loss Accounts for the years 1937 to 1943. It was also argued that the conditions of service in this Company were more favourable and much better than the conditions of service in other oil companies, that a month's bonus had already been paid to the workers in the year 1943 in respect of the profits made in 1942 and that a similar bonus for the profits of 1943 had already been offered by the Company and that offer was still open, although it had to be formally withdrawn as the matter had become "*sub-judice*".

5. I have heard the arguments of Counsel of both parties at some length. At the outset the learned Counsel for the Company questioned the right of the National Oil Workers' Union to represent the employees of this Company and argued that the Union had no "*locus standi*" in this trade-dispute. To my mind there is no force whatsoever in this technical objection raised on behalf of the Company by Sir Jamshedji Kanga. Before ordering adjudication in this case, I take it that the Government of Bombay must have satisfied itself through the Commissioner of Labour, Bombay, that the present trade-dispute, initiated by the National Oil Workers' Union by its complaint to the Commissioner of Labour, was a genuine trade-dispute between the Burmah Shell

Oil Company and its employees. It is idle, therefore, now to assert that the Union does not represent the employees of this Company. The real grievance of the Company lies in the refusal of the Union to supply to it the names of the Company's employees who are members of the Union; but that fact has nothing whatsoever to do with the representative character of the Union. It is open to the Company to move the Commissioner of Labour or the Government of Bombay to make the Union accede to its request to furnish it with the names of its employees who are members of the Union. I, therefore, overrule the preliminary objection and hold that the Union does represent the employees of the Company in the present trade-dispute.

6. I turn now to discuss the sole issue involved in this case. In deciding the question whether the Company should grant a bonus to its employees, I think it would be convenient if I first took up the question whether the Company should be made to pay any bonus to its employees in respect of the profits made by it in the calendar years 1940 and 1941. In my opinion this claim for bonus in respect of the years 1940 and 1941 is clearly barred. Major Bacon, the Labour Officer attached to the Company, has deposed on oath before me that the workmen of the Company waived their claim to bonus in respect of these years and accepted, in lieu thereof, other concessions which the Company offered to them. The evidence of Ram Kishore, a workman of the Company examined on behalf of the Union to contradict the evidence of Major Bacon on this point, is not worth the paper on which it is written. I fully believe the evidence on this point of Major Bacon who seems to me an impartial and independent witness. That being the case, I cannot allow the employees of the Company to revive their claim for bonus in respect of the years 1940 and 1941. Having waived whatever claims they may have had in respect of bonus for the years 1940 and 1941 the workers are now estopped from setting up those claims in 1944. I, therefore, reject the claim of the workers of the Company for bonus in respect of the years 1940 and 1941.

7. I next come to examine the claim for an additional bonus of one month's wages in respect of the profits for the year 1942. The Company had already paid to its employees on 26th February 1943 a bonus of a month's wages in respect of the profits made by it in 1942. The Union, however, after thanking the Company for this favour now wants an additional bonus of a month's wages in respect of the profits of the year 1942. In this connection my attention has been invited to a dictum of Mr. Justice Broomfield in his award as adjudicator in the dispute between the Bombay Electric Supply & Tramways Co. Ltd., Bombay, and its employees (*Bombay Government Gazette Extraordinary*, dated 10th July

1942, paragraph 40, page 2536). In that case the learned Judge observed:—"It is out of the question to review bonuses already declared," and added "and anyhow I am not asked to do that".

8. In the present case I am asked to review the bonus of 1942 already paid, and that I cannot do. Even if I felt myself empowered to do so, I would not interfere with the discretion of the Company in this matter because on examining the profit and loss account filed by the Company under confidential cover, I find that this bonus paid by the Company was a handsome gift to its employees, and the latter cannot now, in all decency, ask for double the amount already granted to them. I, therefore, reject the claim of the employees of the Company for any additional bonus in respect of the profits of the calendar year 1942.

9. Finally, I come to discuss the claim for bonus made by the workmen of the Company in respect of the calendar year 1943. On the 1st December 1943, the Company had, of its own accord, declared, that it would pay a bonus equivalent to $1/12$ th of the earnings of its employees to such employees as were in its service throughout the year 1943. This was a spontaneous offer on the part of the Company to its workmen, but the National Oil Workers' Union turned down this offer as being inadequate, and has now demanded a bonus of two months' wages in respect of the profits made by the Company in the calendar year 1943. I have examined the profit and loss account filed by the Company and I consider that the bonus of a month's wages offered by the Company to its workmen is indeed an adequate and generous gift, and the employees of the Company cannot in all conscience expect the Company to grant them an additional bonus of another month's wages. In view of this spontaneous offer made by the Company, it becomes unnecessary for me, (not to say ungracious on my part), to discuss and to refute the contention advanced by the learned Counsel for the Company that the question of bonus has nothing whatsoever to do with the amount of profit made by the Company in any given year.

10. For the purpose of deciding the present dispute it is sufficient for me to state that I award to each permanent employee (including clerks in its Bombay Installations) in the service of the Company on 31st December 1943, a bonus equivalent to $1/12$ th of his total earnings (excluding dearness allowance), during the preceding 12 months. In view of the definition of the term "employee" contained in section 3, sub-section (10) of the Bombay Industrial Disputes Act of 1938 (Act No. XXV of 1938), and in view of the definition of the term "workman" contained in section 2, sub-section (k) of the Trade Disputes Act of 1929 (Act No. VII of 1929), it was conceded before me on behalf of the Company that

the clerical staff working in the Bombay Installations of the Company should also be granted the same bonus as that given to the workmen of the Company.

11. To sum up, I decide the sole issue in this case by awarding in respect of the profits of the year 1943 only, to each permanent employee of the Company (including a member of the clerical staff working in the Company's Installations in the City of Bombay) who was in the service of the Company on 31st December 1943, a bonus equivalent to $1/12$ th of his total earnings (excluding dearness allowance) during the preceding 12 months. Payment of this bonus will be made by the Company to its employees within a month after the date of the publication of this award in the *Bombay Government Gazette*.

12. I *disallow all other claims* for bonus made by the Union on behalf of the employees of this Company in respect of the profits made by the Company in the years 1940, 1941 and 1942.

(Signed) E. M. NANAVUTTY,
Adjudicator.

Bombay, 3rd March 1944.

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(*Bombay Castle*, 2-2-1946, No. 6215/34-1, *Government Gazette*
Part I, pp. 688 to 690.)

BURMAH-SHELL OIL STORAGE AND DISTRIBUTING COMPANY
OF INDIA LTD.

AND

ITS EMPLOYEES

Adjudicator:—Sir Navroji J. Wadia, I.C.S., (Retired).

Counsel:—Mr. Y. B. Rege, instructed by Messrs. Craigie Blunt & Caroe, Solicitors, Mr. G. Pakenhamwalsh and Mr. A. W. Percy, for the Company.

Counsel:—Mr. H. R. Pardiwalla with Mr. A. P. Pawar and four other representatives of workers for the employees of the Company.

A w a r d

By Government Notification, Political and Services Department, No. 6215/34, dated the 3rd December 1945, issued in exercise of the powers conferred by sub-rule (1) of rule 81-A of the Defence of India Rules read with Government of India, Department of Labour, Notification No. L. 3005, dated the 20th May 1942, the Government of Bombay appointed me to adjudicate the dispute between the Burmah-Shell Oil Storage and Distributing Company of India, Ltd., Bombay (hereinafter referred to as "the Company") and its employees.

2. By the terms of the notification it was provided that for the purpose of adjudicating the said trade dispute I should as far as possible exercise such powers as are conferred on and follow such procedure as is prescribed for a Board of Conciliation under the Trade Disputes Act of 1929, and the Bombay Trade Disputes Rules of 1930.

3. The dispute referred to me for adjudication was as regards the following matters:

"(1) Do the existing scale of wages require any revision and if so in what manner and to what extent?

(2) Should the workers be given dearness allowance for the days of privilege leave spent outside Bombay and if so from what date?"

4. Notice was given to the employees of the Company to put in, on or before the 22nd December 1945, a full statement of their demands. A copy of this was served on Mr. A. P. Pawar who was one of the five representatives of the employees who had served a notice of demand on the Company with respect to the dispute on the 12th November 1945. A similar notice was also given to such other employees as did not desire to be represented by Mr. Pawar. They were asked to file copies of the full statement of their demands in the Court, and also to hand over a copy simultaneously to the Manager of the Company. A notice was also given to the Manager of the Company to file on or before the 7th January 1946, two copies of their written statements in reply to the statements that might be received from Mr. Pawar or other employees of the Company.

5. In reply to this notice a letter without date was received by me on or about the 19th December 1945. It was signed by Mr. Pawar, a representative of the workers on behalf of the workers of the Company. They stated that the employees of the Company were not and are not prepared to accept adjudication in respect of any of their demands, that it was their desire to

settle the matters in dispute by carrying on negotiations with the Company, and that the Government had intervened and referred only two of their demands to adjudication out of the three, excluding the demand for victory bonus which was their principal demand. They said that as a result immediately thereafter the employees had to take recourse to immediate action according to the strike notice served on the Company on the 12th November 1945; that they were busy carrying on the strike mainly in respect of the victory bonus, and that under the circumstances it was difficult for them to submit a detailed written statement in respect of the two terms of reference which were before me. They went on to state that since the day of the strike they had been carrying on negotiations with the General Manager of the Company in respect of their three demands and they were glad to note that the Company had accepted one of their demands in terms of reference No. 2 and the Company had also put up a notice on their notice board to that effect; that the other demand was also under negotiation and they hoped to arrive at an agreeable settlement in that respect also. They asked me not merely to postpone the hearing of the case but to postpone the date of filing the written statement of their demands. I refused to do so. The Company put in their written statement on the 29th December 1945, in which they set out their contentions with regard to the two matters in dispute referred to adjudication, without prejudice to their general contention that no case had been made out for them to answer as the employees had not filed any written statement.

6. I fixed the 14th of January 1946 for the hearing of the matter. On that date the Company appeared through their counsel Mr. Y. B. Rege, instructed by Messrs. Craigie Blunt & Caroe, Solicitors. There was no appearance on behalf of the workers, though the notices issued by me had been duly served on the five representatives of the workers who had signed the notice of demands on the Company. A statement signed by the five representatives of the workers was put in informing me that the employees of the Burmah-Shell Oil Storage and Distributing Company of India, Ltd., Bombay, had decided not to press the demands made by them on the Company by their letter dated the 12th November, 1945, which had been referred to me for adjudication. I was informed by Mr. Rege on behalf of the Company that the Company had received no communication from the workers in this matter. As I considered it desirable to examine the representatives of the workers in order to satisfy myself that there was really no dispute left for adjudication, I adjourned the proceedings to the 16th of January, 1946. The five representatives of the workers who had signed the letter to the Company dated the 12th November, 1945, were present before

me on the 16th as also the representatives of the Company. The representatives of the workers confirmed their letter of the 14th January, that they had decided not to press the demands made by them on the Company in their letter to the Company, dated the 12th November, 1945. Mr. Rege for the Company stated that the Company had not even then received any communication either written or oral from the workers withdrawing their demands, and that there were no negotiations going on between the parties. At this stage Mr. Pardiwalla appeared for the workers and asked me to grant an adjournment in order to enable the parties to try and arrive at a settlement. The proceedings were, therefore, adjourned by consent of the parties to the 26th January, 1946.

7. On the 26th of January 1946, I was unfortunately prevented by ill-health from being present. Intimation not to be present on the 26th was given to the parties in time on the previous day, and the proceedings were adjourned to the 2nd February, 1946. On that date Mr. Rege instructed by Messrs. Craigie Blunt and Caroe with the Branch Manager appeared for the Company. The five representatives of the workers who had signed the letter to the Company dated the 12th November, 1945 were also present. Mr. Rege stated that the Company and the workers had arrived at a settlement on both the points referred to me for adjudication, and this statement was confirmed by Mr. A. P. Pawar, one of the representatives of the workers. A typed copy of the terms of the settlement arrived at between the parties was put in before me. The Memorandum of Settlement states that with regard to the first matter in dispute, *viz.*, whether the existing scale of wages requires any revision and if so in what manner and to what extent, the employees of the Burma-Shell Oil Storage and Distributing Company of India do not desire the Adjudicator to examine the existing scale of wages with a view to seeing whether any revision is required. With regard to the second demand referred to me for adjudication, *viz.*, whether the workers should be given dearness allowance for the days of privilege leave spent outside Bombay and if so from what date, the Memorandum of Settlement provides that the Company agrees with effect from 1st January, 1940, to pay to permanent workers, who were in the Company's service on the 1st November 1945, and who were outside Bombay either for a period of privilege leave or of sick leave with pay or half pay, dearness allowance for that period on the Bombay (Mill-owners' Association) scale.

8. These terms of settlement were read out in my presence to the five representatives of the workers who were present before me and were explained to them, and they and the representatives of the Company have signed them in my presence.

9. The men who had gone on strike returned to work on the 11th January, 1946 and there is now no dispute pending between the Company and its workers on either of the two points which were referred to me for adjudication. Both the points in dispute have been amicably settled by the parties to the dispute. The Memorandum of the terms of the settlement signed by the parties is attached to this report as Annexure A. I make an award endorsing the terms of the settlement and direct that the parties do comply with the terms agreed upon.

Bombay, 14th February, 1946.

N. J. WADIA,
Adjudicator.

ANNEXURE " A "

In the matter of the Trade dispute between the Burmah-Shell Oil Storage and Distributing Co. of India, Ltd., and its employees in the Company's Installations in the City of Bombay.

and

Orders of Reference to Adjudication under date 24th November, 1945 and 3rd December, 1945.

ISSUES

1. Do the existing scale of wages require any revision and if so in what manner and to what extent?

TERMS OF SETTLEMENT

1. Recorded that the above-mentioned employees of Burmah-Shell Oil Storage and Distributing Co. of India Ltd., do not desire the Adjudicator to examine the existing scale of wages with a view to seeing whether any revision is required.

2. Should the workers be given dearness allowance for the days of privilege leave spent outside Bombay and if so from what date?
2. The Company hereby agrees with effect from the 1st January 1940 to pay to permanent workers who were in the Company's service on the 1st November 1945 and who were outside Bombay either for a period of privilege leave with pay or half pay dearness allowance for that period on the Bombay (Millowners' Association) scale.

Y. B. REGE,
Counsel for Burmah-Shell.

A. W. PERCY,
Branch Manager,
Burmah-Shell, Bombay.

Before me,
N. J. WADIA,
Adjudicator,
2nd February, 1946.

For and on behalf of the
Burmah-Shell Oil Storage
and Distributing Co.
A. P. PAWAR,
YASIN VAZIRALLI,
RAM NARAYAN,
RAMKISHOR SHIVRAJAN,
S. S. WAGH,
For and on behalf of the
employees.

(Bombay Castle, 28-2-1944, No. 7626/34-I. Government Gazette.,
3-2-44, Part I, pp. 180 to 189.)

IMPERIAL CHEMICAL INDUSTRIES (INDIA) LTD., DYES DEPARTMENT

AND

ITS EMPLOYEES

Adjudicator:—K. B. Wassoodew Esq., I.C.S., (Retired).

Mr. M. G. R. Aitken of Messrs. Crawford Bayley & Co., Solicitors, with Mr. W. A. Bell, General Manager, Dyes Department and Mr. A. E. Wilkens, Production Manager, Dyes Department, for the Imperial Chemical Industries (India) Ltd., Bombay.

Mr. K. T. Sule, Advocate, with Mr. T. Godiwalla, Advocate, and Mr. V. S. Panemanglor, General Secretary, Chemical Workers' Union (Red Flag), Bombay, for the employees.

A w a r d

By Government Order, No. 7626/34, Political and Services Department, dated 16th November 1943, I was appointed Adjudicator in the dispute between the Imperial Chemical Industries (India) Ltd., Dyes Department, Bombay, (hereinafter referred to as "The Company"), and its employees, under rule 81-A of the Defence of India Rules. The Government Order directed that I was to exercise such powers as are conferred on and follow such procedure as is prescribed for a Board of Conciliation under the Trade Disputes Act, 1929, and the Bombay Trade Disputes Rules, 1930. Usual notices were issued to the parties on 20th and 22nd November 1943, requiring them to file their respective statements. The Chemical Workers' Union (Red Flag) filed a statement on behalf of the employees of the Company on 26th November 1943. The Company filed its reply through its General Manager on the 15th December 1943. Thereupon the hearing of the dispute was fixed on 20th December 1943. On the day of the hearing when the case was opened on behalf of the employees' Union by the General Secretary in the absence of their counsel, it was found that their statement of demand relating to the procedure to be followed in

regard to the dismissal and discharge of the Company's employees was not quite intelligible and clear. The Union was accordingly permitted to amend their statement in that respect. That was done at the next hearing.

2. The matters referred to me for adjudication arise out of the following demands of the Company's employees:

- (1) Extension of the system of provident fund.
- (2) Increase in pay and scales of pay.
- (3) Procedure regarding discharge or dismissal.

3. It is gratifying to note that throughout these proceedings the General Manager of the Company and the representatives of the union exhibited a compromising and conciliatory spirit. That has helped in a great measure my endeavour to bring about a settlement of the complex problems relating to the basic wage and the gradation of scales of pay and increments in the different departments of the Company's factory. I am glad to observe that in the course of the investigation of the dispute and all matters affecting the merits thereof, it was found possible for the parties to come to a fair and amicable settlement of the dispute arising out of the last two demands. A memorandum of that settlement has been drawn up and signed by the parties in my presence. It is attached hereto as Annex I.

4. The parties, however, found it difficult to arrive at an amicable settlement on the first demand and on the question as to what should be a reasonable period of notice of termination of service of permanent employees. The Company suggested that the period of notice should be 14 days or that there should be payment of 13 days wages in lieu of notice. On behalf of the employees a claim for one month's notice was made on the ground that the employees in this factory are paid a monthly rated wage. I have had occasion to deal with a similar point in the dispute between the Vegetable Vitamin Foods Company Ltd., and its employees. After discussion the parties in that case adopted the Textile Industry's rule in that respect and the period of notice was fixed at 14 days. It seems to me that if the object of notice is to limit the chances of unemployment, there is no reason to dissent from the rule of the Textile Industry merely on the ground that the wage is monthly rated. If the 14 days' rule is fair in the one case, which is one of the biggest industries in India, there is no reason to suppose that it would work hardship in any other industry. I am of the opinion that the service of any permanent employee of the Company should be permitted to be terminated by 14 days' notice or by payment of 13 days' wages in lieu of notice. That is my award on that point on which the parties could not agree as signified in clause II (1) (a) of the memorandum of

settlement with regard to demand No. 3.

5. The decision of the question involved in demand No. (1) is by far the most important from the point of view of the employees and is not free from difficulty. The question formulated for investigation before me was whether it was necessary and desirable to extend the benefit of the provident fund system to the permanent employees of the Dyes Department of the Imperial Chemical Industries (India) Ltd., who are not on the clerical staff. In the consideration of that question it will be useful to set out in brief the conditions of employment in the Company's factory. The Company commenced business as an importing concern in or about the year 1923. A modest factory was set up for manufacturing dyes in or about the year 1929. The Company thereafter acquired the factory of Chemdyes, an enemy concern, in 1940, which was located at Sewree. Owing to the expansion of its business throughout the country since then it was necessary to construct a large factory-building to locate the manufacturing, packing, painting and distributing departments of the Company. The Company began with about 100 employees before the war. They are now employing in the Dyes Department alone about 608 workers of whom more than half are on the permanent cadre, the temporary staff becoming necessary on account of the evacuation of the godowns located in different places. The average wage-bill per month exclusive of dearness allowance is about Rs. 16,187. Inclusive of that allowance it is Rs. 34,278. The Company has at present approved of a graded scale of pay with the minimum and maximum fixed on an annual incremental basis according to the department in which the workers are employed. The workers are classified as follows:

(1) General class of coolies who get a basic monthly wage of Rs. 25 with an annual increment of Re. 1 rising to Rs. 37-8-0;

(2) Coolies attached to the Mixing Department getting a minimum wage of Rs. 28 with an annual increment of Re. 1-2-0 rising to Rs. 37-8-0;

(3) Muccadams or Chargemen otherwise known as Keymen getting extra sum of Rs. 6 per month over the basic pay of Rs. 28 with an annual increment of Re. 1-2-0 rising to a maximum pay of Rs. 46-8-0;

(4) Sweepers who are in a separate class by themselves getting a basic pay of Rs. 20 per month rising to Rs. 30 by an annual increment of Re. 1;

(5) Watchmen getting a fixed pay of Rs. 30 with no increments; and

(6) Temporary coolies who are paid at the rate of Re. 1 per day at the end of the month.

6. Generally speaking the work consists of mixing powdered dyestuff, preparing cases, rolling casks, carrying bags and other stores to the different departments and packing dyestuffs in containers and the like. The Company have recognised that those employed in the Mixing Department are relatively speaking more exposed to the irritating influence of the powdered dyestuff. On that account those employees who come in contact with dyestuffs are given free one glass of milk daily. The permanent workers get free uniform and free service of a Dhobi. In addition to the compensation under the Workmen's Compensation Act, free medical aid and free medicines are provided. Provision has been made for special canteens for tea and refreshments with plentiful supply of refrigerated drinking water. The Company maintains a grain-shop and sells grain to the workers at Government rates. In addition to the basic wage both permanent and temporary employees are paid dearness allowance on the scale adopted by the textile mills in Bombay which is recognizedly a generous allowance. It is also to be noted that all permanent employees with one year's service or more are paid a bonus annually which has hitherto been 8 per cent, of the wages earned and is based on the dividend sanctioned by the Directors of the main Company in London, irrespective of the profits earned by the local factory. About 180 workers are given a special Bedaux allowance for efficiency. This special allowance and bonus are denied to temporary employees. This summarises the position of the permanent and temporary employees in regard to pay and amenities in the factory.

7. The employees' complaint is that the continuous employment in this dye factory is detrimental to their health as some of the powdered dyestuffs enters, notwithstanding the wearing of masks, their respiratory system and causes lasting injury to their general constitution. In the course of my inspection of the factory on 21st December 1943, I found workers in the Mixing Department wearing masks of a simple type consisting of cotton-wool padding with gauze covering tied round the nostrils and mouth. Extra precaution was taken to segregate the department where what is known as "Rodomin" was prepared. No worker was examined to prove any permanent or lasting injury to his constitution. The Company's Doctor—Dr. Patrao—who was examined has stated that the incidence of ordinary illness in this factory is 1 in 70 but that of sneezing, cold and influenza is higher, particularly among those employed in the Mixing Department, than in any textile mills. He said that according to his experience, after the introduction of masks about 18 months ago, there has been a fall in the incidence of illness. While admitting that the powdered dyestuff may enter the respiratory system in handling it, the Doctor has said that if proper precautions were taken, beyond the ordinary irritating discomfort to the passage of nose and throat,

no permanent bad effect would be produced on the system. Some workers were observed by him spitting out colour dyes but that in his opinion was due to the bad habit of putting unwashed fingers in the mouth while smoking or chewing "pan". It is difficult to say in view of the medical testimony alone how far the work of mixing done in this factory would affect longevity of the workers or accelerate physical deterioration of the body, making allowance for the fact that in their state of enlightenment it is hardly to be expected that they would scrupulously adopt the necessary scientific precautions to avoid the discomfort inseparable from their occupation.

8. It was strenuously contended that some provision should be made to meet the exigencies of old age and perhaps early retirement due to the special conditions of work in this factory. It was pointed out that the Company has instituted a provident fund scheme for the benefit of their superior and clerical staff and that there is no good reason for the Company's giving a discriminative and differential treatment to the employees with the lowest income. Admittedly the operation of that scheme is limited to a small portion of the staff to the exclusion of the workers in the factory. The Company's objection to the extension of the provident fund scheme to the latter is of a two-fold character. The first is that the amenities provided by the Company more than compensate for the supposed hardships involved in the work and secondly that the payment of annual bonus of 8 per cent. of the wage is in fact a greater contribution to the workers' welfare than the contribution which the Company may be called upon to make by the institution of a contributory provident fund and that the Company should be given the option to withhold bonus if the institution of a provident fund were decided upon. It was also said that provident fund has not been instituted in similar concerns in India, and that if a benevolent scheme of insurance were insisted upon it is possible to consider alternative ameliorative schemes. There can be no doubt that the institution of a compassionate scheme providing some form of relief against old age and retirement caused by occupational discomfort and infirmity has always been regarded as a social necessity in the case of low-paid wage earners who are usually thoughtless, improvident and wanting in thrift. The Company's representatives do not appear to be oblivious to the necessity of providing some kind of security against old age and retirement and Mr. Aitken suggested that the question of granting gratuity on retirement might be favourably considered, as a suitable alternative. Various other schemes which are in vogue in some other industrial concerns were tentatively put forward such as those adopted by the B. E. S. T. Co., Ford Motors, Lever Brothers and the Burma-Shell Company, with a view to comparing them with the alternative suggested on behalf of the Company.

It was said that the other concerns admitted all their employees without distinction. I was not provided with all the necessary material for the purpose of comparison. It is, however, important to note that some textile mills have instituted provident fund schemes for the benefit of the low paid employees although the progress of such schemes is not encouraging (see Textile Labour Inquiry Committee's Final Report, Volume II, p. 321).

9. I have carefully considered the objections to the contributory provident fund and in my opinion they are outweighed by its obvious advantages. The institution of a provident fund scheme encourages thrift in a low-paid wage-earner by insisting upon every member to make a compulsory saving out of his earnings regularly every month, when pay is received. It is a form of compulsory insurance for the benefit of the insured and his dependants. The fear of losing the contribution from the employer acts as an incentive to serve faithfully and for a long continuous period. Stability and continuity of labour are thus secured and they contribute in the long run to the prosperity of the industry. Relatively speaking all these advantages are absent in the scheme of gratuity. I am conscious of the imposition of an additional financial burden on the Company consequent on the institution of a contributory provident fund; but I think that the distinction which the Company observes in this respect between the higher and lower income groups of its employees is an invidious one and is likely to be a constant source of dissatisfaction and disaffection which a prudent employer should avoid even at some small sacrifice of his profits. Obviously the Company instituted the provident fund for the benefit of the clerical staff because it considered the scheme advantageous to them. It is, in my opinion, therefore, idle to contend that the extension of the provident fund will operate to the prejudice of the lower income group of employees. The clerical staff, I am told, receives bonus to the same extent as the labourers and there is no case made out for withholding the bonus to the latter class of employees in consideration of the institution of the provident fund. The question of payment of bonus to employees is entirely independent of the question of the extension of the provident fund scheme. When bonus has been regularly paid in the past it is fair to suppose that the employees have always depended on bonuses and allowances for part of their income. The financial strength of the Company, which is a factor to be considered in instituting such schemes, is undoubtedly very high and Mr. Aitken candidly admitted that the annual estimated extra cost of Rs. 14,500 or thereabouts involved, if the operatives that may be brought on the permanent cadre took the fullest benefit under the scheme by contributing the maximum of 10 per cent. of their wages which is a fair limit, would not be appreciably felt by the Company.

Even that in my opinion is an unduly high estimate, for, I think very few will contribute the maximum amount monthly. I have proposed with the concurrence of the parties the lowest compulsory contribution to be 3 per cent. of the wages; and it is doubtful to my mind that all the workers will not feel the pinch when contributing even that minimum sum from their earnings. On a careful consideration of all the arguments heard by me I think the institution of a provident fund scheme should be extended for the benefit of the permanent employees of the Company. The Company's contribution shall be limited to 10 per cent. of the wages and shall not be more than the sum contributed by the employee within the minimum and maximum which I have allowed under the rules approved by me—the minimum being not less than 3 per cent. of the wages of the individual worker. The extension of the provident fund scheme to the employees in the Company's factory would be a very suitable method of providing against old age and retirement in this factory. I trust it will secure permanency and stability of labour. Mr. Aitken on behalf of the Company has very kindly drafted the rules on the lines suggested by me. The draft submitted by him was discussed with the representatives of the union and although it was not possible to agree on all points, it has been approved by me with certain additions and alterations to accord, in many respects, with the agreed suggestions of the parties. The approved draft is appended as Annex II to this award.

10. My award on demand No. 1 is that the system of provident fund should be instituted by the Company on the terms and conditions set out in the appended rules and regulations (Annex II), for the benefit of the employees of this factory with effect from 1st March 1944. The Company should apply for recognition of the Provident Fund to the Income-tax authorities under the provisions of Chapter IX-A of the Indian Income-tax Act, 1922, as amended by the Indian Income-tax (Provident Fund Relief) Act, 1929. On the demands Nos. 2 and 3 my award is that the parties should comply with the terms of settlement as per Annex I.

K. B. WASSODEW,
Adjudicator.

Bombay, 15th January 1944.

ANNEX I

MEMORANDUM OF SETTLEMENT

The following terms of settlement have been arrived at between the Imperial Chemical Industries (India) Ltd., Dyes Department, Bombay (hereinafter referred to as the "Company"), and its employees:

I. With regard to demand No. 2 mentioned in the Government Order, Political and Services Department, No. 7626/34, dated the 16th November 1943, regarding "*increase in pay and scales of pay*", it is agreed as follows:

(1) that all temporary employees shall be automatically taken on the permanent cadre after one year's approved service;

(2) that the minimum wage for the employees in this factory on the permanent cadre shall be Rs. 30 per month except for the hamals, sweepers and cleaners; who have been treated heretofore on the footing of domestic servants and not as coolies;

(3) that the temporary employees who now receive a daily wage and who will be brought on the permanent cadre under clause (1) above, shall receive a minimum monthly wage of Rs. 30 with an annual incremental rise as stated hereunder; but shall not be eligible to the benefit of any provident fund as may be ordered to be instituted as a result of these proceedings, until the management are in a position to decide what number of permanent employees shall be necessary when the factory is in full working order in the new building. That decision shall be made in June 1944. Thereafter all the present temporary employees who would be taken on the permanent cadre by reason of one year's approved service, will be eligible to the benefit of the said provident fund from 1st July 1944, provided that they continue in service;

(4) that all the temporary coolies except hamals, sweepers, cleaners, and watchmen shall get a daily wage of Re. 1-1-0.

(5) that hamals, sweepers and cleaners whether permanent or temporary shall receive a minimum wage of Rs. 25 per month

I-1-0

in the scale of Rs. 25———30. The watchmen's present rate

I

of pay is adequate and shall not be disturbed;

(6) that the annual incremental scale for the permanent

I-2-0

employees shall be as follows:- Rs. 30———rising up to

I

Rs. 37-8-0. There shall be a special scale of increments for those working in the Mixing Department, which shall be as follows:

1-2-0

Rs. 30 ————— 40;

I

(7) that as a special case permanent employees working as case-makers shall be given a special additional daily allowance of As. 2 as long as they are so employed;

(8) that effect shall be given to the above scales of wages from the 1st of January 1944.

II. With regard to demand No. 3 mentioned in Government Order, Political and Services Department, No. 7626/34, dated the 16th November 1943, regarding "*procedure regarding discharge or dismissal*", it is agreed that the following rules shall be observed by the Company:

(1) (a) The employment of any permanent employee may be terminated by such number of days' notice or by payment of such number of days' wages in lieu of notice as the Adjudicator may determine in these proceedings. The reasons for the termination of service shall be recorded in writing and shall be communicated to the employee at the time of discharge.

(b) Where the employment of any permanent employee is terminated by or on behalf of the Company, the wages earned by him shall be paid before the expiry of the second working day from the day on which his employment was terminated.

(2) The following acts or omissions shall be treated as misconduct:

1. Wilful insubordination or disobedience whether alone or in combination with another or others of any lawful and reasonable order of a superior.

2. Theft, fraud or dishonesty in connection with the Company's business or property.

3. Taking or giving bribes or any illegal gratification whatsoever.

4. Habitual absence without leave or absence without leave for more than ten consecutive days.

5. Habitual late attendance.

6. Engaging in trade within the factory premises.

7. Riotous or disorderly behaviour during working hours on Company's premises or any act subversive of discipline.

8. Habitual negligence or neglect of work.

9. Habitual breach of any rules, or instructions for the maintenance and running of any department or the maintenance of the cleanliness of any portion of the factory premises or factory compound.

10. Frequent repetition of any act or omission for which

a fine may be imposed under the Payment of Wages Act.

(3) (a) Any employee whether permanent or temporary may be dismissed by the Manager without notice or any compensation in lieu of notice if he is found to be guilty of misconduct.

(b) No order of dismissal for misconduct shall be made unless the employee concerned is informed in writing of the alleged misconduct and is given an opportunity to explain the circumstances alleged against him and to tender the evidence of his witnesses, if any.

(c) In awarding punishment under this rule the Manager shall take into account the gravity of the misconduct, the previous record, if any, of the employee and any other extenuating or aggravating circumstances that may exist.

(d) A copy of the order made by the Manager shall be supplied to the employee concerned.

W. A. BELL,
for and on behalf of Imperial
Chemical Industries (India),
Ltd., Dyes Department, Bom-
bay.

V. S. PANEMANGI,OR,
for and on behalf of the Chemical
Workers' Union (Red Flag),
Bombay, representing the em-
ployees of Imperial Chemical
Industries (India), Ltd., Dyes
Department, Bombay.

Before me,
K. B. WASSODEW,
Adjudicator.

Bombay, 13th January, 1944.

ANNEX II

RULES AND REGULATIONS OF THE IMPERIAL CHEMICAL INDUSTRIES (INDIA) LIMITED, DYES DEPARTMENT OPERATIVES' PROVIDENT FUND.

1. The Fund shall be called "Imperial Chemical Industries (India), Limited, Dyes Department Operatives' Provident Fund".

2. Unless there is something repugnant in the subject or context:

The "Company" means Imperial Chemical Industries (India),

Limited, Dyes Department, having their Head Dyes Office at Crescent House, Ballard Estate, Bombay, and their successors and assigns.

"Operative" means a permanent worker male or female employed by the Company on monthly or daily rates of wages for work in the Company's premises in Bombay at "H" Shed, Central Godown and extension, Auxiliary Department attached to the Central Godown, all at Sewree, and in other premises of the Company in Bombay where the work turned out, processed or manufactured is similar to the work turned out, processed or manufactured at the aforesaid premises. "Operative" shall include a Hamal, Coolie, Case-maker, Drum painter, Packer, Filler of container or drum. Watchman, Van and Lorry cleaner, Chargeman, Sweeper and any other skilled, semi-skilled or unskilled worker in the said premises but shall exclude such other employees of the Company working in the said or other premises as are members or be eligible for membership of other Provident Fund schemes to which the Company is a party.

"The Fund" means the fund established and administered by the Trustees under these Rules in Bombay and maintained by contributions thereto of the Members and of the Company.

"Member" means an operative in the employ of the Company who is a contributor to the Fund and who has signed a declaration in Form No. 1, set out in Appendix B to these Rules.

"The Act" means the Income Tax Act, 1922, as amended by the Indian Income Tax (Provident Fund Relief) Act, 1929 and includes any statutory modification or re-enactment thereof.

"Wages" means the monthly earnings paid to an operative exclusive of any bonus, overtime, bedaux premium, dearness allowance or any other payment or allowance made to him.

"Continuous service" means service of an operative or Member commencing from the date he was made a permanent operative.

Words importing the masculine gender shall also include the feminine gender.

3. The object of the Fund is to provide every Member with a sum of money as a provision for him and his family on the termination of his service with the Company.

4. Every operative who has actually worked for at least 250 days prior to 1st March 1944 or prior to the 1st of any subsequent month shall be eligible for membership of the Fund as from the 1st day of the month subsequent to the month in which he became eligible PROVIDED THAT those temporary employees of the Company, who after one year's continuous employment with the Company, are taken on the Company's permanent list on or before 30th June 1944 shall be allowed to join the Fund on or after 1st July 1944.

For the purpose of ascertaining the number of actual working days of an operative the entries in the muster books of the operatives and other books or records of the Company shall be final, conclusive and binding upon the operative.

5. Every operative eligible for membership of the Fund shall apply to the Company for membership and shall sign a declaration in Form I in Appendix B undertaking to be bound by the Rules and Regulations of the Fund. The Company may from time to time place on the notice boards in the said premises the names of the operatives eligible for membership of the Fund.

6. The Fund shall be constituted an irrevocable Trust and shall be vested in not less than two and not more than five Trustees (hereinafter referred to as "the Trustees") who may from time to time be appointed by the Company and shall be held by the Trustees for the purpose specified in these Rules. The Trustees shall have complete control over the management of the Fund and shall be vested with all powers, authorities and discretion necessary or expedient for that purpose in addition to any express powers conferred by these Rules. The Trustees who are for the time being in Bombay, not being less than two, shall be competent to execute and exercise all the trusts, powers and discretions vested by these Rules in the Trustees generally.

7. The Company shall have the power of appointment and removal (without assigning any reason therefor) of Trustees, and may also appoint any person to act as Trustees in the place of any Trustee who is temporarily absent from Bombay, but in case of such temporary appointment it shall not be necessary to carry out any transfer of the Trust property. The Company may also authorise the opening of a current account with any Bank for the deposit of monies belonging to the Fund in the names of any two of the Trustees, and may from time to time authorise any two of the Trustees to operate upon such current account and may revoke such authority or substitute fresh authority.

8. In addition to and not by way of substitution for all indemnities conferred on Trustees at common law and by statute, no Trustee shall be liable for the acts, receipts, neglects or defaults of any other Trustee or for joining in any receipt or other act for conformity, or for any loss or expense happening to the Fund through the insufficiency or deficiency of title to any property acquired for or on behalf of the Fund, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Fund shall be invested, or for any loss or damage arising from the insolvency, or tortuous act of any person with whom any monies, securities or effects shall be deposited or for any loss

occasioned by any error of judgment on his part, or for any other loss, damage or misfortune whatever which shall happen in relation to the execution of his duties as Trustee or in relation thereto, unless the same shall happen through his own default.

9. The Trustees shall have power to alter or abrogate these Rules or substitute new Rules, with the previous approval of the Commissioner of Income-tax and every such alteration, abrogation or new Rule or Rules shall be binding upon Members with effect from such date as the Trustees may determine, provided that the Trustees shall have no power without the consent of all the Members to make any alteration of these Rules that will enable the trusts or any of them constituted by these Rules to be revoked.

10. A separate account shall be kept for each member in the form prescribed by the Central Board of Revenue for use in connection with a recognised Provident Fund, a copy of which for convenience is set out in Appendix A to these Rules.

11. Contributions by Members to the Fund shall be at the rate of not less than 3 and not more than 10 per cent. of his wages. The Member shall state in the form of declaration the percentage of his contribution to the Fund. If a Member desires to vary the said percentage, he must inform the Company of the variation in writing within 30 days before the close of the calendar year and the contribution so varied will be continued to be made during the next calendar year. The amount of each Member's contribution shall be deducted by the Company in accordance with the said percentage of contribution from each monthly payment of wages due to him and shall be paid by the Company to the Trustees and credited to the Member in column 3 of the Member's individual Fund account. On making each such deduction and payment, the Company shall pay an equal amount to the Trustees as the Company's contribution which will be credited in column 5 of the Member's account.

12. No fixed rate of interest shall be allowed to Members on the amount standing to their credit in columns 3 and 5 of their accounts, but the net income of the Fund in each calendar year derived from interest shall as on 31st December be ascertained and interest shall be credited on the amounts standing to the credit of the Members in columns 3 and 5 of their accounts at such rate per cent. per annum as the Trustees having regard to the amount of such net income may determine. Interest at the rate so determined shall be credited as on the 31st December in columns 4 and 6 of each Member's account in respect of every amount carried to the credit of the Member in columns 3 and 5 of his account

respectively. In the case of any member dying or his service being terminated before the net income of the Fund for the year in which he died or his service was terminated has been ascertained, the Trustees shall determine the amount which shall be credited in such Member's account as interest for such year or portion thereof and the amount so credited shall be accepted as correct for all the purposes of these Rules.

13. Any loss to the Fund from any cause whatsoever and all the expenses of management and all other costs, charges and expenses to which the Trustees shall be put in connection with the Fund for any reason whatever shall be borne by and be a charge on the Fund and shall be paid thereout as the Trustees may determine. No Member nor any representative of a Member shall have any claim upon the Company in respect thereof.

14. A Member's service shall not be deemed to be terminated for the purposes of these Rules by absence from work without wages with the permission of the Company. The Company may nevertheless in its absolute discretion terminate the service of any Member for the purposes of these Rules whether during or at the expiry of any period of work or at any time during any absence with or without permission from work, and the statement of the Company to the Trustees as to the fact and date of termination of any Member's service for the purposes of these Rules shall be conclusive. The Company may, however, in its absolute discretion cancel any notice of termination of a Member's service for the purposes of these Rules at any time before the amount or any part of the amount due to such member from the Fund has been paid to him, and on such cancellation being communicated to the Trustees the Member's service shall be deemed to have continued without interruption.

15. Any Member upon termination of his service with the Company otherwise than by death shall be entitled to receive from the Fund the amount of his own contributions credited in column 3 of his account and interest thereon credited or due to be credited in column 4 of his account.

16. If a Member's service with the Company is terminated:

(a) owing to continuous illness or accident incapacitating him for the proper discharge of his duties to be certified by a medical practitioner nominated by the Company; or

(b) through any circumstances unavoidable or beyond his control not being a circumstance provided for in Rule 17.

he shall be entitled to receive from the Fund in addition to his own contribution as specified in Rule 15 such share of the Com-

pany's contributions credited in column 5 of his account and interest thereon credited or due to be credited in column 6 of his account corresponding to his period of service as shown in the following Table of Shares:

Table of Shares.

- | | |
|---|--|
| (i) After completing 4 years' continuous service with the Company. | One-third share of the Company's contributions and interest thereon. |
| (ii) After completing 8 years' continuous service with the Company. | Two-third share of the Company's contributions and interest thereon. |
| (iii) After completing 12 years' continuous service with the Company: | Full share of the Company's contributions and interest thereon. |

PROVIDED THAT the Trustees may on termination of a member's service before he has completed 12 years' continuous service with the Company pay to him for any sufficient reason in their absolute discretion the full share of the Company's contributions or any share greater than the share mentioned in the relative item of the Table of Shares aforesaid.

17. Upon termination of service by voluntary resignation after completing 12 years' continuous service or upon termination of service owing to retrenchment at any time, a Member shall be entitled to receive the full amount of the Provident Fund standing to his credit inclusive of the Company's contributions credited in column 5 and interest thereon credited or due to be credited in column 6 of his account at the date of such termination of service:

PROVIDED THAT if a Member shall voluntarily leave the service of the Company before he has completed 12 years' continuous service with the Company or if a Member shall be dismissed from service of the Company for misconduct of which the Company shall be the sole judge before or after he has completed 12 years' continuous service with the Company, he shall be entitled to receive from the Fund only the amount of his own contributions credited in column 3 of his account and interest thereon credited or due to be credited in column 4 of his account:

PROVIDED ALSO THAT the Trustees may, in their absolute discretion, pay to him the Company's contributions and interest in accordance with the Table of Shares in Rule 16.

For the purposes of Rules 16 and 17 only the Trustees shall include in the period of continuous service the period of continuous employment, subject to a maximum of 8 years, of a member already in the employ of the Company prior to the date of his joining the Fund.

18. Such of the Company's contributions and interest thereon in the individual account of any Member or any part thereof as shall not be payable to him in pursuance of these Rules shall be forfeited to the Fund.

19. For ascertaining any period of service of a Member for the purposes of these Rules the entries in the muster books and other books or records of the Company shall be final, conclusive and binding upon the Member.

20. The Company shall have power to recover from the Trustees any money claims which the Company may have against any Member out of the amount credited to his account in respect of the contributions of the Company and interest thereon to the extent and in the manner permissible by clause (f) of sub-section (1) of section 58C of the Act. Before making any payment of the Company's contributions and interest thereon to any Member or his nominee, legal representatives or dependants the Trustees shall inquire from the Company what amount, if any, should be deducted therefrom in respect of Income Tax payable under the provisions of the Act, and the Trustees shall deduct for income tax such amount, if any, as the Company shall direct and pay the same to the proper authority, and should the Trustees fail to deduct, and pay any such amount the Company shall be entitled to recover from the Fund the amount which should have been so deducted and pay the same to the proper authority.

21. In the event of the death of any member while in the service of the Company or before his claim on the Fund shall have been discharged the Trustees shall hold the amount then standing credited or due to be credited to his account with the Fund including the contributions of the Company upon trust for such person as shall have been nominated or appointed by such Member in accordance with the Rules hereinafter contained.

22. Each Member must on becoming a contributor to the Fund forthwith nominate or appoint a person as the object of such trust on the terms that such person shall become the object of such trust only in the event of his surviving the member.

23. If any person who shall have been nominated by the member shall at the time of his nomination be a minor or under dis-

ability to give a legal receipt or discharge to the Trustees, the member must at the time of such nomination as aforesaid appoint a person of full age who is capable of giving a legal receipt and discharge and to whom the amount standing to the credit of the member is to be paid for and on behalf of the person so nominated as aforesaid so long as he shall be a minor, and the receipt of the said person of full age shall during the minority of the person so nominated as aforesaid be a good discharge to the Trustees.

24. In the event of the death during the life of the member of any person who shall have been nominated as the object of such trust or appointed to receive on behalf of a nominee under the foregoing rules, the member shall forthwith nominate or appoint another person in place of the nominee or appointee so dying as aforesaid.

25. Every nomination or appointment made under the foregoing rules shall be in writing signed by the member making it, whose signature must be attested by two witnesses and shall be according to either Form No. 2 or Form No. 3 given in Appendix B to these Rules whichever is applicable, and shall remain in full force and effect until the death of the nominee or appointee or until the same shall be revoked in writing by the member by whom the same was made and a fresh nomination or appointment be made in manner aforesaid.

26. In the event of any member failing to appoint a nominee (and if necessary a person to receive on behalf of the nominee), the amount to the credit or due to the credit of such member shall at his death lapse absolutely to the Fund, provided that it shall be in the discretion of the Trustees to grant the whole or any part of such amount to the legal representatives of such deceased member or to any relative or dependant of such deceased member whose circumstances appear to the Trustees to warrant the concession.

27. Payment will be made upon claim by the person entitled to payment and shall include interest up to the date on which payment is made, if the claim is made within three months from the date of the member's termination of service or death, but if payment is not claimed before the expiration of the said three months no interest shall accrue beyond that period. If payment be not claimed within three years from the date as aforesaid, the amount to the credit of the member shall lapse absolutely to the Fund.

28. No withdrawals by members on any ground whatsoever

and for any amount whatever shall be allowed by the Trustees out of the contributions to the Fund.

29. Except as hereinbefore provided, no member shall be entitled to draw money from the Fund either of principal or interest or transfer or assign whether by way of security or otherwise howsoever his interest or any part thereof in the Fund and no such transfer or assignment shall be valid and the Trustees shall not recognise or be bound by notice to them or any of them of any such transfer or assignment and all contributions by the Company and interest thereon standing in the books of the Fund to the credit of any member so transferring or assigning his interest as aforesaid shall forthwith be forfeited as from the date of such transfer or assignment to the use of the Fund and be dealt with accordingly.

30. If any prohibitory order or attachment or process of a Civil or Criminal Court in respect of a member be served upon the Trustees or the Company or any person on their or its behalf by which any monies standing to the credit of any member in the Fund shall be attached or be ordered to be paid into a Civil or Criminal Court or be ordered to be withheld from such member, all the Company's contributions and interest thereon and other sums not actually contributed by the member standing to the credit of such member in his individual fund account shall forthwith be forfeited and such member shall forthwith cease to contribute to the Fund or be entitled to any benefits thereunder unless and until such member shall be permitted by the Company to resume his contributions. Provided however that the Trustees shall be at liberty in their absolute discretion at any time thereafter to direct such contributions and interest and other sums or such portion thereof as they may think fit to be credited to such member in restoration of his previous interest in the Fund.

31. All lapses and forfeitures occurring at any time, all profits earned at any time on the sale of investments, all surplus income not allocated for payment of interest as provided in Rule 13, and all balances in the Fund remaining unclaimed after three years, shall be transferred to a separate account to be called "the lapse and forfeiture account" and shall be used and applied by the Trustees primarily for meeting the necessary expenses of the Fund and as a reserve against any loss to the Fund on the sale or in consequence of any depreciation of investments and secondly for the benefit of members and/or retired members and/or dependants of deceased members and/or any such persons collectively and/or for such purposes connected with the Fund in such manner as the Trustees shall in their absolute discretion think fit.

32. The accounts of the Fund shall be made up and audited annually up to the 31st December.

33. The monies (including the net income of the Fund for the time being available for distribution) from time to time in the hands of the Trustees upon the Trusts hereof and not immediately required for making any payment to members shall be invested in accordance with the provisions of any enactments or rules for the time being in force pertaining to a Provident Fund as defined in and for the purposes of Chapter IXA of the Act. Such investments shall be made in the names of the Trustees and may, when the conditions of the investments so permit, be made payable or transferable to the order of any two of the Trustees. The Trustees may from time to time vary, transpose and sell such investments and purchase others of a similar nature, and until realisation such investments shall be valued for all purposes at their cost price without taking depreciation or appreciation into account.

34. If the Company shall give to the Trustees notice in writing that it does not intend to make any further contributions to the Fund or if an order shall be made or effective resolution passed for the winding up of the Company, the Fund shall be closed and investments thereof sold and out of the amount so realised together with all cash balances then available the Trustees shall pay to each member the accumulated balance due to him as if his service had been terminated by the Company at the date of the closure of the Fund. If after payment of all accumulated balances due to members any surplus shall remain in the hands of the Trustees, the Trustees shall pay to the Company the whole or such part of the surplus as may be equivalent to the amount of the contributions of the Company and interest thereon not payable to members as part of the accumulated balances and shall distribute the remainder of such surplus, if any, among the members proportionately to their accounts.

35. For the convenience of members the Trustees may cause these Rules to be translated into one or more of the vernacular languages of India but in all questions arising thereunder the English form is to be regarded as authoritative.

36. No suit or other legal proceeding in regard to any claim, matter or dispute arising out of or relating to these Rules shall be instituted in any Court except the High Court of Judicature at Bombay or the Court of Small Causes at Bombay or any other Court in the City of Bombay competent to entertain such claim, matter or dispute.

APPENDIX A.

Date of Joining Fund

Name

Contribution and Interest.

Year and Month.	Salary.	Contributions by Member	Interest on sums in column 3	Regular contributions by company.	Interest on sums in column 5.
1	2	3	4	5	6
Balance B. F. . .					
January . .					
February . .					
March . .					
April . .					
May . .					
June . .					
July . .					
August . .					
September . .					
October . .					
November . .					
December . .					
Total					

Account Closed
Date
Paid to Member
Lapsed to Company or to Fund
Recovery by Company

	Exempt.	Not exempt.	
Total contributions, columns 3 and 5.			
7			
Total Interest, columns 4 and 6.			
8			
Contributions not exceeding 1/6th of salary for the year or Rs 6,000 whichever is less.			
9			
Interest on sums in column 7 at per cent. per annum but not exceeding 1/3rd of the salary for the year.			
10			
Contributions column 7 minus column 9			
11			
Interest column 8 minus column 10.			
12			
Additions to total income (5 and 8)			
13			
Remarks			
14			

N.B. The totals of columns 3 and 4, 5 and 6 and 9 and 10 will be carried into the next year as the opening balance of columns, 3, 5 and 9 respectively.

APPENDIX "B"

Form No. 1.

IMPERIAL CHEMICAL INDUSTRIES (INDIA), LTD., DYES
DEPARTMENT OPERATIVES' PROVIDENT FUND.

Declaration

I hereby declare that I have read the Rules and Regulations of the abovementioned Fund and that I agree to be bound by them and by any subsequent additions to and alterations in the same as may from time to time hereafter be made in pursuance of Rule 9 of the said Rules and Regulations.

I agree to make a contribution of...per cent. of my monthly wages for the current year ending 31st December 19 . I further agree that my contributions at this rate shall be continued for the next and subsequent calendar years until they are varied by me under Rule 11 of the said Rules and Regulations.

Dated the day of 19 .

Name in full

Date of birth

Nature of appointment

Date of joining service ...

Wages Rupees

Signature

Witness

Form No. 2.

IMPERIAL CHEMICAL INDUSTRIES (INDIA), LTD., DYES
DEPARTMENT OPERATIVES' PROVIDENT FUND.

Nomination

(For use only where the person nominated is of full age.)

Pursuant to Rule 22 of the above Fund, I

hereby

nominate

of

to receive the amount which may stand to my credit in the above Fund at the time of my death.

Dated this day of 19 .

(Signature of Member).

Two witnesses to signature of member who should sign in the presence of each other and in that of the Member, all being present at the same time.

- (1) Name
Address
Designation
- (2) Name
Address
Designation
-

Form No. 3.

IMPERIAL CHEMICAL INDUSTRIES (INDIA), LTD., DYES
DEPARTMENT OPERATIVES' PROVIDENT FUND.

Nomination

(For use only where the person nominated is a Minor)

Pursuant to the Rules and Regulations 23 and 24 of the above Fund, I hereby nominate

of _____ who was born on the _____ day of _____ to receive the amount which may stand to my credit in the above Fund at the time of my death and if the said nominee shall then be a minor I hereby appoint

_____ of _____ to receive the amount on his (or her) behalf.

Dated this _____ day of _____ 19 _____.

(Signature of Member)

Two witnesses to signature of member who should sign in the presence of each other and in that of the Member, all being present at the same time.

- (1) Name
Address
Designation
- (2) Name
Address
Designation

15th January, 1944.

K. B. WASSODEW,
Adjudicator.

*(Bombay Castle, Bombay Government Gazette extra, dated
19th November 1947, part I.)*

*(No. 544/46 pages 4375-A to 4375-Q Adjudication
No. A. R. 10/46).*

IMPERIAL CHEMICAL INDUSTRIES (INDIA) LTD., (DYES DEPARTMENT)

AND

ITS EMPLOYEES (IN HEAD OFFICE)

Adjudicator:—Sir Harshidbhai V. Divatia (President, Industrial Court).

Counsel Sir Jamshedji B. Kanga with Mr. H. J. Kolah instructed by Messrs. Crawford Bayley and Co., Solicitors for the I.C.I. (India) Ltd.

Counsel Mr. A. S. R. Chari with Mr. D. H. Buch for the Head Office Employees.

A w a r d

This is a dispute between Imperial Chemical Industries (India) Limited (Dyes Department) and its (Head Office) employees in Bombay. It has been referred to me by the Government of Bombay by a notification, Political and Service Department, No. 544/46, issued on the 9th of November 1946 under rule 81-A of the Defence of India Rules as continued in force by section 2 of the (Emergency Provisions Continuance) Ordinance, 1946. The demands made by the employees are contained in Annexure "A" to the Notification and the question referred to me is whether all or any of the demands should be granted and if so to what extent, on what terms and conditions, if any, and from what date. Annexure "A" is as follows:

1. *Salaries*.—(Minimum salary on confirmation with annual regular increments and salary on completion of twenty years' service)—

(a) Sepoys, Hamals, Sweepers and other subordinate staff misnamed as "Menials":—Rs. 40 to 110. Grade:—40—3—85—5—110.

(b) Office boys (sepoys below 18 years of age):—Starting on Rs. 30 with annual increments of Rs. 2 till they reach 18 years age when they should be put in the Sepoys grade.

These employees when engaged in heavy, hazardous, semi-clerical, laboratory, cycle work, etc., should be given an extra amount of 10 per cent. of the Salary to the minimum of Rs. 5 per month.

(c) Junior clerks (Undergraduates and others without any diploma or special qualifications)—Rs. 90 to 300. Grade:—90—5—115—10—165—12—225—15—300.

(d) Senior Clerks; Graduates; Employees with special qualifications and/or diplomas:—Rs. 110 to 385. Grade:—110—8—150—10—200—15—275—20—375—25—500.

(e) Double Graduates; In-charges of Sections; Senior Clerks with additional responsibilities:—Rs. 110 to 500. Grade:—150—10—200—15—275—20—375—25—500.

The following (f), (g) and (h) should be the grades of Technical employees:

(f) Those without technical qualifications (excluding Science graduates):—Rs. 110 to 335. Grade:—110—8—150—10—200—12—260—15—335.

(g) Science graduates; others with technical qualifications and diplomas:—Rs. 125 to 400. Grade:—125—8—165—12—225—15—300—20—400.

(h) Double graduates (Science); Senior Technical Assistants; employees with additional responsibilities:—Rs. 150 to 500. Grade:—150—10—200—15—275—20—375—25—500.

(i) Telephone Operators; Artists; Draughtsmen:—Rs. 100 to 300. Grade:—100—7—135—9—180—12—300.

(j) Printers; Punchers; Sorters:—Rs. 90 to 225. Grade:—90—4—110—6—140—8—180—9—225.

These employees should be given junior clerical posts on completion of five years' service.

(k) Comptists; Typists:—Rs. 115 to 300. Grade:—115—5—140—8—180—10—230—14—300.

Comptists should be given senior clerical posts on completion of 5 years' service.

(l) Sectional In-charges of (j) and (k) should be given 25 Rupees extra per month.

(m) Junior Stenographers:—Rs. 125 to 345. Grade:—125—8—205—14—345.

(n) Senior Stenographers:—Rs. 150 to 400. Grade:—150—10—250—15—400.

Adjustment in existing salaries should be made with retrospective effect applicable from 1st July 1946 on the basis of the above scales according to the number of years service of employees including those whose full previous service in Messrs. Chemdyes

Ltd., and Messrs. Havero Trading Co. Ltd., should be calculated for the purpose of increments. Persons drawing more than the actual demanded graded salary should continue to get their increments shown as above. If a person was appointed on an increased or higher salary on account of previous experience, etc., he should continue to get proportionate higher amount while fixing new grades.

(2) *Dearness Allowance*.—50 per cent. of the salary on the first 100 and thereafter 25 per cent. on the remaining, minimum being Rs. 50 and maximum Rs. 150 for bachelors and Rs. 300 for married employees. This should be calculated and paid to every employee with retrospective effect from January 1946.

(3) *Provident Fund*:

(a) The present Staff Provident Fund should be registered.

(b) Every employee should be entitled to receive Company's contribution as follows; after two years $\frac{2}{5}$ ths, three years $\frac{3}{5}$ ths, four years $\frac{4}{5}$ ths and five years full contribution.

(c) The interest should be increased to 5 per cent. per annum.

(d) "Nominees" should be allowed to the Provident Fund.

(e) All employees should be allowed to become members of the Provident Fund from the date of confirmation.

(f) Every member of the Provident Fund should be supplied with a full statement of account every year.

(4) *Gratuity*.—Every employee should receive gratuity at the rate of one month's salary, for each completed year of service. In case of death, nominees should be paid the gratuity.

(5) *Promotions and Appointments*.—No outsiders should be engaged for higher and/or covenanted grades unless it is impossible to fill them up from the existing staff; and this selection should be made on the basis of seniority. Vacancies caused by retirement, promotion, resignation or by discharge, and newly created positions should be filled by the immediate junior employees. Sepoys and others possessing adequate knowledge should be selected for the clerical posts in preference to outsiders.

(6) *Leave with full pay*—

(c) Thirty days' sick leave every year should be credited to accumulate for three months.

(b) Fifteen days' casual leave in a year.

(c) Thirty days' sick leave every year should be credited to each employee. Leave of absence due to sickness for less than three days need not be supported by medical certificates.

(7) *Bonus*—

(a) Every employee should be paid yearly at least two months' salary as bonus.

(b) An aggregate amount equal to $\frac{1}{12}$ of the salaries drawn from 1940 to 1945 (inclusive) should be paid as *War Bonus* to employees.

(8) *Working Hours*.—The working hours should be 7 hours inclusive of 1 hour rest per day, i.e., 10 a.m. to 5 p.m. On Saturdays the number of working hours should continue to be 3, i.e., 10 a.m. to 1 p.m. Double wages should be paid for over-time and for working on Sundays and holidays.

(9) *Probation*.—The probationary or temporary period should not be more than three months after which the employee should be made permanent.

(10) *Transfers*.—No employee should be transferred from one place to another or from one department to another without his concurrence. In case of such transfers, the service rules more favourable should continue to be made applicable in addition to any special allowance/s that may become due.

(11) *Medical Treatment*.—Free medical treatment should be given to employees and their families including injections and patent medicines.

(12) *Free Uniforms*.—Free uniforms should be supplied by the Company to all Sepoys, Hamals, Sweepers, etc., at the rate of two sets per year (each set consists of in the case of Sepoys two pants, two shirts, two coats, one cap and one pair of chappals and in the case of others two half-pants, two half-shirts, two coats and one pair of chappals). Umbrellas should be given to everyone of these employees free every year.

(13) *House Allowance*.—Sepoys, Hamals, Sweepers, etc., who are not provided Quarters by the office should be paid House Allowance at the rate of Rs. 10 per month for married and Rs. 7 for the unmarried.

(14) *Insurance*.—Every employee should be insured against accident, sickness, injury and/or death while on duty, the premium to be paid by the Company.

(15) *Service Register*.—Before any adverse remarks are set down in the "Service Folder" the employee should be given adequate opportunity to put up his defence before the departmental head and he should also have the right to appeal to the highest ex-

cutive of the Company against the said remarks. The Service Folder should be open for inspection by the employee every half year and a copy of any such adverse remarks should be supplied to the employee.

2. Before taking up the demands, it is necessary to refer to the short history of the Company and its employees. The Imperial Chemical Industries (India) Limited is one of the 61 subsidiary companies in the Imperial Chemical Industries Limited having its head office in England. The Imperial Chemical Industries (India) Limited came into existence in 1923 having its main offices in Calcutta and Bombay. It has got various departments the principal of which are the Chemical and Dyes Departments. We are only concerned in this dispute with its Dyes Department, the Head Office of which is situated in Bombay.

In 1921 a Company called Haverro Trading Co. Ltd., began to do business in India as selling Agent of some big European concerns dealing in dyes, perfumes, etc. It had a big establishment in Bombay consisting of about 500 employees. In 1938 a German concern, viz. Chemdyes Limited was formed and it opened its office in Bombay. In the next year Chemdyes Ltd., took over the concern of the Haverro Trading Co. Ltd. After the second world war began in 1939 the concern of Chemdyes Limited was declared as an enemy firm and in 1940 its assets were sold by the Custodian of Enemy Property in Bombay to the I.C.I. (India) Ltd. Several members of the staff of Chemdyes came into the employment of I.C.I. (India) Ltd., and it is said that in January 1947, 45 per cent. of the Company's staff were ex-Chemdyes employees. The I.C.I. (India) Ltd., which I will hereafter refer to as "the Company", does not manufacture any dyes in India but it imports concentrated dyes and sells them in the Indian market; some dyes are sold as they are and others are sold after mixing. It is further stated by the Company that the only profit the Company makes, is that of the Agency Commission at the rate of 12½ per cent. on the sale proceeds which they receive from the parent company of I.C.I. Limited in England. Thus according to the Company it is only the agent to the parent company for buying as well as selling and the price after deducting the commission goes to the parent company. It may be stated here that it is a private and not a public limited company. The Head Office of the Dyes Department in Bombay with which we are concerned has 501 employees in the clerical and technical staff and 201 in the lower and trade and transport departments. The employees being dissatisfied with their salaries, wages and other amenities submitted several demands to the Company on the 10th of September 1946 but as the response made by the management did not meet with their approval the union of the employees gave a 14 days' notice of strike on the 1st of October 1946. The strike began on the 16th of

October and lasted till the 11th of November when it was called off as the Government of Bombay decided to refer the dispute for adjudication. The adjudication notification was issued on the 9th of November as stated above.

3. The preliminary hearings took place on the 16th of December 1946 and the 24th of February 1947 and the regular hearing began on the 21st of April 1947 when all the demands were taken up. There are in all 15 demands which had been classified by the employees into 4 categories. The first category includes demands which have direct pecuniary effect. It consists of demand No. 1 *salaries*, No. 2 *dearness allowance* and No. 7 *bonus*. The second category includes demands which constitute measures for securing the benefits at the end of their service and they are demand No. 3 *provident fund*, No. 4 *gratuity* and No. 14 *insurance*. The third category comprises demands relating to conditions of service and they are demand No. 8 *working hours*, No. 6 *leave with full pay*, No. 5 *promotions and appointments*, No. 9 *probation*, No. 10 *transfers*, and No. 15 *service register*. The fourth category consists of miscellaneous demands such as demand No. 11 *medical treatment*, No. 12 *free uniform* and No. 13 *house allowance*.

Salaries

4. The first demand in the first category, viz., the salary is the most important of all the demands. The clerical and technical staff of the Company consists in the following departments:—Accounts Department, Bazar Department, Mills Department, Supply-Forecast Department, Management Department, Legal Department, Laboratory Department and Production Department. The subordinate staff consists of the lower paid staff such as sepoys, hamals, sweepers, etc., and trade and transport departments. The clerical and technical staff are classified into the following occupational groups, according to the Company:—(1) Head Clerks, i.e., Department and Sectional heads, (2) clerks working under the departmental heads in the various departments in the office, (3) Personal and Confidential Secretaries, (4) Stenotypists attached to Departments and Management, (5) Copy Typists, (6) Comptists, (7) Laboratory staff consisting of Heads of Departments or Section and those working under them, (8) Hollerith Machine Operators, (9) Telephone Operators, (10) one Tracer and one Artist and one Designer and (11) Trade and Transport staff consisting of book-binders, carpenters and boilermen. It may be stated here that the present adjudication covers only workmen as defined in the Trade Disputes Act, 1929, viz. persons employed to do skilled or unskilled, manual or clerical work. It is conceded by the Company that out of these 11 trades all except No. 7 are either doing manual or clerical labour. Even as regards

the employees falling under clause 7, viz., Laboratory staff, the Company has further conceded that they may be taken to be clerks and as such included in this reference. The Company has got other employees who are superior to clerks and are called as covenanted servants, but we are not concerned with their conditions in this dispute. As regards the employees covered by this adjudication, the Company has not fixed grades and time scales of salary. Every employee is kept on probation for a period of six months and is confirmed if he is found to be suitable, otherwise the period of probation is extended by a few months. After the period of probation is over the employee gets increments of salaries at the discretion of the management according to his merits, proficiency and the nature of the work he is doing. The Company does not differentiate between a degree or diploma and increments are granted on the basis of experience and efficiency. The Company, however, pleads that its present standard of salary compares favourably with the standard of salary given by other important comparable commercial houses in Bombay and that its conditions of employment, if not similar, are better than those under the Chemdyes Limited.

5. According to the employees the Company by reason of its being an offspring of the world famous I.C.I. Limited of England belongs to a special category by itself as the parent company "holds a unique position among the combines across the whole range of British manufacturing industries inasmuch as the I.C.I. has a monopoly in essential chemicals and allied by-products and the consequent enormous economic power and influence". It is further stated that the Company commands a vast and prosperous business in India and besides dyestuffs it does business in chemicals and fertilisers and is also handling numerous agencies of various Indian and foreign concerns. The main grievance of the employees is that in spite of the very extensive business and high profits of the Company, the salaries are very low and the dearness allowance is also inadequate. The starting salary of Rs. 60 to a clerk, Rs. 75 to a technical hand and Rs. 16 to the lower paid staff is extremely low, dearness allowance is meagre and the absence of any grades and scales has resulted in a number of cases of nepotism, favouritism and the consequent supercession of the just claims of the employees. The employees urge that the salaries of the lower paid as well as the clerical staff should be brought up to the living wage standard on the basis of the recommendations of the Bombay Textile Labour Inquiry Committee in 1940 where the living wage standard of an average working class family of 4 persons consisting of 2 adults and 2 children (or three consumption units) was fixed at Rs. 52-8-0 for Bombay. It is calculated that on that basis the living wage for a middle class family at present would be roughly in the neighbourhood of Rs. 125 and

that the Company ought to pay this living wage to all its clerical employees. Similarly the subordinate staff should also receive a living wage on that basis. As regards the capacity of the Company to pay, it is urged that the volume of sales in India by the Dyes Department has considerably increased during the last 6 years and the turnover in 1941 was about Rs. 404 lacs, in 1944 it was Rs. 508 lacs and for a part of 1946 it was Rs. 310 lacs. According to the employees the net profit of the Company was about 52 lacs in 1941, 9 lacs in 1942, about 25 lacs in 1943, about 52 lacs in 1944, about 42 lacs in 1945 and about 33 lacs for part of 1946. These figures represent only the 12½ per cent. selling commission of the Company's office but the total profits are transferred to the parent company in England, and the Company's capacity to pay should not be judged merely from the commission they receive but from the total profits which the Company makes for its parent Company in England. It is further urged that there is a good deal of disparity between salaries of the Covenanted staff and the uncovenanted as well as the lower paid staff. Whereas the total monthly earning of 17 members of the covenanted staff are about Rs. 40,100 those of the 498 of the uncovenanted staff are Rs. 91,300 and of the 224 lower paid staff are Rs. 13,400. For these reasons, the employees contend that the Company should fix liberal grades and scales of the clerical and the lower paid staff, the minimum for the lower paid staff excepting office boys being Rs. 40 and Rs. 90 for the clerical staff.

6. The Company does not admit the figures of profits and sales given by the employees and contends that it does not represent a true picture of its financial position. According to the Company its profits consist of only the 12½ per cent. commission which it gets from the parent Company and it is denied that the Company is a monopolist concern. At the same time the Company does not dispute its capacity to pay and on that ground it has refused to show its balance sheets to the employees. Some figures of the profits made by the Company have been supplied to me in a sealed cover and I do not think it necessary to discuss it as the Company has not denied its capacity to pay. I will, therefore, proceed on the assumption that the Company is in a position to pay any reasonable salaries with grades and scales and the cost of other benefits which may be fixed in this adjudication.

The employees have pressed for a living wage. That is no doubt an ideal which should be reached as far as circumstances permit. At the same time the salaries and other emoluments which are being paid by industries as well as Government Departments for doing work of similar nature in the same centre should also be taken into consideration. The employees contend that if

the Company can afford to pay a living wage there is no reason why it should not pay the same to all its employees even though other employees doing similar work have not been able to secure it in other industries and departments, and that a concern like I. C. I. (India), Ltd., should give a lead to other industries. Even giving due weight to this contention it seems to me that the living wage as demanded by the employees should be for a family of 2 adults and 2 children equivalent to 3 consumption units and that, as I have observed in the Banks' Award dated the 8th April, 1947, would be a figure which an employee should get in about the 8th year of his service at which time he can be expected to have a family of 2 adults and 2 children. In fixing the starting salary as well as grades and scales I have to take this factor into consideration and I have fixed the salaries on that basis as well as on the basis that there should not be a great disproportion in the emoluments of persons doing the same kind of work in one centre.

7. I first take up the category of the lower paid staff which includes office boys, sepoys, hamals, sweepers, etc. Annexure "B" attached to the Company's written statement shows that formerly there was no fixed salary and grades for these employees and Exhibit 7 shows that *ad hoc* increments were granted to them on the 9th of October, 1946, after the strike notice was given. Under the present arrangement existing since August 1946 the chokras, i.e., the office boys, under 18 years of age get a start of Rs. 16 and on confirmation after 2 months they get Rs. 19 after which there is a biennial increment of Rs. 2, and Rs. 2 every year if he passes in an English examination (see Annexure "B" to the Company's written statement). The maximum is stated to be approximately Rs. 50. As regards the Sepoys who are usually above 18 years of age, the start is fixed at Rs. 25 with an annual increment of Rs. 1-4-0 only, and Rs. 2 if he passes the English Examination. The maximum is Rs. 50. In the Banks' Award I have allowed a start of Rs. 25 to the office boys and after 18 years of age they are to start with Rs. 30 as peons. I think the same scale should be applied to the office boys in this Company. The Central Pay Commission has recommended a scale of Rs. 20— $\frac{1}{2}$ —25 for boy peons in the Post and Telegraph Department but that is exclusive of other allowances such as house allowance and local allowance. In my opinion, the pay of the boy peons under 18 should be Rs. 25—1—30 and thereafter they should be promoted to the category of a sepoy or a hamal. The pay of the sepoys, hamals and watchman should be started on the same grade which I have fixed in the Banks' Award, viz., Rs. 30—2—50—1—65. The peons who are required to work as cycle peons should be paid Rs. 5 extra as cycle allowance. The Company pays Rs. 25 to the sweepers without any fixed incre-

ments. Their scale should be Rs. 30—1—40. The Havildar should get Rs. 65—3—80. The Company has got 5 butlers and 4 butler boys in the canteens and they get a start of Rs. 45 and Rs. 20 respectively without any fixed increments. The butler should get Rs. 45—5—90 and the butler boys Rs. 25—1—30. The Company pays its liftman a start of Rs. 40 without any fixed increments. The Liftman should be put in the grade of Rs. 45—1—50—2—60. I am told that in the Tatas the whole lower paid staff is on the scale of Rs. 30—2—60. If that is so, the scale which I have recommended compares favourably with the Tatas scale.

As regards the trade and transport staff the Union wants that it should be abolished. The Company has, however, maintained a separate category and I do not think that there is any reason to merge that staff with the other departments of the Company. This staff consists of 7 persons: 2 binders, 3 carpenters and 2 boilermen. The carpenter should have a grade of Rs. 60—5/2—75. The boilermen should get Rs. 70—3—100 and the binders should get Rs. 50—2—60 and the electricians Rs. 90—3—120.

8. As regards the clerical staff the Company has no fixed increments and grades but in the written statement (Annexure "H") it is proposed to fix the pay as follows:—

Clerical and Administrative staff.

		On probation.	On confirmation after 6 months
		Rs.	Rs.
Graduates	...	75	90
Non-graduates	...	60	75
Copy-Typists	...	80	90
Stenographers	...	100	120
Comptists	...	90	100
Hollerith Machine Operators	...	60	75
Filing, Despatch and Telephone	...	60	75

Technical Staff.

		On probation.	On confirmation after 6 months.
		Rs.	Rs.
Non-graduates	...	No fixed pay as the clerk is given this post after 4 years' service.	90
B.Sc. & Diploma Holders in			
Tech. Chemistry	...	100	110
M.Sc. & B.Sc. Tech.	...	110	125

In all these cases promotions were to be given at the discretion of the Company according to position and ability of each employee.

9. At the hearing it was proposed that scales and grades with increments should be fixed for all these employees. The Union filed a statement (Exhibit 26) in which it classified all the employees in different categories from C to N and asked for the same grades which are mentioned in the annexure to the Notification. The Company filed its statement, Exhibit 27, classifying the employees in 5 grades, *viz.*, Head Clerks, "A" grade, "B" grade, "C" grade and "D" grade. The undergraduate employees in the "D" grade would get a start of Rs. 75 rising up to Rs. 130 in 11 years. The undergraduate employees in the "C" grade also get the same start of Rs. 75 rising up to Rs. 160 in 15 years with an efficiency bar after 11 years at Rs. 130. The undergraduate employees in the "B" grade would get the same start of Rs. 75 but the maximum in the grade is fixed at Rs. 190 in 18 years with two efficiency bars in the 11th and the 15th year at Rs. 130 and Rs. 160 respectively. The undergraduate employees in the "A" grade are given a start of Rs. 115 from the 7th year of their service if they are promoted from the lower grade and the maximum of Rs. 275 in 24 years and two efficiency bars in the 17th and 21st year at Rs. 190 and Rs. 230 respectively. The graduates and double graduates in grades "B", "C" and "D" are to start at Rs. 90. In the Technical Department, chemistry graduates and diploma holders in Dyes Technology are to start at Rs. 110 and double graduates at Rs. 125. There was to be no efficiency bar at Rs. 130 for single and double chemistry graduates but it was to begin at Rs. 160. The promotion from one grade to another was to depend on vacancies in the higher grade and fitness for the employment. About Head Clerks the salary was fixed at Rs. 230 in the 21st year of service rising up to Rs. 500 in the 30th year.

10. After carefully considering the nature of work done by the employees and their classification made by the Union in Exhibit 26 and the Company in Exhibit 27, I am of the opinion, that the Company's classifications in Exhibit 27 and the scales and grades should be accepted with modifications. These modifications, I will shortly discuss. The maximum in the "D" grade should not stop at Rs. 130 but should rise to Rs. 137½ and Rs. 145 in 2 years by an annual increment of Rs. 7½. The maximum in "B" and "C" grades should remain the same. The "A" grade should start with Rs. 120 in the 7th year instead of Rs. 115 and the maximum of Rs. 275 should be reached in the 23rd year. All employees who are operating on hollerith machines should be paid an extra allowance of Rs. 15 per mensem and those who are operating on

comptometers should be paid an allowance of Rs. 20 per mensem over and above their salaries. These allowances are not part of the basic pay but in the nature of extra allowance for doing work on these machines. The allowances I have granted to these employees compare favourably with those paid by the Bombay Electric Supply and Tramways Co., to their employees doing similar work. Graduates and double graduates should start on Rs. 90 instead of Rs. 75 and chemistry graduates and diploma holders in technology should start at Rs. 110 and double graduates in the technical department should start at Rs. 125. As regards copy typists it was contended that there are 4 copy typists who are doing work on big-size machines and therefore, they should be paid more. It does not appear, however, that a typist is asked to work on the big machines every day but they are asked to work on these machines only occasionally. That being so I do not think that any special allowance is necessary for these typists. The Central Pay Commission has also not recommended any such allowance for typists operating on big machines. In the sample room in the basement and in the Laboratory some employees have to work on chemicals and colours and the employees' case was that they have to inhale fine coloured powder and hot vapours. There is no definite evidence as to whether the work is so obnoxious as to require an additional allowance. In my opinion, if there is that nuisance, additional allowance of money would not compensate for the evil effects, if any, for this kind of work. What is really needed is some safeguards (*e.g.* protective masks) against any harm being done by this kind of work. The Company should take steps to provide adequate safeguards for this purpose and the Chief Inspector of Factories should be asked to make a report on the nature of the work and for suggesting the safeguards that are needed for minimising the alleged harmful effects of the work. The scales and grades which I have recommended, in my opinion, are very favourable as compared with those given by the Government and also by private companies and coupled with the dearness allowance, bonus and the payment of gratuity which I am going to recommend over and above the provident fund scheme which is in force, I think, there will be a definite improvement in the pecuniary position of the employees

11. The concluding part of the demand relating to salaries deals with the adjustments to be made in the existing salaries. That demand is that the adjustments must be made with retrospective effect from the 1st of July 1946 on the basis of the scales as demanded according to the number of years' service of employees including those whose full previous service in Chemdyes and Havero Trading Co. Ltd., should be calculated for the purpose of increments. It is further urged that persons drawing more than the actual graded salary should continue to get their increments

and a person who has been appointed on increased salary on account of previous experience, must continue to get proportionately higher amounts while fixing new grades.

12. The Company's reply is that although it is true that the Company engaged after 1st September 1940 many of the former employees of Chemdyes Limited, they came from that date as new employees of the I. C. I. (India) Ltd. What was purchased by the Company from the Custodian of Enemy Property was only their assets and there was no agreement to take up the entire or any of the staff of the Chemdyes Ltd., or the Haverro Trading Co. Ltd. Not only that, but the staff of the Chemdyes Company on their discharge by the Custodian of Enemy Property were paid the provident fund dues in full and also gratuities as the result of the termination of their services and the loss of their services was compensated in full. It appears from the documentary evidence that this contention of the Company is correct. Annexure "A" to the Company's statement is an extract from the agreement of the condition of tender and contract relating to the sale of the assets of Chemdyes Ltd., under which the assets of this concern were purchased by the Company. The property was purchased exclusive of cash in hand or at the bank relating to the business of the Chemdyes Ltd., goodwill thereof and all patents, trade marks etc., relating to the business of that company. It therefore clearly appears that the I.C.I. (India) Ltd., did not purchase Chemdyes Limited as a going concern and that the employees of Chemdyes Ltd., at the time of the purchase were all discharged by the Custodian of Enemy Property and the I.C.I. (India) Ltd., was under no obligation to take them over as if they were in continuance of service. In fact a gratuity amounting to half month's salary for every year of service subject to a maximum of 3 months was paid to the employees as compensation because of their loss of service. Thereafter several employees of Chemdyes Ltd., were taken over on probation and the salaries offered to them on confirmation were approximately the salaries paid by Chemdyes Ltd. It further appears that not only the employees of Chemdyes Ltd., were paid off the Provident Fund, gratuities and their pay but even notice pay was given to all the employees including those who were subsequently employed as probationers by the I.C.I. (India) Ltd. In my opinion, therefore, neither for the adjustment nor for any other purpose can the employees of the Chemdyes Ltd., who were employed by the I.C.I. (India) Ltd., be regarded as having entered the latter Company's service from the time they joined either the Chemdyes Ltd., or the Haverro Trading Co. Ltd. The I.C.I. (India) Ltd., is not bound to recognise the previous service of the employees with those companies.

13. As regards the adjustments in the new scale recommended

to the present employees in the Company, the Union has demanded point to point adjustment according to the service. The Company, on the other hand, has contended that the adjustments should be made according to fundamental rule No. 22 in the Government Service Manual, as the existing rates are adequate. It may be noted that in considering the question of adjustment the Central Pay Commission has not followed either the fundamental rules or the ordinary method but has evolved a different method. I recommended that the adjustments should be according to Rule No. 1 of the recommendations of the Pay Commission i.e., the employees should be put in the new scale at the stage above their present pay increased by one increment for every three completed years of service. In any case he must not get more than the maximum in that grade.

Dearness Allowance.

14. The dearness allowance paid by the Company from 1941 to the lower paid staff and from 1942 to the clerical staff till 1946 was no doubt inadequate. But on the 1st of August 1946 the Company revised the dearness allowance and since then it is paying its employees both lower paid and clerical at the rate of 40 per cent., on the first Rs. 100 and 20 per cent., on the balance with a minimum of Rs. 30 and a maximum of Rs. 150 to the unmarried employees and Rs. 300 to the married. I have compared these scales with the latest dearness allowance sanctioned by the Government of Bombay on the 15th of August last by which the dearness allowance is paid from Rs. 25 up to Rs. 45 on a graded scale to employees getting less than Rs. 50 up to Rs. 200 per month. The amount of dearness allowance increases with each slab of salary increase, but the ratio of dearness allowance to the salary goes on diminishing. That amount seems to have been fixed on the recommendations of the Central Pay Commission on a cost of living index ranging from 260 to 280. Comparing that scale with the Company's scale, I find that on the whole the latter is more in favour of the employees than the Government scale. The only difference is that persons who get Rs. 80 per mensem would get Rs. 35 per month under Government scale while Rs. 32 according to the Company's scale but thereafter the employees of the Company get more than Government scale with the result that while a Government servant getting a salary of Rs. 200 per month gets Rs. 45 as dearness allowance, the Company pays its corresponding employee Rs. 60 per month. I therefore keep the Company's scale intact with this variation that the minimum should be Rs. 35 per month instead of Rs. 30 so that persons getting up to Rs. 80 per month should get the same as the Government servants and thereafter will get even more. This variation will apply to persons who are getting more

than Rs. 51 but less than Rs. 90 per month, but the employees who are getting up to Rs. 50 per month will get the minimum of Rs. 30 according to the scale as at present. Similarly employees earning Rs. 90 and over will draw dearness allowance according to Company's scale.

BONUS

15. The next demand relates to bonus. The demand is that every employee should be paid yearly two months' salary as bonus and for the past the employees demand an aggregate amount equal to 1/12th of the salary drawn from 1940 to 1945 inclusive as War Bonus.

The Company grants every year a bonus to its employees in all its branches in India but the method of fixing the amount is peculiar. It does not depend on the profits made by the Company in India but the amount to be paid by the subsidiary companies as bonus is ascertained by the parent company in England. It is fixed at a certain percentage sanctioned by the Board of Directors and it is generally at the same rate as the dividend declared by the I. C. I. (London) on their ordinary stock. For the past several years the bonus has been 8 per cent. of the total salary earned during the year previous to the payment of bonus. This bonus is irrespective of whether the Company in India has made profits or losses for a particular year. This arrangement seems to be rather queer because while on the one hand the Company asserts that its ability to pay the wages and salaries of its employees in India depends only on the profit of 12½ per cent. commission which it gets, the bonus to be paid to the workers has nothing to do with the profits or losses in India but it is governed by the directors from the parent company. As regards bonus for future years, that demand cannot be granted as bonus will depend on the profit of each preceding year. We are therefore concerned here with the bonus for the year 1946. I was told that it was to be declared in May last and paid in September. I find that this practice of paying bonus at 8 per cent. of the total salary earned during the year exists for a long time in this Company and all its branches in India. Roughly it amounts to a bonus of one month's salary provided that the employee has earned the whole year's salary because the percentage depends upon the total salary earned during the year. The capacity of the Company to pay has not been challenged and as bonus depends upon the profits made by the parent Company in England, there is no doubt, that the Company can afford to pay a fairly good bonus to its employees. I was told that if I change the present practice of bonus and recommend a greater amount that will have a repercussion on all the company's branches in India. There is some force in it but I would strongly recommend

to the Company to move the parent office to change this practice and to pay at least one month's salary as bonus to all employees whether they have earned the whole year's salary or not. The bonus should be paid to all those persons who are in the service of the Company and should not depend on the salary earned by them. A person who is on leave without pay should also get bonus on the same scale as other employees because bonus demanded is a profit bonus and does not depend on good attendance. It is difficult to see why the bonus to the employees in India should be linked to the dividend declared by the Head Office on their ordinary stock when for the purpose of the payment of wages the profits of the Company in India only ought to be considered. The salaries as well as the bonus should depend upon the profits either of this Company in India or of its parent Company. In my opinion, the Company should reconsider its policy on this matter. If the salaries and wages are to be paid from the income of the subsidiary companies in India, the bonus of at least one month's salary should be paid to the employees whenever such bonus is declared. For these reasons I do not propose to change the amount of bonus either to be paid or paid for the year 1946.

16. As regards the additional bonus for the war years, 1940-1945, the position, according to the employees, is that although the Company made handsome profits during the war, it did not pay any bonus in addition to the usual bonus of 8 per cent. of the salary earned. Moreover, the amount and scale of the dearness allowance paid till July 1946 was very low. A Victory bonus was paid over and above the usual bonus in 1945, but in the previous 5 years, 1940-1945, the dearness allowance which the Company was paying was entirely insufficient. In my opinion, the employees have a just grievance on this point. There is no doubt from the figures that the Company made a handsome profit during the war years as also several other companies in India dealing with dyestuffs. But not only was no additional bonus paid to the employees but the dearness allowance paid to the employees on account of increased cost of living due to war was not at all adequate. The cost of living index figure which was 105 in August 1939 rose to 126 in July 1941, 137 to 188 in 1942, 203 to 247 in 1943, 220 to 242 in 1945 and it was 264 in October, 1946. In spite of this continuous rise from 1940 onwards no dearness allowance whatever was given to the clerks till the 1st of March, 1942. A meagre dearness allowance was given to the lower paid staff from the 1st of September, 1941. Even when the dearness allowance began to be paid to the clerks it was only Rs. 5 per month to those who earned Rs. 195 per month. Thereafter from the 1st of June, 1942, it was increased to 15 per cent. on the first Rs. 100 and 10 per cent. on the balance, with a mini-

mun of Rs. 5 and a maximum of Rs. 50. Till the 1st of January, 1944 this percentage remained the same but the minimum was raised to Rs. 10-8-0 on the 1st of October, 1942 and to Rs. 16 from the 1st of April, 1943. Then from the 1st of January 1944 the percentage was increased to 25 per cent. on the first hundred and 15 per cent. on the balance with Rs. 16 as the minimum and Rs. 150 as the maximum for single men and Rs. 300 for married men. Till the 1st of August, 1946, this percentage remained the same but the minimum was increased from Rs. 16 to Rs. 18 from the 1st of March, 1945 and to Rs. 22 on the 1st of May, 1945. Thereafter from the 1st of August, 1946 the percentage was increased to 40 per cent. on the first hundred and 20 per cent. on the balance with a minimum of Rs. 30 per month and the maximum remaining the same. As regards the lower paid staff the amount which was Rs. 2 per month in September, 1941 was raised from time to time till on the 1st of May, 1945 it was 25 per cent. on the first hundred and 15 per cent. on the balance with a minimum of Rs. 22 per month. Then curiously enough from the 1st of August 1946 the percentage was raised to the same figure as in the case of clerks. Comparing all these amounts paid for dearness allowance from 1942 onwards with the cost of living figures, there is no doubt in my mind, that till the end of 1943 the dearness allowance paid by the Company was entirely inadequate and even from January 1944 to August 1946 it was not commensurate with the rise in the cost of living. In fact the increase from time to time was based upon no principle except exigencies from time to time. The general principle which has been acted upon in the Bombay Industrial Court is that where the same factor which has raised the cost of living during war has also increased the profits of the employers, a sufficient amount should be given as dearness allowance to neutralise the rise in the cost of living, although the neutralisation need not be cent percent. Applying that test here the dearness allowance ought to have been paid from 1940 onwards and it ought to have been adequate to the rise in the cost of living especially as the Company made higher profits during the war. What the employees now seek is to recover these losses which they have sustained on account of less dearness allowance, not by awarding a proper amount for dearness allowance for the past years but for increased bonus during the war years. They have suffered in both ways, i.e., by not getting adequate dearness allowance in spite of the rise in the cost of living and by not getting increased bonus on account of higher profits during war years. In my opinion, therefore, they ought to get some compensation for the inadequate dearness allowance which they got. It is contended on behalf of the Company that the profits of the past years had already been declared and the accounts have been closed but in my opinion, that should not come in the way of paying at least a part of that amount which the

employees ought to have got during the years. I was told that the Ciba Company's branch in Bombay gave during the war years half a month's bonus in addition to the usual bonus and, I think, that is the least which the employees are entitled to. The additional bonus for these years, i.e., from 1940 to 1944 both inclusive should be at least half a month's salary for these five years irrespective of whether he has earned or not. They would thus get $2\frac{1}{2}$ months' salary for those five years as additional war bonus and I recommend accordingly.

PROVIDENT FUND

17. The next demand is about the Provident Fund. The only ground on which this demand was pressed was that the Company should allow payment of the Provident Fund to nominees and all employees including sepoys, etc., should be allowed to become members of the provident fund on confirmation. The difficulty with regard to this demand is that all the beneficiaries and trustees of the General Provident Fund are not before me and, therefore, the demand cannot be considered in this adjudication. The Company has, however, stated that it has no objection to the appointment of a nominee provided they get an equitable discharge. I would, therefore, recommend that a nominee should be allowed and he should give a legal discharge to the Company and that the Company should also include sepoys and other persons in the provident fund scheme.

GRATUITY

18. The next demand is about gratuity. The employees want gratuity at the rate of one month's salary for each completed year of service and that in case of death the nominee should be paid the amount of gratuity. The Company has no system of gratuity and it is contended that as there is already a provident fund scheme no scheme for gratuity is necessary. The covenanted servants get pension and have no provident fund. The principle of having either gratuity or pension in addition to a provident fund has been accepted in the Banks' Award and, in my opinion, that principle which was made applicable to big banks should also apply to this Company. It is but proper that an employee who has put in certain years of service should be entitled to this benefit and the amount would depend according to the length of service and he should be paid when he leaves the service, retires or dies. The Company's contribution for provident fund does not fully compensate an employee as to dispense with the necessity of paying a gratuity. I, therefore, recommend that the gratuity should be paid to all the employees covered by this adjudication on the same scale laid down for the big banks viz.:—

(1) On the death of an employee while in the service of the Company:

One month's salary for each year of service subject to a maximum of 15 months' salary to be paid to his heirs or executors or nominees.

(2) On voluntary retirement or resignation of an employee:

After 15 years' continuous service in the Company—15 months' salary.

(3) On termination of his service by the Company:

(a) After 10 years' continuous service but less than 15 years' service in the Company ... $\frac{3}{4}$ of one month's salary

(b) After 15 years' continuous service in the Company ... for each year of service. 15 months' salary.

(4) A gratuity will not be paid to any employee who is dismissed for dishonesty or misconduct.

Salary for the purpose of calculating gratuity shall mean the substantive salary (exclusive of allowances) of an employee on the date the employee ceases to be in the employment of the Company. The Company may at its discretion grant gratuity in excess of the above.

The gratuity should be paid to clerks as well as members of the lower paid staff.

For the purpose of ascertaining the amount of gratuity, the service of the employees who came from the Chemdyes Limited would be counted from the time when the Company purchased the assets of Chemdyes Limited and as regards the others, the period should be considered from the time when they entered the Company's service.

PROMOTIONS AND APPOINTMENTS

19. The next demand is about promotions and appointments. The demand is that no outsider should be engaged to higher and/or covenanted grades unless it is impossible to fill them up from the existing staff; and this selection should be made on the basis of seniority. It is further urged that all vacancies should be filled by promotion of the immediate junior employees and sepoys and others possessing adequate knowledge should be selected for the clerical posts in preference to outsiders. I do not think that these demands in the form in which they are made can be granted to the employees. It is the Company that must remain the judge as to who should be appointed in a particular post and no employee can assert his right or claim, whatever may be his qualifications, for the appointment to a higher grade vacancy. All that I can do is to make a recommendation that the claims of the existing employees should not be overlooked when filling up a vacancy by appointment of a person from outside and that an employee

of long standing and of true merits should be appointed to a covenanted post in case of a vacancy. Beyond making this recommendation I cannot go further.

LEAVE

20. The next demand is for leave with full pay. The employees want (a) 30 days' privilege leave every year with facility to accumulate for three months, (b) 15 days' casual leave in a year, and (c) 30 days' sick leave every year. Leave of absence due to sickness for less than three days need not be supported by medical certificates. The Company has revised its rules of leave on 1st August 1946. Under these rules the clerks get privilege leave for 21 days with the right to accumulate up to 42 days. Certain members of the staff on special agreements get 30 days with a right to accumulate up to 60 days; travellers and demonstrators get 28 days with a right to accumulate up to 56 days, the lower paid staff, 15 days per annum with maximum accumulation of 30 days, and the trade and transport department is treated on the same lines as the factory employees and get 14 days per annum with maximum accumulation up to 28 days. Casual leave is 7 days per annum for all the employees except trade and transport staff. This leave is non-cumulative. The sick leave is 30 days per annum for clerks and 15 days per annum for lower paid staff and 7 days for trade and transport staff. The Company has agreed to give sick leave with full pay to all those who are entitled to it. But the sick leave is not cumulative. The Company has also introduced leave travelling expenses for members of the staff who have served the Company for at least 5 years. Under the rules framed for these expenses the employees drawing a salary of at least Rs. 150 are granted second class railway fares and those below inter class railway fares for double journey while going to a place which is likely to benefit the health of the employee and which is approved by the manager. The Company asserts that they have spent about Rs. 48,401 on account of the travelling expenses. However, one condition in granting these expenses seems to be rather cruel. It says that the managers will sanction payment only to those whose work and conduct have been exceptionally good in the previous year and that the facility may be withdrawn any time. Such a condition seems to be rather out of place in the grant of leave travelling allowances and it may create unnecessary bitterness among the employees. If the Company really wishes to assist the employees pecuniarily in the enjoyment of their leave, I wish they remove this condition. It really smacks of a good conduct bonus.

21. The provision for three kinds of leave seems to me to be fair enough and I would like to make the same which are appli-

cable to employees in the big banks. The leave provisions which have been fixed for the clerical and lower grade staff respectively in the big banks are as follows:—

(a) *Privilege leave*.—One month in a year with full pay and allowances. Leave can be accumulated up to a total period of 3 months but the actual period to be granted depends on the exigencies of the Company.

(b) *Casual leave*.—Ten days in a year with full pay and allowances. Not more than 4 days can be taken at one time, provided that gazetted holidays cannot be combined with such leave so as to increase the absence at any time beyond 6 days.

(c) *Sick leave*.—One month for each year's service, subject to a maximum of 12 months in all during the whole service. The Company may in special cases grant additional sick leave, at its discretion.

Sick leave can be granted only on a certificate of a Registered medical practitioner, provided that the Company may require the applicant to be examined by its own medical officer at its expense, if it thinks necessary to do so.

Sick leave may not be granted if privilege leave is available.

Sick leave shall be granted on half pay, provided that the Company may in special cases of hardship grant full pay for a period of six months out of the total period of 12 months during the whole service.

(d) *Leave without pay*.—Can be granted to an employee when no other leave is due, at the discretion of the Company. Such leave may not be granted in continuation of any leave except sick leave.

The same rules should apply to the members of the lower paid staff with the modification that privilege leave can be accumulated up to a total of 2 months. This is necessary to enable peons etc., to go to their native places for 2 months every alternate year if they wish.

WORKING HOURS

22. The next demand is about the working hours. It was, at the time of the argument, however, conceded that it should be governed by the Shops Act and therefore I do not make any recommendation on this demand.

PROBATION

23. The next demand is for probation. The Union wants that the probationary period should not be more than 3 months after which the employee should be made permanent. The Company's present probationary period is 6 months for the clerical staff, 2 months in the case of lower paid staff and 12 months in the case

of the trade and transport staff. I think, that is a fair period and it does not require any change. The demand that at the end of probationary period the employee should be made permanent, cannot be granted. It depends on the fitness of the probationer and the Company should be the sole judge as to whether the probationer should be made permanent.

TRANSFERS

24. The next demand is about transfer. The demand is that no employee should be transferred from one place to another or from one department to another without his concurrence. In my opinion, this demand cannot be conceded. It relates to the internal management and the Company is the authority to decide whether the employee should be transferred from one place to another or from one department to another. This demand is, therefore, rejected.

MEDICAL TREATMENT

25. The next demand is about medical treatment. The Union's case is that free medical treatment should be given to employees as well as their families including injections and patent medicines. The Company has got a medical benefit association of which the employees are members and there is a nominal monthly fee according to their salaries. This association maintains the dispensary in the Company's office where medicines to ailing members are dispensed free of cost and the office doctor daily attends the dispensary to examine sick members. Members are also not prevented from obtaining medical treatment from their family doctors and the cost of such treatment is also reimbursed under the rules of the association. There is also a scheme in the association known as the death benefit scheme whereby Rs. 500 (maximum) is paid to the family of a deceased member. In my opinion, this is a good and satisfactory arrangement and the employees get a good deal of benefit from the membership subscription which they pay as members of the association. This demand is, therefore, rejected.

FREE UNIFORMS

26. The next demand is for uniforms. The Union wants 3 uniforms to be supplied to all sweepers, sepoys, hamals, etc., at the rate of 2 sets per year and also umbrellas every year. The Company provides 2 free uniforms consisting of coat, pant, shirt and cap to the lower paid staff except the watchmen who are given 3 at the start. These uniforms are washed at the Company's expense. During rainy season umbrellas are provided to sepoys

doing outdoor work. I do not think that the Company is bound to do more than what it is doing. This demand is, therefore, rejected.

HOUSE ALLOWANCE

27. The next demand is for house allowance. The Union demands that the lower paid staff who are not provided with quarters should be paid Rs. 10 per month for married and Rs. 7 for the unmarried. The Company gives house accommodation in the premises rented by it to a number of the lower paid staff on a nominal charge of Re. 1 per month. In view of the extreme shortage of house accommodation in Bombay, the Company is unable to provide housing accommodation for all the members of the lower paid staff and the dearness allowance they get includes the expense towards rent. I do not think, therefore, that this demand can be granted. It is rejected.

INSURANCE

28. The next demand is for insurance of employees against sickness, accident, etc., which is not pressed and it is, therefore, rejected.

SERVICE REGISTER

29. The last demand is about the maintenance of service register. The demand is that before any adverse remarks are set down in the Service Folder, the employee should be given adequate opportunity to put up his defence before the departmental head and he should also have the right of appeal to the highest executive of the Company, the service folder should be open for inspection by the employee every half year and a copy of any such adverse remarks should be supplied to the employee. The practice of the Company is that in the case of ordinary misconduct an employee is warned by the head of the department and it is only when a clear case of misconduct is established that a note is entered in the service folder and the employee is advised to that effect. There is a right of appeal to the general manager against any note made in the service folder. The Company asserts that ordinarily no adverse notes are entered in the service folder and in the last 6 years of working such notes were entered only in the cases of 10 employees per annum. In my opinion, if there is any misconduct on the part of the employee then he should be heard by the head of the department before any adverse remarks are made in the service folder, and if any such remarks are made he should be informed of it and he should have a right of appeal to the general manager. It is

not necessary that he should be supplied with a copy of the entry in the folder. All that is required is that he must be told of the remarks so that he can appeal to the general manager. The demand is, therefore, granted to this extent.

Bombay, 6th November, 1947.

H. V. DIVATIA,
Adjudicator.

(*Bombay Government Gazette, extra, dated 19th November, 1947, Part I, pages 4375k to 4375q, No. 544/46-I, Adjudication No. AR 11 of 1946.*)

IMPERIAL CHEMICAL INDUSTRIES (INDIA), LTD.
(DYES FACTORY)

and

ITS EMPLOYEES

*Adjudicator:—*SIR HARSIDBHAI V. DIVATIA,
(*President, Industrial Court*).

Counsel Mr. A. C. Beynon with Mr. T. F. Fletcher and Mr. A. E. Wilkens instructed by Messrs. Crawford Bayley and Company, Solicitors, for the Dyes Factory I.C.I. (India), Ltd.

Counsel Mr. D. H. Buch with Mr. Shantilal H. Shah, Solicitor, instructed by Mr. J. A. Misquith and Mr. V. U. M. Nair of the I.C.I. Factory Employees' Union.

A w a r d

This reference and adjudication No. Ar. 10 of 1946 in which I have just given my award are two companion matters in which the employers are the same but the employees are different. Whereas adjudication No. Ar. 10 of 1946 was between the Imperial Chemical Industries (India), Ltd., (Dyes Department) and its head office employees in Bombay, the parties in this adjudication are Imperial Chemical Industries (India) Ltd., Bombay (hereinafter referred to as "the Company") and its employees in the Dyes Factory in Bombay. The number of these employees at the end of 1946 was 521 workers and 100 clerks. Out of the workers 462 are men and 59 women. The factory consists of 3 main divisions, (1) the Mixing Factory, (2) the Auxiliary Factory and (3) the Central Factory. The Mixing Factory which is known as "H" shed contains workers in mixing

and bulk departments and also watchmen and sweepers. They are in all about 61 number. The Auxiliary Factory consists of 20 workers and the rest of the workers are in the Central Factory where there are a number of departments. Out of the persons employed, 466 are workers whom the Company calls coolies, 6 sepoys, 23 sweepers, 11 cleaners and 15 watchmen. The demands made by the workers consist of two main classes, *viz.*, those for workers and those for clerks and also supervisors and technical staff. Unfortunately the demands in the Government Notification, Political and Services Department, No. 544/46-1, dated the 9th November 1946, are not properly classified and in some cases they are overlapping. Although the Company has called all the workers as coolies, really speaking all of them are not doing the work which is ordinarily associated with that of a cooly. As I have pointed out in my award in the Lever Brothers Company, the word "cooly" for unskilled, semi-skilled as well as skilled workers is inappropriate. I will, therefore, call all these employees whom the Company calls "coolies" as "workers". The employees in their demands have classified the workers into two main divisions, *viz.*, Carpentry section and Packing Department. As far as possible I will retain the categories and classifications made by the employees. Before proceeding further it is necessary to shortly describe the nature of the work which all these workers are doing in this factory. The Company does not manufacture any dyes in India but imports colours from foreign countries and mixes them in different varieties after they undergo various processes and then they are sold in the Indian Market. These processes or operations are pulverising, drying, mixing and filling and then the colours are stored in packing cases and these cases are sold in the market. Apart from the Miscellaneous Department, the largest number of workers employed is in the Mixing Department where there are 49 persons. In the Auxiliary Section there are 20 persons. In the Case Making Department there are 45 persons, Packing 28 persons, Filling 19 persons, the Central Factory Bulk Section 18 persons and Stores 21 persons. There are various other minor departments also.

2. The principal demands made by the employees are for increase in wages, provident fund, gratuity, bonus, leave, uniform, extra payment for handling harmful chemicals and working conditions. The employees contend that this Company is a monopolist concern which is making large profits principally from the operations of its parent company, the Imperial Chemical Industries, Ltd., which has got its headquarters in London and thus it stands entirely on a different footing from the other employers in India and ought to pay a living wage to its employees. This argument and the Company's reply, I have already dealt with in my award in Adjudication No. Ar. 10/46 and I will not, therefore, repeat

my reasons here. It is sufficient to say that the Company has not denied its capacity to pay and in fixing the wages and salaries of the employees I have taken into consideration the capacity of the Company as well as the wages and salaries prevalent in Bombay for this kind of work. In arguing for the increase in wages, the employees' case, apart from the necessity of the living wage, is that the nature of the work which the workers have to do in this factory, viz., mixing and filling as well as dealing with colours of harmful and obnoxious nature requires not only increase in pay but also improvement in the provision for amenities while workers are employed in doing work connected with hazardous dyes. For that purpose they have asked, over and above the pay which they have demanded, Rs. 5 per month extra for workers in the Mixing Department and Rs. 20 per month more for Bulk, Filling and Seaming Departments. For skilled workers in the Auxiliary Factory they have asked for 20 per cent. extra over and above the wages demanded. It may be noted here that in 1944 there was a dispute between these very parties which was referred to the adjudication of Mr. K. B. Wassoodew, Retired Judge of the High Court of Bombay. In that adjudication there were 3 demands, viz., (1) extension of the system of the provident fund, (2) increase in pay and the scales of pay and (3) procedure regarding discharge or dismissal. On the latter two points there was agreement between the parties and the award was passed in terms of the memorandum of settlement, and on the question of provident fund, there was an award by the Adjudicator. The present workers contend that although there was a settlement about the most important demand for increase in pay and scales, they are not satisfied with the terms of that settlement and they want to reopen the question as the wages which they got under the agreement were entirely inadequate and that there was no proper compensation for the obnoxious nature of the work which they were doing in handling certain harmful and hazardous colours. In the present case the point on which the parties were dwelling principally at issue was the one relating to obnoxious nature of the work in several departments. A good deal of evidence has been led by both the parties on that point, consisting of expert evidence as well as other oral and documentary evidence. I will deal with this point when I come to the wages of the workers doing work in Mixing and Filling Departments. In the meanwhile I will begin with the demands in the order in which they are made in Annexure "A" to the Government Notification.

WAGES—(I) MANUAL WORKERS

3. The first demand relates to the workers in the Carpentry Section. The demand for certain machinemen doing work in this section is that they may be paid Rs. 75 per month as minimum

and a maximum of Rs. 150 with yearly increments of Rs. 5. These workers have to cut timber for making boxes by power-operated saws. The work is of a semi-skilled nature. Under the previous award they were to start with Rs. 30 on confirmation after one year's probation and with an annual increase of Re. 1-2-0 they were to get a maximum of Rs. 37-8-0 which the Company subsequently voluntarily increased to Rs. 50 in November 1946. Moreover the permanent employees in this department get Re. 0-2-0 per day extra as per the previous award. In fixing the salaries of these and other workers, I may observe here, that all the workers in the factory are paid dearness allowance which is granted to the textile workers by the Bombay Millowners' Association, and under that scale the amount which the worker gets depends on the rise or fall of the cost of living. On this scale, for a cost of living figure of 260, the amount of dearness allowance comes to about Rs. 37. Now the Pay Commission has fixed for its semi-skilled and skilled workers who come under class IV, a grade of Rs. 35—1—50 and Rs. 40—1—50—2—60. The Commission has taken Rs. 55 as a fair living wage for an ordinary working class family. This amount is split up into Rs. 30 per month as basic pay and Rs. 25 as dearness allowance on a cost of living index figure of 260 for workers who are getting up to Rs. 50 per month. For workers in Bombay they have granted extra allowances of Rs. 10 per month as housing allowance for persons getting below Rs. 55 and compensatory allowance of Rs. 5 per month for persons getting Rs. 35 per month and Rs. 7-8-0 per month to those getting between Rs. 35 and Rs. 60 to meet the higher cost of living and other hardships in cities like Bombay and Calcutta. Thus the total amount to be paid to workers who start under the IVth class is Rs. 70 or Rs. 72-8-0 per month. At present the worker in the Carpentry Section who starts at Rs. 30 per month and gets a dearness allowance of Rs. 37 when the cost of living index is at 260 gets a total of Rs. 67 per month. This amount falls short of that fixed by the Pay Commission. At the same time the demand of Rs. 75 as the starting wage for machinememen as well as carpenters, nailers and joiners in the Carpentry Section seems to be exaggerated. Even taking it that this Company can afford to pay more than any other Company doing similar work, in my opinion, the wages which the workers are getting should not be disproportionate to the nature of the work and the corresponding wage prevalent in similar concerns. After the Pay Commission made its recommendations the Government of India have revised the scale of all their employees. These are contained in the *Gazette of India* dated 2nd August 1947. The Government of India fixed the scale of Rs. 40—1—50—2—60 for carpenters in the Printing and Stationery Department and Rs. 40—2—60 in the Medical Stores Depot in Bombay and other cities. The start in this scale of Rs. 40 to Rs. 60 is the highest among the 3

scales fixed for class IV workers and, in my opinion, these workers in the Carpentry Section should get the same total emoluments. According to Government of India scale they will thus get at the start Rs. 40 as basic pay *plus* Rs. 25 dearness allowance when the cost of living figure is 260, *plus* Rs. 10 house allowance and Rs. 7-8-0 as compensatory allowance making up a total of Rs. 82-8-0. If, therefore, the worker in the Carpentry Section in the Company gets Rs. 45 as the start, then with the dearness allowance of Rs. 37 at the figure of 260, he would get Rs. 82 as the starting wage which is almost the same as the starting emoluments of the highest scale for the IVth class worker in Bombay. I would, therefore, fix the grade on Rs. 45—2—60 for the machinemen, carpenters, nailers and joiners in the Carpentry Section. Carpenters (skilled) of the cabinet maker type should get Rs. 60—5/2—75.

4. I now come to the salaries of all miscellaneous workers who are called "coolies". The demand is Rs. 60—3—100 for coolies employed in the Mixing Department. There is an additional demand of an extra of Rs. 5 per month for coolies in the Mixing Department and there is a general demand that workers handling hazardous chemicals and colours like brenthol should be paid extra Rs. 20 per month. Such coolies are said to be those working in Bulk, Filling and Seaming Departments. The Company is paying from October 1946 Rs. 30 rising up to Rs. 50 with an annual increment of Re. 1-2-0. Mixing coolies start with Rs. 33-2-0 with an annual increment of Re. 1-2-0. Their maximum is Rs. 50 which the Company is willing to raise to Rs. 52-2-0. It is further stated that goggles, respirators and rubber gloves are provided to those coolies who come in direct contact with colours and chemicals.

4-A. This has been one of the principal issues in the case and both sides have led a good deal of documentary and oral evidence on this point. For the workers, it is contended, that the conditions of the coolies in the Mixing, Filling and other departments is extremely bad in spite of the use of goggles, respirators (consisting of cotton wool padding with gauze), etc., because they do not afford adequate protection against some colours the effect of which is extremely harmful and dangerous to health. The Union has examined Dr. P. Raghavan as their expert to prove the harmful effects of some of the colours and the Company has examined Dr. S. Chakravarty to prove that the effect of the colours is not so harmful as is alleged by the employees. The Company has also examined its Production Manager Mr. A. E. Wilkens as well as its surgeon Dr. Patrao and the Superintendent of the Mixing Department Mr. G. K. Tambe. The witnesses of both sides are more or less interested in proving the case of that

party. I, therefore, thought it proper to examine the Chief Inspector of Factories, Mr. N. G. Kevalramani and the Certifying Surgeon to the Government, Dr. Deosthali, as Court witnesses. Dr. Raghavan has deposed that he had made a report (Exhibit 1) after visiting the factory and examining several workers who were suffering from some diseases which according to him were due to their coming into contact with harmful dyes. According to him 4 persons were suffering from dermatitis on account of their coming into contact with certain dyestuffs. He found that the centre of the tongues of some coolies was coated with dyes in spite of their using the respirators, although he admits that he cannot give the name of any particular dye which had produced the result. Some dyes such as Brenthol and Congo Red, according to him, are positively harmful and Methyl Violet may also cause chronic irritation. He admits that he is not a chemist but he claims to know the effects of the harmful colours from his experience as an Honorary Consulting Physician and Lecturer in the G. S. Medical College in Bombay. The Company's witness, Dr. Chakravarti, has replied in detail to the assertions made by Dr. Raghavan in his deposition and he has deposed that aniline products which are only intermediaries have no harmful effects at all. He admits that he has seen the mouths of the workers coated with dyes but that was because the colour on the face trickled down and mingled with perspiration when the respirator was fastened loosely. He said finally that if the workers use the respirators and goggles with which they are provided the effect of the colours on the skin will be considerably minimised but that the workers did not make proper use of them. The Company's Doctor, Dr. Patrao, has stated in his correspondence that two cases were associated with gastro-intestinal irritation, burning of the throat and chest, vomiting and pain in the abdomen; and these were definitely due to Congo Red and there were two cases of mild dermatitis; but the former witness differs from Dr. Patrao on that point. In his opinion Congo Red is not toxic for ordinary purpose, although he admits that he has not himself conducted experiments on that subject. As regards Brenthol colours, Dr. Chakravarti says that although the shippers insisted upon putting a label as "dangerous" on these colours, he does not consider them to be such. He further says that Fast Garnet G.B.C. Base dye was not dangerous or poisonous. I do not wish to attach much weight to either of these expert witnesses because they came to support the case of the party which called them. There is however, documentary evidence consisting of the correspondence among the Company's officers as to the effect produced by the colours on the workmen and I principally rely on that evidence in coming to the conclusion that the effect of some of the colours is undoubtedly obnoxious and harmful to health, even though precautions by way of the use of respirators and goggles might be taken. Exhibits 7, 8, 9

and 16 consist of the correspondence between the Mixing Superintendent, the Production Manager and the Doctor of the Company and that clearly shows that the complaint of the employees of the harmful effects of some of the dyes was not without foundation. It appears from this correspondence that as early as August 1941 the Mixing Superintendent had complained that the work in the Mixing Department was troublesome and hard as also dangerous, that the workers as a consequence got unwell from time to time and that it was difficult to collect good and experienced hands suitable to the mixing work as they were reluctant to join because of the low scale of salary. In 1943 there was another letter to the Production Manager to the effect that coolies had become ill owing to the mixing of Bretemine Fast Garnet G.B.C. Base and that their illness was very serious owing to extreme coughing and vomiting. There was a report that Brenthol Fast Garnet G.B.C. Base mixed at Argyle Road Factory and as it was a bad stuff a lot of it was sticking to the machine. Every cooly who was sent inside the machine for scraping the colour started vomiting and fell ill. In 1945 the Production Manager also sent a memorandum to Mr. Tambe, 'H' Shed, stating that Brenthol Fast Red RC Base dye was rather risky to handle due to its toxic nature and that precautions such as wearing of rubber gloves, respirators, etc., should be taken when that product was handled. In November 1941 one of the women coolies was vomiting and was feeling giddy on account of what appeared to be poisoning by inhalation of some irritant and the Company's Doctor certified that the case appeared to be due to some respiratory irritation, although he did not know what the dye was which caused it. The Production Manager replied stating the name of the colour (*viz.* Hydrochloride of Ortho-amino-azo-Tolnene) and wondering why that effect was caused because on testing the colour it was found that the acidity was normal. Still, however, he observed that the Hydrochloride, if it was inhaled into the respiratory system, would definitely act as an irritant. In the same month there was a report by the Medical Officer to the General Manager on 5 cases of dye-poisoning during the previous week. The Doctor says that in every factory where workmen are handling dangerous and poisonous materials, instructions are periodically given to train the workmen to avoid chances of poisoning, and that if any of these 5 cases had proved fatal the Company would not have been able to stand a rigid inquiry by the Coroner as to what measures they had taken to prevent those cases of poisoning. The Doctor, therefore, suggested several measures to stop the harmful effects and to provide for masks and issuing instructions to the coolies to put on the masks, to keep their mouths shut and to take several other precautions. As a result of this correspondence the Company wrote to the Chief Inspector of Factories and asked for power of imposition of fine on coolies

if they did not observe the precautions given to them and make use of the respirators, goggles, etc., provided to them. The Company's case is that the workers do not make proper use of these amenities provided for them, while the Union's case is that these measures are not provided in all cases and they were not as such able to prevent harmful colours going into mouths and nostrils and also attaching on the skins of the workers. In February 1942 there were 9 cases of severe dye irritation, 3 of them with respiratory symptoms and 2 cases were characterised by nervous symptoms particularly almost complete unconsciousness and were said to be due to handling of Congo Red. The Company's Doctor also reported that there were a couple of cases of mild dermatitis of the fore-arm and hands, although he was not able to give the names and the nature of the dyes which caused it. It is quite true that thereafter the Company had taken several precautions for the use of preventing the disease. The evidence, however, shows that notwithstanding these precautions cases of harmful effects of several dyes on the bodies of several workers did occur partly because the workers were not making use of the apparatus given to them and partly in spite of their proper use. For instance, in May 1943, the Mixing Superintendent wrote to the Production Manager that 7 coolies became sick owing to the mixing of Brenthol Fast Garnet G.B.C. Base and that the illness was not due to any fault on their part. It was purely due to the colour and nothing else. So also in September of the same year it was reported that a particular number of Brenthol Fast Garnet G. B. C. Base was a bad stuff. I am not referring here to the harmful effects produced by the insecticide "666" because according to the employees the use of that stuff is now stopped in the factory. Even in October 1945 after the use of precautionary measures the Production Manager reported to the Head Dyes Office that when attempting to grind concentrate, several workmen complained of burning sensation of the skin and it also seems to have affected the eyes to a certain extent. It is referred to in the letter regarding the effects produced while pulverizing "Gam-mexane". Even in February 1946 the Mixing Superintendent wrote to the Production Manager that the coolies employed in his department were honest and working very hard without grumbling, but they feel that the dyes which they handle were harmful to their health and on that account they were falling sick. The result was that there was a tendency on the workers to leave the job. Every week they had to engage new coolies to fill in the places of those who had left. He concludes by saying that as the trained and permanent workers were going away it was a problem how to get the work done more efficiently. The effect of this correspondence, to my mind, is to show that in spite of the use of precautionary measures, there are several colours which produced obnoxious effects when they were handled by the coolies. In order to obtain

disinterested evidence on this point I had asked the Chief Inspector of Factories to come and give the benefit of his experience as to the conditions in this factory. Unfortunately, instead of getting any assistance from him, the statements made by him made an impression on my mind that while visiting this factory from time to time in his capacity as Inspector of Factories he had not taken the trouble to find out the nature of the dyes which the workers were handling and the effect which was produced by them on the workers. He says that he had visited this factory very often and whenever he went there he was quite satisfied with its working conditions. He had seen workmen using the respirators loose and had warned the workers for doing so. He says further that there were rules called Hazardous Occupation (Lead) Rules under section 33 of the Factories Act, and other miscellaneous rules in which a lot of chemicals have been mentioned but there are no rules relating to the mixing of several dyestuffs. In cross-examination he says that so far it has not been considered necessary to frame these rules because in his opinion the workers were not exposed to personal bodily injury or poisoning in this factory. He says that whenever he had visited the factory he had inquired from the Manager whether there were any ill effects from the colours handled in the factory and that either the Manager or the Assistant Foreman present there said that there were no complaints and he further says that it was the duty of the Certifying Surgeon and not his to see into such complaints although he admits that it is part of his duty as Chief Inspector to check up and procure reports from the Certifying Surgeon. He further admits that he had not inquired into the effects of the dyes each time when he visited the factory. He was satisfied with the qualifications of the Company's Doctor and had accepted the explanations given by him. When questioned about several cases of illness which were the subject matter of the correspondence which I have discussed above, he says that he did not know that these chemicals were in use in the factory and his only explanation is that he did not know because the Company did not tell him that anything dangerous was being used. He has further admitted that having regard to the facts which had been brought to his notice now, an investigation is necessary. I am inclined to think that the investigations made by this witness, whenever he visited the factory, were of a perfunctory nature and he did not care to ascertain the effect of the colours which the Company is using probably because he thought at that time that it was no part of his duty to do so. Nevertheless, I think, he ought not to have remained satisfied with the answer given by the Company's Doctor and should have himself inquired into the matter. If he had moved round the different departments noticing the labels and the colours he would have found, as I found on my inspection visit to the factory on 9th August 1947, that there were certain

colours which were labelled as "dangerous". The Company says that they were not really dangerous but the shipping company insisted on such labels being put. Whatever that may be the Chief Inspector of Factories should have been led to make inquiries if he had moved about and noticed these labels on some of the tins. As this witness has stated that it was the function of the Certifying Surgeon to the Government of Bombay to give opinion about the harmful effects of these colours, I sent for him and examined Dr. Deosthali who is at present the Certifying Surgeon to the Government of Bombay. This gentleman, however, says that he had taken over charge only in January last and that he had never visited the factory before the day on which he was examined in Court. On that day when he went over there he found that although there was an exhaust in the filling department, there was no such contrivance in the other departments. There was certain amount of dust flying about. He further says that the whole bodies of the workers were covered with dyes. Although he saw the workmen working with boots, gloves and respirators on, he found that such precaution was not sufficient. He saw one worker whose nose was discharging as a result of irritation and one or two with dermatitis on their hands. As regards the different colours, he admits, he does not know much about them although he thinks that the occupation is hazardous. He was only temporarily doing the certifying work at present and did not know much about the chemicals. He concludes by saying that lead, yellow chrome and aniline colours are harmful to health. This is the main evidence on this point and over and above this evidence, I have also the impressions of my observations when I visited the factory in company with the parties and their counsel. It is true that at that time the men might have interfered with the working apparatus to show that the particles of the dyestuffs can escape from the pulverizer and other machines. But even making such an allowance, my impression is that notwithstanding the use of the appliances there are particles of dust floating about in the room in which the colours were being handled and their effect inside the nose as well as mouth would cause irritation as well as coughing. I have no doubt about the obnoxious nature of the work done by the coolies but as to the exact harm which the colours might produce on the bodies of the workers, outside as well as inside, as alleged by the employees, I am not at present in a position to say definitely. In my opinion, this evidence has convinced me of the urgent need of conducting a thorough inquiry by the Government into the working conditions of this as well as the other dye factories in the City and in other places in the Province and for framing rules under the Factories Act about handling of obnoxious or harmful colours in these factories where the occupations are hazardous. At present there are no such rules and the inquiry in this case reveals to my mind that the

investigation be conducted by an expert. I would, therefore, recommend that the Government should be moved to take appropriate steps in this matter and provide for proper precautionary measures. In the meanwhile, I think the employees' demand for an extra payment to the coolies working in these departments on account of the obnoxious nature of the work is, in my opinion, justified although not to the extent demanded. The employees have asked not only for the payment of Rs. 5 per month to the coolies in the Mixing Department but an additional 20 per cent. to all those in the Bulk, Filling and Seaming Departments. I am not convinced that they are entitled to such an additional amount as part of their wages over and above the use of respirators, goggles, etc. The Company starts them at Rs. 33-2-0 and they go up to Rs. 52-2-0. In my opinion, the coolies as a class should get a salary of Rs. 30 rising up to Rs. 50 with an annual increment of Rs. 1-4-0 and the coolies working in the Mixing, Bulk, Filling and Seaming Departments should start at Rs. 40 with a maximum of Rs. 60 with an annual increment of Rs. 1-4-0. I fix this scale for the coolies in these departments on the materials that I have got before me at present. It may be necessary as a result of the inquiry which I have suggested above, to ascertain whether these revised wages require any modification in the light of the conclusions. At present, I think, it is sufficient to recommend what I have done *viz.*, that the coolies of these departments should get Rs. 10 more than the coolies working in other departments. The other coolies should get Rs. 30—1¼—50.

5. The next demand is for machinemen in the Packing Department. There are 5 men doing the work of sealing the tin. The Union has demanded the grade of 75—5—150 while the Company is paying them Rs. 30, *plus* Rs. 2 as machine allowance—1¼—58-8-0. The Government of India have awarded machinemen in the Printing and Stationery Department under the Works Mines and Power Department Rs. 40—1—50—2—60 (*Vide Gazette of India*, Part I, dated 2nd August, 1947, page 49). The total emoluments of such a machineman in Bombay would according to the recommendations of the Pay Commission be Rs. 40 as basic pay, Rs. 25 as dearness allowance with the cost of living index figure at 260, Rs. 10 as house allowance and Rs. 7-8-0 as Compensatory allowance making a total figure of Rs. 82-8-0. The total earning of such a machineman in this Company should not, therefore, be less than that amount. Whereas under the Pay Commission, the dearness allowance is Rs. 25 at a cost of living figure of 260 and rises to Rs. 30 only when the figure is 280, under the Millowners' scale on which the dearness allowance is given by the Company the amount comes to about Rs. 37 when the figure is 260 and goes on increasing

up to more than Rs. 41 when the figure is 280. I will, therefore, take a rough figure of Rs. 40 as dearness allowance between the figures 260 and 280. That being so, the basic pay should be Rs. 45 in order that a man may earn Rs. 85 which is slightly more than the earning of a machineman in Bombay under the Pay Commission's scheme. I, therefore, fix the grade of Rs. 45—1½—60 for the machineman in the packing department.

6. Before going to the clerks, I will take up the various categories of workers which are mentioned at the end of the demands. The first is that of lorry drivers for whom the demand is 80—5—150. The Company's grade is 64—4—100. The Commission has dealt with two kinds of lorry drivers (1) in the Waterways and Experimental Stations (page 39 in the Gazette) for whom the grade is 60—5/2—75—3—105 and the other is in the Printing and Stationery Department of the Works, Mines and Power Department where the grade is 60—5/2—75. In my opinion the latter grade is appropriate in the present dispute. On the starting basic pay of Rs. 60 the lorry driver would have a total earning of Rs. 117-8-0 under the Pay Commission's Report. In the recent Government Transport Service dispute in Bombay in which I gave the award on 27th January, 1947 before the Pay Commission's Report was published, their salary was fixed at Rs. 60 *plus* Rs. 10 temporary increase, Rs. 5 house allowance *plus* the dearness allowance paid by the Bombay Government which at present is Rs. 35. The total earning of the Government Transport Service driver at present, therefore, is Rs. 110 per month. Taking the figure of Rs. 40 as dearness allowance, as explained above, if the driver gets Rs. 70 as the basic pay, his total earning would be Rs. 110 per month and that would be the same as that of the driver in the Government Transport Service. I, therefore, fix the grade of 70—5/2—85 for the lorry drivers. In my opinion, the same grade should be fixed for the van and car drivers as well as motor-cycle riders.

7. The next category is of mechanics and electricians. The Company starts them on a salary of Rs. 70 to 100 and increments are given according to ability. The Government of India have got a scale of Rs. 75—3—105 for electricians and electric mistries and on the calculation mentioned above, the earning of such a man in Bombay would be Rs. 75 *plus* 35, *plus* 15 *plus* 7-8-0, i.e., Rs. 132-8-0. Taking the average dearness allowance at Rs. 40 I think the starting basic pay should be Rs. 90 so that the man may get Rs. 130 at the start. I, therefore, fix the scale of Rs. 90—3—120 for mechanics and electricians.

8. The next category is of cleaners. The rate fixed for these persons by the Government of India is Rs. 30—½—35.

(See page 39 in the Gazette). The total earning according to the Pay Commission's recommendations of such a person at the start would be Rs. 70 and taking dearness allowance at Rs. 40, the total earning would be Rs. 70 if Rs. 30 is the basic wage. I, therefore, fix a grade of Rs. 30—1—35 for the cleaners.

9. I am told there is only one painter and there is no fixed scale for him. I fix a scale of Rs. 75—3—105 for the painters.

10. For the next category of Printers, the Company has got a grade of Rs. 30—1/2—50. I fix for them a grade of Rs. 40—1/8—55.

11. The next class is sweepers, for whom the present grade is Rs. 26 rising up to Rs. 30 with an annual increment of Rs. 1-1-0. The Government of India have prescribed (page 65 of the Gazette) the scale of Rs. 30—1/2—35 for sweepers and I accept the same scale here. With the dearness allowance at Rs. 40 they would be earning about Rs. 70 per month which is the same as that of a sweeper under the Pay Commission's recommendations.

12. The last category is that of sepoys for whom the present grade is of Rs. 30—1/2—50. I fix the same grade for the Sepoys in this Company as I have done for the big banks in the Banks' Award. That grade is Rs. 30—2—50—1—65. Mukadams should get Rs. 8 per month extra in addition to the basic wages as demanded by the Union.

WAGES—(ii) CLERKS

13. I now come to the demands relating to clerks. The Union has demanded Rs. 90 at the start and Rs. 120 on confirmation rising up to Rs. 520. The Company had suggested a start of Rs. 75 on confirmation after 6 months and promotion according to merits and ability. At my request, however, the Company has suggested grades and scales in Exhibit 22. According to the Company the number of clerks employed in the factory are non-matrices and therefore they have proposed a start of Rs. 60 rising up to Rs. 130 at the end of 14 years and if there is a vacancy and the person is found fit he would be promoted to the higher grade where he starts at Rs. 137-8-0 and rises up to Rs. 160. In similar circumstances he goes to the next higher grade where he rises up to Rs. 190 and thereafter in similar circumstances he goes to the highest grade where he may rise up to Rs. 275. Although a large number of clerks in the factory are non-matrices, there is a difference in their working hours. The factory clerks work for about 48 hours a week while the head office clerks for about 36 hours. Then again the factory clerks

have got to work for more days than the head office clerks as they get only factory holidays. The technical men in the laboratory section work one hour less than the factory staff. Whereas in the Government offices the clerk works for 7 hours a day including the recess, in this factory he has got to work 8 hours a day. On account of these circumstances, in my opinion, the clerks in the factory should get the same pay as they are getting in the Head Office and therefore the same scales and grades which I have recommended to the clerks in the Head Office will apply to the clerks in the factory.

14. As regards dearness allowance there is no demand for the dearness allowance paid to the factory workers which is according to the Millowners' scales. For the clerks the demand is the same as for those in the Head Office and, in my opinion, the clerks in the factory and technical men in the laboratory section should receive the same dearness allowance which I have recommended for clerks in the Head Office.

15. As regards the adjustments in the new scale recommended to the present employees in the Company, the Union has demanded point to point adjustments according to the service. The Company, on the other hand, has contended that the adjustments should be made according to fundamental rule No. 22 in the Government Service Manual, as the existing rates are adequate. It may be noted that in considering the question of adjustment the Central Pay Commission has not followed either the fundamental rules or the ordinary method but has evolved a different method. I have discussed this point in my award in the Head Office Dispute and adopting the same principle I recommend that the adjustments should be according to Rule No. 1 of the recommendations of the Pay Commission, *i.e.* the employees should be put in the new scale at the stage above their present pay increased by one increment for every three completed years of service. In any case he must not get more than the maximum in that grade.

HOURS OF WORK

16. The next demand is for hours of work. The hours of work are mentioned in Annexure "J" attached to the Company's written statement and there is nothing against it in the statement filed by the Union and no arguments are advanced on that point. I, therefore, recommend that the hours of work should be the same as they are at present.

NIGHT SHIFT

17. The next demand is about night shift. The only demand

made before me is that of conveyance for the workers but no worker has to work continuously in two shifts and therefore, in my opinion, this question about conveyance for night shift workers does not arise at all. No concern in Bombay provides conveyance for its night shift workers. I, therefore, reject this demand.

LEAVE

18. The next demand is for leave. As regards leave for the factory workers, the Union has agreed that the workers who are governed by the leave provision under the Factories Act should get leave according to that Act. The Company's present leave rules for the workers are favourable to the workers as compared with the leave provisions under the Factories Act. I, therefore, recommend that no change should be made in the present rules. As regards leave rules for clerks and technical staff, I recommend the same rules which I have recommended for employees in the Head Dyes Department.

PERMANENCY

19. The next demand is about permanency. The Union demands that a worker should be made permanent after three months and there should be no discharge without the employee being heard. The Company's case is that it was agreed to in the previous award that an employee will be made permanent after one year's probation. In my opinion, there is no need to change the present probation. It is contended that some men are engaged for alleged temporary work and they are discharged before the year is over and then they are re-employed so that they may not claim to be made permanent employees. The Company's case is that the employment of temporary men depends upon the exigencies of work and that no person is discharged before he has served one year simply to disable him from being made permanent. I have no definite evidence before me that the Company has purposely discharged the employees before one year and re-employed them so that they may not claim to be permanent. I do not, therefore, see any reason to change the present practice. I would only recommend that when employees are made permanent they should be made permanent according to seniority of their service in the Company.

UNIFORMS

20. The next demand is about uniforms. The demand is that the Company should provide lockers for keeping the uniforms safely or else they should not insist for their return and that uniforms should be provided for every employee. On my visit to the Company I found that the Company has provided lockers for some of the employees and the others take them home. The

Company, however, insists that even if the uniforms are kept in the Company's premises, the workers would be responsible for their loss, even though no lockers are provided by the Company. In my opinion, this is not fair. The Company should provide lockers for the workers if they are to be held responsible for the uniforms kept in the Company's premises. Then there is another grievance that the workers in the Mixing and Filling Departments get uniforms with short sleeves and short pants and the colour sticks to their arms and legs. In my inspection also I found that the colour has stuck to the arms as well as legs of the workers and I would, therefore, recommend that as far as possible workers in the Mixing and Filling Departments should be provided with uniforms with long sleeves and full pants. As regards goggles, gloves, respirators, etc., they should be provided to all the workers who come into contact with obnoxious colours and that would depend upon the result of the inquiry which I have recommended.

ATTENDANCE

21. The next demand is for attendance. The employees say that 15 minutes' grace should be given for attendance and 10 minutes at the close of work for washing. The Company has opposed the demand on the ground that the workers in the past were found to frequently abuse this concession and that five minutes' time is sufficient for washing etc. In my opinion, the demand for 15 minutes is too much and the five minutes for washing etc., should be given for the workers as has been conceded by the Company.

PROVIDENT FUNDS

22. The next demand is for provident fund. As regards workers, the demand for provident fund is dropped and as regards provident fund for clerks, I make the same recommendation which I made with regard to clerks in the Head Office.

GRATUITY

23. The next demand is for gratuity for workers as well as clerks. The Company has opposed this demand as there is a provident fund for all the workers but for the reasons which I have given for recommending gratuity to the workers in the Head Office award, I recommend the same scale and conditions for all employees in the factory. It is true that the other concerns do not pay gratuity. The amount which a man can get at the end from the provident fund is not a wholly adequate amount on which he can live in future when there is no pension, and he should get something more by way of gratuity or retiring allowance according to the period of his service. The recommendation is therefore, the

same as I have made for the Head Office employees.

MEDICAL ATTENDANCE

24. As regards medical attendance, I am satisfied that the present arrangement made by the Company for medical treatment is adequate and therefore, it should continue as it is at present.

Milk Ration.

25. As regards the demand for milk ration for all the workers in the factory, it appears that milk ration is given to a particular class of workers not so much because of the nature of their work or that milk is necessary to ward off the harmful effect of the particular colours with which they have to deal, but this concession was given several years back partly in view of a demand for increase in wages and the workers seem to have been satisfied with the system of milk ration which the Company introduced. The Union demand that milk ration should be given to all employees. I do not see any necessity for doing that. There is nothing to show that the drinking of milk while working in the Company is necessary to prevent any bad effect of the obnoxious colours on the body of the workers. At the most it can be said that it increases the stamina of the workers but adequate provision is made, in my opinion, in the increased wages and dearness allowance. I would not, therefore, interfere with the milk ration which is being given at present in the Company. That demand is, therefore, rejected.

BONUS

26. The Company pays bonus at the same rate and for the same reasons, as it gives to the employees of the Head Dyes Department and the reasons which I have given in my award relating to the Head Office Staff equally apply to this case also. I, therefore, make the same recommendation for the factory employees. As regards bonus for the war years, that has not been demanded by the factory workers and the reason why I have allowed the demand for war bonus to the employees of the Head Office Staff does not obtain in the case of the factory workers because the factory workers are being given dearness allowance on the Millowners' scale which is more liberal than the haphazard manner in which the dearness allowance was given to the Head Office employees for several years.

WORKING CONDITIONS

27. The next demand is for working conditions. The Union demands the right to nominate shop stewards. The Company, however, is not agreeable to that and it is contended that there

is provision in the Industrial Disputes Act of the Government of India for joint works committees and if need be, such a committee may be appointed. I do not think that the Union has made out any case for the appointment of a shop steward. That demand is, therefore, rejected.

HOLIDAYS

28. As regards the demand for working on holidays, the work to be done on a holiday and the payment to be made is governed by the Factories Act and I, therefore, do not wish to make any recommendations.

EXTRA PAYMENT

29. Lastly, there is a demand for additional pay for skilled workers in the auxiliary factory to the extent of at least 20 per cent. more. There is no evidence before me that persons working in Auxiliary Department are handling hazardous chemicals or colours. It may be that they have to deal with some colours which are obnoxious and some chemicals which might give forth obnoxious fume. The inquiry which I have recommended about the dyestuffs will also extend to the working of this auxiliary factory and recommend what precautionary measures should be introduced if it is found necessary that the workers require protection. For the present I do not see any reason to make any recommendation for additional wages. If at all, it would depend upon the result of the inquiry.

H. V. DIVATIA,

Bombay, 6th November 1947.

Adjudicator.

(Bombay Castle, 22-1-1944, No. 7632/34-I. Government Gazette 27-1-44, Part. I, pp. 131)

SWADESHI DYEING, BLEACHING AND PRINTING WORKS, BOMBAY,

AND

ITS EMPLOYEES.

Adjudicator.—E. M. Nanavutty, Esq., I.C.S., (Retired).

Counsel Mr. Y. B. Rege, instructed by Messrs. Dorab & Co., Solicitors, for the Swadeshi Dyeing, Bleaching and Printing Works, Bombay.

Mr. K. T. Sule, Advocate, with Mr. T. Godiwalla, Advocate, for the employees.

A w a r d

By Government Order, Political and Services Department, No. 7632/34, dated the 20th November 1943, I was appointed adjudicator in the dispute regarding dearness allowance between the Swadeshi Dyeing, Bleaching and Printing Works of Bombay, and its employees. The Government also directed that for the purpose of adjudicating the said trade dispute, I was to exercise such powers as are conferred on, and follow such procedure as is prescribed for, a Board of Conciliation under the Trade Disputes Act of 1929, and the Bombay Trade Disputes Rules of 1930.

2. In the month of October 1943 the employees of the Swadeshi Dyeing, Bleaching and Printing Works of Bombay (hereinafter referred to as the "Company"), made a representation to the Commissioner of Labour that in pursuance of previous agreement with the management they were entitled to dearness allowance according to the sliding scale adopted by the Millowners' Association of Bombay. This was followed by the notice of strike under Rule 1-A of the Defence of India Rules by the employees to the Manager of the Company on or about the 11th November 1943. As the dispute could not be settled amicably between the parties before the Commissioner of Labour, it was referred to me for adjudication as stated above.

3. The usual notices to the parties to file their respective statements were issued on 23rd November 1943. The statement on behalf of the employees was filed on 29th November 1943 and Messrs. Dorab & Co., Solicitors, filed the reply of the Company on 7th December 1943. The first hearing was fixed at 11 a.m. in the Industrial Court on 8th December 1943, but since Mr. Sule, Advocate, for the employees could not attend my Court as he was engaged in a part-heard case in the High Court, the hearing of this case was adjourned to 11th December 1943. On that day the basis for a settlement was discussed with the parties and Mr. Soonawalla, one of the partners, asked for a little more time to consult his other partners in this matter. The proceedings were accordingly adjourned to 18th December 1943, on which day the parties appeared before me and intimated to me that they had reached a settlement on the question of dearness allowance which was the sole point in dispute in this case. The Memorandum of Settlement was accordingly drawn up and signed in Court in my presence; its copy is attached herewith. I make my award in terms thereof. I am glad to observe that the parties have settled this dispute to the satisfaction of all concerned.

Bombay, 21st December 1943.

E. M. NANAVUTTY,
Adjudicator.

MEMORANDUM OF SETTLEMENT

The employers (the Swadeshi Dyeing, Bleaching and Printing Works, Bombay) agree to pay and the employees agree to accept dearness allowance at the sliding scale adopted by the Millowners' Association of Bombay, less two annas per day per employee with effect from 1st October 1943. This arrangement is without prejudice to the employees' claim for arrears of dearness allowance mentioned in their statement filed before the Adjudicator (Ex. A) and the employers' contention that there was no agreement between the employers and the employees to pay dearness allowance at the Millowners' scale as alleged in their reply (Ex. B), dated the 6th of December 1943, to the statement of the employees. The arrears by way of difference in the dearness allowance between the scale hereby agreed to and the amount actually paid, from the 1st of October 1943, shall be paid by the employers on or before the 7th January 1944.

Y. B. REGE,

Counsel,

for Swadeshi Dyeing Bleaching
and Printing Works, Bombay.

Left hand thumb impression of

MARUTI ANANT,

K. T. SULE,

Advocate.

for and on behalf of the
employees of Swadeshi Dyeing,
Bleaching and Printing Works,
Bombay.

Before me,

E. M. NANAVUTTY,

Adjudicator.

Bombay. 18th December 1943.

(Bombay Castle, 17-4-1943, No. 6892/34-A. Government Gazette, 17-4-43, Part I, pp. 798-799)

SUNDERDAS SAW MILLS, BOMBAY

AND

ITS EMPLOYEES

Adjudicator:—E. M. Nanavutty Esq., I.C.S., (Retired).

Mr. Purshottam Ranchhoddas with Mr. Valji Dhanji and Mr. Dwarkadas Purshottam for the Sunderdas Saw Mills, Bombay.

Mr. K. T. Sule, Advocate, with Mr. V. Chaudhuri, for the Bombay Saw Mill Workers' Union (Red Flag).

Messrs. Uma Dutt Mahavir Prasad Misra, Yamuna Prasad Ramlagan Ram Tiwari and Rambharan Musaesingh, for other employees.

Mr. D. P. Sethna, Solicitor to the Government of India at Bombay, watched the proceedings.

A w a r d

By Government Order, Political and Services Department No. 6832/34, dated the 5th February 1943, I was appointed to adjudicate in the trade dispute regarding bonus between the Sunderdas Saw Mills, Bombay, and its employees. The usual notices to the parties were issued on 9th February 1943, calling upon them to file their respective statements. On the 13th February 1943, I paid a visit to the Sunderdas Saw Mills at Reay Road to see the nature of the work done in that factory. The preliminary hearing was fixed on 25th February 1943. The Bombay Saw Mill Workers' Union had formulated 8 other demands in addition to the claim for bonus. The attention of Mr. Sule was invited to the fact that this dispute was restricted to the question of bonus by Government Order itself. Mr. Sule admitted this and stated that for the purposes of the present inquiry he unreservedly withdrew all other demands enlisted in the written statement of the Union filed by him.

2. After examining two witnesses on behalf of the proprietor of the Sunderdas Saw Mills, on that day, I discussed separately with each of the parties in chamber in order to explore possible avenues for a compromise so as to enable parties to come to a settlement and thereby secure industrial peace and the maximum of war-effort.

3. On the 26th and 27th February 1943, and 1st March 1943, I further informally discussed matters relating to the dispute with the parties separately and jointly. The parties appeared before me on 2nd March 1943, and the Memorandum of Settlement annexed herewith was duly signed in my presence. I, therefore make an award in terms of the settlement. With regard to the second term of the settlement, I hereby award that the bonus shall be paid to the employees on Wednesday the 28th April 1943. It is satisfactory to note that, thanks to the good sense of the parties, this dispute has been amicably settled.

Bombay, 3rd March 1943. (Signed) E. M. NANAVUTTY,
Adjudicator.

MEMORANDUM OF SETTLEMENT

In connection with the trade dispute regarding payment of bonus between the Sunderdas Saw Mills, Bombay, and their employees now referred to the adjudication of E. M. Nanavutty Esquire, I.C.S. (Retd.), it is hereby agreed as follows:

(1) That the said Sunderdas Saw Mills will pay to all their employees except as hereinafter provided, a bonus equal to $\frac{1}{8}$ th of the total actual earnings of the said employees during the period 1st January 1942 to 31st December 1942, both days inclusive, the dearness allowance now being paid to the employees to be excluded from such computation of earnings.

(2) That the said bonus shall be paid in a lump sum on such day as may be fixed by the Hon'ble Adjudicator.

(3) That only such employees will be entitled to the payment of the said bonus, as will have worked in the said mills for at least 120 days during the year 1942.

PURUSHOTTUM RANCHHODDAS,
for and on behalf of the
Sunderdas Saw Mills, Bombay.

V. CHAUDHARI,
for and on behalf of the Saw Mill
Workers' Union (Red Flag),
Bombay.

UMA DUTT MAHAVIR
PRASAD MISRA.
YAMUNA PRASAD
RAMLAGAN RAM TIWARI.

(Left-hand thumb impression of)
 RAMBHARAN MUSAESINGH,
 for and on behalf of the other
 employees of the Sunderdas
 Saw Mills, Bombay.

Verified

Before me,

(Signed) E. M. NANAVUTTY,

Adjudicator,

Bombay, 2nd March 1943.

(*Bombay Castle, 12-1-1944, No. 7631/34-I, Government Gazette, 20-1-44, Part. I, pp. 85 to 87.*)

BOMBAY BURMAH TRADING CORPORATION LTD., AGENT AND LESSEE,
 GOVERNMENT SAW MILL, GHORPURI

AND

ITS EMPLOYEES

Adjudicator:—C. B. Nagarkar, Esq., I.C.S., (District and Sessions Judge, Poona).

The Government Pleader Rao Saheb G. V. Gupte with Mr. A. M. Steven (General Manager, Government Saw Mill, Ghorpuri), for the Bombay Burma Trading Corporation Limited, Agents and Lessees, Government Saw Mill, Ghorpuri.

Messrs. K. K. Govindan Achari and B. Saidali for the employees of the Government Saw Mill, Ghorpuri.

A w a r d

The dispute between the Bombay Burma Trading Corporation Limited, Agents and Lessees, Government Saw Mills, Ghorpuri, and its employees, has been referred to me for adjudication under rule 81-A of the Defence of India Rules by Government Order, Political and Services Department, No. 7631/34, dated 20th November 1943. The Government order also directed that I should exercise such powers as are conferred on, and follow such procedure as is prescribed for, a Board of Conciliation under the Trade Dispute Act, 1929, and the Bombay Trade Disputes Rules, 1930. Notices to the parties were duly served and they have filed their respective statements. The proceedings were conducted before

me for about three days, and in order to acquaint myself with the conditions of work of the employees. I visited the Government Saw Mill at Ghorpuri, and was taken round and shown the departments by the Manager.

The dispute arises over the question of an alteration in the drawing up of the monthly pay sheet of the employees of the Government Saw Mill, Ghorpuri, by the Bombay Burma Trading Corporation, Limited, showing dearness allowance as a separate item in the wages and salaries paid to the mill employees. A change in the management of the Mill took place in August 1943 when the Bombay Burma Trading Corporation Ltd. took over the control of the Mill at the request of the Timber Directorate, from its former Agent and Lessee Mr. E. John Kuruvila. A majority of the employees in this Mill hail from Malabar and were brought to Poona at the instance of Mr. Kuruvila in the interests of economy and also because his experience showed that workmen from Malabar were more efficient than local workmen. The employees imported from Malabar who comprise skilled workmen such as blacksmiths, beltmen, carpenters, fitters, sawyers, etc., and unskilled labourers such as coolies, are roughly divided into four categories according to the place of their origin, e.g., Cochin men, Quilon men, Moplahs and Cuddapahs.

In August 1943 the new management thought that the existing arrangement for payment to the mill staff should be revised in such a way as to bring every employee on to a regular monthly salary and eliminate daily rates as far as possible. The men had been asking for an increase in their wages in the shape of a dearness allowance to meet the high cost of living, similar to the one being paid to Government employees in the section of the mill manned by regular Government employees. The management, partly on their own initiative, and partly as a result of the demand for a dearness allowance, revised and altered the pay-sheet, but in doing so split up the monthly salary being paid to each employee into two sections, (1) monthly rate of pay, and (2) dearness allowance. With the exception of a few cases in the lower paid staff this revision in the pay-sheet meant no substantial increase in the wages of the employees, but in effect resulted in their monthly basic rate of pay being shown in the pay roll as less than the amounts that were being paid at the time. The employees objected to the new arrangement and stated that far from getting an increase in the monthly emoluments which they had been receiving, and for which they had been asking, a new arrangement had been introduced whereby their basic monthly rate of pay had been reduced, and as the dearness allowance was liable to be reduced in view of local fluctuations in the cost of living and local rates of wages, there was a danger of their getting, under the new system, smaller monthly emoluments than they had been

getting hitherto. After approaching the management of the Mill with a request to redress their grievances, the employees, numbering 206, on 15th November 1943, went on strike which lasted for about four to five days. Ultimately, the employees were prevailed upon to resume work on an assurance being given that the dispute would receive careful consideration, and should the decision of the Adjudicator be in their favour, effect would be given to his decision retrospectively with effect from 1st October 1943. The total number of employees involved in this dispute are 206.

Attempts were made by me to bring about an amicable settlement of the dispute, and with this object I held discussions with Mr. A. M. Steven, the Government Pleader, the employees' representatives, and also with Mr. E. John Kuruvila, who very kindly came from Delha to Poona, to assist in settling the dispute. It was unfortunately found that an amicable settlement of the dispute was not possible and the General Manager and the employees' representatives therefore requested me to pronounce my award in the matter which I now proceed to do.

I am satisfied from the information supplied to me and from an examination of the correspondence put in by the Mill Authorities, and an examination of the statements and figures supplied to me, that the arrangement introduced in August 1943, whereby the monthly salary of the employees of the Mill was split up into (1) a basic salary, and (2) a small dearness allowance, without giving the men any actual increase in their emoluments, was unfair and unjustifiable. It appears from an examination of the material put on record that employees in private saw mills in Poona receive higher wages than those that are given to the employees of the Government Saw Mill at Ghorpuri. The vast bulk of the employees in this Mill, viz., Cochin, Quilon, Moplah and Cuddapah employees who number 206, were imported by Mr. Kuruvila from Malabar and he gave them an assurance that as they were leaving their native places they would get in Poona an increase of about 25 per cent. over the Malabar rates of wages, plus Rs. 25 per head. This assurance implied a very substantial increase over the rates prevailing in Malabar. And but for this assurance these men would not have consented to leave their homes in Malabar and go to unknown surroundings. Mr. Kuruvila has put in a statement in which he has summarised the wages and the terms of employment which these men got in Malabar and why they agreed to go to Poona at Mr. Kuruvila's instance. The following is an extract from the statement put in by Mr. Kuruvila and this is what he says about the different classes of employees imported from Malabar:

"Cochin.—All the Cochin coolies who are working in Ghorpuri are men who have been working under me at Chalakudi.

They were given their Railway fare and brought to Ghorpuri and they were being paid round about their wage in Chalakudi *plus* 25 per cent., *plus* Rs. 25. Even in spite of these increases it was a matter of sacrifice for them to have come out to Ghorpuri for the following reasons:

(1) They had to keep two establishments, one for their family and one for themselves in Poona.

(2) In addition to wages that they were getting ever since the war started I have been giving them 3 months' salary as bonus. This they were losing by coming to Ghorpuri.

(3) In Chalakudi they have been getting a sliding scale rate of bonus for extra turnover and this in most of the days worked out more than 25 per cent. of their wage.

(4) They would have been given a set of clothes free of cost on the "Onam" festival day.

These are all men who are working under me for years together, and were prepared to make the sacrifice in the hope that when the mill works to its full capacity I would give them a salary to make up all sacrifices they were making.

Quilon.—Quilon people are men brought in by an old contractor of mine and I offered to pay them Rs. 40 per month to start with, even though I knew considering the expenses in Poona it was not very encouraging. Most of them are men engaged in fishing and other labour and could easily earn a rupee a day in their own place. In the case of these people it was the expectation of my being able to do something better when the mill was in full working order that they stayed on.

Moplahs.—Most of these men were labourers working in the Victory Sawmills at Kallai in which I am financially interested. The Moplahs with the increased amount of timber business in Kallai were able to earn a minimum of Rs. 1-4-0 per day in Kallai and the salary of Rs. 45 that they are now getting is definitely inadequate considering what they can make in their own place. As in the case of others they have been working in the expectation of a better salary when the mill was in full working condition when I would have been in a position to pay them much more decently.

Cuddapahs.—Cuddapah coolies were brought here on a fixed salary of Rs. 35 per month and they were also expecting a better wage from me when I could have afforded to pay them so when the mill was able to run to its full capacity."

Mr. Kuruvila had no hesitation in admitting that the men have a very good case for asking for a dearness allowance in addition to the salaries they received up to August 1943.

It is admitted by the present management that the employees concerned in this dispute have been working in this Mill for periods ranging from 3 months to 18 months. I think men who have left their native places and come to Poona on the understanding that they are to get a substantial increase in wages and a general improvement in prospects, are entitled, in view of the present high cost of living in Poona, to a fair and reasonable dearness allowance in addition to the basic rate of pay in vogue in August 1943, and which rate of pay was being paid to them for periods ranging from 3 months to 18 months. I think their demand is very reasonable and they should get the same dearness allowance over and above the basic rates of monthly pay which is now being given to Government employees in this Mill. The result will be that men who drew in August 1943 a monthly salary of Rs. 39 and under, will get a dearness allowance of about Rs. 8-8-0 per month, and men who drew monthly salaries between Rs. 40 and upwards up to Rs. 125, will get a dearness allowance of about Rs. 11 per month. The award which I would therefore make in the matter is that the new arrangement introduced by the Agents and Lessees of the Government Saw Mill, whereby the pay-sheet was revised in such a way as to split the existing monthly salary into basic salary and dearness allowance, should be rescinded, and with effect from 1st October 1943, the management should pay a dearness allowance in addition to the monthly salaries in vogue in August 1943, ranging from Rs. 8-8-0 to Rs. 11-0-0 per month to all the employees of this Mill. I understand similar rates of dearness allowance are being paid to Government employees in this Mill.

In conclusion I should like to place on record my appreciation of the help rendered to me in this matter by Mr. A. M. Steven, the General Manager, and Mr. E. John Kuruvila, late Lessee and Agent. My special thanks are due to Mr. Kuruvila for kindly coming to Poona from Delhi to help me in arriving at my decision.

Parties should bear their own costs. A copy of this Award will be sent to Government.

(Signed) C. B. NAGARKAR,
Adjudicator.

23rd December 1943.

(Bombay Castle, 18-7-1945. No. 8673/34-1. Government Gazette, 2-8-45, Part I, pp. 1960-1961)

MESSRS. MCKENZIES LTD., BOMBAY

AND

ITS EMPLOYEES.

Adjudicator.—E. M. Nanavutty, Esq., I.C.S., (Retired).

Counsel Mr. V. F. Taraporewalla with Mr. S. C. Pardiwalla of Messrs. Kanga & Co., Solicitors, for the company.

Counsel Mr. Dhirajlal B. Desai, with Mr. S. G. Athavle for the employees.

A w a r d

By Government Order, Political and Services Department, No. 8673/34, dated the 29th March 1945, issued under sub-rule (1) of rule 81-A of the Defence of India Rules, read with Government of India, Department of Labour, Notification No. L. 3005, dated the 20th May 1942, I was appointed to adjudicate in the trade dispute between Messrs. McKenzies Ltd., Bombay (hereinafter referred to as "the Company"), and their employees. The said Order also directed that I was to exercise such powers as are conferred on, and follow such procedure as is prescribed for, a Board of Conciliation under the Trade Disputes Act of 1920, and the Bombay Trade Disputes Rules of 1930.

2. The dispute referred to me for adjudication raises only one issue:

"Should the present rates of dearness allowance be increased, and if so to what extent and from what date?"

3. It would appear that on or about 16th August 1944, Mahomedkhan Jaffer Khan and 400 other workers made a petition for the grant of increased dearness allowance. The Labour Office carried on negotiations between the representatives of the workers and the management of the company with a view to a settlement of the dispute. The employees, however, gave a 14 days' notice to strike work on 20th November 1944, but again owing to the intervention of the Labour Office actual cessation of work was averted. On the 12th March 1945, the Commissioner of Labour made certain suggestions about the payment of dearness allowances. These were accepted by the company but not by

the employees. A fresh notice of strike was served on the Company on 6th March, 1945. Government, therefore, referred this matter to me for adjudication as stated above.

4. The usual notices to the parties to file their respective written statements were issued on 2nd April 1945. As there was no Union in this case, Baboo Yeshwant, one of the representatives of the employees of the company, was directed to file the written statement. He filed the written statement on 12th April 1945. The company did not file any separate written statement, but in a letter addressed to the Secretary of the Industrial Court, on 17th April, 1945, objected to any increase in the dearness allowance unless the company was reimbursed by Government to that extent. No appearance was put in this case on behalf of the Government of India in the Supply Department.

5. This case was fixed for hearing on the 21st May, 1945. On that day after preliminary discussion the parties wanted time to see whether the matter could not be settled amicably. It was, therefore, adjourned to 5th June. The case was again adjourned to 20th June, 2nd July and the 9th July 1945. On the 9th July, nobody appeared on behalf of the employees. Mr. S. C. Pardiwalla, with the Secretary of the company, appeared on that day. In spite of the case being adjourned, from time to time, it appears that the parties never made any real or genuine effort to settle the matter amongst themselves. On the 9th of July, 1945, I, therefore, heard the arguments of the Solicitor for the company, ex-parte.

6. In this company, there are about 1,900 workers, 364 of whom are engaged on a daily wage of As. 14, 155 on a daily wage of Re. 1, 52 on Re. 1-2-0, 80 on Re. 1-4-0 a day and the rest are above Re. 1-4-0 a day. The company has filed a statement, Ex. 7, which shows that the average wage in the company in the month of August, 1939 was Rs. 31-7-0. No dearness allowance was paid at that time. In 1942, the company granted a dearness allowance of As. 2 a day for those getting up to Re. 1-4-0 a day and As. 3 a day to those getting above Re. 1-4-0. These rates of dearness allowance were gradually increased from time to time. Before the Commissioner of Labour was requested to intervene in the matter, the company was paying dearness allowance at the rate of As. 9 a day to those getting Re. 1-4-0 and below, a day, and As. 12 a day to those getting above Re. 1-4-0 a day. The Commissioner of Labour recommended that the company should pay with effect from 1st March, 1945, dearness allowance at the rate of As. 12 to those getting up to Re. 1-4-0 a day and As. 15 to those drawing above Re. 1-4-0 a day. The company then put up a notice, as per Ex. 5, intimating to the workers the enhanced rates of dearness allowance

recommended by the Commissioner of Labour and the employees were asked to intimate their acceptance of the same. Two representatives of the workers however, went to the Commissioner of Labour and reported that they could not agree to the rates of dearness allowance recommended by that office. The company has filed a statement, Ex. 9, which shows that average wage for 26 days in the month of April 1945 was Rs. 40-3-0 and the average dearness allowance at the rates recommended by the Commissioner of Labour, was Rs. 22-9-0, making a total of Rs. 62-12-0. This, Mr. Pardiwalla, rightly pointed out, would neutralise the cut in real wages due to the rise in the cost of living to the extent of 84 per cent. In this connection he further argued that while in the case of textile workers in Bombay, the cut was neutralised to the extent of 76 per cent., the employees of McKenzies Ltd., were much better off in this respect.

7. I had to hear this matter ex-parte on the 9th July 1945, as the employees and their counsel did not choose to appear before me. It is clear from the evidence on the record that the grievance of employees in not accepting the rate of dearness allowance recommended by the Commissioner of Labour, is not a genuine one. I, therefore, unhesitatingly accept the contentions advanced by Mr. Pardiwalla in this case, on behalf of the company. I think that the dearness allowance recommended by the Commissioner of Labour, is in my opinion very fair. I, therefore, award that all the employees who are drawing Re. 1-4-0 and below a day, should be given a dearness allowance of As. 12 a day and those getting above Re. 1-4-0 should be given a dearness allowance of As. 15 a day with effect from 1st March, 1945, as recommended by the Commissioner of Labour, and tacitly accepted and acted upon by the company. I decide the sole issue in this case accordingly.

(Signed) E. M. NANAVUTTY, ,
Adjudicator.

Bombay, 13th July, 1945.

(Bombay Caste, 8-10-1945, No. 8841/34-1. Government Gazette, 11-10-45, Part I, pp. 2538 to 2541)

MESSRS. D. M. KERR & CO., LTD., BOMBAY,

AND

ITS EMPLOYEES

Adjudicator :—E. M. Nanavutty, Esq., I.C.S. (Retired).

Mr. B. Narayanaswamy Advocate, with Mr. D. Chudiwalla, General Manager, for the company.

Mr. K. T. Sule, Advocate, with Mr. V. Chaudhari, General Secretary, Bombay Saw Mill Workers' Union, Bombay for the employees.

A w a r d

By Government Order, Political and Services Department, No. 8841/34, dated the 21st June, 1945, issued under sub-rule (1) of rule 81-A of the Defence of India Rules, read with Government of India, Department of Labour, Notification No. L. 3005, dated the 20th May, 1942, I was appointed to adjudicate in the trade dispute between Messrs. D. M. Kerr & Co., Ltd. (hereinafter referred to as "the company") and their employees. The said Order also directed that I was to exercise such powers as are conferred on, and follow such procedure as is prescribed for, a Board of Conciliation under the Trade Disputes Act of 1929, and the Bombay Trade Disputes Rules of 1930.

2. The notices to the parties to file their respective written statements were issued on the 28th June, 1945. The Bombay Saw Mill Workers' Union (hereinafter referred to as "the Union") filed the statement of the claims on behalf of the employees of the company on 10th July, 1945, and the company was directed to file its reply written statement on the 23rd July, 1945. I fixed the hearing of this case also on the 23rd July, 1945, but as the company was not ready with its written statement, the case had to be adjourned to 13th August, 1945. Owing to my indisposition in the meantime the matter could not be proceeded with on the 13th August, 1945, and had to be further adjourned to 27th August, 1945. I heard the parties and their counsel on the 27th August, and the matter was adjourned to 29th August, in order to enable the parties to come to some settlement, if possible, on some of the issues if not on all. On the 29th August

I was told that the parties had met among themselves on the 28th August but they could not effect a settlement on any of the issues. On Saturday, the 1st September, 1945, I visited the factory as desired by Mr. K. T. Sule and Mr. V. Chaudhuri, but neither of them was present at the time I visited the factory. Although the proceedings had formally terminated on the 29th August, 1945, as I wanted clarification from the parties on certain points connected with dearness allowance and standing orders, I discussed the same with Mr. Narayanaswamy and his clients on Thursday, the 6th September, 1945, in chamber at 4 p.m. and with both the parties and their counsel on Friday, the 7th September, 1945, at 10 a.m., at my residence.

3. In the month of January, 1945, the Union made certain demands to the management on behalf of the company. The management was not able to concede those demands, and the Union, therefore, gave 14 days' notice to strike work on the 28th March, 1945. The parties sought the intervention of the Labour Office in this dispute, and in the course of the negotiations that went on in that office certain suggestions were made by the Labour Office. The suggestions were acceptable to the management provided they were agreed to by the Union "in toto". The representatives of the Union, however, could not agree to all the suggestions made by that office and the matter was, therefore, referred to adjudication as stated above.

4. The demands of the employees as stated in the Government Notification, referred to above, are as follows:

(1) Should the existing dearness allowance given to the employees be revised and if so how and from what date?

(2) What bonus, if any, should be granted on the earnings of the employees for the year 1944 and on what terms and conditions? and

(3) What standing Orders, if any, should be framed for regulating the relations between the management and the employees?

5. As regards issue No. 1 relating to dearness allowance the demand of the employees is that a rate of at least Re. 1 a day be fixed as dearness allowance for all the workers from 1st January, 1945. At the hearing it was pointed out by Mr. Sule that the dearness allowance of 25 per cent. of the basic wages was too low, and at most, it would neutralise the rise in the cost of living only to the extent of 20 per cent. Mr. Narayanaswamy on behalf of the company pleaded the inability of the company to pay a single pie more, either by way of dearness allowance or bonus or increase in wages, for the simple reason that during the first year of its existence as a private limited company it had incurred a loss of several lacs of rupees, although the com-

pany was mainly engaged on war orders for the manufacture of ammunition boxes. The company has filed before me a confidential statement of the profit and loss account from 1st January, 1944 to 30th June 1945 for a period of 18 months. The reason given on behalf of the company for submitting the balance-sheet for 18 months is that since the company has been incorporated as a private limited company from 1st January, 1944, the company is within its rights to prepare its first balance-sheet for a period of 18 months by virtue of the provisions contained in section 131 of the Indian Companies Act of 1913. It was also submitted on behalf of the company that no statement of accounts has yet been submitted to the income-tax authorities for the purpose of assessment of taxation which is dependent on the production of profit and loss account and the balance-sheet. According to the statement filed before me it appears that the company has incurred a loss of several lacs of rupees. It was further urged on behalf of the company that the war in the Eastern Theatre had ended abruptly and that the chances of making good to some extent these losses in the near future were very remote. It was suggested by Mr. Narayanaswamy that if the company was not able to bear any longer the financial burden, the management would be left with no other alternative but to close the concern within a short period. On behalf of the employees it was urged that if there had been a loss, the employees were not responsible for it. It was on the other hand an indication of either bad management or mismanagement. It was argued that the employer owed a duty to the employees to pay adequate wages and to give proper compensation by way of dearness allowance if on account of the rise in the cost of living there was a fall in the real wages of the employees. Mr. Narayanaswamy on the other hand pointed out that no doubt the employer owed a certain duty towards his workers to pay wages and dearness allowance provided the concern had the ability to make such payments. In support of his contention he invited my attention to the observations of the Full Bench of the Industrial Court in its award dated 26th April 1940. There the Industrial Court observed as follows:

".....that the workers would not be entitled to a rise to the full extent of the rise in the cost of living unless it could be shown that the industry has benefited to a corresponding extent by the very contingency which has occasioned the rise."

(Bombay Labour Gazette, May 1940, p. 780).

He further pointed out that if the employees were not getting adequate dearness allowance or wages, it was open to them to leave the concern and seek employment elsewhere. I am not sure whether the employees would be prepared to take such steps.

6. The company in its written statement stated that this com-

pany which was formerly a proprietary concern was made a private limited company from January 1944. Thereafter the company revised the rates of wages paid to the workers and fixed higher rates. In view of the general increase in basic wages, the company had been paying an uniform rate of dearness allowance of 25 per cent., of the basic wages. The present company is paying the same dearness allowance as was paid by the old management to the employees of this company. The cost of living index numbers between January 1944 and June 1945 were as follows:

Month	Index No.
January 1944	238
February 1944	230
March 1944	226
April 1944	231
May 1944	235
June 1944	236
July 1944	241
August 1944	250
September 1944	239
October 1944	239
November 1944	242
December 1944	236
January 1945	229
February 1945	229
March 1945	225
April 1945	226
May 1945	230
June 1945	235

These figures show a stationary or downward tendency and negative the demand for an increase in dearness allowance made by the Union on behalf of the workers of this factory. The fact also remains that the losses are extraordinarily heavy. Even if I were to ask the company to pay a little more dearness allowance, I am afraid the financial burden would in the end be still heavier. I, therefore, decide that there should be no increase in the present rate of dearness allowance.

7. The Union has asked for two months' wages by way of bonus. The financial position of the company, as stated in paragraph 5 above, shows that it would be absurd to ask the company to pay any bonus when it is not in a position to pay even adequate dearness allowance. The demand is, therefore, dismissed.

8. As regards the standing orders the company accepts the principle that there should be standing orders for the employees of this company. The parties met together but were not able to

settle the draft standing orders. Mr. Narayanaswamy has given me a copy of the standing orders as framed by the Industrial Court, prevalent for operatives in the cotton textile industry in Bombay, and he suggests that these should be adopted "in toto" for the employees of this company. Mr. Sule on the other hand has handed over to me another draft of the standing orders. The parties desire that I should settle the standing orders for this company. I, therefore, discussed the standing orders as framed by the Industrial Court for the operatives in the cotton textile industry at Bombay, clause by clause with Mr. Narayanswamy and Mr. V. Chaudhari on the 7th September and after discussing the suggestions of Mr. Chaudhari in respect of certain additions or omissions in the phraseology of some of the standing orders, particularly Nos. 11 and 23, I have been able to prepare a new draft of the standing orders as per annex A. I have categorically rejected two contentions strenuously advanced by Mr. Chaudhari. The first contention was that these standing orders now framed should be given retrospective effect from the date on which the notice of strike was given by the Union in this case. In my opinion standing orders newly framed are always for future guidance and cannot have retrospective effect. The second contention was that 15 days' leave with pay should be granted to the workers in addition to other leave. I have always held that I cannot move in advance of the legislature. I, therefore, award that the standing orders enclosed herewith in Annex 'A' will come into effect from 15th October 1945.

9. I, therefore, award that in view of the acute financial stringency of the company the existing rates of dearness allowance need not be revised and the employees are for the same reason not entitled to any bonus. As regards the third issue framed by Government in this case, I do award that the company shall bring into effect the standing orders as reproduced in Annex A with effect from 15th October 1945.

(Signed) E. M. NANAVUTTY,
Adjudicator.

Bombay, 2nd October 1945.

ANNEX " A "

STANDING ORDERS

1. These Orders shall come into force on and from the 15th October 1945.

2. In these Orders, unless there is anything repugnant in the subject or context:

(a) "Operatives" means all work-people, male or female, employed in the factory premises, whose names and ticket numbers are included in the departmental musters, and includes Overseers, Jobbers, Muccadams, Watch and Ward Staff, Motor Vehicle Staff and Cartmen.

(b) "The Company" means the D. M. Kerr & Co., Ltd.

(c) "The Manager" means the Company's Manager or Acting Manager for the time being.

(d) "The Factory" means the factory or workshop of D. M. Kerr & Co., Ltd., situated at "Cotton Green", Bombay.

(e) The masculine includes the feminine.

3. Operatives shall be classed as (1) Permanent; (2) Probationers; (3) Badlis; (4) Temporary Operatives; and (5) Apprentices.

A "permanent" operative is one whose name has been entered in the Muster Roll and who has been given a permanent ticket and has completed a probationary period of two months in the same or another occupation in the factory.

A "probationer" is one who is provisionally employed to fill a permanent vacancy, and has not completed two months' service in that post. If a permanent operative is employed as a probationer in a new post, he may, at any time, during the probationary period of two months be reverted to his old permanent post.

A "badli" is one who is employed on the post of a permanent operative or probationer, who is temporarily absent.

A "temporary operative" is one who is engaged for work which is of an essentially temporary character.

An "apprentice" is a learner who is given a nominal allowance during the period of his training.

4. Every permanent and probationary operative without exception shall be provided with a departmental ticket showing his number, and on attendance each day, shall deliver up the ticket at the place provided.

Every "badli" shall be provided with a "badli" card, which shall be surrendered if he obtains permanent or probationary employment.

Every temporary operative shall be provided with a special

ticket or a pass which he shall surrender at the place provided when entering the factory.

Every apprentice shall be provided with a card which shall be surrendered if he obtains permanent or probationary employment.

5. The periods and hours of work for all classes of operatives shall be posted up on a notice board at the time-keeper's office.

6. Notices specifying (a) the days observed by the factory as holidays and (b) pay days, shall be posted as required by the Factories Act and the Payment of Wages Act respectively.

7. Notices specifying the rates of wages payable to all classes of workers and for all classes of work shall be displayed in a conspicuous position in the departments in which the operatives concerned are actually working.

8. Any wages due to an operative but not paid on the usual pay day on account of their being unclaimed shall be paid by the Company on such unclaimed wage pay day in each week as may be notified to the workers and following the date on which a substantial claim was presented by the operative or, on his behalf, by his legal representative provided that such claim is submitted within three years from the date on which the wages become due to the operative.

9. Shift working shall be regulated in accordance with the Factories Act. More than one shift may be worked in a department or departments or any section of a department at the discretion of the Company. If more than one shift is worked in the factory, operatives shall be liable to be transferred from one shift to another. Shift working may be discontinued after putting up a notice in the time-keeper's office. Notice of fifteen days of discontinuance of any shift shall be given provided, however, that it shall not be necessary to give fifteen days' notice if as a result of the discontinuance of the shift no permanent employee is discharged. If as a result of discontinuance of shift working any permanent employees are likely to be discharged, they shall be discharged having regard to the length of their service in the factory, those with the shortest term of service being discharged first. If the shift is re-started, a week's notice thereof shall be given by posting a notice at the factory premises and the employees discharged as a result of discontinuance of the shift shall, if they present themselves at the time of re-starting of the shift, have preference in being re-employed, having regard to the length of their previous service in the factory, those with the longest term of service being re-employed first.

10. All operatives shall be at work in the factory at the times fixed and notified to them. Any worker arriving late within the

first 15 minutes for work in a shift to which he has been assigned will not be allowed to start work before the first 15 minutes of the scheduled time of the commencement of the shift and will be "timed in" at the quarter hour. Operatives attending late by more than a quarter of an hour after the starting time shall be liable to be shut out and treated as absent.

Any operative, who after presenting his ticket, card or pass, is found absent from his proper place or places of work during working hours without permission or without any sufficient reason, shall be liable to be treated as absent for the period of his absence.

If, however, he is so absent from the factory premises during working hours without permission, he shall be liable to be treated as absent for the whole day, in case his absence commences before the recess period, and for half a day in case his absence commences after the recess period.

If the operative is so absent from the factory premises with the permission of the head of the department, his wages for the period of absence shall be liable to be deducted.

The deductions from wages to be made for the periods of absence under this Standing Order shall be made in accordance with provisions of the Payment of Wages Act.

11. Service for a total period of 12 months in the factory shall qualify an operative for total period of one month's leave without pay. Grant of such leave shall depend on the exigencies of the factory and shall be at the discretion of the Company.

Any operative who desires to obtain leave of absence shall apply to an officer or officers appointed for the purpose by the Company. It shall be the duty of such officer or officers to obtain the orders, on such application, of the authority appointed by the Company on two days in a week fixed for the purpose; provided that, if the leave applied for is of an urgent nature, that is, to commence on the date of the application or within three days thereof, the orders of the authority empowered to grant leave shall be obtained without any delay. If the leave asked for is granted, a leave pass shall be issued to the operative. If, however, the leave is refused or postponed, the fact of such refusal or postponement and the reasons therefor shall be recorded in writing in a register to be maintained for the purpose. If the operative after proceeding on leave desires an extension thereof, he shall make an application for the purpose to the authority granting leave either in writing or orally or through any other person. In any case, a written reply either of the grant or refusal of extension of leave shall be sent to the operative if his address is available and if such reply is likely to reach him before the expiry of the leave originally granted to him.

If the operative remains absent beyond the period of leave originally granted or subsequently extended, he shall lose his lien on his appointment unless (1) he returns within eight days

of the expiry of the leave, and (2) gives explanation to the satisfaction of the authority granting leave of his inability to return before the expiry of leave. In case the operative loses his lien on the appointment, he shall be entitled to be kept on the "badli" list.

12. An operative may be granted casual leave of absence not exceeding 10 days in the aggregate in a calendar year. Such leave shall not be for more than three days at a time except in case of sickness. Such leave is intended to meet special circumstances which cannot be foreseen. Ordinarily, the previous permission of the head of the department shall be obtained before such leave is taken, but when this is not possible, the head of the department shall as soon as may be practicable be informed in writing of the absence from work and of the probable duration of such absence.

13. The number of holidays to be granted to the operatives and the days which shall be observed as holidays by the factory shall be regulated in accordance with the Factories Act and the custom or usage of the factory.

14. No operative shall enter or leave the factory premises except by the gate or gates appointed for the purpose.

15. All male operatives shall be liable on leaving the factory premises to be searched by the gateman and all female operatives shall be liable to be detained by the gateman for search by the female searcher, if acting without malice he suspects that any operative who is so detained is in wrongful possession of the property belonging to the Company; provided that no search shall be made except in the presence of two other persons of the same sex as the suspected operative.

16. The Company may, at any time or times, in the event of a fire, catastrophe, breakdown of machinery, or stoppage of the power supply, epidemic, civil commotion or other cause, beyond the control of the Company, stop any machine or machines or department or departments, wholly or partially for any period or periods, without notice and without compensation in lieu of notice.

In the event of a stoppage of any machine or department under this Order during working hours the operatives affected shall be notified by notices put upon notice boards in the department concerned and at the time-keeper's office, as soon as practicable, when work will be resumed and whether they are to remain or leave the factory. The period of detention in the factory shall not ordinarily exceed one hour after the commencement of the stoppage. If the period of detention does not exceed one hour, the operatives so detained shall not be paid for the period of detention. If the period of detention in the factory exceeds

one hour, operatives so detained shall be entitled to receive wages for the whole of the time during which they are detained in the factory as a result of the stoppage. In the case of pieceworkers, the average daily earnings for the previous month shall be taken to be the daily wages.

17. Any operative "played off" under Order 16 shall not be considered as dismissed from service, but as temporarily unemployed, and shall not be entitled to wages during such unemployment except to the extent mentioned in Order 16. Whenever practicable a reasonable notice shall be given of resumption of normal work and all operatives played off under Order 16, who present themselves for work, when the normal working is resumed, shall have prior right of reinstatement.

18. The Company may, in the event of a strike affecting, either wholly or partially, any one or more department or departments of the factory, close down, either wholly or partially, such department or departments and any other department or departments affected by such closing down, and for any period or periods. The fact of such closure shall be notified by notices put upon the notice board in the departments concerned and, in the time-keeper's office as soon as practicable. The operatives concerned shall also be notified by a general notice prior to the resumption of work, as to when work will be resumed.

19. (a) The employment of any permanent operative may be terminated by fourteen days' notice or by payment of thirteen days' wages in lieu of notice. If he draws wages on a piece-rate basis, the thirteen days' wages shall be computed on the average daily earnings of such operative for the days actually worked during the previous wage period. The reasons for the termination of service shall be recorded in writing and shall be communicated to the operative, if he so desires, at the time of discharge, unless such communication, in the opinion of the Manager, may directly or indirectly lay the Company and the Manager or the person signing the communication open to criminal or civil proceedings at the instance of the operative.

(b) Probationers other than those transferred from permanent posts in the factory, "badlis", temporary operatives and apprentices may leave, or be discharged from service without notice by an Officer not below the rank of the head of a department.

(c) Where the employment of any person is terminated by or on behalf of the factory, the wages earned by him shall be paid before the expiry of the second working day from the day on which his employment was terminated.

20 Any permanent operative desirous of leaving the Company's

service shall give fourteen days' notice to the head of the department concerned. The wages due to such an operative must, if possible, be paid on the day the notice expires and in any case within two days after the expiry of the notice.

If any permanent operative leaves service without notice, he shall be liable to be sued for damages.

21. The following acts or omissions shall be treated as misconduct:

(a) Wilful insubordination or disobedience whether alone or in combination with another or others of any lawful and reasonable order of a superior.

(b) Striking work without giving 14 days' notice.

(c) Inciting other operatives to strike work without giving 14 days' notice.

(d) Theft, fraud or dishonesty in connection with the Company's business or property.

(e) Taking or giving bribes or any illegal gratification whatsoever.

(f) Habitual absence without leave or absence without leave for more than ten consecutive days.

(g) Habitual late attendance.

(h) Habitual breach of any Standing Orders.

(i) Collection of any moneys within the factory premises for purposes not sanctioned by the Manager.

(j) Engaging in trade within the factory premises.

(k) Riotous or disorderly behaviour during working hours on factory premises or any act subversive of discipline.

(l) Habitual negligence or neglect of work.

(m) Habitual breach of any rules, or instructions for the maintenance and running of any department, or the maintenance of the cleanliness of any portion of the factory premises or factory compound.

(n) Frequent repetition of any act of omission for which a fine may be imposed under the Payment of Wages Act.

22. (i) An operative may be suspended for a period not exceeding four days or dismissed without notice or any compensation in lieu of notice if he is found to be guilty of misconduct.

The order of suspension shall be in writing and may take effect immediately on communication thereof to the operative. Such order shall set out in detail the alleged misconduct and the operative shall be given an opportunity of explaining the circumstances alleged against him. If on inquiry the order is confirmed or modified, the operative shall be deemed to be absent from duty for the period of suspension and shall not be entitled to any remuneration for such period. If, however, the order is rescinded, the operative shall be deemed to be on duty during the full period of suspension and shall be entitled to the same wages as

he would have received if he had not been suspended.

No order of dismissal shall be made unless the operative concerned is informed in writing of the alleged misconduct and is given an opportunity to explain the circumstances alleged against him.

In awarding punishment under this Standing Order the Manager shall take into account the gravity of the misconduct, the previous record, if any, of the operative and any other extenuating or aggravating circumstances that may exist.

(ii) A copy of the order made by the Manager shall be supplied to the operative concerned.

23. All complaints arising out of his employment including those relating to unfair treatment or wrongful exaction on the part of the employer or his agent or servant shall be submitted by an operative or on his behalf by a union registered under the Indian Trade Unions Act, 1926, and recognised by the management, of which he is a member or by a deputation of workers accompanying him, to the Manager or such other officer or officers as he may appoint. The Manager or such officer shall personally investigate the complaint at such times and places as he may fix and the complainant operative, or the aforesaid union or the deputation of workers as the case may be, shall have the right to be present at such investigation. Where the complainant alleges unfair treatment or wrongful exaction on the part of his employer or his agent or servant, a copy of the order finally made shall be supplied to the complainant. In other cases the decision of the investigating officer, and the action, if any, taken by him shall be intimated to the complainant:

Provided that complaints relating to—

(1) assault or abuse by any person holding a supervisory position; or

(2) refusal of an application for urgent leave shall be inquired into without avoidable delay by the Manager or such other officer or officers as he may appoint.

24. The decision of the Manager upon any question arising out of, in connection with, or incidental to these orders, shall be final, subject, however, to appeal to the Managing Agents or Directors and without prejudice to any right of an operative aggrieved by his or their decision to resort to legal proceedings in a Court of Law.

25. When any probationer or permanent operative is summarily dismissed, suspended, or discharged, or leaves the services of the factory, or is granted leave of absence, he shall, except in cases of general retrenchment, closing down of departments, strike or lock-out, be given a written order in the form prescribed by the Company.

Every permanent employee shall be entitled to a service certificate at the time of leaving service, dismissal or discharge.

26. Each Overseer, Jobber or Muccadam, shall personally be held responsible for the proper and faithful observance of the Standing Orders and of the special rules made under the Factories Act and posted in the factory, particularly regarding the employment and working of women and children under him.

27. A copy of these orders in English and also in the principal regional language of the area in which the factory is situated shall be posted in the time-keeper's office and in all departments and in such other places in the factory premises as the Company may decide and shall be kept in a legible condition.

Provided where more than 20 per cent. of the total number of operatives employed speak a language other than the principal regional language, such Standing Orders shall be printed also in that language.

(Bombay Castle, 9th January, 1943, No. 6432/34-A, Government Gazette, 14th January, 1943, Part I, pages 48 to 49).

- (1) AHMED OIL AND LEATHER CLOTH FACTORY (INCLUDING ANTI-GAS FABRIC PLANT);
- (2) THE AHMED SILK MILLS; AND
- (3) THE AHMED WOOLLEN MILLS, AMBERNATH;

AND

THEIR EMPLOYEES

Adjudicator :—E. M. Nanavutty, Esq., I.C.S. (Retired).

Counsel Mr. K. M. Munshi with Mr. B. Narayanswamy, Advocate, instructed by Mr. A. G. Hashim, Manager, Mr. K. Abdul Majid and Messrs. Payne & Co., Solicitors, for the Ahmed Abdul Karim Brothers, Ltd.

Mr. K. T. Sule, Advocate, with Mr. T. Godiwalla, Advocate, instructed by Mr. S. V. Parulekar, Vice-President, and Miss Godavari Gokhle, Secretary of the Silk-Woolen-Leather Factory Workers' Union, for the employees.

Mr. N. A. Mehrban, M.B.E., F.S.S., J.P., Assistant Commissioner of Labour, Bombay, was also present.

A w a r d

I was appointed to adjudicate in these disputes by Government Notification, Political and Services Department, No. 6432/34.

dated the 26th October, 1942, issued in exercise of the powers conferred by rule 81-A of the Defence of India Rules, read with Government of India, Department of Labour, Notification No. L. 3005, dated the 20th May 1942. The usual notices to the parties were issued on the 28th October 1942, and the written statement from the Silk-Woolen-Leather Factory Workers' Union was called for on 6th November 1942, and the reply of the employers on the 13th November 1942. The hearing was fixed on the 16th November 1942. But, as the employers were not able to file their written statement, the case was adjourned to 1st December 1942. On the 20th November 1942, I visited the factories at Ambernath. The hearing on the 1st December had again to be adjourned to 2nd December 1942, on the request of Mr. K. M. Munshi, Counsel for the employers, as he had not received complete instructions from his clients on account of the illness of their advocate Mr. Narayanswamy. The next day the parties requested me to give them the services of Mr. N. A. Mehrban, M.B.E., Assistant Commissioner of Labour, to enable them to come to a settlement acceptable to both parties. I agreed to their request and asked Mr. Mehrban to act as a Conciliator in this case. The proceedings were, therefore, adjourned to 4th December. But as the parties were not able to complete their negotiations on account of the illness of Mr. K. M. Munshi, the case had to be again adjourned to 9th December 1942. The parties appeared before me on that day and I am glad to note that a settlement has been arrived at through the good offices of Mr. Mehrban. The Memorandum of Settlement which was signed in my presence is enclosed herewith. I record the settlement and make an Award in terms thereof. All other demands made on behalf of the workmen by the Silk-Woolen-Leather Factory Workers' Union of Kalyan have been withdrawn.

2. I place on record my appreciation of the valuable help given by Mr. N. A. Mehrban, in settling these disputes.

(Signed) E. M. NANAVUTTY,

Bombay, 9th December 1942.

Adjudicator.

MEMORANDUM OF SETTLEMENT

It has been agreed that the employees of the Ahmed Oil and Leather Cloth Factory (including the Anti-Gas Fabric Plant); the Ahmed Silk Mills and the Ahmed Woollen Mills which are under the management of Messrs. Ahmed Abdul Karim Brothers Ltd., and which are situated at Ambernath shall receive the following concessions from the management:—

- (1) Dearness allowance to be paid to all employees at two-thirds the rate of the sliding scale of dearness allowances

adopted by the Millowners' Association, Bombay, and which may be operative in any month during the period of the war.

(2) Dearness allowance at the rates specified in clause (1) will be paid with effect from 1st September 1942, subject to deduction in respect of amounts already paid on the basis of the scales of dearness allowances in operation in these factories as on that date.

(3) A general all round increase of $6\frac{1}{4}$ (six and a quarter) per cent. will be given on all piece rates and on all time rates of less than Rs. 60 per month or less than Rs. 2-4-0 per day with effect from the first day of November 1942, provided that no male worker shall receive less than ten annas per day and that no female worker shall receive less than eight annas per day, however his or her wages may be calculated.

(4) The house rents charged by the Employer Company to its workers will be reduced from Rs. 6 and Rs. 4-8-0 per month to Rs. 4-8-0 and Rs. 3 per month respectively with effect from the first day of November 1942.

(5) Water rates charged to workers residing in the Company's chawls will be recovered at the rate of three annas per worker per month with effect from the first day of November 1942.

(Signed) A. G. HASHIM,
Manager, Messrs. Ahmed
Abdul Karim Bros. Ltd.,

(Signed) B. NARAYANSWAMI,
Advocate,
Counsel for the Employers.
(Signed) S. V. PARULEKAR,
Vice-President, Silk-Woolen-
Leather Factory Workers'
Union, Kalyan.

(Signed) N. A. MEHRBAN,
Conciliator at the request
of the parties.

(Signed) K. T. SULE,
Counsel for the Employees

Bombay, 9th December 1942.

Presented and verified before
me by both parties in open
Court.

(Signed) E. M. NANAVUTTY.
9-12-1942.

(Bombay Castle, 26th April, 1946, No. 8690/34-1, Government Gazette, 2nd May 1946, Part I, pages 1376 to 1380).

INDIAN HUME PIPE CO., LTD., BOMBAY,

AND

ITS EMPLOYEES

Adjudicator :—E. M. Nanavutty, Esq., I.C.S. (Retired).
Mr. B. Narayanaswamy, Advocate, with Messrs. Wadia Ghandy & Co., Solicitors, for the Company.
Mr. K. T. Sule, Advocate, with Mr. R. D. Thatte, Secretary, Hume Pipe Workers' Union, Bombay, for the employees.

A w a r d

By Government Order, Political and Services Department, No. 8690/34, dated the 4th April 1945, issued under sub-rule (1) of rule 81-A of the Defence of India Rules, read with Government of India, Department of Labour, Notification No. L. 3005, dated the 20th May 1942, the dispute between the Indian Hume Pipe Co., Ltd., Bombay (hereinafter referred to as "the Company"), and the employees of its factory at Wadala, on the question of the demand for bonus in respect of the year 1944 was referred to me for adjudication. The said notification also directed that I was to exercise such powers as are conferred on, and follow such procedure as is prescribed for, a Board of Conciliation under the Trade Disputes Act of 1929 and the Bombay Trade Disputes Rules of 1930.

2. The employees in this case are represented by the Hume Pipe Workers' Union, which claims a very large majority of the workers of the factory at Wadala as its members. At the annual general meeting held by the Union on 22nd December 1944 the workers by a resolution requested the Company to grant them a bonus equivalent to two months' wages (i.e., 1/6th of their earnings) for the year 1944. But the Company replied that the business of the Wadala factory did not justify the payment of any bonus. The Union by its letter, dated the 31st January 1945, requested the Commissioner of Labour to take the matter up, and bring about a compromise. The Commissioner of Labour tried to bring about a settlement of the dispute, but it appeared that the Company was not prepared to concede this demand of the employees. On the 13th March 1945 about 700 workers out of the 1,200 employees in the factory at Wadala gave a

notice of strike in respect of their alleged grievance concerning the non-payment of bonus for the year 1944. On the recommendation of the Commissioner of Labour the Government of Bombay referred the dispute to me for adjudication as stated above. Although the dispute was referred to me for adjudication, nevertheless, in contravention of the provisions of rule 81-A of the Defence of India Rules, the employees of the Company remained on strike. In order to create a congenial and favourable atmosphere for the smooth and orderly conduct of these adjudication proceedings, I decided to advise the workers to call off their strike, and an informal conference was, therefore, held in chamber on 10th April 1945, when Mr. Narayanaswamy, Advocate, and Mr. T. G. Patel, Engineer, were present on behalf of the Company and the Union was represented by Mr. Thatte, Secretary, and Mr. Khare, President. I impressed upon the officers of the Union that the strike which was going on then, even after the dispute had been referred to me for adjudication by Government, was illegal. I, therefore, appealed to the Union leaders to persuade the workers to go back to work, and that unless that was done it was not possible for me to start proceedings in this dispute. The workers' leaders stated that they were perfectly aware of the fact that the strike was illegal and that they were trying their best to end the strike as early as possible but that they were helpless in the matter. According to them, the employees were also demanding payment for the days on which they struck work and immediate settlement of the dispute regarding bonus. I, therefore, suggested that the Union should convene a meeting of the workers either on the 10th April 1945 or on the 11th when the fact of the illegality of the strike should be impressed on the minds of the workers, and they should be warned that in case the strike continued, the workers would have to suffer the consequences thereof. The Union leaders promised to do what was necessary and report to me on Thursday, the 12th April 1945. When I again met them on the 12th April 1945, they informed me that the workers had not resumed work and that all their pleadings had fallen on deaf ears. I, therefore, decided to pay a visit myself to the factory on the 14th April 1945. When I went there the workers had gathered outside the gate of the factory. They had not resumed work but they were discussing amongst themselves whether they should get back to work. A police officer and four constables were also present in the compound. Through the influence of some of the workers I was able to persuade the workers to resume work and I understand that they did so subsequently. The workers were prepared to call off the strike provided an assurance was given to them by the management that no striker would be victimised; they further wanted the management to put up a notice to that effect. A verbal assurance was given by Mr. Patel that no worker would be victimised for going on strike but that he would not be answerable for whatever action Govern-

ment or the Police might take.

3. In order to expedite the early disposal of this case, I directed the Secretary of the Industrial Court on the 12th April 1945 to issue notices to the parties calling upon the Union to file its written statement on the 21st April 1945, and the Company to file its reply thereto on 1st May 1945. On the 21st April a statement signed by the Secretary of the Indian Hume Pipe Workers' Union, was filed on behalf of the employees of the Company. On the 1st May 1945 the Company did not file its written statement but through its advocate asked for a fortnight's extension of time for filing the same. I, therefore, granted the extension and directed the Company to file its written statement on or before the 15th May 1945. The reason given in the letter of Mr. Narayanaswamy, Advocate, asking for extension of time, was that the Company had to collect information from its factories all over India and to consider carefully all aspects of the case. In the meantime, without any intimation to me, the Company filed a petition in the High Court on or about the 11th May 1945 praying for the issue of a writ of *certiorari* against me calling for the records and proceedings of the case before me and demanding that the adjudication proceedings be quashed, and further that, pending the hearing and final disposal of their petition in the High Court, I should be restrained by an interim order and injunction of the High Court from exercising any powers or giving any directions as and by way of adjudication or otherwise. This petition was based on the contention of the Company that the dispute relating to bonus was not a "trade-dispute" within the meaning of that term as defined in the Trade Disputes Act, and that, therefore, the notification of Government referring the matter to me for adjudication was illegal, *ultra vires*, and bad in law. An interim injunction was accordingly granted *ex parte* by the High Court and a rule-nisi was served on me, as Adjudicator, through the Secretary of the Industrial Court, whereby all further proceedings in this adjudication matter had to be stayed pending the disposal of the Company's petition in the High Court. The petition came up for final hearing before the Honourable Mr. Justice Bhagwati on the 20th September 1945, and after hearing Mr. V. F. Taraporewalla, counsel for the Company. Mr. Samarth, counsel for the Union and the Advocate General for the Adjudicator and Mr. J. A. Shah for the Government of Bombay, the Honourable Mr. Justice Bhagwati dismissed the petition with costs, holding that the dispute between the petitioners and the workers regarding the demand for payment of bonus for 1944 was a "trade dispute" within the meaning of the definition thereof as given in section (j) of the Trade Disputes Act of 1920, and could, therefore, by virtue of the operation of rule 81-A (1) (c) of the Defence of India Rules be made the subject matter of reference to an Adjudicator. The interim injunction was also dis-

charged by a concurrent order. The Company wanted time to consider the judgment of the Honourable Mr. Justice Bhagwati and to file an appeal in the High Court against the said judgment, if it were so advised. No order for further stay of proceedings was obtained from the High Court when the Company decided to file an appeal. At the same time the Solicitors of the Indian Hume Pipe Company requested the Government Solicitors to agree that I should not proceed further with the case before me pending the disposal of the appeal in the High Court. Since no definite stay order had been obtained from the High Court, I inquired from Government whether I should start the proceedings afresh against the parties. I was directed by Government in their letter No. 8690/34/21562-E, dated the 25th October 1945, not to exercise my jurisdiction as Adjudicator or take any proceedings or to pass any order until the Company's appeal was heard and finally disposed of. I had, therefore, no option but to postpone the hearing of the case "sine die". In the meantime copies of the correspondence between the Solicitors for the Company and the Government Solicitors were forwarded to me by the latter from time to time in connection with the efforts made by the appellants to bring the appeal on the appellate board, as early as possible. Till the end of January 1946, it was not likely that the appeal would come up for hearing at an early date and Government, therefore, in their letter, dated 6th February 1946, requested me to start afresh the adjudication proceedings. In compliance with those instructions, I directed the Secretary of the Industrial Court to issue notices to the parties and to fix the hearing of this case before me in the Industrial Court on 18th February 1946, at 11 a.m. The Solicitors for the Company, however, again moved the Government Solicitors to present a consent precipe in the High Court so as to request the Prothonotary and Senior Master to place the appeal of the Company first on the Board for hearing. At that time it was anticipated that the Appellate Bench would be constituted on the 25th February 1946 and that this matter would be given precedence on that day over other matters on the Appellate Board. As it appeared almost certain then that the appeal would reach hearing on or about 26th February 1946, the counsel and their parties who appeared before me on the 18th February 1946, desired that I should adjourn the hearing till 12th March 1946; the Government Solicitor Mr. Lillie had no objection to my adjourning the case by a few weeks provided the Company agreed to file its written statement within a short time. I, therefore, adjourned this matter till 12th March 1946 and directed the Company to file its written statement, profit and loss accounts and all the relevant information required by the Union on 1st March 1946.

4. The Company's appeal came up for hearing before the Honourable the Chief Justice Sir Leonard Stone and the Honour-

able Mr. Justice Kania on Tuesday, the 26th February 1946. I understand that, after hearing counsel for the appellant Company, the Advocate General was not even called upon to reply and that the appeal was dismissed with costs. The Appellate Court in dismissing the appeal has observed as follows:

"I respectfully agree with the conclusion arrived at by the learned Judge in the Court below that the dispute between the appellant Company and their workmen relating to their demand for payment of bonus for the year 1944 is a trade dispute within the meaning of the Trade Disputes Act, and can, by virtue of the operation of Rule 81-A sub-rule (1) (c) of the Defence of India Rules be the subject matter of reference to the adjudicator, respondent No. 1 in this appeal." (Per Stone, C. J.). "In my opinion it is clearly a dispute between the parties as regards the terms of employment and is covered by section 3 of the Trade Disputes Act and Rule 81-A (1) (c) of the Defence of India Rules." (Per Kania, J.)

5. When this case came up for hearing before me on 12th March 1946, Mr. Pochkhanawalla of Messrs. Wadia Ghandy & Co., Solicitors for the Company, once again applied for an adjournment in view of the fact that the Company had filed a petition in the High Court for leave to appeal to the Privy Council against the Appellate decision of the High Court. The High Court had issued a rule which was fixed for hearing on 26th March 1946. As the Company's attorneys had not obtained any stay order against me from the High Court, I was reluctant to lengthen out this long-protracted litigation any further. But, after some discussion counsel for the Union consented that the proceedings might be adjourned. By mutual consent of parties, therefore, I adjourned the case to 29th March 1946. On 26th March 1946, the High Court refused to grant leave to appeal to the Privy Council and also discharged the notice of motion taken out by the Company's Solicitors to stay further proceedings before me, had leave to appeal been granted. The case was argued before me on 29th and 30th March 1946 and the arguments were concluded on 1st April 1946.

6. At the outset, the learned counsel for the Company raised a preliminary objection, and questioned the right of the Indian Hume Pipe Workers' Union to represent the employees of this Company. To my mind there is no force whatsoever in this technical objection raised on behalf of the Company; and as a matter of fact Mr. Narayanaswamy afterwards withdrew his objection. I, therefore, overrule the preliminary objection.

7. I come now to discuss the sole issue in this case framed by Government in the following terms:

"What bonus, if any, should be granted on the earnings of

the employees for the year 1944 and on what terms and conditions?"

The fixed idea under which the proprietors of this Company are labouring is that bonus being an "*ex-gratia*" payment, the workers of their Company cannot claim it as a matter of right, and being a voluntary payment by the Company cannot, therefore, become the subject of a "trade-dispute" as defined in section 3 of the Trade Disputes Act. On these fundamental assumptions the Company contended that the Government of Bombay acted illegally and without jurisdiction in referring this dispute to an Adjudicator. So strongly did the proprietors of this Company hold these views that they took this matter up before the High Court of Bombay and tried to vindicate the correctness of their views before that Honourable Court. But both in the trial Court as well as in the Appellate Court of the High Court of Bombay the Company lost its case. Even then the Company thought that it had a good and arguable case and applied for leave to appeal to Their Lordships of the Privy Council against the appellate judgment of the High Court. That application for leave to appeal to the Privy Council was refused and so ultimately the case has come back to me for final disposal.

8. The High Court has held that the action of the Government of Bombay in referring this dispute to an adjudicator is legal, and that I have jurisdiction to hear and decide this case. That finding is binding upon the Company and the only contention now open to the Company is that bonus being a voluntary payment the Company should not be compelled to grant bonus to its workmen.

9. In this connection I cannot do better than quote a passage from my award in the dispute between the Standard Vacuum Oil Company, Bombay, and its employees (See *Bombay Government Gazette* of 18th November 1943, Part I, page 2574):

"The contention that labour had no right to share in the extra profits made by a business-concern was accepted as axiomatic some fifty years ago and more. During the 19th century, when the principle of '*laissez faire*' held the field, there existed a state of competition amongst the employers as well as amongst the employed. The newly-acquired ideals of freedom and liberty introduced into the field of industrial relation in their widest application led to the keenest and most unrestricted competition, the fruits of which were richly gathered in the exploitation of men, women and children, long hours of work for the factory-hands and low wages. The sordid conditions under which labour had to eke out its existence turned the scale of public opinion against the policy of '*laissez faire*', and legislation had to be introduced in various countries to remedy the evil plight of workers in various industries. The transition from conflict

between capital and labour to collaboration between the two was gradually brought about in the present century by State legislation, for the due adjustment of industrial relationship in conformity with present-day ideals. This is the trend of modern economic thought due to the spread of communistic and socialistic ideals all over the world. The old idea of controversy between capital and labour is now completely obsolete, and co-operation between all engaged in business-concerns is deemed to be the only salvation for industrial enterprises. As a result of this fundamental change of attitude a movement has been started in the world of economic thought in the present century, which has led to the idea of co-partnership in industry and to profitsharing between the capitalists and organisers of industry on the one hand, and their workmen on the other. No longer is industry looked upon merely from the business point of view but also from the human side. The demand to-day for 'peace in industry' is emphasized. Co-partnership in industry and profitsharing make for peace and harmony and efficiency in industry with the depth and silence of a strong tide at night. This demand for 'peace in industry' is all the more urgent and pressing when there is a world war raging. Profit-sharing or the demand for bonus may not be a legal right; it may not be capable of enforcement in a Court of Law; but capitalists and organisers of industry have, after a long, bitter, and chequered experience, found it expedient in their own enlightened self-interest to grant this demand as being just and equitable."

10. These views of mine, expressed in 1943, receive corroboration from a recent award, dated 12th October 1945, of the Industrial Court of Bombay in the matter of the Industrial dispute regarding payment of bonus between the Textile Labour Association of Ahmedabad and the Ahmedabad Millowners' Association (*vide Bombay Government Gazette* of 18th October 1945, Part I, pp. 2575 and 2576). I would like to quote here certain relevant extracts from this illuminating award of the learned Judges of that Court:—

"A bonus is undoubtedly a gratuitous payment as it cannot be claimed as of right, i.e., a legal right enforceable in a Court of law.....It is because there may be demands arising out of the relationship of the employers and the workers which either party can make on the other and which cannot be enforced in a Court of law but the settlement of which is desirable for the smooth working of the industry, that the Bombay Industrial Disputes Act is enacted for the purpose of settling such disputes in the Industrial Court. A demand for something which cannot as such be enforced in a Court of law can be adjudicated upon in the Industrial Court, provided it is an 'industrial matter'. The fact that the workers have no legal right to a bonus does not, therefore, affect their right

under the Act to demand the payment of bonus as a reward or additional payment for work already done."

11. In February 1924, the Government of Bombay appointed a Committee of Inquiry in connection with a bonus dispute between the Cotton Millowners of Bombay and their workers. This Committee was presided over by the Hon'ble Sir Norman Macleod, the then Chief Justice of the Bombay High Court. The Committee after an elaborate inquiry held that the mill-workers had not established any enforceable claim, customary, legal or equitable to the payment annually of a bonus and that such a claim would, in their opinion, not be upheld in a Court of law.

12. The Committee, however, held that in view of the real nature of the claim made by the workers against their employers, it was a question of bargaining between the workers and the employers in which consideration might well be given to principles of equity, and that it was not a question of determining what was the contract between the parties. (See *Labour Gazette*, Vol. III—September, 1923 to August, 1924—Bonus Dispute Committee's Report, March 1924, pages 15 to 17).

13. It is thus clear from the decisions quoted above that the demand for bonus made by the workmen of a Company, though not based on any legal right arising out of a contract express or implied, has to be decided on broad principles of justice, equity and good conscience. The notion that bonus can only be claimed by their workmen if based upon a legal right founded on a contract, express or implied, must be given up by the proprietors of the Indian Hume Pipe Company. They must also learn to treat their factory hands not as rivals or mere inferior creatures, but as human beings with whom they must be on terms of co-operation and not on terms of hostility and antagonism, and in short that capital and labour must learn to hobnob together in friendly fashion if "peace in industry" is to be secured and industrial enterprises are to be successful to the fullest extent. That is the trend of modern economic thought to which the Company in the present case must also learn to pay homage.

14. For the reasons given above, I hold that the workmen of the Indian Hume Pipe Company can claim bonus in the present trade-dispute and that I, as an Adjudicator, can award them bonus the amount of which will have to be decided by me on principles of justice, equity and good conscience.

15. The employees in the present dispute claim a bonus equivalent to two months' wages, that is to say, 1/6th of their earnings for the calendar year 1944. In the three previous years the

Company had paid bonus to its employees as under :

PERIOD	AMOUNT OF BONUS
From 1st April 1941 to 31st March 1942.	1/12 of the earnings of each employee.
From 1st April 1942 to 31st December 1942.	1/8th of the earnings of each employee.
From 1st January 1943 to 31st December 1943.	7/48th of the earnings of each employee.

16. The Company's financial year ends on 30th June of each year. The only just and equitable principle upon which the Company may be called upon to grant bonus to its employees is to consider the amount of profits made by it in any given year, and the general financial condition of the Company and its capacity to bear this additional burden of granting bonuses without impairing its efficiency or injuring the business of the firm in any vital manner. The Company has filed in my Court numerous statistical and other statements and produced before me statements of audited accounts for the years ending 30th June 1939, 1940, 1941, 1942, 1943, 1944 and 1945.

17. The employees of the Company base their demand for bonus at 1/6th of their total yearly earnings (exclusive of dearness allowance) on the gratuitous assumption that the profits of the Company are large enough to give each worker in the Wadala factory, to which the present dispute relates, a bonus equivalent to two months' wages. It is contended on behalf of the workers of this Company that this is a fair and reasonable demand which has been put up on behalf of the employees. The Company in its written statement (Exhibit B) has pointed out that this demand of the workers is both unreasonable and unjustifiable, as the Company would not be justified in granting any bonus only to its workers in the Wadala factory when it is not in a position to grant bonus to any of its workers in the remaining 38 factories spread all over India. In the present dispute I am only concerned with the workers in the Wadala factory of the Company and so the question whether the workers in the Company's other 38 factories are entitled to bonus or not is not a relevant consideration in deciding the present case. The demand for bonus in each trade-dispute has to be decided on the facts proved in that particular case.

18. The Company's main ground for refusing bonus to its workers is that the profits earned by it in the calendar year 1944 were so low that if the demand of its workers were to be granted it would mean a further considerable loss to the Company. Moreover, it was further contended that if the Company were ordered

to pay bonus then that bonus would have to be paid out of the revenue of subsequent years, and as it is, the Company was losing money and if its revenues were still further depleted by having to fork out bonuses to its workmen, then the Company would be forced to reduce the number of its employees and close down many of its activities and that would result in loss of service to many of its workmen, and so the Company was anxious to avoid such a catastrophe in the interests of the employees themselves.

19. It was further argued by the learned counsel for the Company that in the year 1945 the Company had not been able to pay any dividend to its shareholders nor had the Company been able to make provision for depreciation in the value of its plant and its building. Counsel moreover pointed out that the wages and dearness allowance granted by the Company to its employees were on a very liberal scale and the Company also provided for amenities in the shape of free medical aid to its workers.

20. In my opinion the question whether the Company's scale of wages and dearness allowance were adequate or not is not a relevant consideration in deciding the question of bonus. Except the demand for bonus there is in the present trade dispute no demand made for increase in wages or for increase in dearness allowance. The dearness allowance paid by the Company is on the same scale as that paid by the Bombay Millowners' Association to its mill-hands; and it was conceded that the employees of this Company are fully satisfied with the wages and dearness allowance at present granted to them.

21. The only question for determination that now remains for decision is whether the finances of the Company can stand the strain of paying a certain sum of money by way of bonus to its employees, and what should be the amount of bonus if any which the Company should be called upon to pay to its workmen. After considering all the evidence on the record and after carefully weighing all the arguments of the learned counsel for the Company I am of opinion that the Company's financial position is not as unsatisfactory as counsel has sought to make me believe. In pleading for the Company's complete inability to pay any bonus at all to its workmen counsel has painted a picture of the Company's financial condition in rather lurid colours. On the other hand Mr. Sule, the learned advocate for the employees and their Union, pointed out that while the factory hands at Wadala factory got no bonus for the year 1944, the clerks and staff of the Company were given in 1945 bonus by the Company for this very year 1944. It was further argued before me that the Company in questioning for the first time the right of the Government of Bombay to appoint an Adjudicator in this case and in challenging

the right of its workmen to demand bonus after voluntarily paying bonuses for three previous years was not acting honestly but was merely trying to prolong the present litigation and harass the workers, so that the award of the Adjudicator might become a nullity by virtue of the fact that the Defence of India Ordinance would by efflux of time have ceased to be in force.

22. These considerations appeal to one's passions and not to one's intellect, and I must brush them aside as irrelevant, and proceed to decide the quantum of bonus to be paid to each workman of the Wadala factory upon the evidence on the record. I only mention these matters "*en passant*," as showing the bitterness created in the minds of the employees of the Company at the Wadala factory by the unwise conduct of the Company in prolonging the duration of the present trade-dispute. For myself, acting on the noble precept of the highminded Moor, I will "nothing extenuate, nor set down aught in malice," and in awarding bonus to the employees scrupulously weigh the conflicting claims of the two contending parties.

23. The Company has estimated that the cost of the total amount of bonus, if ordered to be paid, according to the demand of the employees would come to Rs. 78,095 (see statement 4 in exhibit C). The average number of workers in the Wadala factory ranges between 1,200 and 1,300, and the average basic wage of each workman is Rs. 29-8-0. According to the profit and loss account filed by the Company for the year 1945, the Company has made a profit of Rs. 95,740. To this may be added the sum of Rs. 51,176 being the balance brought over from the previous year's account, making a total of Rs. 1,46,917 (see Directors' report for 1945, page 2). Out of this sum the Directors have recommended that a sum of Rs. 1,00,000 be set aside for depreciation, and the balance of Rs. 46,917 be carried forward. Exhibit "I" however shows that the Company had not provided for depreciation at all in the year ending 30th June 1945. From these two conflicting statements I draw the inference that the amount recommended by the Directors for depreciation has not yet been set aside. Even if I were to assume that the amount carried forward was only Rs. 46,917, still I do not think that the Company would be saddled with a heavy financial burden if the employees are paid out of this sum a small bonus equivalent to 1/24th of their earnings for the year 1944. This amount would only come to about Rs. 20,000, that is roughly one-fourth of the amount stated in Exhibit C statement 4.

24. The apprehension of the Company's counsel that if bonus were ordered to be paid the Company would be compelled to reduce the number of its workers and close down some of its factories is, in my opinion, not warranted at the present juncture. If the affairs

of the Company are wisely managed, its Directors will have a prospective field of work in the post-war reconstruction period during which the demand for the products of the Company will, I feel sure, be increased.

25. I am, therefore, clearly of opinion that the Company should on equitable grounds pay to its factory hands at Wadala a bonus equivalent to $\frac{1}{24}$ th of their earnings for 1944, exclusive of dearness allowance. I accordingly make an award that all the Company's employees at its Wadala factory who were in the service of the Company during the calendar year 1944, should be given a bonus equivalent to $\frac{1}{24}$ th of their earnings for that year exclusive of dearness allowance. This bonus will be paid by the Company to its employees within a month from the publication of this award in the *Bombay Government Gazette*.

Bombay, 23rd April 1946.

E. M. NANAVUTTY,
Adjudicator.

(*Bombay Castle*, 26-7-1945, No. 8713, 34-1. *Government Gazette*, 9-8-45, Part I. pp. 2031 to 2035).

REAY PAPER MILLS, MUNDHWA (POONA),

AND

ITS EMPLOYEES

Adjudicator.—K. B. Wassoodew, Esq., I.C.S., (Retired).

Mr. Maneckshah N. Pochkhanawalla of Messrs. Wadia Ghandy & Co., Solicitors for the Reay Paper Mills, Mundhwa.

Mr. N. V. Phadke, Advocate, with Mr. R. K. Kerkar, General Secretary, and Mr. V. B. Gavane, Assistant Secretary, of the Mundhwa Paper Mills Kamgar Union, for the employees.

A w a r d

By Government Order, Political and Services Department, No. 8713/34, dated the 21st April 1945, issued under sub-rule (1) of rule 81-A of the Defence of India Rules, read with Government of India, Department of Labour, Notification No. L. 3005, dated

the 20th May 1942, I was appointed to adjudicate the trade dispute between the Reay Paper Mills, Mundhwa (Poona), (hereinafter referred to as "the company") and their employees. The said Order also directed that I was to exercise such powers as are conferred on, and follow such procedure as is prescribed for, a Board of Conciliation under the Trade Disputes Act, 1929, and the Bombay Trade Disputes Rules, 1930.

2. The dispute referred to in the Government Order, relates to the following matters:

"(i) Whether the dismissals of Messrs. R. V. Deshpande, Mahadu Tukaram, Gangaram Rama, Erappa Keru, Bandu Amin, Ramchandra Kesu and Bai Chinki Babu, Bai Harni Ramchandra, Bai Yellawa Ramchandra and Bai Savitri Rama were justified? If not whether any order regarding reinstatement and/or compensation is necessary or desirable, and if so what order?

(ii) Should the rates of wages of such of the workers as are not on the minimum fixed by the Labour Office in 1943 be increased and if so to what extent and from what date?

(iii) Should dearness allowance be included in wages for the purpose of calculating the second instalment of bonus paid for the year 1943-44?

3. This reference to adjudication has been made on account of the refusal of the parties to accept the recommendations of the Labour Office in regard to some matters in dispute between the company and its employees and the fourteen days' notice of strike given on 6th March 1945, by the members of the Mundhwa Paper Mills Kamgar Union, to the company. Upon my appointment the usual notices to the parties to file their respective written statements were issued on the 17th May 1945. The written statement by the Mundhwa Paper Mills Kamgar Union, on behalf of the employees, was filed on the 11th June 1945. The Solicitors of the company disputed the representative character of the Union in a preliminary objection filed on 21st June 1945, in which they advisedly declined to reply to the claim statement of the Union, on the ground that the company could not take notice of a claim made by an unregistered Trade Union and its supposed office-bearers pretending to represent the employees, till the same was confirmed by the employees themselves. Pending the consideration of the preliminary objection of the company the Solicitors were directed to file their written statement on the terms of reference, without prejudice to their contention against the Union's alleged representative character. The company, therefore, filed its written statement on 25th June 1945. On the same day, the parties and their counsel were heard by me in the Industrial Court. Upon the undertaking given by Mr. Phadke, the Advocate appearing for the Union and the company's employees, that he would

obtain the necessary authority from as many employees as could conveniently be brought to the Union's office, Mr. Pochkhanawalla on behalf of the company withdrew his preliminary objection. That authority was subsequently filed. It may be noted that in pursuance of the general notice issued by me, about 23 employees of the company, most of whom are watchmen, have intimated that they do not belong to the Union, and that they are satisfied with what they get from their employer. The hearing continued on 26th, 27th, 28th and 29th June 1945 and 2nd July 1945. In order to appreciate the contention involved in the second dispute and the Union's plea that there should be a graduated scale of basic wage for different categories of workers in the different process departments, at the suggestion of the parties, I visited the Padumjee Paper Mills in Bombay, on 3rd July, so that I could get an idea as to the nature of the work done in the various processes of paper making. The proceedings were resumed on 4th July 1945 and concluded on the same day.

4. The genesis of this dispute, so far as a statement thereof is necessary for the present purpose, may be shortly stated. The Reay Paper Mills at Mundhwa, near Poona, is one of the pioneer paper factories in this Province. It made a modest beginning in 1885 and is now employing nearly 800 workers. Owing to the proximity of the Mundhwa Industrial Settlement a large body of workers is recruited from there. The rest of the workers, with the exception of those for whom quarters are provided in the mill compound, live in Mundhwa and the neighbouring villages. It seems that side by side with its growth the company has increasingly provided amenities for its employees. Apart from the maintenance of cost-price grain shops, which is regarded as a normal responsibility of industrial institutes in wartime, the company has established adult education classes for its workers, a free primary school for their children, a health centre and a maternity ward with creches for babies and a free medical dispensary with a resident doctor for the employees and their families. There is also a tea canteen. Apparently the employees were not articulate in the expression of their grievances until October 1943, when some of them organised themselves into a trade union with a small membership and named it "The Mundhwa Paper Mills Kamgar Union". It has now got, I am told, a membership of 450 workers, that is a little more than half of the workers on the roll. Having regard to the fact that about 250 of the workers, both male and female, are recruited from the Industrial Settlement, who by the rules of conduct of the Settlement, are prevented from taking part in trade union activities, the Union is fairly representative of the employees of the company. That fact was fully appreciated when the company expressed its willingness to reach a settlement with the Union in the matter of certain demands which the company considered reasonable.

5. Upon the formation of the Union its first act was to demand an improvement in the condition of labour in this mill. Not satisfied with the attitude and the response of the management, they approached the Commissioner of Labour for his intervention and mediation. The conciliation proceedings at the initial stage were not barren of results, for, a large number of grievances, not less than 18, were settled amicably and the recommendations of the Commissioner of Labour were agreed to be given effect to from 1st October 1943. The outstanding grievance remaining unsettled then was in regard to the occupational gradation of workers and the general increase in the basic wage of those earning a daily wage of annas seven and above. There were subsequent differences between the parties and those are incorporated in disputes Nos. 1 and 3 in the Order of Reference. A spirit of mutual concession was shown in these proceedings, except where questions of principle were involved. On those questions the attitude of the parties were perfectly intelligible.

6. It appears from the evidence on the record that except for occasional demands for further improvement in their lot, and the usual resort to threats of strike, the actual working of the factory was carried on without any disturbance till about February 1945. At about that time there was a dispute in regard to the manner of distribution of "Attendance Cards" provided by the company for its workers. Till then those cards were distributed through the departmental supervisors to the workers at the end of the day and were brought back by the workers on each succeeding morning and deposited in the box kept for the purpose at the mill-gate. It is alleged by the company that one of the supervisors in the Rags Department, by name R. V. Deshpande, instead of distributing the cards to the workers under him in the factory, did so in the Union office in the village where the workers were asked to attend to receive them, the object being that the workers may be impressed by the Union's activities and be thus induced to become its members in course of time. The company thought that Deshpande's conduct was a flagrant disobedience of orders and accordingly it was directed that in future the "Attendance Cards" should be distributed to the workers by the time-keepers at the gate. That order was resented by Deshpande, who complained that it involved unnecessary loss of time of the workers in getting their cards at the gate in the evening. It was noticed that at Deshpande's instigation several workers refused to take away their cards. The management, having regard to the record of Deshpande, decided to discharge him. On or about the 3rd March 1945, Deshpande was served with an order of discharge and that was followed by the discharge of other principal persons who in sympathy with Deshpande had resorted to stay-in-strike followed on 6th March and on or about 11th April 1945. When

a settlement of the dispute failed, adjudication was ordered by Government to avert a strike.

7. The first dispute has arisen on account of the discharge or dismissal of 10 employees of the company on different dates between January and April 1945. The question referred to me upon that dispute is whether the dismissal was justified and if not, whether it is necessary and desirable to order their reinstatement or in the alternative the payment of compensation. It is necessary to note that the company has attempted to differentiate between an order of discharge and an order of dismissal on the ground that an employer is not obliged to give reasons for discharging his servant with compensation but is obliged to do so in the event of his dismissal. The company maintains that their order was one of discharge and not of dismissal, and that in consequence they had offered to pay compensation to the 10 discharged employees in question. The question assumes academic aspect inasmuch as the company has agreed in these proceedings to offer a reasonable compensation to the discharged persons.

8. Before considering the merits of the order of discharge or dismissal, it is necessary to bear in mind certain principles governing the remedy available to the employee who is discharged or dismissed unreasonably or wrongfully. If the discharge was not wrongful the question of reinstatement or compensation does not arise. It is commonplace in law that the relationship of an employer and his employee is based upon contract. In consequence the remedy of a servant, who is dismissed wrongfully, that is without just cause or excuse, is founded on breach of contract and he is entitled to claim damage for such wrongful dismissal or discharge. It has been well recognised that a contract of service cannot be specifically enforced against an unwilling party for the relation established by such a contract is so essentially of a personal and confidential character that a specific enforcement thereof cannot be hoped for with ultimate and real success. It is not, generally speaking, in the interest of society that a person, who is not desirous of continuing personal relationship with another should be compelled to do so. Just as a worker cannot be forced to do work, against his will, which will satisfy his employer, the latter cannot be forced to take work from a particular person whom he is not willing to take in his service. An order for reinstatement "in invitum" of a dismissed servant will not be expedient on the simple ground of want of mutuality of remedies. When the dismissal appears to be unjustified, the normal course for an Adjudicator to adopt in such proceedings is argument and persuasion with the employer and I must say in fairness to the company's advisers that that method has not failed to achieve reasonable success. The alternative remedy of a worker against his wrongful dismissal is in law to claim compensation.

He may either treat the contract as rescinded and claim to be paid for the value of the work done and for which he has not been paid and also damages for the pecuniary loss resulting from the wrongful termination of his service. Merely because his feelings were wounded by the manner of his own dismissal or that of the leader of his Union will not affect the question.

9. It is important to note that without much persuasion the representatives of the company agreed to reinstate some of the workers against whom there was no case of serious misbehaviour and whose work was not unsatisfactory. Mr. Pochkhanawalla was very conciliatory and upon his recommendations, Dr. Bhadkamkar, one of the managing directors of the company, agreed to take back five out of the 10 discharged workers. The case of the other workers has been left for my consideration on the merits. These workers are (1) R. V. Deshpande, (2) Mahadu Tukaram, (3) Bandu Amin, (4) Bai Chinki Babu and (5) Bai Harni Ramchandra. The evidence against each can be summarised as follows:—

- (1) *R. V. Deshpande*.—By caste a Brahmin. Supervisor in Rags Department. Served the company for seven years. Discharged or dismissed on 3rd March 1945. Pay Rs. 50 a month. Literate—studied up to Matriculation. Joined the Union in October, 1944. Charged with wilful disobedience, insubordination, incompetence and stirring up strife. Used to play gramophone during working hours. Warned against such conduct. Refused to obey orders regarding distribution of "Attendance Cards". Protested against change of orders. Instigated the workers not to receive their cards at the gate. Interfered with the mill management generally. Quarrelled with and threatened the co-workers. His work was considered unsatisfactory by the general manager who warned him. He has generally denied the charges made against him. Says he is victimized because he is an active Union worker. Reported to be unfit as supervisor. Has not sought any employment elsewhere since his discharge. Refused wages and compensation offered by the company upon discharge.
- (2) *Mahadu Tukaram*.—Nhavi by caste. Muccadam in the General Department on Rs. 25 per month. Served the company for eight years, dismissed on 5th March, 1945. One of the Vice-Presidents of the Union. His wife continues to work in the mill on Rs. 20 a month. Habits unsober. Came drunk with toddy into the mill. Generally quarrelsome by nature. Incited watchmen to break their orders. Now working in his fields. Has denied all allegations of misconduct. His explanation is that he is

victimized for his participation in Union activities. Refused to accept wages and compensation offered by the company upon discharge.

- (3) *Bandu Amin*.—Musalman. Cutter in the company's mill. Paid daily wage of As. 15 including dearness allowance. Dismissed on 20th March, 1945. Overbearing and intemperate. Took part in an assault in the mill. Was himself severely injured in a scuffle. Says that because he remonstrated with certain police officers for flirting with women, he was beaten. Reported for being drunk. At present working in a factory at Ghorpuri, near Poona, on a daily wage of Re. 1. Refused wages and compensation offered by company upon his discharge.
- (4) *Bai Chinki Babu*.—Female coolie. Was paid Rs. 24—25 a month. Worked for seven years in the company's mill. Dismissed on 5th March, 1945. Member of the managing committee of the Union and does active work. She was charged with entering the motor-house in the mill compound and inciting other workers and oilmen to stop oiling the engines, on the day on which Deshpande was dismissed. Attempted to defy the Engineer's orders. Was forcibly prevented from touching the wheel and endangering her life. Her work reported unsatisfactory. Now employed in Ghorpuri Saw Mills on Rs. 31 per month. Refused to receive wages and compensation offered by the company upon her discharge.
- (5) *Bai Harni Ramchandra*.—Chambhar by caste. Worked in finishing department of the company's mill. Dismissed on 5th March, 1945. Was paid Rs. 22 per month including dearness allowance. Her work reported unsatisfactory. Of an unruly temper. With Bai Chinki Babu, and in sympathy with Deshpande she induced women to enter motor-house to stop the mill. Forced out and thus prevented from causing serious injuries to herself and others. Now employed in Ghorpuri on Rs. 26 per month. Refused to receive wages and compensation offered by the company on her discharge.

10. I have carefully weighed the evidence led in this case, and I am satisfied that what the manager has stated in his evidence is substantively true. I hold that the above persons have not been victimized for their trade union activities. I am satisfied that by their action they have transgressed the rule of decent behaviour. Mr. R. V. Deshpande, in my opinion, has stirred up strife and has been generally overbearing and insolent towards his superiors. His apology to Mr. Natekar, a clerk in

the factory, for wantonly interfering with his duty as a clerk, is an illustration of his domineering attitude. I accept the manager's opinion that his work was below the mark. The manager was sympathetic towards the Union and its legitimate activities and connived at Mr. Deshpande's conduct a great deal. I think for the maintenance of discipline in the mill, the management's action was justified. Deshpande's reinstatement is out of the question. Ordinarily his claim to damages or compensation could not be sustained upon proof of his misconduct such as I have before me. But as Mr. Pochkhanawalla has expressly stated that the offer of wages earned by him and the compensation of one month's pay with dearness allowance, for discharge, still holds good, the award that I make in his case is that the terms of their offer be carried out by the company. The measure of damage, even in a case of wrongful dismissal, could not be higher. It may be noted that it is even higher than the measure fixed by the textile mills in their Standing Orders for operatives.

11. The case for reinstatement of the other four persons referred to above does not arise upon the manager's own evidence which I accept. He has stated that their work is consistently unsatisfactory and having regard to their unruly conduct deposed before me, I could not properly persuade the company against their will to reinstate them. The company's view in the matter is sensible. The offer of 13 days' wages and dearness allowance as compensation for their discharge still holds good according to Mr. Pochkhanawalla and I recommend that the compensation offered which is reasonable and fair should be paid to them.

12. The third dispute has been amicably settled by the parties and the terms of settlement are embodied in the document signed by the parties and attached hereto.

13. There then remains for consideration the second dispute which has also been partially settled between the parties. That settlement affects the rates of basic wages of only male coolies getting As. 7 and above, who were not brought on the minimum scale of wages agreed to be given effect to, upon the recommendations of the Labour Office, from October 1943.

14. I am asked in view of the settlement to decide the claim of workers other than coolies. The claim in regard to the increase in their wage is adumbrated by the Union in the statement, Ex. 24, submitted to me by their advocate Mr. Phadke on the last day of hearing. In their written statement, the Union claimed an increment of 50 per cent. on an average on the present scales of wages. It has been suggested before me that there should be incremental grades of pay in several departments of this factory and a classification adopted on the basis of skill

required. In their statement, Ex. 24, a general rise of more than 50 per cent. has been claimed in some cases and less in others without any intelligent scheme of gradation. As an illustration I shall refer to the proposals in the Fitter's Shop. There the workers are classified under the following heads:—Turners, Carpenters, Masons, Assistant to Fitters and Coolies "who are not really coolies". The present rates of wages to the "Assistant to Fitters" range from As. 6 to Rs. 1-4-0. The Union claims that their minimum wage should be As. 12 rising to Rs. 2 within five years with an annual increment of As. 4. Similarly with regard to "Turners" getting Rs. 2-2-0 a day, the rise recommended is Rs. 2-4-0 to Rs. 2-12-0 a day with an annual increment of As. 2. The "Carpenters" who are now paid As. 13 to Rs. 2 a day are placed in the scale of Re. 1 rising to Rs. 2 a day with an annual increment of As. 4. The "Masons" getting Rs. 1-2-0 to Rs. 2 per day are recommended for a scale of Rs. 1-4-0 with an annual increment of As. 4 reaching Rs. 2-8-0 within five years. Even the coolies in this department who are paid As. 6 to As. 11 a day are put in the scale of As. 10 to Rs. 1-2-0 with an annual increment of As. 2 on the ground that they are "really better than coolies". No reasons are assigned for the recommendation for a general rise and no evidence is tendered in support of the demand. Mr. Phadke for the Union has realised his own difficulty in substantiating the claim. In the Padamjee Paper Mills which we inspected in Bombay, there is, we were told, uniform scale of As. 12 for certain classes of adult male coolies. Skilled workers with long experience get a fixed pay of Rs. 2-8-0 a day in the higher categories. These are the wage conditions in the Bombay Mill where the occupational distribution of process workers is not different although the mill is much smaller than the Mundhwa Mill. In order to say what a proper basic wage in this mill in Mundhwa should be, for the different categories of workers, one must possess material to compare the basic wages in similar units of the same industry in the neighbourhood and also in other parts of the country. Fitness, ability, efficiency, local demand and supply of the labour employed, are factors, which cannot be ignored. Before venturing on a general recommendation for a rise in basic pay, one must undertake an elaborate inquiry and the matter cannot be decided on mere hypothetical classification of grades of workers. It is true that this is a solitary paper mill of its kind in Poona and there is no material available to show what basic wages are paid in other paper mills in other parts of India. It is important to bear in mind the fact that the basic wage of coolies in Poona, recommended by the Labour Office in this case was not above As. 7 for males. Against that background the wage claimed for semi-skilled workers seems unduly high. The company has stated that the wages paid in their factory when compared with those offered in other paper mills in India, will bear a favourable

comparison. I have no means of verifying that statement. In the absence of evidence before me on the question of basic wages in the Paper Industry during the last few years it is impossible to say that the claim of the Union is justified.

15. The only statistical record available to me is the General Wage Census Report. Part I, (Fourth Report) of 1934. There is at page 118 a comparative statement under the heading "General averages of daily earnings in the Paper Manufacturing Industry". It may be noted that those figures are of "daily earnings" and not "daily wage" - which is a different thing, for "earnings" may include wages earned from basic rates of pay and all allowances such as dearness of food, good attendance, bonus, earnings from double substitute work and pay for holidays or for leave with pay, etc., less disciplinary fines. Those statistics, therefore, do not afford a fair basis for comparison. Moreover, the information was collected more than ten years ago and suffers on account of its antiquity. It is true that the cost of living has enormously increased since 1934. But for that adequate compensation is being given in the shape of dearness allowance. No instance has been pointed out to me where there has been on that account a radical change in the basic wage in any industry in Poona. That being so, with every desire on my part to sympathetically consider the claim of labour to increased wage, I am unable to say with confidence that any reasonable case has been made out for a rise at present in the basic wage of semi-skilled or skilled workers, in the paper industry in Poona.

16. In view of the above, my award on the three disputes is as follows:

- (1) With regard to Dispute No. (i) I award (a) that the terms of the accompanying settlement which has been duly signed before me, with regard to the five workers named therein, whom the company is willing to take back in their factory, should be given effect to and (b) that with regard to the other five workers, the orders of discharge or dismissal, were proper and justified; but inasmuch as the company has offered compensation to those workers individually, which is in my opinion fair and adequate, that compensation should be paid to the said workers by the company. The compensation offered and which should be paid is as follows:

Mr. R. V. Deshpande, who was engaged on a monthly wage, shall be paid, in addition to the monthly wage with dearness allowance earned by him but not paid till the date of his discharge, one month's additional wage and dearness allowance at the same rate. The

other four workers, viz., (1) Mahadu Tukaram, (2) Bandu Amin, (3) Bai Chinki Babu and (4) Bai Harni Ramchandra, shall be paid their wages and dearness allowance earned till the date of their discharge and 13 days' additional wages and dearness allowance.

(2) As regards Dispute (ii) my award is that the terms of the accompanying settlement arrived at in respect of this dispute, should be given effect to, and that the employees of the company in general who are not affected by the terms of that settlement, are not entitled to any increase in their rates of wages.

(3) With regard to Dispute No. (iii) regarding bonus, my award is that the terms of the accompanying settlement arrived at between the parties should be given effect to so far as all the employees of the company are concerned without any distinction whatsoever.

(Signed) K. B. WASSODEW,

Bombay, 18th July, 1945.

Adjudicator.

In the matter of the trade dispute between the Reay Paper Mills Mundhwa (Poona), and their employees.

MEMORANDUM OF SETTLEMENT

TERMS OF SETTLEMENT

Issue No. 1. Whether the dismissals of Messrs. R. V. Deshpande, Mahadu Tukaram, Gangaram Rama, Erappa Keru, Bandu Amin, Ramchandra Kesu and Bai Chinki Babu, Bai Harni Ramchandra, Bai Yellawa Ramchandra and Bai Savitri Rama were justified? If not, whether any order regarding reinstatement and/or compensation is necessary or desirable, and if so, what order?

It is hereby agreed that the company shall reinstate the following five workers discharged by them on the terms and conditions set out hereunder:

- (1) Gangaram Rama.
- (2) Erappa Keru.
- (3) Ramchandra Kesu.
- (4) Bai Yellawa Ramchandra.
- (5) Bai Savitri Rama.

The terms and conditions on which the above workers shall be reinstated by the company are as follows:

- (a) The aforesaid five workers shall be permitted to resume their work in the company's factory as soon as they are free and willing to do so after previous intimation to the company's management of two days before attending the duty.
- (b) That on such resumption and reinstatement the said workers shall be given by the company the same rate of pay and dearness allowance as was in force at the time when they were discharged.
- (c) That the company shall pay the aforesaid workers on the next pay day the wages and dearness allowance earned by them at the time of their discharge and in addition compensation amounting to 13 days' wages with dearness allowance from the date of discharge.
- (d) The company undertakes that the fact of discharge of the aforesaid workers will not affect their prospects for bonus, if any, to be paid to the company's workers in future, nor to such other benefits which they would have been entitled to if they were not discharged, provided that the aforesaid workers shall not be entitled to any wages or dearness allowance during the period of their absence after discharge, except the compensation of 13 days' wages and dearness allowance, referred to in clause (c) above.
- (e) That the aforesaid workers on their part shall undertake to carry out their duties under the control of the company's management and act according to the rules and regulations in force in the company's factory.
- (f) The company on its part undertakes not to harass or ill-treat the aforesaid workers for any legitimate trade union activities which do not interfere with the discharge of their duties in the factory.
- (g) That the dispute with regard to the remaining five workers shall be decided by the Adjudicator on the merits of each individual case.

Issue No. II. Should the rates of wages of such of the workers as are not on the minimum fixed by the Labour Office in 1943 be increased and if so to what extent and from what date?

Whereas the recommendations of the Commissioner of Labour which were given effect to from 1st October 1943, affected the basic wages of certain class of coolies (both men and women) and whereas the question of increment to other workers who were not affected thereby has been referred to adjudication and whereas such other workers include male coolies getting As. 7 and above per day in October 1943, and other skilled workers in the various departments of the company, viz. (1) fitter's shop department, (2) salle (finishing) department,

(3) rags department, (4) paper machine department, (5) beater department, (6) kneader department and (7) boiler department, and whereas it is agreed that the dispute as to the rate of wages of male coolie workers getting As. 7 and above in October 1943, only should be settled and adjusted and the dispute as regards other skilled and unskilled workers should be left to the determination of the Adjudicator upon the record before him, it is hereby agreed and settled as follows:

- (a) That all male coolie workers who were getting As. 7 and upwards a day before the recommendations of the Commissioner of Labour were brought into force in October 1943, shall be brought on the time-scale detailed below:
- (b) That all coolies who continue to be fit and efficient, shall get a biennial increment of As. 2 rising to As. 14; (c) that As. 14 shall represent the maximum daily wage given to male coolies, who continue to work for the company as coolies and (d) that the first increment shall be given to the said coolies on 1st January, 1947.

Issue No. III. Should dearness allowance be included in wages for the purpose of calculating the second instalment of bonus paid for the year 1943-44?

It is hereby agreed and settled as follows:

That the company shall include half the rate of dearness allowance, prevalent in March 1944, in wages for the purposes of calculating the second instalment of bonus paid for the year 1943-44, in March 1944, provided that the additional bonus shall be paid to those workers who were in service on the 1st March, 1944.

The company shall pay the said additional amount of bonus along with the wages of August 1945, on or about the 7th September 1945.

(Signed) WADIA GHANDY & Co.,
For and on behalf of Reay Paper
Mills, Mundhwa (Poona).

(Signed) N. V. PHADKE,

(Signed) R. K. KERKAR,
General Secretary.

For and on behalf of Mundhwa
Paper Mills Kamgar Union.
Poona, and on behalf of the
employees.

Before me,
(Signed) K. B. WASSOODEW,
Adjudicator.
4th July 1945.

(Bombay Castle, 27-11-1943, No. 7479/34-1, Government Gazette,
2-12-43, Part I, pp. 2676-2677).

VEGETABLE VITAMIN FOODS CO. LTD., BOMBAY,

AND

ITS EMPLOYEES

Adjudicator.—K. B. Wassoodew, Esq., I.C.S., (Retired).

Counsel Mr. H. M. Seervai with Mr. V. K. Irani, Advocate, instructed by Mr. Gordon-Tydd, Manager, for the Vegetable Vitamin Foods Co., Ltd., Bombay.

Mr. K. T. Sule, Advocate, with Mr. T. A. N. Swamy, General Secretary, Bombay Soap and Oil Workers' Union, for the employees.

A w a r d

The dispute between the Vegetable Vitamin Foods Co., Ltd., Bombay, and its employees, was referred to me for adjudication under Rule 81-A of the Defence of India Rules, by Government Order, Political and Services Department, No. 7479-34, dated the 14th September 1943. The Government Order also directed that I was to exercise such powers as are conferred on and follow such procedure as is prescribed for a Board of Conciliation under the Trade Dispute Act, 1929, and the Bombay Trade Disputes Rules, 1930. The usual notices to the parties requiring them to file their respective statements, were issued on the 17th September 1943. The Bombay Soap and Oil Workers' Union filed a statement on behalf of the employees of the Company on 21st September 1943, and the Company submitted its reply on 23rd September 1943. The hearing of the dispute was fixed on 11th October 1943, in the Industrial Court. The workers' demands referred to me for adjudication by the said Government Order are as follows:

“1. What increases, if any, should be given to employees in wages and/or allowances and/or by way of minimum wage?

2. Whether provision for notice before discharge should be made, and if so what provision?”

2. This Company was established in October 1942. It manufactures what is commonly known as Vegetable Ghee. It is a small concern with about 200 employees, and started as a private limited company. The company has within the last six months

suffered a loss of about Rs. 43,000. Counsel on both sides showed conciliatory attitude and after a good deal of discussion at the first day's hearing (11th October 1943), it appeared that the parties had almost reached a settlement on important points but as they wished to consider the implications of the proposed settlement and the workers' representatives intended to scrutinise the figures in the pay-roll of the Company for the month of September 1943, the proceedings were adjourned to the next day.

3. On the 12th October 1943, the parties placed before me the terms of the proposed settlement with certain modifications. After discussion in Court the final draft of the settlement of the dispute was approved by both parties. The memorandum of settlement was then drawn up and signed in my presence by the parties and their counsel. It is attached herewith. I accordingly make my award in terms thereof.

4. I place on record my appreciation of the good sense exhibited by the parties and their counsel, without whose co-operation the amicable settlement of the dispute would not have been possible.

Bombay, 18th October 1943.

K. B. WASSODEW,
Adjudicator.

In the matter of a trade dispute between the Vegetable Vitamin Foods Co., Ltd., Bombay, and its employees.

MEMORANDUM OF SETTLEMENT

It is hereby agreed between the Vegetable Vitamin Foods Co., Ltd., Bombay, hereinafter referred to as the said Company, and its employees, as follows:

(1) That every employee who has been in the service of the said Company continuously for three months will be treated as a permanent employee of the Company.

(2) That the following Standing Orders will be observed in the cases of discharge or dismissal, as the case may be, of any permanent employee:

(a) The employment of any permanent employee may be terminated by 14 days' notice or by payment of 13 days' wages in lieu of notice. If he draws wages on a piece-rate basis, the 13 days' wages shall be computed on the average daily earnings of such employee for the days actually worked during the previous wage month. The reasons for the termination of service shall be recorded in writing and shall be communicated to the employee at the time of discharge.

(b) Where the employment of any permanent employee is terminated by or on behalf of the Company, the wages earned

by him shall be paid before the expiry of the second working day from the day on which his employment was terminated.

Note.—Clause 2 (b) shall apply to temporary employees also.

(3) The following acts or omissions shall be treated as misconduct:

1. Wilful insubordination or disobedience whether alone or in combination with another or others of any lawful and reasonable order of a superior.

2. Theft, fraud or dishonesty in connection with the Company's business or property.

3. Taking or giving bribes or any illegal gratification whatsoever.

4. Habitual absence without leave or absence without leave for more than ten consecutive days.

5. Habitual late attendance.

6. Engaging in trade within the factory premises.

7. Riotous or disorderly behaviour during working hours on Company's premises or any act subversive of discipline.

8. Habitual negligence or neglect of work.

9. Habitual breach of any rules, or instructions for the maintenance and running of any department, or the maintenance of the cleanliness of any portion of the factory premises or factory compound.

10. Frequent repetition of any act or omission for which a fine may be imposed under the Payment of Wages Act.

(4) (a) Any employee whether permanent or temporary may be suspended by the General Manager for a period not exceeding four days or dismissed without notice or any compensation in lieu of notice if he is found to be guilty of misconduct.

(b) The order of suspension shall be in writing and may take effect immediately on communication thereof to the employee. Such order of suspension shall set out in detail the alleged misconduct and the employee shall be given an opportunity of explaining the circumstances alleged against him. If on inquiry the order of suspension is confirmed or modified, the employee shall be deemed to be absent from duty for the period of suspension and shall not be entitled to any remuneration for such period. If, however, the order of suspension is rescinded, the employee shall be deemed to be on duty during the full period of suspension and shall be entitled to the same wages as he would have received if he had not been suspended.

(c) No order of dismissal shall be made unless the employee concerned is informed in writing of the alleged misconduct and is given an opportunity to explain the circumstances alleged against him.

(d) In awarding punishment under the Standing Order the

Manager shall take into account the gravity of the misconduct, the previous record, if any, of the employee and any other extenuating or aggravating circumstances that may exist.

(e) A copy of the order made by the Manager shall be supplied to the employee concerned.

(5) (a) The Company may, at any time or times, in the event of a fire, catastrophe, breakdown of machinery, or stoppage of the power supply, epidemic, civil commotion or other cause beyond the control of the Company, stop any machine or machines or department or departments, wholly or partially for any period or periods, without notice and without compensation in lieu of notice.

(b) In the event of a stoppage of any machine or department under this Order during working hours, the employees affected shall be notified by notices put upon notice boards in the department concerned and at the time-keeper's office, as soon as practicable, when work will be resumed and whether they are to remain or leave the factory. The period of detention in the factory shall not ordinarily exceed one hour after the commencement of the stoppage. If the period of detention does not exceed one hour, employees so detained shall not be paid for the period of detention. If the period of detention in the factory exceeds one hour, employees so detained shall be entitled to receive wages for the whole of the time during which they are detained in the factory as a result of the stoppage. In the case of pieceworkers, the average daily earnings for the previous month shall be taken to be the daily wages.

(6) Any employee played off under clause 5 shall not be considered as dismissed from service, but as temporarily unemployed, and shall not be entitled to wages during such unemployment except to the extent mentioned in clause 5. Whenever practicable a reasonable notice shall be given of resumption of normal work and all employees played off under clause 5, who present themselves for work, when the normal working is resumed, shall have prior right of reinstatement.

(7) Dearness allowance will be paid to all its employees by the said Company at the rate of 9/20th of the scale adopted by the Bombay Millowners' Association, with retrospective effect from 4th July 1943. It is agreed that the rate of dearness allowance from 4th July 1943 to the end of October 1943, will be nine annas per day and that sum will be added to the daily wage computed according to clause 9 (a) below. The sliding scale agreed to will operate from 1st of November 1943.

(8) Re. 1 per day will be the minimum wage payable by the Company to all its daily-rated employees.

(9) (a) In the case of daily-rated employees the rate of daily wage shall be computed as follows:

The figures representing payment of wage and dearness allowance shown against the name of each daily-rated employee in the said Company's pay-sheets for the month of September 1943, shall be totalled up. From that sum annas 4 will be deducted and the remaining sum shall represent the daily wage payable to such employee.

(b) In the case of monthly-rated employees whose wages, exclusive of dearness allowance are less than Rs. 26 a month, they shall be treated as daily-rated employees and paid at the rate of Re. 1 per day with effect from 1st June 1943, and the agreed dearness allowance.

(10) The arrears of dearness allowance and wages in accordance with this agreement will be paid by the said Company to all its employees on or before the 25th October 1943.

GODREJ P. JOSHI,
A. G. GORDEN TYDD,
H. M. SEERVAL, Counsel,
V. K. IRANI, Advocate,
for and on behalf of the Vegetable
Vitamin Foods Co., Ltd.,
Bombay.

T. A. N. SWAMY,
K. T. SULE,
for and on behalf of the Bombay
Soap and Oil Workers' Union
(Red Flag), representing the
employees of the Vegetable
Vitamin Foods Co., Ltd.

Bombay, 12th October 1943.

Before me,
K. B. WASSODEW,
Adjudicator.

(Bombay Castle, 27-12-1943. No. 7902/34-1. Government Gazette, 30-12-43, Part 1. pp. 2863 to 2867).

MESSRS. JAMES CONNELL, LTD., BOMBAY,

AND

ITS EMPLOYEES

Adjudicator:—A. Latifi, Esq., C.I.E., O.B.E., M.A., LL.M. (Cantab), LL.D. (Dub.), Bar-at-Law, I.C.S., (Retd).

Counsel Mr. Y. B. Rege, with Mr. G. Godambe, Solicitor, instructed by Mr. James Connell, Manager, for Messrs. James Connell, Ltd.

Mr. K. T. Sule, Advocate, with Mr. T. Godiwalla, Advocate, and Mr. V. Chaudhuri, Secretary, James Connell Workers' Factory Committee, for the employees.

A w a r d

1. This trade dispute between Messrs. James Connell Ltd., Bombay, and its employees was referred to me for adjudication by Government Order (Political and Services Department), No. 7302/34 of the 1st July 1943, under rule 81-A of the Defence of India Rules, read with Government of India (Department of Labour) Notification No. L. 3005 of the 20th May 1942. The Government Order directed that I was to exercise such powers as are conferred on and follow such procedure as is prescribed for a Board of Conciliation under the Trade Disputes Act, 1929, and the Bombay Trade Disputes Rules, 1930.

The issues referred to me are as under:

(1) Whether the following demands should be granted wholly or in part—

- (i) Dearness allowance to be 0-8-0 per day to all workers.
- (ii) Wages to be increased by at least 0-2-0 per day.
- (iii) Bonus to be given after every one year (one month's bonus.)
- (iv) Iron department workers to receive Rs. 2 per hundred clothes.

(2) Whether the discharge of Mohamed Fakir and Abdul Rahaman Fakir and other workers is justified? If not, what should be done by the Company in the way of reinstatement or compensation?

(3) Whether it is necessary to take any measures to prevent

the Company from discharging without justification, and if so what measures?

The history of this dispute, as also the proceedings and steps taken for ascertaining the facts and circumstances for bringing about a settlement was recorded in Annex I which together with Annex II forms an integral part of this Award.

2. The business of the Employers, James Connell Ltd., comprises separate departments which work independently of each other but keep a joint account. These departments are the Power Laundry, the Victoria Aerated Water Factory, the Dairy and the Bakery. There was an ice-cream factory also which has been closed down. James Connell Ltd., have recently started a large business as dubashes (or providores), the accounts of which are also kept joint with those of other concerns. The Boarding House known as Victoria Annexe is quite independent of all these and does not come into the present adjudication.

3. It appears that the workers in the Dairy and the Bakery numbering sixty-seven in all are given boardwages, i.e., in addition to their pay they get free food and lodging. These workers all filed an application on 13th November 1943, stating that they dissociated themselves from the demands made by the Union. They agree, however, to be bound by the Standing Orders as framed by settlement with the employers. I believe that this application is bona fide and I accept it.

4. The parties have arrived at a settlement as recorded in Annex II on demand No 3. I will now proceed to consider the other demands.

5. *Demand No. 1.—*

- (i) Dearness allowance to be 0-8-0 per day to all workers.
- (ii) Wages to be increased by at least 0-2-0 per day.
- (iii) Bonus to be given after every one year (one month's bonus).
- (iv) Iron department workers to receive Rs. 2 per hundred clothes.

It will be convenient to take items Nos. (ii) and (iv) first and that only in respect of the Aerated Water Factory and the Laundry Department. The Dairy and the Bakery, as mentioned above, are not concerned.

The demand is based, firstly, on the ground that the work is very heavy in comparison with the wages paid, and secondly, that the business of the Company has rapidly developed and is bringing in large profits. In reply the Company point out that the nature of the work in neither of these departments is heavy, and further that so far from making large profits, they are losing money over these two departments. The Company also say that

an increase of four annas has been given to the workers as a whole between 1938 and 1943.

From the statement (Ex. C), Mr. Sule calculates that the average daily wage of an operative in August 1938 was Re. 1-2-0 and in August 1943 it was Re. 1-4-0. He denies, therefore, that the employees have got an increase of four annas as claimed by the employers. It was only two annas. Mr. Sule has pressed that the wages paid are lower than those of similar skilled workers elsewhere. He states, however, that if a minimum wage of Re. 1 is guaranteed to every unskilled adult worker, he is agreeable to a minimum general increase of one anna only in the daily wage. This particular demand would mean a small addition in the wage of 16 workers only and would amount altogether to Rs. 65 per mensem. The principle, however, is important.

6. I have gone through the accounts of James Connell Ltd., and am satisfied that the Laundry and Aerated Water factory are not in themselves very paying. So far as these particular items of demand are concerned, I feel that the employers are justified in not increasing the wage generally as demanded, if for no other reason than because "the distribution of increased profits among workers is better achieved by the giving of an annual bonus than by a further increase in wages. Wages must be fixed on the basis of normal conditions."* I have also gone over the Aerated Water Factory and the Power Laundry and I do not consider that the work is "heavy". In fact the work in the laundry is such that in England and other countries it is reserved for women. The only point where I think the workers are on firm ground is that a concern of this standing should not pay to an unskilled adult male worker less than one rupee, the sum fixed in the award in the Lever Brothers Dispute.† Similarly no addition is necessary in the rate of the Iron Department workers whose average earning is Rs. 1-2-10 for daily work of 8 hours.

7. As regards item (i), the employers agree that in view of the rise in the cost of living some sort of dearness allowance is called for. But they point to the increase in their working costs as also to their difficulties in obtaining the raw materials of their industry. They say that these departments do not pay at all the apparent prosperity of the Company being due to the profits of the newly started dubash (or providore) business. The employers offered, however, to give dearness allowance at a flat rate of rupees eight per mensem to their workers, which would amount to an additional expenditure of Rs. 20,000 per annum on a total wage-bill of Rs. 72,000. A dearness allowance at eight annas a day

*The General Motors Dispute, *Bombay Government Gazette*, Part I. dated 28th May 1942, page 1900.

†See *Labour Gazette*, April 1942, page 846.

would mean an additional expenditure of Rs. 33,000, i.e., Rs. 13,000 more per annum than what they have offered to pay. If this is granted they say that these departments will have to be closed down. I have already stated above that the Laundry and the Aerated Water Departments are not paying concerns at present. But I do not think that the management are justified in lumping all the departments together and regarding their profits and losses as one and indivisible when it comes to a question of paying Income-tax or Excess Profits Tax and separate only when it is a question of paying a living wage to their employees. In my view the dearness allowance claimed at the rate of eight annas per day, which means about Rs. 13 per month of 26 days, is reasonable. On principle, however, I do not approve of dearness allowance at a flat rate. Rs. 13 per month for the month of September 1943 is almost exactly two-fifths of the dearness allowance paid by the Millowners' Association, Bombay.

8. *Item (iii).*—The employees demand a bonus of one month's total earnings on the ground of the prosperous working of the Company. In their written statement the Company have offered to give this to all operatives with two years' service at the end of December 1943.

In view of the discussions in these proceedings the most equitable arrangement appears to be that the bonus should be paid, calculated at one-twelfth of the total earnings including overtime during the year ending 31st March 1943, to such operatives as have worked at least 120 days during that year. I can of course say nothing regarding bonuses in the years to come.

9. *Demand No. 2.*—Whether the discharges of Mohamed Fakir and Abdul Rahaman Fakir and other workers are justified? If not, what should be done by the Company in the way of reinstatement or compensation.

The parties agreed that I should consider only the cases of Mohamed Fakir and Abdul Rahaman Fakir who ceased to be in service before 1st July 1943, the date of the Order. The cases of all the others are to be dealt with under the Standing Orders in Annex II.

Mohamed Fakir's case is that he was discharged for the sole reason that he was a member of the Union, i.e., he has been victimised. Mohamed Fakir gave evidence before me as follows: He served the Company for nearly seven years as boiler-attendant. On 29th May 1943, when the factory closed at 5-30 p.m. as usual, he with all the workers were called by the Connell Brothers and told that this was a private family business where no union could be tolerated. Whoever wished to join the union must go. Mohamed Fakir as being a member of the Factory Committee, replied on behalf of all the workers that as they could not get anything out of the employers they had perforce joined the union. Mohamed

Fakir then asked the Connell Brothers whether any boiler was to be lighted on the following day, i.e., Sunday, 30th May, and on their agreeing, he lighted the small boiler of the Dairy at 7-30 a.m. for the milk. On the dairy operations being finished he left the factory at 5-30 p.m. as usual and when he left, the pressure was 20 lbs. as usual. He did nothing further on that day. There was a lock-out on the factory on Monday, the 31st May: but on Tuesday the 1st of June he fired the big boiler at 8-30 a.m. and after working for the whole day drew fire at 5-30 p.m. and went home at 6 p.m. When he left there was a pressure of 25 lbs. in the boiler and there was no live fire in it. On the following day, Wednesday, the 2nd June, Mohamed Fakir started work at 5 a.m. as usual. At about 9-30 a.m. Mr. William Connell accompanied by Mr. Glen, Manager, came up and told Mohamed Fakir that since he was a member of the union he was discharged.

10. The employers' case as stated by Mr. J. D. S. Glen, their Engineer, is that on Sunday, the 30th May, he, Mr. Glen, went to the dairy boiler at about 5-30 p.m. and found that Mohamed Fakir had left, without giving the usual closing service to the boiler. Mr. Glen called in Lieutenant Commander Flemming Robb, an Engineer of the Royal Indian Naval Reserve, who was living close by. Lieutenant Commander Robb states that on examining the boiler at about 6 p.m. he found that it was under steam with a pressure of 30 lbs. per square inch, had half an inch of water in the glass, had its stop-valve open, with a live fire in the grate. Lieutenant Comander Robb gave a certificate to this effect (Ex. J). The employers reported this matter to the Police as well as to the Chief Inspector of Boilers. On Monday there was the lock-out. On Tuesday morning Mr. Glen under the employers' orders warned Mohamed Fakir to see that the fire was properly drawn from the big boiler, and that everything was in order before Mohamed Fakir left the factory in the evening. Mr. Glen found, however, that Mohamed Fakir had left the boiler at 5-30 p.m. with the pressure of 20 to 30 lbs. and with a live fire in the grate. This was also reported to the Chief Inspector of Boilers. On the following morning, Wednesday, 2nd June, Mr. William Connell came up to Mohamed Fakir and asked him why he had disobeyed orders on the preceding evening. Mohamed Fakir replied that he was not going to obey any orders of that sort and if the employers were not satisfied with his work he would go. On this Mr. Connell told him to take his salary and go, which he did. Lieutenant Commander Robb and Mr. William Connell have supported this statement.

11. I am satisfied that the employers' version of the incident is in the main correct. I do not believe that they dismissed Mohamed Fakir because of his connection with the union or his imagined importance among his fellow-workers. Mohamed Fakir

is a decrepit old man somewhat lacking in intelligence and seems to have acted on a wrong notion of his rights and duties. It was wrong of him to have neglected the boilers and the employers were justified in dismissing him. There was no victimisation.

12. As for Abdul Rahaman Fakir, brother of the foregoing, he had been working in this factory as a fitter for some two and a half years. He gave evidence to the effect that on Wednesday, the 2nd June 1943, at 10 o'clock he was called by Mr. Connell who said to him "You also belong to the Union. You are also dismissed."

The employers' case as given in their written statement is that Abdul Rahaman Fakir was confirmed in his post as a fitter some two years ago. His services were not really necessary but he was kept entirely to act as a relief to Mohamed Fakir. When Mohamed Fakir's services were terminated Mr. Connell directed Abdul Rahaman to take charge of the boilers. This he refused to do and said he would prefer to leave. He was, therefore, discharged. The employers' case is not altogether borne out by Mr. Glen's evidence before me. Mr. Glen says that Abdul Rahaman is slow, but he is not incompetent as a fitter. It is correct that whenever Mohamed Fakir went on leave, Abdul Rahaman acted as his relief, but I am not prepared to accept that there was any understanding that Abdul Rahaman was bound to take up the job of boiler-attendant otherwise than as a relief of Mohamed Fakir when Mohamed Fakir went on leave. Abdul Rahaman Fakir was not, therefore, bound to take up the job of boiler-attendant when it permanently fell vacant on Mohamed Fakir's discharge and he was within his rights when he refused to do so. His discharge was not, therefore, justified and he is, I think, entitled to rupees sixty in the way of compensation.

13. My decision therefore is—

(a) that the Company should not, as from 1st January 1944, pay less than one rupee per day to any adult male worker (other than piece-workers) in their Aerated Water and Laundry Departments;

(b) that the Company should, with retrospective effect from 1st June 1943, pay a dearness allowance calculated at two-fifths of the sliding scale of the Millowners' Association, Bombay, to every operative of the Laundry and the Aerated Water Departments. The accounts to be made up monthly, pies being rounded off in the usual way. The arrears of dearness allowance should be paid within four weeks of the communication of this decision to the parties;

(c) that the Company should pay a bonus calculated at one-twelfth of the total earnings including overtime to every operative of the Laundry and the Aerated Water Departments who has worked at least 120 days during the year ended 31st March 1943.

The bonus should be paid within six weeks of the communication of this decision to the parties;

(d) that the Company should forthwith pay to Abdul Rahman Fakir Rupees sixty in the way of compensation. He should further be paid such bonus as he may be entitled to under sub-paragraph (c) preceding;

(e) that the discharge of Mohamed Fakir was justified. He should, however, be paid such bonus as he may be entitled to under sub-paragraph (c) preceding;

(f) that the parties do comply with the provisions of the Standing Orders mentioned in Annex II.

Bombay, 4th day of December 1943.

A. LATIFI,
Adjudicator.

ANNEX I

This dispute may be said to have begun formally on the 19th of May 1943 when the employees of James Connell Ltd., submitted certain demands which the management did not concede. On this the employees formed a committee and gave a strike notice on 31st May 1943 under rule 81-A of the Defence of India Rules. Negotiations were then carried on through the Commissioner of Labour, but as these gave no results the Order mentioned in the first paragraph of the award followed. Notices were issued on 5th July 1943 to the parties for their statements. The statement of the employees was received on 22nd July 1943, and that of Messrs. James Connell, Ltd., on 13th August 1943. There was a preliminary hearing in the Industrial Court on 28th August 1943, when, after some discussion, the proceedings were adjourned to 23rd September 1943, so that the detailed statements regarding wages, rates, promotions, etc., of each individual employee, desired by Mr. V. Chaudhuri from the employers could be filed. On that date the hearing was adjourned to 27th September 1943 and again to 2nd October 1943 to enable the parties to effect a settlement in view of a tentative understanding on some of the demands. I adjourned the case further to 6th October 1943, when after a short hearing there was another adjournment to 4th November 1943, partly because of the High Court Vacation and partly to give further time to the counsel to settle the other demands. After hearing the parties on the 4th and 5th November I visited on 6th November the work-premises of the employers in company with Mr. W. H. Phillips, Chief Inspector of Factories, Bombay, to whom my thanks are due. The proceedings were then continued on 8th, 10th, 12th, 13th, 17th, 19th, 23rd and 24th November and concluded on 1st December when the parties signed in my presence their settlement on issue No. 3 (Annex II). It is unfortunate that small differences have kept the parties from reaching a settlement on the other issues as well. Before the hearing of the 12th

November, I discussed in chambers the accounts and balance sheets of the employers with their auditor Mr. P. B. Surtee.

ANNEX II

MEMORANDUM OF SETTLEMENT

DEMAND NO. 3.	TERMS OF SETTLEMENT
Whether it is necessary to take measures to prevent the Company from discharging without justification and if so what measures?	By common consent the parties have framed the Standing Orders reproduced in the schedule below. This demand is, therefore, settled.

SCHEDULE

Standing Orders under which all Operatives on daily wages are employed in all Departments in James Connell, Ltd.

1. These orders shall be deemed to have come into force on and from the 2nd of July 1943.
2. In these orders, unless there is anything repugnant in the subject or context:
 - (a) "Operatives" means all work people employed in the factory (male or female work people) or the premises, whose names and ticket numbers are included in the Company's Musters, and includes Overseers, Jobbers, Mukadams, Mistries, Watch and Ward Staff, Cycle and Motor Vehicle Staff and Cartmen.
 - (b) The "Employers" means James Connell, Ltd.
 - (c) The masculine includes the feminine.
3. Operatives shall be classed as (1) Permanent and (2) Temporary operatives. A permanent operative is one whose name has been entered in the Muster Roll or has completed a period of three months in the service of the Company or who has been given a permanent ticket. A temporary operative is one who is engaged for work which is of an essentially temporary character or one who is employed for the time being in place of a permanent operative who is temporarily absent.
4. Every operative permanent or temporary without exception shall be provided with a departmental card showing his number, daily or monthly wage as the case may be, overtime hours and time or daily attendance, and on attendance each day shall deliver up the card at the place provided. The card shall be returned to him on his leaving the premises for the day.

5. The periods and the hours of work for all classes of operatives shall be posted up on a Notice Board at the entrance of the Factory.

6. Notices specifying (a) the days observed by the factory as holidays and (b) pay days, shall be posted as required by the Factories Act and the Payment of Wages Act respectively.

7. Notices specifying the wages payable to all classes of operatives and for all classes of work shall be displayed in a conspicuous position in the department in which the operatives concerned are actually working.

8. Any wages due to an operative but not paid on the usual pay day on account of their being unclaimed shall be paid by the Company on such unclaimed wages pay day in each week as may be notified to the workers and following the date on which a substantiated claim was presented by the operative or on his behalf by his legal representative provided that such claim is submitted within three years from the date on which wages become due to the operative.

9. All operatives shall be at work in the factory at the time fixed and notified to them.

10. Any operative late for work in any shift to which he has been assigned will be timed in at the quarter hour.

Any workman more than a quarter of an hour late will not be allowed to work until he has reported to the Employers or Departmental Head, if any, and obtained their or his special permission to work that day.

If the operative is absent from the Employers' premises with the permission of the Employers or the Department Head, his wages for the period of absence will be deducted. If, however, he is so absent from the Employers' premises during working hours without permission, he will be treated as absent for the whole day, in case his absence commences before the recess period and for half a day in case his absence commences after the recess period.

The deductions from wages to be made for the periods of absence under this Standing Order, shall be made in accordance with the provisions of the Payment of Wages Act.

11. Subject to the exigencies of the Company's work, the Company's employees will be granted leave as follows:

(a) All permanent daily-rated employees of the Company shall be entitled to 30 days' leave without pay in any one calendar year. This leave cannot be accumulated. In the event of such leave being taken as sick leave, such sick leave will be subject to the production of a medical certificate, but the

Employers may within their discretion sanction such leave if they are satisfied that an employee's absence was due to unavoidable causes.

(b) All applications for leave must be made in the forms provided for this purpose and which may be obtained from the Employers' office. An application for leave should be submitted to the Employers direct at least three days previous to the date from which the leave is asked for.

(c) Application for extension of any kind of leave should be made to the Employers and not to any Officer by name and should ordinarily be received by the Employers at least four days prior to the expiry of the leave already granted.

(d) If an operative remains absent beyond the period of leave originally granted or subsequently extended, he shall lose his lien on his appointment unless (1) he returns within eight days of the expiry of his leave and (2) gives an explanation to the satisfaction of the Employers granting leave of his inability to return on the expiry of his leave.

(e) No leave, excepting sick leave, will be given retrospectively to cover absence without leave.

(f) No compensation will be paid under any circumstances whatsoever on account of leave not taken, and an operative who leaves the Company's employment or whose services are terminated in accordance with the provisions of the Standing Orders will receive no financial compensation in respect of any leave not taken at the time of his leaving the Company's service or at the time of the termination of his service.

12. The number of holidays to be granted to the operatives and the days which shall be observed as holidays by the Company shall be regulated in accordance with the Factories Act.

13. The Employers may, at any time or times, in the event of a fire, catastrophe, breakdown of machinery, or stoppage of the power supply, epidemic, civil commotion or other cause beyond the control of the Employers, stop any machine or machines or department or departments, wholly or partially for any period or periods, without notice and without compensation in lieu of notice. In the event of a stoppage of any machine or department under this Order during working hours, the operatives affected shall be notified by notices put upon notice boards of the Factory as soon as practicable, when work will be resumed and whether they are to remain or leave the Factory. The period of detention in the Factory shall not ordinarily exceed one hour, after the commencement of the stoppage. If the period of detention does not exceed one hour, operatives so detained shall not be paid for the period of detention. If the period of detention in the Factory exceeds one hour, operatives so detained shall be entitled to receive wages for the whole of the time during which they

are detained in the Factory as a result of the stoppage. In the case of pieceworkers, the average daily earnings for the previous month shall be taken to be the daily wages.

14. Any operative played off under Order 13 shall not be considered as dismissed from service, but as temporarily unemployed, and shall not be entitled to wages during such unemployment except to the extent mentioned in Order 13. Whenever practicable a reasonable notice shall be given of resumption of normal work and all operatives played off under Order 13 who present themselves for work, when the normal work is resumed shall have prior right of reinstatement.

15. The Employers may, in the event of a strike affecting either wholly or partially, any one or more department or departments of the Factory close down either wholly or partially such department or departments and any other department or departments affected by such closing down, and for any period or periods. The fact of such closure shall be notified by notices put upon the notice board in the Factory as soon as practicable. The operatives concerned shall also be notified by a general notice prior to the resumption of work, as to when work will be resumed.

16. (a) The employment of any permanent operative may be terminated by fourteen days' notice or by payment of thirteen days' wages in lieu of notice. If he draws wages on a piece-rate basis, the thirteen days' wages shall be computed on the average daily earnings, of such operative for the days actually worked during the previous wage period. The reason for the termination of service shall be recorded in writing and shall be communicated to the operative.

(b) Where the employment for any reason is terminated by or on behalf of the Employers, the wages earned by him shall be paid before the expiry of the second working day from the day on which his employment was terminated.

17. Any permanent operative desirous of leaving the Employers' service shall give fourteen days' notice to the Employers. The wages due to such an operative must, if possible, be paid on the day the notice expires and in any case within two days after the expiry of the notice.

If any permanent operative leaves service without notice he shall be liable to be sued for damages.

18. The following acts or omissions shall be treated as misconduct:-

(a) Wilful insubordination or disobedience whether alone or in combination with another or others of any lawful and reasonable order of a superior.

(b) Theft, fraud or dishonesty in connection with the Company's business or property.

(c) Taking or giving bribes or any illegal gratification whatsoever.

(d) Habitual absence without leave or absence without leave for more than ten consecutive days.

(e) Habitual late attendance.

(f) Habitual breach of any standing orders.

(g) Collection of any money within the Factory premises for purposes not sanctioned by the Employers.

(h) Engaging in trade within the Employers' premises.

(i) Riotous or disorderly behaviour during working hours on Employers' premises.

(j) Habitual negligence or neglect of work.

(k) Habitual breach of any rules, or instructions for the maintenance and running of any department, or the maintenance of the cleanliness of any portion of the Employers' premises or compound.

(l) Frequent repetition of any act of omission for which a fine may be imposed under the Payment of Wages Act.

19. (i) An operative may be suspended for a period not exceeding four days or dismissed without notice or any compensation in lieu of notice if he is found to be guilty of misconduct.

The order of suspension shall be in writing and may take effect immediately on communication thereof to the operative. Such order shall set out in detail the alleged misconduct and the operative shall be given an opportunity of explaining the circumstances alleged against him. If on enquiry the order is confirmed or modified, the operative shall be deemed to be absent from duty for the period of suspension and shall not be entitled to any remuneration for such period. If, however, the order is rescinded, the operative shall be deemed to be on duty during the full period of suspension and shall be entitled to the same wages as he would have received if he had not been suspended.

No order for dismissal shall be made unless the operative concerned is informed in writing of the alleged misconduct and is given an opportunity to explain the circumstances alleged against him.

In awarding punishment under this Standing Order the Employers shall take into account the gravity of the misconduct, the previous record, if any, of the operative and any other extenuating or aggravating circumstances that may exist.

(ii) A copy of the order made by the Employers shall be supplied to the operative concerned.

20. All complaints arising out of his employment including those relating to unfair treatment or wrongful exaction on the part of the Employers or their Agent or servant, shall be submitted

by an operative or on his behalf by a Deputation of the operatives to the Employers. The Employers shall personally investigate the complaint at such times or places as they may fix and the aggrieved operative shall have the right to be present at such investigation. Where the complaint alleges unfair treatment or wrongful exaction on the part of the Employers or their agent or servant, a copy of the order finally made shall be supplied to the complainant. In other cases the decision of the Employers, and the action, if any, taken by them shall be intimated to the complainant:

Provided that complaints relating to:

(1) Assault or abuse by any person holding a Supervisory position, or

(2) Refusal of an application for an urgent leave, shall be enquired into without avoidable delay by the Employers.

21. When any operative is summarily dismissed, suspended or discharged, or leaves the services of the Employers, or is granted leave of absence, he shall except in cases of general retrenchment, closing down of departments, strike or lock-out, be given a written order in the form prescribed by the Employers.

Every permanent operative shall be entitled to a service certificate at the time of leaving service, dismissal or discharge.

22. A copy of these orders in English and also in the principal regional language of the local area in which the factory is situated shall be posted in the Employers' office and in all departments and in such other places in the factory premises as the Employers may decide and shall be kept in a legible condition.

Provided that in establishments where more than 20 per cent., of the total number of operatives employed speak a language other than the principal regional language, such Standing Orders shall be printed also in that language.

23. (a) All disputes between the Employers and their operatives arising out of these Standing Orders in so far as they relate to the question of wages shall be referred to the authority under the Payment of Wages Act or under any other Act of Legislature made in modification or substitution thereof.

(b) All other questions relating to the observance or breach of the Standing Orders either on the part of the Employers or their operatives shall be referred to the Commissioner of Labour whose decision or award thereon shall be binding upon both the Employers and the operatives.

W. B. CONNELL,
for and on behalf of James
Connell Ltd.

V. CHAUDHARI,
for and on behalf of James
Connell (Workers' Factory
Committee.

Before me,
A. LATIFI,
Adjudicator.

Bombay, 1st December 1943.

(Bombay Castle, 22-8-1945, No. 8801/34-I. Government Gazette, 3-9-45, Part I. pp. 2261 to 2266).

BRITANNIA BISCUIT CO. LTD., BOMBAY.

AND

ITS EMPLOYEES

Adjudicator:—K. B. Wassoodew, Esq., (Retired Judge, High Court, Bombay).

Counsel Mr. C. K. Daphtary, Advocate General, with Mr. N. K. Petigara of Messrs. Mulla & Mulla, Solicitors, instructed by Mr. J. H. Kirk, Works Manager, for the Company.

Mr. K. T. Sule, Advocate, with Mr. M. V. Gopalan, General Secretary, and Mr. Vithal Chaudhari, Member, Managing Committee, Biscuit and Bakery Workers' Union, Bombay, for the employees.

A w a r d

By Government Order, Political and Services Department, No. 8810/34, dated the 28th May 1945, issued under sub-rule (1) of rule 81-A of the Defence of India Rules, read with Government of India, Department of Labour, Notification No. L. 3005, dated the 20th May 1942. I was appointed to adjudicate the dispute between the Britannia Biscuit Co. Ltd., Bombay (hereinafter referred to as "the Company") and its employees. The said Order also directed that I was to exercise such powers as are conferred on, and follow such procedure as is prescribed for, a Board of Conciliation under the Trade Disputes Act, 1929, and the Bombay Trade Disputes Rules, 1930. The reference for adjudication was necessitated by reason of the failure of the conciliation proceedings and the cessation of work between 14th and 17th May 1945, following upon the 14 days' notice of strike dated 25th April 1945, given by the Biscuit and Bakery Workers' Union, Bombay, on behalf of the employees.

2. The demands of the employees have been crystallized in the following issues referred to me for adjudication:

(1) Should Bhika Bhau be reinstated and if so on what terms and conditions?

(2) Do the existing rates of wages in the oven and other departments require any revision and if so how?

(3) Does the number of trollies in the packing department require to be increased and if so by how many? and What should be the number of workers employed to operate them?

(4) Does the Provident Fund Scheme in force in the Company require any modification and if so in what respect?

(5) Should the Provident Fund Scheme be extended to all workers and if so on what terms and conditions?

(6) Should the night shift workers, particularly of the packing department, be given uniforms and if so how many?

(7) Do the leave rules require any revision and if so in what respect?

3. The usual notices to the parties to file their respective written statements were issued on 8th June 1945. The Biscuit and Bakery Workers' Union, Bombay, filed its claim statement on behalf of the employees of the Company on 25th June 1945. About 10 workers describing themselves as the duly elected representatives of the workers of the Britannia Biscuit Co. Ltd., filed a separate petition containing a statement of their demands on 23rd June 1945. But no one appeared at the hearing on their behalf to support their demands, some of which, it may be noted, are beyond the terms of reference by Government particularly the demands relating to dearness allowance and the supply of cards to workers containing details of pay and attendance. The petition so far as it relates to such demands could not, therefore, be considered. The Company filed its written reply on 19th July 1945. The hearing of the dispute commenced on 30th July 1945. At the request of the parties on 31st July 1945, the working of the factory was seen in company of the Secretary, Industrial Court, Counsel Mr. C. K. Daphtary, Mr. N. K. Petigara, Solicitor, Mr. K. T. Sule, Advocate, and Mr. Gopalan, General Secretary of the Union. Mr. J. H. Kirk, the Works Manager, took us round the factory. The hearing continued on 31st July, 1st, 2nd, 3rd and 6th August 1945. On the last day the parties after considerable discussion of the terms proposed at the previous days' hearing, finally approved and signed the Memorandum of Settlement (Annexure "A") in my presence relating to such of the matters in dispute as could amicably be settled. I am glad to say that out of the seven demands four, namely, those referred to in issues Nos. 2, 3, 5 and 6 above, form the subject matter of that settlement. The remaining matters in dispute have been dealt with by me in this award.

4. The Britannia Biscuit Co. Ltd., which has its registered office at Calcutta owns two factories, one in Calcutta and the other in Bombay. The one with which I am at present concerned is the factory at Reay Road, Bombay. It was erected in its present position in 1938. The plant consists of four modern complete producing units, each consisting of a mixer and kneader, a rolling

and cutting machine and an electric oven. The average daily attendance of the employees of the company was about 500 prior to 30th June 1945, when, owing to the reduction in Government orders, 198 employees were discharged. The Company employs large number of female workers whose strength prior to retrenchment was about 190. They are mostly employed along with adolescent labour, in the packing department. The adult males are employed in the mixing, machine and oven departments and for lifting trays and packing cases and removing them in trollies. The factory appeared spick and span when we visited it. The workers wore uniforms provided by the Company and the packers looked particularly clean in their white aprons and head gears. Besides the canteen for girls, provision is made for lockers where they could keep their belongings, whilst on duty. There is also a decent dispensary and free medical treatment is provided for the workers. The Company's plans for extension of some of the benefits to adult male workers were impeded on account of the war. Since the beginning of the war in the East, the Company has been working exclusively on Government work and no supplies of biscuits, either of the ordinary or fancy type, have been available to the public. The entire factory is under the control of Mr. J. H. Kirk who took charge of his duties on 1st April 1945, just after the differences between the Company and its employees became acute. He has one European Assistant Manager under him. The rest of the office staff are Indians who receive a monthly salary.

5. For the purpose of wage, the classification of the daily rated workers in this Company is based on the jobs on which the workers are employed. And these jobs are only two in number, (i) female or adolescent jobs and (ii) adult jobs. All the workers in each job are treated alike for the purpose of wage. Females and adolescents who alone are employed in the former, receive a starting daily wage of annas 12 with a rise of annas 2 after the first year and again another annas 2 at the end of the third year of service. The adults receive a flat rate of Re. 1-2-0 per day. The dearness allowance is received by all in addition to the wage at four-fifths of the rate given to the textile workers. Special personal pay is given to selected workers as a token of appreciation of good service. The monthly rated staff is not concerned in this dispute which is confined to the employees on daily wage more particularly those employed in the process of manufacture.

5-A. In order to appreciate the nature of the dispute it is important to note the division of work in the factory. There are three process departments (1) the mixing department, where the workers who are adults are charged with the duty of mixing the biscuit ingredients under the direction of their foreman according to the recipe previously approved and the preparation of the dough, (2) the manufacturing department where the dough is taken and

placed in the machine for being rolled and cut and deposited in trays. These trays are removed and placed in the oven for the final process of baking, and (3) the packing department manned by females and adolescent males. It may be noted that the work at the oven is not congenial and the management on that account resorts to shifting of workers in different processes at its discretion and according to the exigencies of the factory. Each of these three departments has a foreman at the head who is on the monthly rated staff. There is also the maintenance department in which skilled mechanics are engaged on monthly pay.

6. The dispute involved in the first issue arose upon the summary dismissal of one Bhika Bhau, an employee engaged in the machine department, for refusal to work at the oven when called upon to do so on 17th March 1945. That action has been characterised by the workers' Union as unmerited and vindictive against an old and tried employee of the Company. Bhika Bhau began work in the Factory in 1923 as a packer-boy. After some experience he was transferred to the machine department where he worked in various processes of manufacture. In 1930, he fell ill and went to his native place. He returned to duty after four years' absence, and resumed his place in the machine department on a daily wage of Re. 1-2-0. At the time of the discharge he was receiving a daily wage of Re. 1-6-0. At that time he was also officiating as the President of the workers' Union. He has been its Vice-President when it was first organised. The short reason for the discharge, as stated in the office copy of the discharge notice (Ex. 9), is "refusing to obey orders". In the copy furnished to Bhika Babu (Ex. 4) that reason has been rubbed out. In pursuance of the Standing Orders of the Company, Bhika was given 13 days' wages in lieu of notice. According to Bhika's story which is adopted by the workers' Union for supporting their first demand for his reinstatement, the true reason for his discharge was his active and constant agitation for the betterment of the conditions of labour carried on in his capacity as the President of the workers' Union, which was distasteful to the management. The latter have denied that suggestion and have alleged that Bhika's insubordination and defiant refusal to work at the oven, without assigning any reason warranted his summary discharge as a disciplinary measure. I have before me considerable body of evidence of this point consisting of Bhika's own narrative on the one hand and that of the Assistant Factory Manager, the time-keeper and the mechanic attendant at the machine on the other. The suggestion underlying Bhika's story of victimization is not corroborated by the first letter (Ex. 8) written by the workers' Union to the Company's management complaining of the discharge of Bhika Bhau. The letter does not even indirectly refer to any ulterior motive for the discharge. On the contrary, it supports the reason given by the Company for their action. Mr. Sule has

stated that the Union had complained (Ex. 10) of victimization to the Commissioner of Labour, although it omitted to charge the Company directly of that treatment of its employee. The letter (Ex. 8) to the Company runs as follows:

* * * * *

Although you have not stated any reason which seems to have been deliberately avoided in this case, it appears to be this:

He was asked to work in the Oven Department instead of the Machine Department in which he has been working for years together. He pleaded weak and not sufficiently strongly constituted for this job. Only about a month back he had recovered from typhoid attack which has made him weaker still. Besides of late, the work in the Oven Department has also been made so heavy and strenuous that even the strongest shudders to do it. Number of men required are not enough; instead of two pattis, you have introduced four pattis; in absence of some workers, Badlis are not called; all this has made the work very hard and tortuous.

Bhika Bhau only explained that in view of difficult work, as it is today, he should be allowed to do the work in Machine Department only, till his health permitted him to undertake this new job.

You also know that his left hand cannot work as efficiently and lift heavy pattis because his two fingers are incapacitated while working in your very company about 1½ years back. He has still to receive his promised compensation (At present, of course, this is not his grievance)."

Now, if the above story of refusing to consider the plea of a disabled and convalescent worker in allotting work, were true, perhaps the conduct of the Company might savour of vindictiveness. The question, therefore, is whether Bhika had ineffectively pleaded his inability to work at the oven, with the manager? The important witness on the point is Enas Pinto. According to the latter on the 17th March 1945, the baker More was short of three men at the oven, and he asked Pinto, who was directing the workers in the different departments on instructions from the Assistant Manager, to give him the necessary help. Pinto found that three men including the aforesaid Bhika were engaged in cleaning No. 1 machine which was not working on that day. These three men were, therefore, told to attend to the oven. Bhika refused to go and when asked for an excuse Pinto was told that it was not his business to demand an explanation. Thereupon the matter was taken to the Assistant Manager Mr. Soundy, who on getting the refusal of Bhika to go to the oven and obtaining no reasonable explanation for that conduct, took him to Mr. Garrett, who was then the manager of the factory. According to Mr. Rao, the timekeeper, he was summoned by Mr. Garrett to interpret his

questions to Bhika. Rao has stated that Bhika simply refused to work at the oven without assigning any reason. Mr. Garrett thereupon remonstrated with him and explained to him the unreasonableness of his attitude and told him that if all the workers chose their own work the factory would come to a stand-still. Bhika refused to give any reason and persistently refused to go to the oven. Notwithstanding Bhika's denial, according to Mr. Soundy, Bhika had worked only a week before and on many other occasions at the oven and there was no ostensible reason for his refusal except perhaps the discomfort involved in removing trays from the hot oven. An ultimatum was given to Bhika that he must either work as directed or leave the factory. Bhika elected to leave the factory and asked for his pay. Rao then calculated his attendance in that month. His pay-slip (Ex. 7) was then written up and after making the necessary payment Bhika was given the discharge order. In the discharge order supplied to him, the reason for his discharge is rubbed out. Rao says that he had interpreted to Bhika the office copy on which his signature was obtained and as Bhika did not want the reason to appear in the copy supplied to him the recorded reason was rubbed out. The main reason according to the officials of the Company was disobedience of orders which is impliedly admitted in the Union's letter to the Company. In view of the direct evidence, which has impressed me as truthful it is difficult to accept the suggestion that there was an ulterior motive behind the discharge order.

7. It is stated that Bhika was voicing the grievances of the workers, that he had opposed the send-off function to Mr. Garrett who was not popular and that he was consequently singled out for harsh treatment. It would appear that this Union was started about three years ago when Bhika was selected as its Vice-President. In that office he continued for two years and he had constantly been an active trade union worker. In spite of that activity, no steps were taken to penalise him. It is difficult to imagine that Bhika's position in the Union was a compelling reason for getting rid of him. It may be that there was a counter move on behalf of the Company to have a works committee to divert the workers from the Union, but on that account it is difficult to say that the alleged inability to work at the oven was used as a pretext for getting rid of Bhika Bhau. I accept the story of Pinto, Rao and Soundy and hold that Bhika's refusal to work at the oven, without giving excuse or assigning any reason, was an act of gross insubordination and defiance inviting his summary discharge.

8. It is perfectly open to a factory worker, who is ill or disabled, to put forth an excuse for not doing particular kind of onerous work, but it is a different matter when a worker in a Biscuit factory refuses to do any particular work without assigning any reason and is not influenced by persuasion tried to

bring him to his senses. If in the circumstances the manager, as a disciplinary measure, discharges the worker, I do not think it can be said that his action is unjust or improper. Such a worker is not entitled to any consideration. Bhika has been given 13 days' wages in lieu of notice which is all that he could expect to get for the summary action of the management. Apart from the inexpediency of thrusting a worker on an unwilling employer, this is not a case where reinstatement is called for. I did not, therefore, attempt to persuade the management to condone Bhika's conduct and take him back. I, therefore, decide the first part of the demand in the negative. The second part of the demand as to the terms and conditions of reinstatement, does not, therefore, survive.

9. With regard to demand No. 4 regarding modification in the Provident Fund Scheme introduced by the Company in 1930, on which the parties expect my decision, I have carefully read and considered the rules framed by the Company in that respect for the benefit of their employees. They are excellent rules so far as they go and I should have been reluctant to suggest modification thereof if the provisions for deduction from the amount standing to the credit of the subscriber on account of his dismissal, discharge or resignation were less rigorous and uncertain. Clauses 17 (A) and (B) and 19 which refer to such deductions are in the following terms:

"17 (A). On the voluntary resignation or retirement of any member from the service of the Company without the existence of any cause justifying his dismissal the Trustees shall pay to him the aggregate amount subscribed by him to the Fund and the amount, if any, standing to his credit for interest, and shall, in respect of the balance standing to his credit in the books of the Fund on the 31st day of March preceding such resignation or retirement, pay to him one-twentieth part of such balance for each completed year of service, provided that such amount payable shall not exceed the amount to his credit.

"17 (B). Provided further that in regard to any member joining the Fund on or after 1st April 1945, the Trustees shall in respect of the abovementioned balance standing to his credit, pay to him one-twentieth part of such balance for each completed year of continuous membership instead of service, provided that such amount payable shall not exceed the amount to his credit.

"19. If any member shall be dismissed from the service of the Company or shall leave the service of the Company in breach of the terms of his Agreement or employment or having given notice to the Company determining his Agreement or employment shall leave the service of the Company before the expiration of such notice, the Trustees shall, subject to these Rules, pay to him the aggregate amount only subscribed by him to the

Fund and the interest accrued only on such amount subscribed and the balance, if any, of all moneys then standing to his credit in the books of the Fund, shall, subject as aforesaid, upon such dismissal be forfeited to the use of the Fund and shall be dealt with accordingly. Provided also that the Company may at any time authorise the Trustees to pay to any such dismissed member the amount to which he would have been entitled under Rule 17 if he had voluntarily retired from the service of the Company and had not been dismissed. Provided further that if any member shall be dismissed from the service of the Company through no fault of his own (as to which the Company shall be the sole judge) the Trustees shall, in addition to paying him the amount subscribed by him, also pay him the amount of the Company's contributions and all interest accrued up to the 31st March preceding such dismissal."

The benefit of the Company's contribution to the subscriber to the fund under the first rule is so meagre that he is unable to say what real bargain he has made by becoming a member, and under the second, so precarious and dependant on the will of the Company that I feel it necessary to assure him a reasonable certainty of gaining something definite from the Company's contribution after a certain period of service by making the payment of the Company's contribution, less dependant on chance or the use of discretion in the event of his discharge, dismissal or resignation. In that regard there are the Draft Model Rules relating to Provident Fund for Industrial Employees, approved by the Tripartite Labour Conference in 1943, and the Standing Labour Committee at New Delhi in 1944. Rule 12 (2) of those Rules is to the following effect:

"If any subscriber is dismissed from service for serious misconduct, or resigns or leaves his employment at his own request otherwise than on medical grounds, or if any voluntary subscriber while remaining in his employment discontinues his subscriptions to the Fund, the Board may direct that deductions shall be made from the amount paid into the subscriber's account by the employer under rule 8 (including interest) in accordance with the following scale:

- | | | |
|--|-----|---------------|
| (a) Subscribers of less than 3 years' standing | ... | 100 per cent. |
| (b) Subscribers of 3 but less than 6 years' standing | ... | 50 per cent. |
| (c) Subscribers of 6 but less than 9 years' standing | ... | 25 per cent. |
| (d) Subscribers of 9 or more years' standing. | ... | Nil. " |

It ensures to the subscriber a definite percentage of the Company's contribution after 3 years' service and he can look forward with certainty to getting the entire amount after 9 years' service

even if he wishes to resign after that period. It seems to me that the adoption of such a rule would be beneficial to the workers and would not impair the stability of labour which is the object aimed at for making contributions to the fund. That is the only modification pressed before me on behalf of the employees, although the latter stand to lose the entire contribution of the Company upon resignation or dismissal before completing three years' service. No serious objection could be raised on behalf of the Company against the suggested modification. I would adopt the principle of the draft Model Rule in lieu of Rules 17 (A) and (B) and 19 relating to deductions in the provident fund amount standing to the credit of the subscriber. The rule in substitution of Rules 17 (A) and (B) and 19 shall be Rule 17 as follows:

"17. If any member voluntarily resigns or retires or is discharged from the service of the Company or if any member shall be dismissed from the service of the Company for serious misconduct or shall leave the service of the Company in breach of the terms of his Agreement or employment or having given notice to the Company determining his Agreement or employment, shall leave the service of the Company before the expiration of such notice, the Trustees shall pay to him the aggregate amount subscribed by him to the Fund and the amount, if any, standing to his credit for interest, and shall, in respect of the balance standing to his credit in the books of the Fund on the 31st day of March, preceding such resignation or retirement, discharge or dismissal as aforesaid pay to him the said balance after making the following deduction therefrom:

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|--|-----|---------------|
| (i) Subscribers of less than 3 years' standing | ... | 100 per cent. |
| (ii) Subscribers of 3 but less than 6 years' standing | ... | 50 per cent. |
| (iii) Subscribers of 6 but less than 9 years' standing | ... | 25 per cent. |
| (iv) Subscribers of 9 or more years' standing. | ... | Nil. " |

The above modification will not involve the Company in any additional commitment and will benefit all the subscribers to the Fund. The modified rule will have to be recognised and approved by the Commissioner of Income-Tax under the provisions of Chapter IX-A of the Indian Income-tax Act, 1922, as amended by the Indian Income-tax (Provident Fund Relief) Act, 1929, and the Company shall make the necessary application to that Officer.

10. Then there remains demand No. 7 relating to leave rules. I am told that no kind of leave rules are framed by the Company affecting their employees. Leave is granted at the discretion of the manager and on such terms and conditions as he may desire to impose. But no leave is granted with pay. The demands involved

in issue No. 7, may be divided under three heads. The workers want provision to be made for (1) leave with pay, (2) sick leave or leave on medical certificate and (3) leave of absence without pay. With regard to the 3rd class of leave the Company's management did not raise any serious objection to the demand in that respect, but it was feared that if simultaneous applications for leave were received from numerous workers it would cause embarrassment to the management. In that respect I was asked to make the necessary provision and I have found that the standing orders for textile workers could be adopted with slight modifications according to the requirements of the Company and its employees. With regard to the 2nd class of leave also the management was fully convinced of the desirability of providing for such leave and they have left it to me to make some reasonable provision in that behalf. I think that the worker who is really sick should be shown some consideration on humane and compassionate grounds. I think 10 days' sick leave on half pay should be allowed to every worker in each calendar year subject to his producing the necessary medical certificate from a qualified doctor.

11. The demand for the first kind of leave evoked controversy. My attention was drawn to the provision made for holidays with pay in the Factories (Amendment) Act, 1945. That Act comes into operation from 1st January 1946, when doubtless rules will be made as provided therein for the working of the Act. But the employees think that they should get some kind of leave on that principle for the current year. It is said that if they were to go on leave between now and 31st December 1945, they should get some days' casual leave or leave with pay during that interval, if they have put in the qualified period of one year's service. The demand is that they should be given at least 7 days' leave during the remaining part of the current year. The Company has resisted that demand on the ground that it will cause embarrassment to the Company as no provision has been made for absence of workers on holidays. At one time I viewed the demand with great sympathy. But after very careful consideration I do not think any provision of the kind should be made for the short remaining period of the current year when the Legislature has deemed otherwise. Moreover the introduction of such a rule in the middle of the year and only a few months before the new legislation comes into force, will create complications and difficulties for the Company. I have, therefore, thought that it would be better for the employees to await the coming into force of the new legislation. The leave rules which I have framed are incorporated in Annexure "B" attached hereto.

12. My award on the above three demands is as follows:

(a) *Demand No. 1.*—There shall be no reinstatement of Bhika Bhau and consequently the question of the terms and conditions of his reinstatement does not arise.

(b) *Demand No. 4.*—The existing rules 17 (A), 17 (B) and

19 of the Rules and Regulations of Employees Provident Fund of the Company shall be substituted by the following rule 17 subject to its recognition and approval by the Commissioner of Income-tax, under the provisions of Chapter IX-A of the Indian Income-tax Act, 1922, as amended by the Indian Income-tax (Provident Fund Relief) Act, 1929. The Company shall make the necessary application for the purpose to that Officer.

"17. If any member voluntarily resigns or retires or is discharged from the service of the Company, or if any member shall be dismissed from the service of the Company for serious misconduct or shall leave the service of the Company in breach of the terms of his Agreement or employment or having given notice to the Company determining his Agreement or employment, shall leave the service of the Company before the expiration of such notice, the Trustees shall pay to him the aggregate amount subscribed by him to the Fund and the amount, if any, standing to his credit for interest, and shall, in respect of the balance standing to his credit in the books of the Fund on the 31st day of March, preceding such resignation or retirement, discharge or dismissal as aforesaid, pay to him the said balance after making the following deductions therefrom:

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|--|-----|---------------|
| (i) Subscribers of less than 3 years' standing | ... | 100 per cent. |
| (ii) Subscribers of 3 but less than 6 years' standing | ... | 50 per cent. |
| (iii) Subscribers of 6 but less than 9 years' standing | ... | 25 per cent. |
| (iv) Subscribers of 9 or more years' standing. | ... | Nil." |

The benefit of the above rule shall, according to my award be received by all the employees of the Company who under the existing Rules and Regulations of the Employees' Provident Fund are eligible to the membership of the Fund and also those who were members of the Fund on 1st January 1945.

(c) *Demand No. 7.*—The Company is directed to adopt the leave rules framed and incorporated in this award as annexure "B". The rules will be applicable to all the employees of the Company who are paid daily wages. The benefit of those rules shall be given to such of the employees of the Company who may have completed one year's service on 1st January 1945. The Company shall incorporate the leave rules in the standing orders.

(d) As regards demands 2, 3, 5 and 6, effect shall be given to the Memorandum of Settlement arrived at between the parties.

(e) The petition (Ex. 2) of 10 workers submitted independently of the Union is dismissed for reasons indicated in paragraph 3 above.

(Signed) K. B. WASSODEW,

Bombay, 22nd August 1945.

Adjudicator.

(Bombay Castle, 8th May 1947, No. 1057/46 Government Gazette dated 8th May 1947, pp. 1651 to 1654).

SALT PAN OWNERS OF THANA

AND

THEIR EMPLOYEES

Adjudicator:—R. D. Shinde, District and Sessions Judge, Thana;
To—The Secretary to Government, Political and Services Department, Secretariat, Fort, Bombay.

Sir,

I have the honour to state that under the Government Notification No. 1057/46-I, dated 24th March 1947, the Government of Bombay was pleased to refer to me for adjudication the trade disputes between the Salt Pan Owners mentioned in Annexure A to the Government Notification and their employees in respect of matters specified in Annexure B to the Government Notification.

2. At the time of issuing notices to the Salt Pan Owners mentioned in Annexure A, I found that the names of some of the Salt Pan Owners were incorrectly described in the Annexure. The names have now been corrected and the list of correct names is appended herewith (Appendix A). Of these salt pan owners Nos. 1 to 4, 6 to 14, 17 to 30, 33, 35 and 36 are members of an Association known as "Bombay Salt Merchants' and Shilotries' Association". In response to notices of adjudication proceedings, the above-mentioned salt pan owners put in a joint appearance before me through the Joint Honorary Secretary of the Association and they were represented by pleaders Mr. M. V. Hedge, Rao Sahib R. M. Chitnis, Mr. K. K. Shende and Mr. Mustafa G. Faquin. Such of the salt pan owners in Annexure A to the Government Notification who were not members of this Association were individually served with notices and Nos. 5 and 16 appeared before me. Salt Pan owners Nos. 15, 31, 32 and 34 were absent though they were served with notices. As regards the employees of these salt pan owners all the employees of salt pan owners Nos. 1 to 24, 26 to 28 and 34 are members of a labour Union known as "Mithagar Kamgar Sangh, District Thana" with its office at Juchandra in Bassein Taluka. These employees who are members of the Labour union appeared through Mr. V. B. Tamhane in the proceedings of the Adjudication. As regards the employees of the other salt pan owners, notices were sent to the salt pan owners

with a request that the same should be displayed on the Notice Boards of their Offices in the salt pans for the purpose of giving publicity to the proceedings before me. One employee from each of the salt pan owners Nos. 31 and 32 appeared before me and informed me that so far as the salt pans in which they were employed were concerned, there was no dispute between the employees and the salt pan owners, neither had there been any strike by any of the employees. The employees of the remaining salt pan owners did not at all appear in the proceedings.

3. As laid down in section 7 of the Trade Disputes Act (Act VII of 1929), I brought together the representatives of both the parties for the purpose of inducing them to come to a fair and amicable settlement of the dispute. General discussions took place in my presence on 14th April 1947, 16th April 1947 and 19th April 1947 when an agreement was put in writing and was signed by the representatives of the parties. Subsequently the salt pan owners Nos. 5 and 16 who put in their appearance on 22nd April 1947 appended their signatures to the agreement. The agreement in question is appended herewith (Appendix B).

4. This dispute between the employees and the salt pan owners was apparently the sequel of a dispute which had arisen previously between the salt pan owners and their employees at Juchandra in Bassein Taluka. That dispute was settled by Mr. Sapre. One of the main terms of the agreement was that each employee was to be paid a total emolument of Rs. 54 a month and this figure of Rs. 54 included the basic pay of Rs. 30, Rs. 19-8-0 as dearness allowance and Rs. 4-8-0 as Bonus. This payment was to be made for the season which generally begins in October of every year and ends on 31st of May of the following year. Another term was that the hours of work for each employee were not to exceed eight a day. The employees in the Juchandra salt pans are persons residing in the locality of the salt pans, while in the case of salt pans of the salt pan owners in the dispute referred for arbitration to me, all the employees were not residents of the locality but were imported from such places as Surat, Billimora, etc., for the purpose of working in the salt pans. They are brought in groups by persons who are known as "*Kharwas*" and each *Kharwa* is paid the emoluments by the salt pan owners and the *Kharwa* distributes them among the labourers whom he has brought to the salt pans for work. All these labourers belong to one class. There were in the past two systems under which the salt pan employees were paid by the owners. Under one which obtained in some of the salt pans in dispute, each of the workers was paid every month Rs. 22 in cash and the salt pan owners used to give to each labourer a hut to live in, fuel, earthen pots worth about Rs. 3, implements costing about Re. 1, pots for cooking, four *payalis* of rice and supplementary ration if this allowance of four *payalis* was found to be in-

sufficient. The salt pan owners used to employ at their cost one cook for cooking food for a batch of 10 men. Sweet water was also provided by the salt pan owners in cases where such water was not available near the salt pans or in the neighbourhood. In the case of other salt pans the system that prevailed was that the salt pan owners paid an amount of Rs. 44 in cash a month as wages and in addition each was given a hut to live in. A cook was provided for every 10 of such labourers at the cost of the salt pan owners, and the labourers were provided gratis with pots for cooking, fuel and implements required for their work. In some cases ration cards were obtained in respect of each of the labourers and the salt pan owners used to collect all the ration cards of their employees and on the strength of the ration cards, they used to get provisions from the Government ration shops and used to distribute them among the employees according to their needs. In some cases the rations of food were found to be insufficient and salt pan owners used to supplement them by making purchases of food-stuffs elsewhere. Accounts are usually taken at the end of the season in the case of each employee. Any advances paid during the season to the employees were then taken into account and ultimately the employee used to be paid any balance if it was due to him at the foot of the accounts and in this manner the salt pan owners and the employees used to have their accounts taken up in respect of each season. When the employees put up the demand that they should be given uniform terms as stated in Annexure B to the Notification, the salt pan owners readily accepted the demand and they were also agreeable to have the number of hours of work to be fixed at 8 and that every employee should be given one holiday per week with pay. As regards the demand No. 2 in Annexure B, it was found after discussions between the salt pan owners and the employees, that in future the salt pan owners should not collect the ration cards of the employees in their hands but that each employee should be given a separate ration card and the employee should make purchases of the rations from the ration shops directly with his own money. The practice so far was that the salt pan owners used to collect the ration cards of their employees and they used to purchase on the strength of these ration cards the rations admissible and after they collected the rations in this manner, the salt pan owners used to provide from time to time quantities of food-stuffs to each employee and used to debit against his name in the accounts the cash value of the food-stuffs thus supplied. This system gave rise to complaints that in the case of some articles such as sugar and kerosene oil, the employees did not get the quantities to which they were entitled under ration cards but that the surplus was appropriated by the salt pan owners for their own purposes. The new arrangement which is now accepted by both the parties is likely to remove any room for such disputes in future. The demand No. 2 in Annexure B was evidently made on the analogy of the

concerns such as the Railways who have established Grain Shops and articles of necessity are supplied to the employees at concession rates. Obviously salt pan owners would not be able to procure such articles at concession rates and it would not be possible for them to have such shops for the benefit of their employees. The employees saw the weakness of the demand No. 2 and they readily agreed to withdraw it altogether. The Agreement, Appendix B, provides that the salt pan owners are to pay to every employee an amount of Rs. 54 per month from the beginning to the end of the season. There was some dispute as regards what this amount should be taken as being inclusive of. In the Juchandra Agreement which I have already referred to above, there is an item of Rs. 4-8-0 as Bonus. The employees in this dispute were not prepared to accept the classification of these items as was accepted in the Juchandra agreement, but they undertake not to go on strike on the point of bonus during the present season. Another matter which is likely to create some disputes is that prior to the present agreement the employers and the employees had proceeded on the basis of the old terms of employment which obtained before and hence in taking up accounts at the end of the season, some employees might take exception to some items which are debited against their names in the accounts of the salt pan owners in respect of certain amenities which have been provided in the past by the salt pan owners. One prominent item which was discussed was the provision of sweet water for the employees. I was told that in the case of about 28 out of the 44 salt pan owners, there is no difficulty in providing sweet water to the employees as there are wells of sweet water nearby the Agars or salt pans where the employees have to work. But in the case of the remaining 16, the practice has been for the salt pan owners to employ special labourers to bring sweet water from distant wells and to provide that water to the employees and each employee was debited every month an item of about Rs. 3 to meet the costs incurred by the salt pans. The salt pan owners have in these 16 places to engage labourers with carts to bring water from the wells to the Agar and that cost is consolidated and then it is divided *pro rata* and debited to each of the employees. It was pointed out on behalf of the salt pan owners that in cases where the salt pan owners had to incur expenses in bringing sweet water from distant wells, which cost amounted to about Rs. 3 every month per head, it is but fair that each employee should bear a proportionate share of the costs. On the other hand it was contended on behalf of the employees that it was no fault of the employees that they were made to work in salt pans where there is no provision of sweet water wells in the immediate neighbourhood and that as the salt pan owners have now agreed to provide free of cost huts for their residence, the salt pan owners should also bear the total costs incurred by them in bringing sweet water from distant wells for the use of the employees. It was also pointed out for the salt pan

owners that when the employees put up their demands and asked for a uniform scale of pay at Rs. 54, they did not make a specific demand that they should be provided gratis with sweet water and that under the practice which was obtaining in the past, such costs have been paid by the employees to the salt pan owners and there has been no victimisation of the employees on this point. It was, therefore, thought it expedient not to include in the agreement any term regarding the provision of sweet water by the salt pan owners. Another matter which I noticed in the discussions between the salt pan owners and the representatives of the employees was that when the present season would be over and accounts would be taken of the advances and other amenities provided, some cases might involve a dispute. For instance an employee may take exception to certain debits which the salt pan owners may have made against his name in the account-books and unless the parties resolve the differences the employee may not get a proper account of what is due to him from the salt pan owner. There is no doubt some substance in the complaint which is made on behalf of the employees on this point. I am, however, assured by the representatives of the salt pan owners that as far as possible they would not allow such occasion to crop up and that the salt pan owners would be generous in examining any such complaints if at all a complaint is made by any employee that certain item debited in the past requires further examination and they would try to see that the employees get a square deal. That is why in the Agreement, Appendeix B, paragraph No. 2, has been so worded. Such disputes could not obviously be the subject of adjudication by me. It might involve the examination of the accounts of every one of the employees for the purpose of seeing whether the employee has really received in cash value the several amenities in respect of which certain monies must have been debited against him and under the terms of the Government Notification I could not have gone into such disputes.

5. In regard to the hours of work, there is an agreement between the parties. The salt pan owners have assured me that they would give to their labourers every day due intimation as regards the hours during which they would be employed on the subsequent day and that the salt pan owners would provide in suitable cases clocks in their Offices which would give the employees facility for verifying the hours of their work and for seeing that they do not exceed the number agreed to. The salt pan owners have also agreed to have devices such as ringing of bells or flying of banners where it is practicable to intimate to the employees the time for the starting of their work and the employees have no objection if the salt pan owners provide such means to regulate the hours of work for the purpose of ensuring that in no case the employee is made to work for more than eight hours. I, therefore, think that the agreement, Appendix B,

embodies fair terms of employment for the employees of the salt pan owners and this Agreement would in substance be my Award as the Adjudicator of the dispute.

6. The Award, Appendix B, would be operative from the beginning of the season, i.e., October 1946 to the end of May 1947 and would apply in the case of all the salt pan owners mentioned in Annexure A. I must at the same time point out that in the case of employees of salt pan owners Nos. 30, 31 and 32, it was represented to me that there had been no strike on the part of the employees in these salt pans and that the employees are prepared to go on with their work under the terms of employment which have been prevailing even before this dispute arose in respect of some other salt pans. The terms of this Award will not also apply to such owners of the salt pans whose employees are satisfied with the terms of the employment under the existing schemes in preference to the terms embodied in the Award. The Award will only apply if in, such cases the employees prefer to have the terms of the Award and not the terms under the existing schemes. Credit is due to the representatives of the parties for the conciliatory spirit shown by them in arriving at the Agreement and I sincerely trust that the same spirit would be displayed by them at the close of the season when the accounts would be made up.

Your obedient servant,
(Signed) R. D. SHINDE,
Adjudicator.

APPENDIX B

AGREEMENT BETWEEN THE PARTIES.

The owners of the Salt Works mentioned below and the Mithagar Kamgar Sangh, District Thana, representing the employees of the Salt Works have settled the dispute referred to the Adjudicator as follows:—

The Serial Nos. and names of owners.

1. Shet Chandulal Chhabildas.
2. Shet Ramchandra Radhakison.
3. Shet Rampratap Hiralal.
4. Shet Harkisondas Lakhmidas.
5. Shet Kajulal Shaligram.
6. Shet Nandlal Laduram.
7. Shet Shivrath Chhnilal.
8. Shet Rampratap Shivchandrai.
9. Shet Gopikison Bankatlal.
10. Shet Rampratap Hukumchandrai.
11. Shaikh Abdul Gaffur and Co
12. Shet Hajarimal Ramkison.
13. Shet Shivkaran Harakchand.
14. Mukmud Khalit Haji Abdul Razak Faki and Co.
15. Mustuffa G. Faki and Co.
16. Shet Babu Manekchand.
17. Shet Isa Usman Gani.
18. Shet Ardeshir Hormusji Bhiwandiwalla.
19. Shet Shapurji Manekji Kotwal.
20. Shet P. S. Khambatta.
21. K. B. Haji Amirsahab Rais and Co.
22. Shet Tribhuvandas Jamnadas.
23. Shet Mahipatram Mulshankar.
24. Dr. J. F. Ghonsalvis and Co.
25. Mundra Bros.

The above owners who are members of the Bombay Salt Merchants and Shilotries' Association and the Union on behalf of the employees in the Salt pans of above Salt Works have settled the dispute on the following terms:

1. The owners agree to pay Rs. 54 per month to their employees from the beginning of the season. The owners accept the figure of Rs. 54 on the basis of the Sapre Award for Juchandra employees which is Rs. 30 as basic salary, Rs. 19-8-0 as dearness

allowance and Rs. 4-8-0 as bonus. The employees do not accept the above classification but they undertake not to go on strike on the point of bonus till the end of the season.

2. The owners will be entitled to deduct the sums spent by owners to supply amenities to the employees. The employees are entitled to challenge the items. In case of difference the parties may settle the dispute by amicable settlement or by Government help.

3. The 2nd item in Schedule B is not pressed by employees.

4. It is agreed that the workers shall attend when there shall be work. The hours of such work shall be intimated to the workers on the previous day. On no day the worker is to work for more than 8 hours in a day.

5. The owners agree that the employees should have one day holiday every week but $1/7$ th of the number of employees should have a holiday on one day.

6. There is only one class of workers in the Salt Works and the terms of employment and wages are uniform.

7. The terms as regards hours of work and holiday are to come into effect immediately on the making of the award.

(Signed) M. YUSUF SHAIK ESMAIL,
Jt. Hon. Secretary, Bombay Salt
Merchants and Shilotries' Association.

(Signed) G. K. MHATRE (In Marathi),
Secretary, Mithagar Kamgar Sangh,
District Thana.

Filed in Court,
(Signed) M. V. HEGDE,
Pleader.

19th April 1947.
(Signed) V. B. TAMHANE,
19th April 1947.

(Signed) AMRATLAL PITAMBAR for No. 16.
(In Gujarati) 22nd April 1947.
(Signed) MAHADEV BABUL PATIL for No. 5.

True Copy.
(Signed) R. D. SHINDE,
Adjudicator.

(Bombay Castle, 16th June 1947 No. 1057/46-II, Bombay Government Gazette Part I, pages 2579 to 2585)

THE SALT PAN OWNERS OF URAN

AND

THEIR EMPLOYEES

Adjudicator :—Mr. R. D. Shinde, District and Sessions Judge, Thana.

2nd June, 1947.

A w a r d

The Government by Notification No. 1057/46-II of the Political and Services Department, dated 24th March 1947, were of the opinion that it was necessary for maintaining supplies essential to the life of the community to end the trade dispute upon the matters specified in Annexure B between the salt pan owners at Uran mentioned in Annexure A and their employees and referred to me for adjudication the same with a view to find out whether all or any of the demands mentioned in Annexure B should be granted and if so to what extent and on what terms and conditions if any and from what date. Annexure A mentioned 8 salt pan owners, all of whom, except No. 8, are Muslims, while No. 8, the correct designation of whom is H. M. D. H. Bhiwandiwall and Co. is a concern of a Parsee gentleman who has a Muslim Manager for the management of the Company's salt pans at Uran. The demands of the employees are contained in Annexure B to the Government Resolution.

2. Usual notices of the adjudication proceedings were served on the Salt Pan Owners mentioned in Annexure A. As regards No. 1, it was pointed out that the description in the Government Resolution was incorrect and that it should be Mahomad Ibrahim Mahomad Jaffar and Company. As regards Nos. 3 and 6, it was disclosed that the persons named are dead and they, while they were alive, owned no salt pans. As regards No. 5, the correct name is Badruddin Kamruddin and Company. No. 7 in the Annexure A was stated to be Alm Thakur. It is now agreed that this name is incorrectly described and at the first hearing of the proceedings Mr. Abdul Kadir Thakur had appeared and had contended that his name was not Alm Thakur. On behalf of the employees who had appeared through their Union, Uran Peta Mithagar Kamkari Sangh,

it was represented that No. 7 in the Annexure A was really Mr. Abdul Kadir Thakur and I gave a ruling that Mr. Abdul Kadir Thakur was a proper party and a notice was then issued to him to appear and file a Written Statement if he desired to do so. The names of Nos. 3 and 6 were struck off. As regards No. 1 a preliminary objection was taken, apart from the fact that the name was not correctly described in the Annexure A, that the Company owned no salt pans, but that the Company holds some salt pans known as Albandi, Sheva and Musghat Agars merely as lessees under a lease for five years commencing from 16th June 1943 and therefore they being not salt pan owners as mentioned in paragraph 1 of the Government Notification, they were not proper parties to the adjudication proceedings. The employees who now are members of a Union known as "Uran Peta Mithagar Kamkari Sangh" appeared through their President Mr. T. H. Wajekar. In the Adjudication proceedings Mr. W. P. Oka, Advocate, appeared for Nos. 1 and 7. Nos. 2 and 5 were represented by Mr. P. V. Joshi, Counsel Mr. Madnani and Mr. M. G. Faqui, Advocate, appeared for No. 4 while No. 8 was represented by Rao Saheb R. M. Chitnis and Mr. K. G. Limaye.

3. A number of preliminary objections were raised in the first Written Statement filed on behalf of the salt pan owners. The important ones were that the appointment of the Adjudicator was not legal as the adjudication proceedings were being held at a time when the Ordinance No. XX of 1946 has already lapsed on or about the 30th March 1947 and that there had not been in fact any dispute between some of the salt pan owners and their employees. After hearing both the parties, I passed an order (Exhibit 16) on 15th May 1947 in which I disposed of these preliminary objections. I held that the appointment of the Adjudicator was valid and legal and that after the decision of the Government that there was a trade dispute between certain parties mentioned in the Annexure A and their employees, the Adjudicator had the power to proceed with the adjudication of the dispute and the Adjudicator could not go behind the order of the Provincial Government and consider a challenge on the ground that in the case of some of the salt pan owners there was in fact no such dispute between them and their employees.

4. Written Statements were filed by the salt pan owners Nos. 1, 2, 4, 7 and 8. All of them opposed the demands made by the employees particularly demands Nos. 1, 6 and 9 in Annexure B. It was stated for No. 1 that in the season 1945—46 there were some Agri labourers in their service but that there were none of them working for No. 1 in the present season which commenced in October 1946. It was alleged that the reasons for the Agris ceasing to work for No. 1 were that as a result of the communal disturbances which had taken place in the country before October

1946, there was a tension between the two communities at Uran and that the cessation of the work was not due to any industrial dispute. The claim of the employees for a share of the salt produced on the system of *Ardhel* was opposed on the ground that it was not only not sanctioned by previous custom in the locality but was also not reasonable. For No. 2 it was stated that some local *Agris* had been engaged in the past and though some of them were paid seasonal wages which at times worked to half of the net price of the salt produced, the system on which the seasonal wages were paid was not the system of *Ardhel* as claimed by the employees. Some of the other demands in Annexure A were also opposed. Numbers 3 and 4 alleged that all their employees were *Kharwas* and there was no dispute between them and their employees. Number 5 denied that there was any dispute between him and any of his employees. No. 7 in his Written Statement stated that there were some *Agris* employed by him in the season of the previous year but they refused to work for him in the current season and had not done any work for him during the season. He alleged that there was a boycott of Muslim salt pan owners by the Hindu employees owing to the prevailing tension between the two communities in the country. On behalf of No. 8 it was stated that out of the total number of 399 employees in their *Agars* as many as 242 were *Kharwas* from Surat side, that 92 were local *Agris* who had executed agreements as in the previous years and 71 more were engaged on monthly salaries for the manufacture of salt. It was denied that there was the system of *Ardhel* in operation, as regards the *Agri* producers but that the *Agri* producers had been executing every year agreements under which they were paid seasonal wages as agreed to and set out in the agreements.

5. In order to give both the parties a clear understanding of the materials which I needed from them for proceeding with the work of adjudication, certain issues were framed so that the parties could lead oral or documentary evidence to supply the materials. These were—

- (1) What were the terms of employment in the salt pans of each of the salt pan owners who are parties before the dispute arose?
- (2) When did the dispute start and when and in respect of what class of employees?
- (3) Who were the employees who had ceased to be employees as a result of the trade dispute?
- (4) Can they or any of them claim to be re-instated in the employment?
- (5) What are the terms of employment of other salt workers in the locality?
- (6) Is term No. 6 in Annexure B an incident of employment for salt production?

- (7) Can the employees claim a right to be employed permanently as stated in term No. 9?
- (8) Should all or any of the demands in Annexure B be granted and if so against which parties and to what extent?

6. To suit the convenience of the parties, I camped at Uran between 20th May 1947 to 24th May 1947. On 20th May 1947 I held a local inspection of two salt pans in the presence of the parties. Diwan Bahadur Pessikaka who was cited as one of the witnesses for the salt pan owners was also present. One of the salt pans was being worked by *Kharwas* while in the other the employees were local *Agris*. Evidence was heard on 21st May 1947 and 22nd May 1947 at Uran. On the 23rd there was a move between the parties to arrive at an equitable settlement of the dispute and such a settlement was almost effected but when the settlement was to be finally approved and signed the Counsel for the employees represented to me that though personally they and the leaders of the employees held the proposals made by the salt pan owners as quite reasonable, some employees were still demanding that the principle of *Ardhel* should be adopted and therefore the adjudication proceedings should be continued further and an award should be given. The proceedings were then resumed at Thana on 26th May 1947 when some more evidence was recorded on that day as also on 27th May 1947. Thereafter parties were asked to produce their account books for five years and extracts from their accounts. Arguments were heard on 31st May 1947.

7. I will at this stage set out in brief the various events which took place prior to the decision of the Government to appoint an Adjudicator. In Uran range, which is divided into three salt Talukas, Uran, Sheva and Karanja, a large number of salt pans, about 70 per cent. are owned by Muslims. Of the remaining, about 15 per cent. are owned by Bhiwandiwallas while the rest are held by Hindus, some of whom are Gujarathis and Marwaris and some are local *Agris*. Five kinds of salt are manufactured in this salt district which supplies a substantial portion of the total salt produced in the country. These varieties of salt are: (1) *Vajani* otherwise known as *Agri* salt. (2) *Mabi* or *Kharvi* salt. (3) Table salt, (4) *Kuppa* salt and (5) *Pen* quality salt. The bulk of the salt produced consists of the two main categories: *Vajani* and *Mabi*, while quite recently Bhiwandiwallas have started manufacturing finer salt viz., the table salt. The *Kuppa* and *Pen* quality salt are also very small portions of the total salt produced in the locality. The persons employed for the production of salt mainly fall into two classes: One is *Kharwas* imported from Surat side who fall into two sub-categories of *Kharwas* and *Macchis* to whom monthly wages are paid. The other class consists of local *Agris*. *Kharwas* have been employed in the work of production

of salt for many years in the past in Uran District, though there is some difference of opinion as regards the percentage of the *Kharwas* in the total number of salt producers in this locality. On behalf of the salt owners it was stated that the *Kharwas* form about 60 to 70 per cent., of the salt producers while on behalf of the employees who are exclusively *Agris*, as some of the *Kharwas* are members of this Union, it was stated that the percentage was that there were 80 per cent. of *Agris* and about 20 per cent., are *Kharwas*. It was however conceded that so far as the present season is concerned, the number of *Kharwas* has risen considerably and they form about 70 per cent., of the salt producers in the present season. It appears from the evidence that some salt pan owners employ exclusively *Kharwas* in their salt pans for producing salt, while in the case of some *Kharwas* are employed to produce the *Mapi* salt while some *Agris* are employed to produce *Vajani* salt. *Vajani* salt is an inferior kind of salt but it appears that there is a market for this kind of salt as well and that is why salt pan owners produce some *Vajani* salt also when they could have employed *Kharwas* and have produced only *Mapi* salt. The practice seems to be, so far as the local *Agri* producers who were employed in the salt pans were concerned, that some of them used to be paid monthly wages, while some used to receive a sort of a seasonal wage under which after the commencement of the season in October they get advances from the salt pan owners and when the season is over an account is taken of the total salt produced by each producer and on the basis of the rate at which the salt pan owners sell the produce, the producer is given a share of the income from which the advances are first to be deducted and then the balance is to be paid to him. Such adjustments of accounts take place in the months of *Shravan* and *Bhadrapad* which would be some time in August or September and the practice seems to be that if a producer has done satisfactory work in one season and he expresses his desire to take the same salt pans again in the next season he is given the salt pans in the next season and he is also given some fresh advances as against the unsold salt which at the end of the season is kept covered with thatched grass on the platforms near the salt pans. Some *Agri* producers used to take up salt pans for which they were paid at so much amount per *Kondi* for their labour and they had no further share in the amount that was realised by the sale of the salt produced by them. In the case of *Bhiwandiwallas*, whose management of the salt pans for the last five or six years shows a definite and a more satisfactory method of laying down the terms of employment for their employees, a system of engaging *Agris* on definite contracts has been in operation since about 1940. *Bhiwandiwalla* had at the same time *Kharwas* whom they employ on monthly salaries and some *Agris* as well to whom monthly wages were paid. In the case of *Bhiwandiwallas*, some *Agris* had passed agreements to them before the season of 1946-47 com-

menced in October 1946. It is common ground that in the case of all the salt pan owners who are concerned in this adjudication none of the Agri producers came for work as usual to the salt pans when the season commenced in October 1946. No satisfactory explanation is forthcoming for this cessation of work by the Agris in the salt pans of the Muslim salt pan owners concerned in the adjudication as well as in the salt pans of the Bhiwandiwallas whose manager happens to be a Muslim. It is not at all suggested that the Agri producers who used in the past to work for these owners had at any time before October 1946 formulated their grievances and submitted them to these employers and that the employers had turned them down and this had led to the Agri producers failing to turn up for work when the season started in October 1946. I should think that the only reasonable explanation for this state of affairs was the prevailing tension between the two communities, Hindus and Muslims, that was gathering momentum from August 1946 and that this had something to do with the local Agris abstaining from coming to work for the Muslim salt pan owners as usual when the season started in October 1946. Even those Agris who had executed contracts with Bhiwandiwallas did not come for work. The work of salt production does not commence in the month of October. But certain preliminary work such as preparing the salt pans, mending the channels and making arrangements for taking brine from the reservoir have to be made and brine is usually taken in the salt pans in about December when for about 2 months more the drawing of salt takes place, say once in 10 or 15 days as in the cold season brine takes longer to dry up and for salt to become ripe for collection and the drawings take place more quickly later on say once in 10 days as the heat of the sun dries up the brine more quickly in the months of March to the end of May or the middle of June when the season of salt production comes to an end. In this season there were unusual rains in the months of November and December 1946 which must have interfered with the work of production of salt and delayed the starting of the season for production of salt. But the fact that in those salt pans in which in the previous season some Agri producers had produced salt for the owners and that the same Agris had not turned up for the work when the season started in October 1946, may suggest that the reason for the stoppage of the work had something to do with the communal tension. Though there may have been previously some grievances regarding the unfair treatment which the producers might have been receiving in the past in settling the accounts or that they had not been receiving a fair share of the value of the salt produced by them, there had not been any actual formulation of demands by these employees and any question of acceptance or rejection of these proposals by the owners before the season started in October 1946 had not arisen. It cannot, therefore, be said that the cessation of the work by the Agris

in the case of the Muslim owners in the beginning of the season viz., October 1946, was in fact the result of an economic dispute between them and the salt pan owners. There was another complication in the situation created by the communal rioting which broke out at Uran on 6th November 1946. It is clear from the evidence recorded by me that in addition to the previous local Agri employees not coming for work, some of the *Kharwas* who had as usual come from Surat side to take up the work for producing salt, had been scared away by the outbreak of rioting and the owners were thus deprived of the services of the *Kharwas* also at a time when the work of production of salt was to begin. Diwan Bahadur Pessikaka has stated that when the salt production season started at Uran there was about 10,00,000 of maunds, of salt lying on the platforms awaiting removal and sale and that this removal of salt could not be undertaken owing to want of labour to do the work and that until the old unsold salt was removed from the platform, the production of new salt could hardly be begun by the owners. Diwan Bahadur Pessikaka has stated that labourers such as *Hamals*, *Dalals*, *Shivanars* (workers stitching bags) and *Bhares* (workers who load salt into bags) were demanding higher wages and through his intervention higher rates which were practically double the rates which were paid in previous season were settled for these labourers and these were announced at a public meeting held on 20th November 1946 at Jaskhar. Even after these higher rates were agreed to be paid by the salt pan owners, there was no improvement in the work of removal of heaps of salt from the platforms as the Agris objected to the presence of the Muslim supervisors employed by the Muslim salt pan owners and there was at about the same time another cause leading to the Agri employees not coming up for work and this was the arrest of several Agris by the Police in connection with the communal rioting at Uran on 6th November 1946. The leaders of the Agris were insisting upon the arrested persons being released on bail if the Agris were to return back to work and have all the old or unsold salt removed from the platforms and making it thus available for sale to the public. When the Agris were not available and the removal of the salt from the platforms as well as the commencement of the work of producing salt could not be delayed, the salt pan owners had naturally to think of importing labour from outside for that work. Some of them induced the *Kharwas* who had been scared away to come back and they also imported more *Kharwas* from Surat side. Some of the salt pan owners imported a number of Pathans from Bombay to do the work though the Pathans had previously no experience of doing this kind of work and the Salt Department as well as the local authorities were asked to give protection to the imported labourers. According to Mr. Wajekar, it was on or about 20th November 1946 that the Agri salt producers came to formulate their demands and that later on they founded the present Union through which

they started to agitate for the demands being accepted by the salt pan owners. It may be that as in the case of Bhiwandiwallas, some of the old Agri employees were coming back to the work in the months of February and March 1947 and as stated by Khan Saheb Gazali, they were being employed by Bhiwandiwallas on new terms which were necessary in view of the fact that there was only half of the normal season ahead for production of salt. The Muslim salt pan owners were naturally averse to re-employing the old Agri employees of theirs when they had already been forced to import labourers from outside at considerable cost and secondly confidence between the two communities had not yet been completely restored. It is under such a situation that the Union approached the Government with a set of demands which are now found in Annexure B to the Government Notification. It is conceded on behalf of the Union that in the present season no salt has been produced by any Agri employee for any owner on terms of employment which existed between the owners and these employees in the season of the previous year. As I have already pointed out, the Agri employees who now seek an adjudication of the dispute had not put up these demands before the season started and that their staying away from the salt pans was not due to any unwillingness or refusal on the part of the owners to accept the demands. At first the only dispute that existed was regarding the wages of the subsidiary labourers such as *Hamals*, *Dalals*, *Shivanars* and *Bhars*. That dispute was settled on 20th November 1946. It was after this that the Agri salt producers came to formulate the present demands. It is with such a background that the present demands have to be considered with a view to find out if all or any of them can be accepted as reasonable for the purpose of including them in the Award.

8. The first demand in Annexure B is that half the salt produced in the pans should belong to the employees who should have a right to sell their share. This system is called by the employees as being the system *Ardhel* which according to them was customary in this locality. The spokesman of the employees Mr. Wajekar described the system as follows: "The *Ardhel* system is that the Agri producer is to do all the work in the salt pans in connection with the production of salt, the repairing of the *palas*, i.e., bandhs of salt pans as well as repairs to the platform (where salt is stored) used to be made by the producer. The salt produced remaining unsold was to be kept in heaps covered over with grass *pendhas* by the producers. The producers have to keep a watch over them during the rainy season. At the end of the season the whole of the salt produced was to be sold by the owner and half of the proceeds were credited to the producers and after deducting the advances taken during the season the balance, if any, was to be paid to the producer." I have already pointed out that all the salt pan owners concerned in

these proceedings have denied that at any time *Ardhel* system like this was in operation. I have already referred to the Written Statements filed by the owner No. 2 in which he has admitted that seasonal wages which used to be paid to the Agri producers came to the value of half the salt which was produced by a particular producer. Mr. Ardeshir Bhiwandiwalla in his evidence stated that in the past in the case of some Agri producers whom his firm employed there was in existence a system of *Ardhel*. But as in those years the price of salt was extremely low the Agri producers were not attracted by that system and would leave the work and thus the salt pans used to remain fallow and it was with a view to encourage the production of salt by the Agris that he induced some of them to take up the salt pans on contract basis and this system of contract basis has been in operation in the salt pans of Bhiwandiwallas in the case of Agris from 1940. Several contracts have been produced which had been executed by Agri producers in favour of Bhiwandiwalla in the last five years and Khan Saheb Gazali, their Manager, has also produced statements showing the amount of salt produced by each Agri employee and the payments made to them. The agreements show that in addition to certain basic wages which were on the basis of a production of one anna of salt i.e., 72 Bengal maunds dearness allowance based upon increased cost of living was paid. The other salt pan owners have not supplied to me any materials to show what terms of employments were allowed by them to such of the Agri employees as they had in their pans. In the case of Bhiwandiwallas, therefore, there is not the slightest evidence that in recent years any of the Agri producers had been paid seasonal wages on the *Ardhel* system as now claimed for them by the Union. After the salt pan owners particularly Nos. 2, 3, 5 and 7 denied that they had in the past employed any Agri producers on *Ardhel* basis, the Union have not led the evidence of any Agri producer to say that they had at any time in the past produced salt on the *Ardhel* basis for these owners. The only employee who was examined for the Union is one Balu Alo Kadu. He had taken last year 8 salt pans which originally belonged to Bapushet Tungikar. Bapushet died some years ago. After his death the salt pans which he owned were partitioned among his heirs and the heir from whom the witness had taken the pans last year is not a party to these proceedings. Even then his evidence goes to show that the Agri producers had not a security of tenure and that even though the system was of *Ardhel* the producer had no voice in fixing the rate at which the salt was shown as having been sold and that the rate which the owners would give was to be accepted in making up of the accounts. It is, therefore, clear that the Union have not produced sufficient evidence to prove a custom that in the case of such of the Agri producers who were employed by the salt pan owners concerned in this adjudication, they had been receiving as consideration for the labour in pro-

ducing salt, wages or remuneration to be calculated on the *Ardhel* basis. The Union at an earlier stage of these proceedings set up what was called to be the historical background for this demand. It was alleged that most of the Agars originally belonged to the Agris and that the Agris had constructed the salt pans but later on they had passed out of the ownership of the Agris into the hands of non-agris such as Muslims, Parsees, Gujarathis and only a small percentage of the salt pans is now owned by the original Agris, and therefore they had a sort of a proprietary interest in the salt pans though they are now working in them as labourers. The Counsel for the Union rightly conceded that the alleged historical background could not avail the claimants in this dispute. The property rights of the salt pan owners cannot in any way be impugned so as to give to the Agri producers who are now working as labourers some sort of proprietary interest in the salt pans which they might have previously owned. It is also conceded on behalf of the Union that the fixity of tenure as claimed by the Union in No. 9 of their demands (Annexure B) could not be claimed in the absence of some legislative enactment such as exists in the case of tenants of agricultural lands. The system of *Ardhel* which is claimed by the employees is no doubt akin to the claim of agricultural tenants which have been reorganized. But there are several practical difficulties in the way of the employees successfully proving such a custom or an Adjudicator allowing the demands in the Award. In the first place salt production is being done in this area on more than one basis. *Kharwas* are engaged on monthly salaries during the season. Some Agris are also engaged on monthly salaries. Some Agris have been working for Bhiwandiwalla on contract basis. There may be cases of some Agris in the case of some of the salt pan owners in this dispute who may have in the past granted to the Agri employees seasonal wages which might have some resemblance to remuneration on the *Ardhel* basis. But as I have pointed out above the Union has failed to lead sufficient evidence to prove the existence of such a uniform custom. The other practical difficulties which have been admitted by the witnesses examined for the Union are: (1) the difficulty of fixing the rate at which the salt produced is taken as having been sold and (2) if the producer is to be given in kind his half share of the salt produced, there would be the legal difficulty in his selling the salt in the absence of a license under the Salt Act. It is pointed out on behalf of the Union that the legal difficulty can be got over by asking the producer to give a chit to his Agri tenant in the salt pans and the Agri producer can then sell with the consent of the Salt Department his share of the salt. On the balance of evidence which has been placed before me, I feel that this system of *Ardhel* which is now being strenuously demanded by the Union is not a satisfactory system providing fair or equitable terms of employment for salt producers. It is not disputed on behalf of

the Union that the system would cause a hardship to the employees when the prices of salt are low. It is in evidence that in about 1930 the selling price of an anna of salt, *i.e.* 72 Bengal maunds was hardly Rs. 4 at a time when Government duty was about Rs. 1-9-0 and the producer on the *Ardhel* basis could hardly have received even a fraction of what his reasonable wages should have been. It is only when the prices of salt have risen abnormally as during the present season and these are about Rs. 140 to Rs. 150 for one anna of Vajani salt, that the claim of *Ardhel* may bring to the producer a very substantial gain but as the prices of salt are never constant and they fluctuate a great deal the system cannot be accepted as a satisfactory basis to provide the terms of employment for an Industry which produces a commodity vital to the interests of the public. The public have a right to expect that the production of salt should be maintained at a level which would ensure a reasonably low price for the commodity. At present due probably to the stoppage of the import of foreign salt and the difficulties created in bringing the stocks of ready salt to market owing to labour troubles and communal tension as in this case, the prices of salt have soared up enormously. Even though the prices may stabilise at a rate which may be higher than the rate which prevailed in the pre-war period, the system of *Ardhel* might not work in the interests of the producers, if the results of the working of the system over a long period are to be taken into account. Another consideration is that there is a class of producers who have so far not raised any dispute regarding their terms of employment. These are *Kharwas* who produce better salt and they are paid according to the evidence monthly wages of about Rs. 40 in addition to rations and fuel. The *Kharwas* work longer hours—about 8 a day, while the local Agris who take up the salt pans treat this occupation of theirs as a subsidiary one. Some of them cultivate agricultural lands either owned by them or taken by them on lease from others in the monsoon and they also engage themselves in subsidiary labour on the salt pans such as doing the work of *Hamals*, *Dalals*, *Shivanars* and *Bhares* and they are paid wages for this labour. The remuneration which they deserve must have some relation with the remuneration which whole-time producers like *Kharwas* have been getting and particularly when the *Kharwas* produce a better kind of salt and their methods of production are more efficient than those of the Agris. In view of all these considerations I do not think that the demand No. 1 in Annexure B has either been proved by the Union or deserves to be adopted as a satisfactory basis for laying down the terms of employment for the Agri salt producers.

9. I have already referred to the fact that on 23rd May 1947 both the parties had practically come to an agreement under which the demand for *Ardhel* was to be given up and in its place a scale of seasonal wages was devised and that scale was accepted as

being fair and equitable to both the parties. Unfortunately almost all the workers are illiterate and ignorant persons and even though their leaders, Counsel and Advocate argued with them and explained to them the disadvantages of the *Ardhel* system and the necessity of putting the terms of employment on the basis of seasonal wages based upon the cost of subsistence, the Agri employees failed to be convinced and the Union had, therefore, to stick up to the demand of *Ardhel*. I have discussed the merits of the scheme and I feel that the demand of *Ardhel* to which the owners are not agreeable will not even if granted be beneficial to the employees. Mr. Rajani Patel the learned Counsel for the Union who had with Mr. Godiwalla, Advocate, taken a good deal of trouble in convincing the employees that the terms agreed between the salt pan owners as a result of the intervention of some of their friends such as Mr. Chapsi Purushottam *alias* Shambhushet of Panvel were more beneficial to them than the claim of *Ardhel*, submitted for my consideration an alternative scheme of seasonal wages under which instead of 20 annas being taken as the unit, the unit should be one of 15 annas and on the prices of this unit, the share of the price of the salt which should be taken as the basic wage should be Rs. 110 and there should be an addition of Re. 1 per point of index of cost of living above 100, so that at the present index of cost of living the total remuneration for a producer would amount to Rs. 315. According to the present prices of salt, 15 annas of salt would bring to the owner an income of Rs. 1,650 and even though a deduction of about 20 per cent. may be made to cover the expenses, the amount of Rs. 330 would be comparatively a small remuneration to the producer for his labour. He further argued that even if the price of salt for the previous year which was Rs. 50 an anna was taken as the basis, the demand of Rs. 315 as seasonal wages would not be unfair to the salt pan owners. This scale is not acceptable to the owners. The proposal made by them on 23rd May 1947 and which was admitted by the leaders of the Union as well as the Counsel to be an equitable one even though they failed to get agreement for it from the employees, was that the annual wage of every employee undertaking to produce twenty annas of *agri* or *vajni* salt by taking over such salt pans as have according to practice the capacity of producing 20 annas of salt every season shall be Rs. 253 and the way in which this amount was to be made up was that the basic wage to be paid to every employee on the basis of producing 20 annas of salt was taken to be Rs. 100 i.e., at the rate of Rs. 5 per anna of salt and that the employee was to be paid dearness allowance of Rs. 153 which was calculated so as to secure Rs. 9 per every 10 points of the living index figure which was taken to be 270 at present. Provision was also made for an increase or decrease in the dearness allowance in proportion of Rs. 9 per every 10 points of variation in the living index figure. As Adjudicator I have to give a decision to meet the

present day requirements. I have to consider what it is proper for the employees to be paid in view of the state of the industry even though the employees might make certain demands and the demands are not acceptable to the employees. I, therefore, hold that the scale of wages which at one stage did meet with the approval of both the parties should be taken as the scale which is equitable. I, therefore, think that demand No. I should not be granted in the present form but that in its place a scale of seasonal wages should be granted to every Agri employee producing salt on the following scale:

(1) The basic wage to be paid to every employee on the basis of producing 20 annas of salt, shall be Rs. 100 (at Rs. 5 per anna of salt).

(2) The employees shall be paid dearness allowance of Rs. 153 which is calculated so as to secure Rs. 9 per every 10 points of the living index figure which is taken to be 270 at present.

(3) The dearness allowance shall be liable to be increased or decreased in proportion of Rs. 9 per every 10 points of variation in the living index figure.

(4) The living index figure shall for the above purpose be the monthly average of the season from 1st October to 15th June based on figures published by the Government.

(5) The employees shall be paid at the above rate inclusive of dearness allowance for every anna of salt (72 Bengal Maunds) produced in excess of 20 annas and in case the salt produced is less than 20 annas they shall be paid at the above rate on the actual amount of salt produced by them.

10. As regards demands Nos. 2 and 3 it may be pointed out that the practice of appointing agents or Akhatyars or Patels is not uniform. In the case of Bhiwandiwallas, some *Karbharis* are appointed by them in salt pans which are worked by *Kharwas*. These *Karbharis* are paid wages varying between Rs. 75 to Rs. 100 per month in addition to fuel, food and free quarters. Their duty is to supervise the production of salt and to maintain the bands and salt pans in good order and they are also responsible for the quality of the salt. In the case of Agri producers, Bhiwandiwallas appoint one of them who is also a producer to be a leader and he is called a Patel. The duty of the Patel is to carry the instructions given by the Manager to the workers under him. Bhiwandiwallas pay such Patels an extra remuneration of Rs. 15 per season for this work. No evidence is led on behalf of the Union as to how Patels in the case of other salt pan owners are employed and what remuneration they are paid. The Patels and the *Karbharis* are the agents of the salt pan owners and naturally must be persons in whom they have confidence as they have to supervise over the work of production by these Agri producers. I should think that if any salt pan owner appoints from the Agri producers any Patel to do this

work of supervision, that Patel should be paid an extra remuneration which should be calculated at the rate of Rs. 30 a season.

11. Demands Nos. 4, 5 and 7 merely seek to put down on record what the existing practice is. There is unanimity among the salt pan owners and the Union that in practice the salt pan owners and the producers have to do the several things which are enumerated in the demands Nos. 4, 5 and 7. There being no disagreement in respect of these three items I would incorporate them in my Award.

12. As regards demand No. 6 it is conceded on behalf of the Union that the right of taking fish is not an incident of the work of salt production. There is also no satisfactory evidence that the producer is entitled to the fish. Khan Saheb Gazali the Manager of Bhiwandiwallas has stated that it is the salt pan owners who dispose of the fish in the reservoir and the pans and the employees have nothing to do with it. The demand is, therefore, not proved by sufficient evidence and I do not accept it for the purpose of adjudication.

13. Demand No. 8 is that if extra labour is taken from the salt producer it should be paid for. The salt pan owners have denied having taken at any time free labour from the producers. If extra labour is required from them it should be paid at the rate of Rs. 1-8-0 per head per day, as this is the wage which is at present being paid to persons who work for weighment and *Hamali* work.

14. Demand No. 9 is not pressed on behalf of the Union. It is conceded that unless some legislation is undertaken by Government on the lines of giving protection as in the case of agricultural tenants, such security of tenure cannot be ensured under the present conditions. The salt pan owners when they made proposals for a settlement on 23rd May 1947 were agreeable to the suggestion that the Agri employees who were in their employment in the year 1945-46 in the various salt pans should be given the first preference for employment in the season of the year 1947-48 and thereafter so long as they work satisfactorily and they further laid down that in case the employees do not offer themselves for employment by 1st September 1947, the owners should be free to engage new labourers. If both the parties had accepted this proposal, it would have been binding on both. But when it has come to the stage of an adjudication, it would not be proper for the Adjudicator in the absence of any legislative sanction to impose any restriction upon the choice of the salt pan owners to engage such labourers as they like. All that I can do is to make a recommendation to the owners that as far as possible old Agri employees

who were with them in the year 1945—46 in the various salt pans should be given the first preference for employment in the year 1947—48 and thereafter so long as they work satisfactorily.

15. One more demand which is not mentioned in Annexure B was discussed on behalf of the Union. That was the question of giving some compensation to the old Agri employees who for the reasons discussed above have not done any work of salt production during the present season for any of the salt pan owners in the dispute. I have examined this claim of theirs carefully. But I do think that having regard to the circumstances under which the present adjudication was decided upon by the Government and the fact that the employees had not put up their demands for the consideration of the salt pan owners before the producers stopped working as usual from the beginning of the season and the fact that the abstention from work had something to do with the general communal tension which is prevailing in the country which in some cases have led to the boycott of one community by the other, the grant of any compensation is likely to lead to some more bitterness of feelings. I, therefore, do not accept the demand particularly when that demand was not included in the list submitted to Government and Government have not included it in Annexure B to the Notification.

16. I would, therefore, summarise my Award as follows:

(i) that the salt pan owners Nos. 1, 2, 4, 5, 7 and 8 will pay to such Agri producers who would be employed by them in the season commencing from October 1947 and who undertake to produce 20 annas of *Agri* or *Vajani* salt by taking over such salt pans as have according to practice the capacity of producing 20 annas of salt every season an amount of Rs. 253 as seasonal wages computed as follows:

- (i) The basic wage to be paid to every employee on the basis of producing 20 annas of salt, shall be Rs. 100 (at Rs. 5 per anna of salt).
- (ii) The employees shall be paid dearness allowance of Rs. 153 which is calculated so as to secure Rs. 9 per every 10 points of the living index figure which is taken to be 270 at present.
- (iii) The dearness allowance shall be liable to be increased or decreased in proportion of Rs. 9 per every 10 points of variation in the living index figure.
- (iv) The living index figure shall for the above purposes be that based upon the monthly average figures published by Government during the season commencing from 1st October and ending on 15th June.
- (v) The employees shall be paid at the above rate inclusive of dearness allowance for every anna of salt (72 Bengal Maunds) produced in excess of 20 annas and in case

the salt produced is less than 20 annas they shall be paid at the above rate on the actual amount of salt produced by them.

(2) That if any Patel is appointed from the Agri producers he shall be paid for the season an extra remuneration of Rs. 30.

(3) The salt pan owners shall arrange :

(a) (i) to keep the main embankments of the Agar in proper order,

(ii) to keep the turnings in the Agar in order,

(iii) to repair any inundation to the embankments, and

(iv) to carry out all repairs to embankments and turnings as also to put the drains in order and, if necessary, to build new ones and put drain pipes.

(b) The employees in an Agar shall on their part,

(i) put the pans in proper order,

(ii) repair the platform for storing salt, and

(iii) produce salt, sift it and put it on the platform. In short they shall do all work from preparation of the pans to production and storage of salt on the platforms.

(4) If any salt remains on the platforms at the end of the season the sheaves necessary for covering it shall be provided equally by the salt pan owners and the employees. The latter shall do the labour part of covering the salt and look after the heaps so covered in the rainy season.

(5) The salt pan owners shall prepare the sieves for salt at their cost. Other implements necessary for producing salt shall be provided by the employees at their cost.

(6) The employees shall not be required to supply free labour to the salt pan owners but in case there is any damage due to inundation to the embankments, and labour is supplied by them, it shall be paid at the rate of Rs. 1-8-0 per head per day.

The other demands of the employees are not allowed.

Thana, 2nd June 1947.

(Signed) R. D. SHINDE,
Adjudicator.

(Bombay Castle, 12th August, 1947, No. 980/46, Bombay Government Gazette, Part I, pages 3414 to 3429.)

THE EMPIRE OF INDIA LIFE ASSURANCE CO., LTD.
(HEAD OFFICE), BOMBAY

AND

ITS EMPLOYEES

Adjudicator :—Sir Harsidhbhai V. Divatia (President, Industrial Court).

Counsel Mr. R. J. Kolah, instructed by Messrs. Merwanji Kolah & Co., Solicitors for the Company.

Counsel Mr. H. R. Pardiwalla, instructed by Mr. N. N. Mody, General Secretary of the Empire of India Life Office Staff Union for the employees.

I n t e r i m A w a r d

This dispute has been referred to me for adjudication by the Government of Bombay by an order made on the 25th of February 1947. The dispute arose on account of the rejection by the Company of the demands made by the employees on the 20th June 1946. The demands relate to salary, recruitment and promotion, dearness allowance, bonus, provident fund and various other amenities. The short history which led to the dispute is as follows:

2. The Empire of India Life Assurance Co. Ltd., which is doing business in life insurance is one of the oldest insurance companies in India. It was incorporated in the year 1897 and it has its Head Office in Bombay and a number of branches in different parts of India and Burma. It was established by two persons, Mr. E. F. Allum and Mr. R. E. Bharucha, who in 1911 formed the firm of Messrs. Allum Bharucha & Co. which became its managing agents, and remained as such till 1938. After the passing of the New Insurance Act, the managing agency was dissolved but the same Agents continued the management of the Company. Towards the end of 1945, Mr. Ram Ratan Gupta, a business man of Cawnpore, acquired a controlling interest in this Company. Some time thereafter the former officials left the Company's service and Mr. Byramjee was appointed as the Manager. In April 1946 the employees made an oral representa-

tion to the management for increasing their salaries, grant of dearness allowance, bonus, etc., and improving the working conditions of the employees. On the 20th June 1946 a written representation was made in which the demands were formulated. The management issued two circulars on the 20th and 22nd of July 1946 by which the grades were revised. The employees were not however satisfied with the steps taken by the Company. On 20th July 1946 they formed a Union consisting of about 266 employees out of a total of about 280. The Secretary of the Union wrote a letter to the management on 2nd October 1946 intimating the formation of the Union and on the 16th the demands were again formally made by the Union to the management. Thereafter correspondence took place between the Company and the members of the Union but as the Union was not satisfied with the Company's reaction to their demands, a formal notice of strike was served on the Company on the 25th of November 1946, intimating that unless the demands made by the employees were fully accepted and their grievances redressed the members of the Union would go on strike from Tuesday, the 10th of December. On the 4th of December, the Chairman of the Company, Mr. Ram Ratan Gupta, addressed the employees and thereafter negotiations took place between the Company and the Union as a result of which the Company's Actuary, Mr. Markan, arranged a meeting between the Director-in-charge, Mr. Jain, and some members of the staff on the 6th December. Mr. Markan was to prepare a report as to the extent of the relief which could be given to the employees and submit it to the Company. The report was prepared and furnished to the employees on the 8th of December. As it was not found satisfactory by the employees, Mr. Markan arranged for a discussion between Mr. Jain and the representatives of the Union for further negotiations. The conference took place on the next day, *i.e.* on the 9th as a result of which an oral agreement was arrived at between the parties. That agreement was placed before a general meeting of the Union the same night and it was approved of by a majority of 200 against 19. According to the Union, the Director-in-charge was requested to put down the settlement in writing on the same day but as it was very late he promised to give a written statement of the terms of the settlement on the morning of the next day. According to the Company, it was agreed between both the parties that the terms should be reduced to writing and signed on the following morning. On the 10th which was the day on which the strike was to commence according to the notice, the employees refused to work until the company gave them a draft of the agreement already arrived at in writing. Accordingly a draft was prepared by the Director-in-charge, without the signatures of the Actuary and the Manager, and it was handed over to the Secretary of the Union, Mr. Mody, at about 2 p.m. the same

day. It is alleged by the Company that when Mr. Markan inquired from Mr. Mody, the Secretary, and Mr. Pavri, the Vice-President of the Union, as to why the staff refused to work in spite of the decision of the previous night, he was told that the President, Mr. Pardiwalla, had told the staff to remain outside as he felt their going inside the office before signing the agreement would prejudice the strike. Mr. Markan requested Mr. Mody to call the President into the office and an interview took place between them. Mr. Markan told Mr. Pardiwalla that the object of the staff to commence work only after the signing of the agreement could be achieved if the employees occupied their seats and waited till the signed agreement was circulated. After the Director-in-charge, Mr. Jain, came into the office he dictated the terms of the settlement which had already been arrived at on the previous night and the copy of the draft was handed over to Mr. Mody who with other members of the Committee of the Union went thereafter to the residence of Mr. Pardiwalla to show him the draft. As nothing was heard from them for more than three hours Mr. Markan telephoned to Mr. Pardiwalla's place and inquired the reason for the delay. He was told that Mr. Pardiwalla had not returned to his place, whereupon Mr. Markan asked the members themselves to discuss the draft. Thereafter Mr. Markan was told that on a perusal of the draft it was found that the draft did not contain the oral agreement arrived at on the previous day and that it contained several omissions and additions which the members of the Union were not prepared to accept. After the members returned to the Company's office there was a conference between the officers of the Company and some of the members of the Committee. According to the Union the Company prepared a fresh memorandum which was handed over to the employees at night on that day but they found very little difference between the altered draft and the original agreement. According to the Company, Mr. Markan assured the members of the Committee that there were no errors in the draft and he took them again to Mr. Jain where a conference took place between them in which finally agreed touches were given to the draft and after retyping a fair copy was handed over to the Union. On the next day the employees continued their stay-in-strike. According to the Union, they suggested various alterations to the draft to bring it in line with the oral agreement but the Director-in-charge and the Actuary refused to consider that suggestion. According to the Company, although the oral agreement was reduced to writing on the night of the 10th with some agreed changes, the negotiating members informed the Company on the 11th that they were not in a position to abide by the terms, that they were instructed by the President that the negotiations must be stopped and that the terms were not binding on the Union as they had been agreed to by the members in their individual

capacity. On and from the 12th the employees did not enter the office and continued the strike. An Action Committee was appointed by the Union to picket near the gates of the Company and picketing continued during the strike.

3. Thereafter on the 21st January 1947, the Manager of the Company, under the instructions of the Director-in-charge, sent cyclostyled notices to all the members of the Union discharging them from the Company's service for their rowdy, violent and indecent behaviour during the strike. Thereafter the employees continued the strike and picketing and ultimately the Government wrote two letters, one to the Company and the other to the Union on the 10th of February suggesting to both the parties the advisability of referring the dispute to arbitration. The Union replied on the next day approving the suggestion and stating that it was prepared to go to arbitration of any impartial authority. The Company, however, replied on the 17th February that no question for arbitration arose between the Company and the ex-employees as the latter's services were terminated by the notices of discharge given on the 21st January, as the consequence of which they were no longer in the service of the Company. The Government, however, passed an order on the 25th of February referring the demands of the employees for adjudication to me. Notices were thereafter issued to both the parties and the preliminary hearing took place before me on the 15th and 26th of March.

4. It was contended by Sir Jamshedji Kanga on behalf of the Company, that the notification issued by the Government under rule 81-A of the Defence of India Rules as continued in force by Section 2 of the Emergency Provisions (Continuance) Ordinance, 1946 (No. XX of 1946), was *ultra vires* inasmuch as it was issued and promulgated by the Government of Bombay and not by the Governor of Bombay as was required under the Defence of India Act and the Rules thereunder. I held that the notification was *intra vires* because although it was signed by the Deputy Secretary to the Government, it was issued by order of the Governor of Bombay. Thereafter the Company applied to the Bombay High Court for a writ of certiorari that the proceedings before me were *ultra vires* on the same grounds taken before me. The application was heard by Dixit J., who held that the notification was not *ultra vires* and that I had the jurisdiction to try the case. Thereafter a further hearing proceeded before me on the 22nd of May. On that day also an objection was made that as Ordinance No. XX of 1946 had expired on the 31st of March, Defence of India Rule 81-A was not, therefore, in operation then. I over-ruled that objection and held that even in spite of the expiration of the Ordinance the

present proceedings could be continued and completed under the provisions of section 6 of the General Clauses Act.

5. The parties then asked me to make an interim award as regards certain demands which were of a preliminary nature about the reinstatement of the striking employees who were discharged, the removal of the new employees who were appointed in place of the striking employees and the terms and conditions on which the striking employees should be reinstated. The preliminary demands taken out by me are demands Nos. XIV, and XVII of the Original demands, and a fresh demand, which was referred to me by the Government subsequently on the 28th February after the notification was issued. These demands are as follows:

No. XIV. Withdrawal of discharge notices.—Notices served on the members of the Union purporting to terminate their services with the Company should be withdrawn.

No. XV. The employees should be paid full salary for the period of the strike. Salary for two months should be paid forthwith by way of interim relief.

No. XVII. All the outside persons appointed to work in the place of the employees on strike should be removed.

Fresh demand No. 2.—(a) Whether any employees have been discharged during the continuance of the trade dispute, (b) if so, whether they should be reinstated and if so, on what terms and conditions, and (c) whether any and if so what compensation should be paid to them.

Both the parties have led voluminous evidence on these preliminary demands consisting of more than 300 typed pages of oral evidence and 120 exhibits of documentary evidence. The principal points in dispute between the parties on these preliminary questions were (i) whether the Company was justified in giving notices of discharge which it did during the pendency of the strike, (ii) whether the conduct of the strikers was peaceful or violent, (iii) whether the Company was justified in employing new persons in place of striking employees, (iv) whether, after the notification referring the matter to adjudication, the Company was justified in not reinstating the employees and (v) finally whether the employees are entitled to any compensation for loss of their service pending the final decision of these proceedings.

6. Although the matter has been complicated by both the parties leading a mass of evidence, the position in law in so far as these interim demands are concerned is simple. Under Ordinance No. XX of 1946 which was in force at the time the notification was issued, the previous rule 81-A of the Defence of India Rules was continued in operation. Under that Rule, the appropriate Government may for the purpose of public safety, the maintenance of public order or for maintaining supplies and services essential to the life of the community, make provision for prohibit-

ing a strike or lock-out in connection with a trade dispute and refer any trade dispute for adjudication in the manner provided in the order. By virtue of that power this notification was issued directing me that for the purpose of adjudicating it I was to exercise, so far as may be, such powers as were conferred on and follow such procedure as is prescribed for a board of conciliation under the Trade Disputes Act, 1929, and the Bombay Trade Disputes Rules, 1930. Sub-rule (5) of rule 81-A says that the expressions "employer", "lock-out", "strike", "trade dispute" and "workman" shall have the respective meanings assigned to them in section 2 of the Trade Disputes Act, 1929. Under the provision of rule 81-A of the Defence of India Rules, the Central Government have issued an order on the 19th of December 1945 which stated among other things as follows: "when any or all of the matters of the Trade Dispute have been referred to a Court of Inquiry or a Board of Conciliation under the Trade Disputes Act, 1929, or for conciliation or adjudication under an order made under rule 81-A of the Defence of India Rules, no person employed in any undertaking concerned in the dispute shall go or remain on strike and no employer in any undertaking concerned in the dispute shall lock-out or continue to lock-out his employees during the period from the making of the reference until the expiry of 2 months after the completion of the proceedings upon such reference". (See *Bombay Labour Gazette*, February 1946, p. 397, 398).

7. The term "workman" has been defined in the Trade Disputes Act, 1929, as meaning "any person employed in any trade or industry to do any skilled or unskilled manual or clerical work for hire or reward and includes, for the purposes of any proceedings under this Act in relation to a trade dispute, a workman discharged during that dispute". It is conceded by Mr. Kolah on behalf of the Company, that by virtue of this definition although the employees were discharged on the 21st of January last during the continuance of the trade dispute, they continue to be workmen for the purposes of these adjudication proceedings so that they can come before the Adjudicator. But he contends that as regards the demand for reinstatement they cannot be regarded as workmen because they had been already discharged by proper notices before the adjudication proceedings began. Mr. Kolah conceded that the notification relating to lock-out would have applied if the adjudication order had been made before the discharge notices and if the other conditions in the notifications were satisfied, but he went to the length of contending, as he had to do logically, that by giving notices of discharge, which may be good or bad, before the adjudication order was made, he can even get out of the adjudication itself. The basis of his argument is that under the common law a master is at liberty to discharge a servant whenever he likes after giving a proper notice to him and there is no industrial law which provides to the contrary and forces an employee on an

unwilling master after the trade dispute arose. The second contention is that the definition of "lock-out" in the Trade Disputes Act, makes it clear that the lock-out must be intended for the purpose of compelling employees to accept the terms or conditions of employment; that on the 27th of February when it is alleged lock-out took place there was no intention on the part of the Company to compel the employees to accept any terms or conditions of employment because they had been already discharged on the 21st of January. In order to appreciate these contentions it is necessary to examine the purpose of the emergency legislation like the Defence of India Act and the Rules thereunder. The original rule 81-A of the Defence of India Rules was enacted for the purpose of securing the defence of British India, the public safety, the maintenance of public order or the efficient prosecution of war, or for maintaining supplies and services essential to the life of the community. After the end of the war this part of the rule 81-A was amended as per Ordinance XX of 1946 and therein some of the original objects were omitted but the other objects, namely, "for securing public safety or the maintenance of public order or for maintaining supplies and services essential to the life of the community" remain. The omission of the other objects was clearly due to the termination of the war in the middle of 1945 but the retention of the two objects in the Ordinance was obviously due to the fact that although the war itself was over, the conditions created by the war still remained for maintaining order and supplies to the community. Therefore, during as well as after the war it was necessary for the purpose of maintaining industrial peace as well as for increasing production of necessary articles and for maintaining supplies and services essential to the life of the community that there must be a summary and speedy procedure for the prevention and settlement of trade disputes. It is for that reason that the Government notification which was originally issued in August 1942, was substituted by another notification to the same effect on the 19th of December 1945 which provides, among other things, that no employer shall lock-out or continue to lock-out his employees during the period from the making of the reference until the expiry of two months after the conclusion of the proceedings upon such reference. If, therefore, either all or some of the employees are locked-out or continue to be locked-out on the 27th of February when they wanted to resume work, there is clearly an infringement of the order issued under rule 81-A. The contention that the employees continue to be such notwithstanding the discharge notices only for the purposes of conducting the adjudication proceedings has no force at all. If they are already discharged, there is no point at all in starting the adjudication proceedings. In fact the argument amounts to this that if they are discharged rightly or wrongly there is no point in their going on with the adjudication proceedings because even after the adjudication proceedings are over,

the employers are not bound to take them in service and in fact Mr. Kolah had to admit this. No distinction can be made, therefore, between the employees remaining as such for the purpose of adjudication and ceasing to be such for the purpose of lock-out. This principle which has been embodied in the Defence of India Rules, namely, that the employees cannot go on strike or be locked-out after a trade dispute arises and is referred to adjudication, is obviously enacted for the purpose of meeting a situation like the one which Mr. Kolah has pressed before me. If it were not so, as soon as a trade dispute begins, the employers can discharge the workers in order to avoid the subsequent adjudication order which may be made. The result would be that the workers' demands can be successfully defeated. The Defence of India Rules are made for the purpose of settling disputes and not aggravating them and the argument put forward by Mr. Kolah would really result in the aggravation rather than in the settlement of an industrial dispute. In fact this principle that all employees must continue to be such during a trade dispute has been made the basis of legislation in the United States of America as well as in England. The term "employee" has been defined in section 2(3) of the National Labour Relations Act of the United States as "including any individual whose work has ceased as a consequence of or in connection with any current labour dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment." The effect of the decisions on this definition as summarised by Ludwig Teller in "Labor Disputes and Collective Bargaining", Volume II, Section 332, page 894, is as follows: "The employer's duty to bargain with his striking employees is not extinguished by the fact that the strike was called pending negotiations; and for the purpose of bringing pressure to bear in reinforcement of the striking employees' demands. Nor can the employer relieve himself of the duty to bargain with striking employees by announcing their discharge in the midst of the strike, the Board (The National Relations Board) holding it beyond the employer's power thus to alter his relationship with his employees, a relationship which section 2(3) of the Act, and not the employer, had created." It is further observed in the same Volume in section 277, page 753 as follows:

"Striking employees retain their status as employees under the act in two situations: first, where they strike in connection with a 'current labor dispute.' Second, where the strike is the result of an unfair labor practice." In England also the term "workmen" has been defined in section 5 of the Trade Disputes Act of 1906, as "all persons employed in trade or industry whether or not in the employment of the employer with whom a trade dispute arises." During the war the Minister of Labour in England had issued the "Conditions of Employment and National Arbitration Order, 1940." (See *Ministry of Labour Gazette*, August 1940,

p. 235). The principle underlying this order corresponds to that of rule 81-A of the Defence of India Rules. It is provided in Part II of the Order that lock-outs and strikes are prohibited unless the disputes have been reported to the Minister and not been referred by the Minister to settlement within 21 days from the day on which they are reported.

8. The object of all these emergency provisions is to my mind quite clear, namely, not to change the *status quo* between the employers and the workers during the existence of any trade dispute if the dispute is referred to adjudication. The object is that as soon as adjudication order is made, either on apprehension of an intended strike or soon after the strike begins, peace should not be disturbed and production should not cease and therefore, if there is any strike, it should be called off and the employers should not prevent the workers from resuming work. This object will be clearly defeated if the construction which is sought to be imposed on the definition is accepted. In my opinion, workmen continue to be workmen both for the purpose of adjudication and for the purpose of disability on their part to strike and on the part of the employers to declare a lock-out. I, therefore, hold that all the discharge notices which were given during the pendency of the trade dispute have not the effect of terminating the employer-employee relationship between the parties for any purpose.

9. It is quite true that even during the pendency of an industrial dispute it would be open to an employer to discharge the worker for any reason which is not connected with the trade dispute. For example, if the worker is disobedient or is guilty of gross misconduct or habitually negligent he would be liable to be discharged. But no discharge or victimisation can be made for any reason which is connected with the trade dispute itself. The next point for consideration is whether the reasons given in the discharge notices are extraneous to the trade dispute. For that purpose it is necessary to see under what circumstances the discharge notices were given. The notices are all in the same form and worded as follows:

"You have in combination with some other employees of the company ceased to attend Office and work and attend to your duties since the 10th day of December 1946.

"The strikers from day to day assemble in the public streets in front and rear of the Office premises, make ugly demonstrations, molest constituents calling at the Office for payment of premia due on their life policies, and prevent them and others having business with the Company from entering the Office. They also abuse, molest and threaten with violence and are violent to old and new employees of the Company, use filthy and disgraceful language towards women employees and threaten

them with indecent behaviour. Your actions and omissions cannot possibly be looked upon with equanimity.

"This is to give you notice that your employment is hereby terminated forthwith. Your salary whatever due will be paid to you in exchange of a receipt duly signed by you."

The notices most of which were issued on the 21st of January and some on the 22nd bear the cyclostyled signature of Mr. Byramjee Hormusjee, the Manager of the Company and most of them were initialled by him. The Company justifies all the notices both on the ground of the employees' going on strike and for the conduct of the strikers. In view of the legal position which I have discussed, it is quite clear that the reason of ceasing to attend the office during the strike is not a valid ground. The second ground remains to be examined. In order to appreciate it it is necessary to deal with the important points from the voluminous evidence which has been led by both the parties on this point. The employees have led evidence to show that the contents of the notices about the behaviour of the strikers are false and that the strike was quite peaceful throughout without any violence on their part. The Company has led evidence to show that the strikers were guilty of a number of acts which amounted to violence as well as disgraceful, rude and indecent behaviour towards the officers of the Company as well as new employees. I will here deal with the conduct of the strikers up to the 21st of January when the notices were given. The alleged behaviour of the strikers after that date till the date of adjudication does not bear on the question as to whether the contents of the notices are true or not. The premises of the Company are situated on the Hornby Road with its back on the Bastion Road. The offices of the Company are situated on the first and second floors of the building. The entrance door for going up is on the South side of the building in a small enclosed compound having two gates, one opening on the Hornby Road and the other on the Bastion Road. Immediately after the strike police constables were posted on duty near the entrance door and several police officers of the Esplanade Police Station used to visit the place both in the morning and in the afternoon. It is common ground that some of the striking employees used to remain present near the entrance gates almost every day for the purpose of picketing and exhibiting posters and placards. Some time after the strike commenced the Company began to engage new employees for conducting its business. These employees were brought to the office and also taken home in motor trucks in the beginning and thereafter in the buses belonging to the B. E. S. T. Company. The striking employees resented the engagement of new employees in their places whom they called black legs and demonstrations were made whenever the new employees came in and went out. In order to prove that the picketing was on the whole peaceful throughout, the employees have examined several police officers who were on

duty from time to time. These officers are Inspector Khansaheb Pathan, Sub-Inspector Shaikh, Sub-Inspector Doctor, Sub-Inspector Tajuddin Merchant, Deputy Inspector Gurr, Sub-Inspector Desai, Sub-Inspector Hemmady, Sub-Inspector Maidev and Sub-Inspector Donnelly. The evidence of these police officers is generally to the effect that whenever they went near the gates of the Company's office they did not see any violent conduct or disorderly behaviour on the part of the strikers and that on the whole the picketing was peaceful except for shouting of slogans. The employees strongly rely on the evidence of these police officers for the purpose of proving the falsity of the allegations contained in the notices of discharge.

10. The Company has led evidence to prove about 13 instances of the violent, disorderly and indecent behaviour of the strikers in justifying the reasons mentioned in the notice of discharge.

(1) The first incident on which the Company relies was an alleged assault on a new employee named Motiwalla on the 23rd or 24th December. There is, however, no evidence except suspicion to prove that he was assaulted by any of the striking employees.

(2) The second incident relied upon is an alleged assault on a loyal employee named Machliwalla on the 31st of December. He says in his evidence that while he was proceeding from Vadala Station to his house at the Parsi Colony in Dadar, he was suddenly assaulted in front by one of the three persons who had come near his taxi which he wanted to engage near the office premises that evening. He got a blow on the left eyebrow but the assailant ran away and he was unable to identify him. He says that the persons who assaulted him must be the strikers because the incident took place during the strike period. This is the only evidence on this point and although it may be possible that he might have been assaulted by a striker, I cannot hold it definitely proved that the assault must have been by a striker for want of further evidence on this point.

(3) The next incident is on the 30th of December. It relates to an alleged conduct of the strikers in not allowing a contractor by name Mantri who had prepared a name board of the Company and wanted to fix it up on the office premises. Mantri went with some coolies to the Company's office on the evening of the 30th of December but some of the strikers requested the coolies that they should not carry it to the first floor whereupon the coolies became afraid and left the board in the passage near the wall. Mantri has produced a letter which he had written to the General Manager of the Company on the 13th of February in which he refers to the incident that took place on the 30th of December when the strikers instigated the coolies not to take the name board upstairs and therefore they went away after leaving it downstairs. Mantri in his evidence says

that he wrote the letter within three days after the incident but later on says that the Manager had asked him to write a letter immediately after the incident but that he had neglected to do so and wrote it after a long interval. In the letter (Exhibit 110) which was written by him again to the Company on the 7th of April in which he brought to the notice of the Manager that when he was trying to fix the board some days before this letter, he found that one of the hangers which was fixed up by him in the pillar with cement-mortar earlier was found removed from its place and missing. He was afraid that the strikers would tamper with the board if it was fixed and therefore, the Company should take necessary steps to report the matter to the police to prevent any further tampering with the remaining hangers. It is true that the letter (Exhibit 98) was written after a long interval but I believe Mantri when he says that the strikers did not allow the coolies to take the name board upstairs. There is no evidence, however, of the names of these strikers. The only thing that is proved is that some of the strikers who were present at that time did not allow the coolies to do their work.

(4) The next incident relates to the alleged tampering of the lift on the 2nd of January. Exhibit 97 is a letter written by J. J. Engineering Company to the Manager. But the contents of this letter are not proved as the Engineering Company's man is not examined. Witness Katrak, however, deposed that the lift frequently gave trouble during the strike period and that the original liftman had joined the strike. He said that the machinery of the lift was on the roof but the switch and fuses which were on the ground floor were interfered with. Byramjee has deposed that the original liftman had the key of the closet on the ground floor and therefore, it is probable that he must have tampered with the switches and fuses. I believe Byramjee on this point and it is possible that the liftman might have tampered with the switch and fuses.

(5) The next incident alleged is on the 3rd of January on which day three new women employees of the Company were surrounded by the strikers while they were going out of the office premises during the lunch hour and the strikers made filthy and rude remarks towards them. One of the three women, Miss May Cassier, has been examined and she has deposed that very filthy and dirty language was used towards them. Some of the words alleged to have been used by the strikers could not be mentioned by her openly in the Court and she put them down on a piece of paper at my request and I am satisfied that the words were very indecent. She also says that some of the strikers on subsequent days used to flourish 10 Rupee notes towards her. This woman made a written complaint about the strikers' conduct on the 3rd of January and the complaint was forwarded by the management to the police. The

Inspector of Police Mr. Khan forwarded it to Deputy Inspector Gurr for necessary enquiry who went and warned the strikers that they should desist from such things and he suggested that to avoid such a recurrence police officers should be posted for duty in the morning as well as evening. Deputy Inspector Gurr says in his evidence that when he went to the Company for enquiry one woman employee was called in and she affirmed the contents of the letter. I have no reason to disbelieve Miss May Cassier in spite of the suggestions made against her in her cross-examination and I am satisfied that her evidence is mainly true. I may note, however, that there is no evidence as to the names of the strikers who took part in the molestation and abuse against these women.

(6) Thereafter it is alleged by the Company that in the first week of January the Company's manager Mr. Byramjee was abused and insulted in very indecent language by the strikers who used to assemble near the gates. It may be stated here that when the new employees used to come in the buses the Company's officers, Mr. Byramjee, Mr. Markan and Mr. Kapoor, either singly or together used to go down and receive the new employees and escort them upstairs and also to accompany them downstairs in the evenings in order that they may not be molested by the strikers near the gates. Byramjee has deposed that in the beginning the strikers' behaviour towards him was quite respectful but thereafter the strikers began to abuse him from the first week of January. The strikers used to shout slogans calling him "Byramjee Muradabad", "Lahore Criminal", "Zenith Goonda" and "Bogus Manager", referring to his past stay in Lahore and because he was the Ex-manager of Zenith Life Insurance Co. Mr. Byramjee says that he was never convicted at any time and the slogans were entirely false. The strikers did not stop at these and he was repeatedly called a pimp and tout of the Marwaris referring to the Chairman of the Company, Mr. Ramp Ratan Gupta. Some of the words used against him are extremely indecent. I am quite satisfied that the epithets used against him by the strikers are so vulgar that no decent employees can address them to the Manager of the Company. Byramjee says that some of the permanent strikers whom he particularly noted in abusing him were Achadwalla, Sampura, D'Souza, Unwalla, Sachinwalla and several others. The Company examined one independent witness, Mr. Pavri, who has his office in a building opposite to that portion of the Company's office. He has deposed that he used to see from the place which he occupied in his office, the strikers shouting at Byramjee and calling him "Byramjee Burglar" and other unmentionable words. This witness has been cross-examined to prove that from the place which he was occupying in his office he could not have seen or heard what was taking place near the gates of the Company but even apart from his evi-

dence I have no reason to disbelieve the evidence of Byramjee. Throughout the adjudication proceedings before me which lasted for nearly 6 weeks I could see that Byramjee was most disliked by the employees and he was the object of their ridicule. In fact Mody, the General Secretary of the Union, has admitted that they had no regard for the persons who were conducting the affairs of the Company at the time and Byramjee was the principal person whom he had in mind. I will take up Byramjee's evidence later on when I come to the demand about reinstatement. It is sufficient to observe here that the general conduct of the strikers towards Byramjee was disrespectful and unfair.

(7) The next incident in point of time was on the 13th of January when it is alleged that one Easwaran who is a loyal employee of the Company was given threats by one of the strikers Achadwalla in order to take from him a contradiction to a letter (Exhibit 30) which he along with others had written to the press against the leadership of the strike. I was not, however, much impressed by the evidence of this witness and therefore I will not take this incident into consideration.

(8) Then it is alleged on the 14th of January Mr. Markan, the Actuary, had gone to the office of the Bombay Life Assurance Co. where also a strike of the employees was going on. While he was in the office, he heard shouts of the strikers against him. When he came out, he saw one of the strikers of the Empire of India Co., Dongerkery, among the crowd, directing the strikers of the Bombay Life Company. I hold this incident proved for Dongerkery himself admits his presence there, but except for the shouting by the strikers the incident has not much significance.

(9) Then it is alleged that about the middle of January Mr. Kapoor who is a Zonal Manager of the Company was surrounded by the strikers and abused. He was asked by the strikers whether he had insured his life and if not, he should take out a policy immediately. He gave the names of Achadwalla, Unwalla, Katrak Jr. and Sukheshwalla. as among the persons who abused him and he also identified three persons. Palia, Zaikar and Sethna in Court. I believe the evidence of this witness and hold this incident as proved.

(10) The next incident alleged is the pouring of oil in Mr. Kapoor's car by the strikers and also the attempt to puncture the wheels of the car by putting nails into the tyres on the 16th and 17th January. These incidents are deposed by four persons who occupied the car, *viz.*, Kapoor, Markan, Easwaran and Chauhan. Mr. Markan has deposed that while he and Kapoor were going to sit in the car in the evening, Easwaran and Chauhan who had occupied their seats inside told him that oil had been sprinkled in the front seat and asked him to put paper on the seat before occupying it. Thereupon newspaper was spread

over the seat as well as the cushion but in spite of that his clothes as well as Mr. Kapoor's were soiled with patches of oil. Both the suits were produced in Court. It was alleged by Mr. Pardiwalla on behalf of the employees that the oil marks on the suits could not have been on the particular spots where they were if the evidence was correct. But I have no doubt whatever that there is no inconsistency between the evidence and the places where the oil marks were on the suits. Mr. Markan has further deposed that the next day while they were leaving the office in the car two of the strikers, Unwalla and Achadwalla, came to him and asked him how he had enjoyed the oil incident on the day before. I have no doubt about the happening of this incident as alleged by the Company and there is also no doubt that nobody else except the strikers could have done it.

(11) About the spokes put in the wheels on the same day there is some discrepancy in the evidence of the witnesses as to where the spokes were taken out and where the car was taken but in spite of this discrepancy I do not find any reason to disbelieve this incident. In fact at the time of the second incident about putting nail in the car while the occupants were changing from the car into a taxi, a police officer was doing duty at the entrance of the office who enquired as to what had happened and he helped him in procuring a taxi. I, therefore, hold that the Company's story on this point is true and the incident had happened.

(12) The next incident is alleged to have taken place in the 3rd week of January when some of the strikers carrying placards went to the Podar College of Commerce where Mr. Markan is part-time professor in Actuarial Science. Mr. Markan says that when he was coming out of the college he found some of the strikers at the gate of the college carrying placards. After he left the college they followed him through the bazaar and kept on shouting after him. On account of this incident he had to make alternative arrangements for his lectures at a different place. Mr. Markan says that one of the strikers, Pillai, was among the crowd on that day. I hold this incident also proved.

(13) The last incident before the discharge notice was given is the alleged conduct of the strikers against one Perreira, who had joined the strike formerly but thereafter rejoined the service of the Company. He says that on the 20th of January he was forcibly taken first to the Union's office and thereafter taken forcibly by Mr. D'Souza and others to the house of the President. He says further that they asked him not to work in the office and that if he did so there would be injuries on his person. Thereafter he was made to sign a statement against his will. Subsequently Perreira wrote down a statement on the 29th of January about this incident (Exhibit 95) and this statement seems to be verified by Rao Bahadur Vijayaraghavachariar who is a Justice of Peace and who was working as a Secretary to

the Company's Chairman, Mr. Ram Ratan Gupta and whose office was on the top floor of the Company's building. I am not quite satisfied in the manner in which Ferreira gave his deposition before me and although he was taken by the strikers to the President's house, it is not safe to rely on his evidence.

11. These are the incidents for which evidence has been led by the Company as regards the strikers' conduct before the issue of the discharge notices. One of the principal arguments urged on behalf of the employees is that the incidents which are alleged by the Company to have taken place near the entrance of the Company's office cannot be believed at all because the policemen were always there from morning till evening and the police officers also used to visit the office in mornings and in afternoons, and no complaint has been made by any loyal employee of the Company to the police when the incidents are alleged to have taken place. The Company relies upon the evidence of the police officers themselves that they used to go there for about an hour only in the morning and an hour in the evening. The workers were not standing in one place but were moving about. Although Deputy Inspector Gurr had suggested that the police officers should be there in the mornings and afternoons that suggestion had not been carried out. It is quite true that there was no report of the police about any of these incidents narrated above although some complaints had been made by the new or loyal employees to the officers of the Company. For the police officers were not always there and it is not at all improbable that the incidents which have been proved on the evidence of witnesses whom I believe, took place, when the officers were absent. As regards the policemen on duty, it appears to me that they did not consider it to be their duty to interfere whenever there was any little trouble between the strikers and the loyal employees. All that they thought they should do was to prevent any violent incident taking place. I am not, therefore, prepared to disbelieve the incidents, which I have held as proved, merely because no complaint was made to the police at that time. As regards the number of the strikers who used to be present near the gates of the office there has been exaggeration on both the sides, the Company's witnesses saying that there were about 100 in number and the employees' witnesses saying that there were only a few. The police evidence is to the effect that generally there used to be 30 or 40 strikers standing near the gate as well as moving from one gate to the other.

12. There is no evidence, however, that all the 260 strikers to whom the discharge notices were given were at one time or another present near the Company's office and took part in the demonstrations mentioned above. In fact some of the strikers who were examined on behalf of the employees have deposed that they never went to the office premises before the 21st January either

because they were ill or for other reasons. Six of such strikers have been examined. Although some of them went near the office to hand over the discharge notices which they had received from the Company to the Secretary of the Union, their evidence shows that they could not have been present near the Company on any day before the 21st January. As a result of this evidence I do not hold that all the 260 strikers to whom the notices of discharge were served took part in the above incidents. It was generally stated in the notices that the strikers from day to day assembled and made ugly demonstrations etc., and for those reasons it was stated that "Your actions and omissions cannot possibly be looked upon with equanimity and therefore your employment is hereby terminated forthwith." This shows that the notices were given indiscriminately to all the strikers who were members of the Union and in fact Mr. Byramjee has admitted that the Managing Director Mr. Jain who was empowered by the Board of Directors to deal with the situation gave instructions to Mr. Byramjee to give notices to all persons who had gone on strike. There is nothing to show that the Director-in-charge satisfied himself that all the strikers to whom notices were served were guilty of any act mentioned in the notices. It is not possible to hold that the strikers who were not present near the office and did not take part in the demonstrations were constructively responsible because of the acts of their fellow strikers. There is no evidence of any conspiracy or understanding between the strikers to commit the acts alleged against them. Nor is it possible to hold that every striker was present near the office premises on some day or other and took part in the demonstrations and that all the strikers are, therefore, constructively responsible for these acts. It appears that the strikers assembled almost every day and moved about in groups shouting slogans etc. The management does not seem to have taken a serious view of the acts of the strikers in the beginning and complaint was made to the police about their acts till about 10 days after the discharge notices were given i.e., on the 31st January. On the other hand there is clear evidence to show that although discharge notices were given to all the strikers the management had hopes that the notices in fact would put successful pressure on the strikers so that they might be induced to give up the strike. The employees have examined one Mr. Jamnadas Shah who was in the insurance business and who was known to the management of the Company. Jamnadas says that he was offered some executive post in the Company some time before the strike took place. He was present at the meeting of the Board of Directors after the strike took place and he used to visit the office of the Company fairly regularly. According to the employees he was appointed or was to be appointed as the General Manager. Jamnadas denies this but it is quite clear that even though he might not have been appointed as such, he was attending the Company's office and taking interest and trying to bring about a settlement between the

parties. He put himself in touch with the President of the Union and met the action committee of the Union on the 23rd of December. For that purpose thereafter he had various conferences with them at different places. He had collected the necessary files from the Company's office for carrying on negotiations with the strikers and after discussing matters with the committee of the strikers he used to communicate the results to the Director-in-charge of the Company. He admits that after he came to know of the notices of discharge, he inquired from Mr. Jain, the Director-in-charge, as to why notices were given when Mr. Jain seems to have replied that the Company had no other alternative except serving notices as the negotiations he (Jamnadas) was conducting, failed. He does not say that Mr. Jain told him that the strikers were discharged because of their violent and unruly behaviour. He further says that even after the notices were served he continued to carry on discussions with the Union and although he says that he did so at his own instance, I have no doubt that he did so to the Company's knowledge and with their implied consent. Even about 5 or 6 days after the discharge notices were sent, he along with one Alwa had met Mr. Jain in the Company's office, when Mr. Jain said that he was prepared to have the settlement made and if any minor points were left he would see to it. Even thereafter he had some more meetings with the Action Committee till the negotiations finally failed on or about the 30th of January when the Action Committee had given him a draft of the demands and he (Jamnadas) had a talk with one of the directors about one of the demands of the Union that the new employees should be discharged. The Director is said to have replied that it was not possible. He says further that in the beginning of the negotiations the stumbling block was the question of the recognition of the Union and in the later stages it was the demand that the new employees should be discharged. Although this witness says that the Company had never asked him to negotiate with the strikers and he did so on his own accord, it seems to me that he was all along carrying on negotiations at the instance of the Company's officials. Jamnadas was in no way connected with the employees or the Company before and there is no reason at all why a stranger should intermeddle in the affairs of the Company and try to bring about a settlement. Probably he was given a promise of a high executive post in the Company and the Company used him as an agent on their behalf to carry out the negotiations and that seems to me to be so because the new employees of the Company were not only not conversant with work in the insurance offices but they were collected somehow or other to break the strike and to make a show to the strikers that the Company's work could be carried on without them. In that the Company did not succeed because it is clear on the evidence that most of the new employees were quite worthless men. It is natural, therefore, that the Company was anxious that the strikers should be persuaded to resume work

as soon as possible. The Company was trying its best to persuade some of the strikers to give up the strike and four or five workers indeed deserted the Union and resumed work but all the rest of the strikers who subsequently included some of the officers of the Company, stood solidly in continuing the strike. It is for that reason that the Company had used Jamnadas to bring about a settlement even after the discharge notices were served. That this was so, is also clear from what the Company wrote to its branch managers after the notices of discharge were given. It appears that on account of the strike correspondence with the branch offices could not be carried on as regularly and there were complaints from the branch offices about the disposal of work relating to new policies in the head office in Bombay. To one of such complaints the Manager, Mr. Byramjee, wrote a letter to the Branch Manager on the 31st of January i.e., 10 days after the discharge notices, in which it is stated as follows, "We are doing all we can to expedite matters and in the meanwhile, will thank you to very kindly convey our apologies to parties who are inconvenienced on account of the strike. This should be the regular practice till the strikers resume work and everything is in order once again." (Exhibit 14). If the Company had intended really to discharge all the strikers on the 21st for their violent and disorderly conduct, it is really strange why it should write in this manner to the Branch Manager. It is urged by Mr. Kolah on behalf of the Company that the statement about the strikers resuming work in the letter was made simply for holding out hopes to the Branch Managers but I am not satisfied with that explanation. If there was a definite dismissal of the strikers and the new employees were engaged as members of permanent staff, they should have stated that although the strikers were discharged new employees were already engaged and that there will, therefore, be no delay, now. Instead of that, the branch managers were told to apologise to the constituents and tell them that everything is likely to be in order when the strikers resume work. It appears that this letter which was in the files of the Company's office seems to have come in the possession of the Union probably on the 27th February when they went to the office for resuming work. However improper may be the manner in which the strikers obtained possession of an authentic copy of the letter from the files of the Company, it has not been challenged that the letter is not genuine. The documentary evidence along with the negotiations which Mr. Jamnadas carried on even after the notices of discharge were served strengthens the inference that Jamnadas carried on the negotiations at the instance of the Company even after discharge notices were given. The employees have also examined one Sukheshwalla who was once a Superintendent of this Company and had retired in 1942. He has got his two sons in the employment of the Company one of whom had joined the strikers and the other had not. He says that in the last week of January Mr. Markan the Actuary

had sent him a message through his son to see him. Thereupon Sukheshwalla went to Mr. Markan's house at night when the latter asked Sukheshwalla to advise the strikers to give up the strike. The next morning Sukheshwalla went near the office of the Company and told some of the strikers that if they were willing Mr. Markan would come down and speak to them, but the strikers refused to speak anything to Mr. Markan. I have not doubt about the truth of the evidence given by this old man. This incident is also about a week after the discharge notices were given. All this evidence leads, to my mind, to the conclusion that the discharge notices which were indiscriminately given to all the members of the Union without ascertaining what part each had taken in the demonstrations were really meant by the management as a threat to the employees to give up the strike with the hope that the negotiations which Jamnadas was carrying on at the time might prove successful as a result of this threat. As I have stated before, the employees continue to be the employees of the Company during the strike and the management had no right to discharge them for any reason connected with the trade dispute. The Company was at liberty to discharge or dismiss such persons who are guilty of any violent action or misconduct even while the trade dispute is going on and therefore, the individual strikers who might be proved to have taken part in the disorderly behaviour in the incidents which I have narrated above may be regarded as properly discharged. But the wholesale discharge of all the other strikers was not justified. Moreover, the Company itself did not mean the notices to be bonafide discharges but only threats. I, therefore, hold not only that the discharge notices against all the strikers who were not proved to have taken individual part in the disorderly demonstrations are not valid and were not meant to be discharge notices but that the action of the Company really amounted to a lock-out within the definition of the term under the Trade Disputes Act as the Company refused to continue their employment in consequence of the dispute that was going on and it was intended for the purpose of compelling the strikers to accept the terms and conditions of the Company for resuming work. In fact, the Company through Jamnadas negotiated with the strikers to accept the Company's terms.

13. This brings us up to the events of terminating the services of the strikers. Thereafter the strike continued and there were several other incidents at or near the Company's premises in which the strikers are allged to have taken part. On the 23rd of January one Commisariat who was working as a clerk in the Company was roughly handled by some of the strikers who abused him and tore his shirt. He says that Achadwalla kicked him from behind and tore his shirt. He also pointed out in the Court one Pavri who he says had caught his hand. On the next day he made a written complaint (Exhibit 103) about this incident to the Manager. The evidence of this witness is supported by Witness

Widhani who is an employee of the Company. He was asked by Commisariat to help him in putting the complaints before the manager. On the 29th January Miss Haffernan who was working as a clerk in the proposal department of the Company was abused in indecent language by the strikers when she was leaving the office premises. She also stated that one day while she was going in the truck the strikers spat at her and flourished a 10 Rupee note at her. She made a written complaint (Exhibit 96) about this incident to the manager on the same day. On the 3rd of February one Manecklal Dave who had joined the service of the Company on the previous day and was working as a Superintendent in the Loan Department was surrounded by the strikers in the afternoon when he and another employee Vakharia were leaving the office and the crowd called them "rascals" and "scoundrels". On the 5th of February when he and Vakharia were going from the office in a car the strikers asked the driver of the car not to drive it whereupon the driver was afraid that the strikers would do some damage to the car and did not drive. On the 6th this witness made a written complaint (Exhibit 102) about this incident. This complaint of Dave and Vakharia was sent by the management to the police for report. Sub-Inspector Doctor has stated in his evidence that he was present at the time when Dave and Vakharia had entered the car and another Sub-Inspector, Merchant, went to the car and asked them to come and identify the persons against whom the complaint was filed. Sub-Inspector Merchant subsequently made a report to the effect that Vakharia pointed out one striker Zaikar as the assailant and Dave also identified him. Thereafter the prosecution was launched against Zaikar which seems to be still pending. On the 12th of February a serious incident happened to the bus which was bringing the new employees to the office. When the bus was proceeding on the Queen's Road near the Cemetery three acid bulbs were thrown against the occupants of the bus with the result that a number of them received serious injuries and had to be removed to the Gokuldas Tejpal Hospital for treatment. The Princess Street Police made inquiries as a result of which one of the strikers Purshottam Bhika who was identified from a group photograph of the staff by some of the occupants of the bus was arrested and produced before the Magistrate. Another striker, D'Souza, who is a General Secretary of the Union was also identified from a group photograph as one of the persons who is alleged to have done the mischief and he too was subsequently arrested. Purshottam was later on released on bail and thereafter brought near the office premises and garlanded by the strikers. On behalf of the Company, one Katrak who is employed there and who had gone to the Police Station, and Dr. Meghani who treated some of the victims are examined to prove this incident. I do not propose to discuss the evidence relating to this incident in detail because the prosecution of this serious incident is still pending and the case is *sub-judice* in the Criminal Court,

I only wish to say that I have seen the persons who are injured by acid and they had to stay in the hospital for a fairly long time. The injuries seem to be serious and have resulted in the disfigurement of the faces in some cases and of the body in others. There after there was an incident in the Company's office in which a loyal employee was alleged to have been assaulted by two strikers. Although the scuffle seemed to have taken place, it seems to have subsequently made up at the intervention of Mr. Markan.

14. All these incidents referred to above took place after the discharge notices were served and they have got an important bearing on the demand for reinstatement which I shall deal with later on. After the adjudication reference was made, the strikers convened a meeting and resolved to call off the strike and resume work on the 27th. On that day most of the strikers assembled near the Esplanade Maidan and walked in a body to the Company's office at about 10 a.m. It is alleged that the guards who were posted by the Company near the entrance gates asked the strikers not to enter the building but the strikers pushed the guards and went to the first and the second floor of the building where the office is situated. According to the employees they quietly occupied the seats which they used to occupy before the strike and they found the Company's papers lying about on the tables as well as on the floors with layers of dust and some important documents containing the fair policies to be issued to the constituents were found in the waste paper basket. According to the Company, the strikers entered the premises in an unlawful manner and threw the papers helter skelter after occupying the seats. At the time the strikers came, there was no official of the Company present but later on Mr. Byramjee and Mr. Markan came into the office. It is alleged by the Company that the new employees who came thereafter were not allowed to occupy their seats and they were required to huddle together in a vacant room in the office. The only independent version of what took place in the office is that of Sub-Inspector Maiden who had gone to the office immediately after the strikers had entered it. He says that he did not see the strikers indulging in any unruly or disorderly manner, and that some of the loyal workers were already there and had gathered in one partitioned compartment. He did not see any striker pushing about or hustling any loyal worker or any striker asking him to get up from his seat. He says further that the manager after his arrival in the office did not complain to him that any new employee was hustled or pushed aside from his seat. The strikers remained in the office till about 2 p.m. and left quietly after the manager gave a letter (Exhibit 18) to the Secretary of the Union stating that the strikers whose services were terminated had no right to enter the office premises without the consent of the management and their presence in the office amounted to criminal trespass. It was therein stated

that the Company was aware of the order of adjudication made by the Government but the Company did not allow the employees to take the law into their own hands till the decision of the arbitrator is delivered. Before this letter the Union had written a letter (Exhibit 17) on the same day to the manager stating that they had resolved themselves for resuming duty in pursuance of the order of the Government referring the matter for adjudication. The only materiality of what took place on this day is whether the refusal by the Company to allow the strikers to work on the 27th February amounted to a lock-out or not. There is no doubt that the Company refused to allow the strikers to work on that day in spite of the order of adjudication. The Company's case is that this action did not amount to a lock-out, firstly because the strikers were no longer the employees of the Company as they had already been discharged with proper notices on the 21st January and, secondly, because the refusal to allow them to work on that day was not intended for the purpose of compelling the employees to accept the terms and conditions affecting their employment. According to the Company there was no question of compelling the strikers to accept any terms or conditions of employment because the Company did not want the employees to work in the Company at all as they had already been discharged, much less to compel them to accept any terms. It is urged that even assuming that the refusal of the Company to allow the strikers to work on that day amounted to a lock-out, there was no liability on the Company to reinstate the workers on that ground and that the only liability, if at all, was the liability to be prosecuted for an offence under the Defence of India Rules. In my opinion, the action of the Company in not allowing the strikers to resume work on the 27th amounted not to a fresh lock-out, but a continuation of the lock-out which I have already held as having taken place when the discharge notices were given on the 21st of January. Under the definition of the term "lock-out", the refusal of an employer to continue to employ persons already employed is also a lock-out, and therefore, the act of the Company in refusing the employees to work is really a continuation of the lock-out which had taken place before and that first lock-out was intended to compel the strikers to accept the terms or conditions of employment; and as the lock-out was continued on the 27th the action of the Company comes within the definition of that term and therefore, amounts to a "lock-out".

15. If, therefore, notwithstanding the continuation of lock-out, the strikers still continue to be employees of the Company, the next question is whether they are entitled to the demand for their reinstatement and the removal of the new employees appointed to work in their places. Ordinarily if the lock-out is not valid, the employees should be entitled to reinstatement. But reinstatement is not an absolute right. If the circumstances are such that

reinstatement is not desirable on the facts of a particular case, the alternative relief would be compensation instead of reinstatement. The question I have to consider at present is not their permanent reinstatement but reinstatement only till the final disposal of these adjudication proceedings. I, therefore, proceed to consider whether the employees should be reinstated or not.

16. There is no law at present in any industrial enactment in India which compels an employer to reinstate an employee. The new Bombay Industrial Relations Act provides for reinstatement in certain circumstances but that Act has not still come into force. The only ground on which reinstatement can be claimed is an order under rule 81-A which says that when a matter has been referred for adjudication, no employer in any undertaking shall lock-out or continue to lock-out his employees until the expiry of 2 months after the conclusion of the proceedings. Apart from the remedy of criminal prosecution under this Rule, the employees can ask either for reinstatement or for compensation for illegal lock-out. In absence of any definite provision in the Indian Law, I may usefully refer to the provisions on that point in the National Labour Relations Act of the United States of America, where it is provided that reinstatement may be ordered under certain circumstances. The right mainly depends upon the guilt of doing what is called an "unfair labor practice". The following passage in "Labor Disputes and Collective Bargaining" Volume II. by Ludwig Teller, Section 318, page 849, lays down the principles established under the National Labour Relations Act: "A strike may be the consequence of an unfair labor practice committed by an employer, as by his refusal to bargain collectively with the proper bargaining agency of his employees. It may, on the other hand, be the utilization of the strike weapon as a means of enforcing a demand in a situation wherein the employer is blameless, has committed no unfair labor practice, but simply refuses to accede to his employees' demand. In the former case, the employer is under an affirmative obligation to offer to reinstate the striking employees without discrimination. "The Board does not require an application by the employee for reinstatement following discriminatory discharge, lay-off, or refusal to reinstate, because the unfair labor practice is already complete." In the latter case, however, an application for reinstatement must be made by the employee, unless the employer adopts the practice of notifying the employees to return to work, or unless the employer's actions taken at the termination of the strike reasonably induced the belief among the striking employees that an application would be futile..... The Supreme Court of the United States has settled it that an employer who has committed no unfair labor practice, against whom a strike has been declared is not obliged to cease the conduct of his business, but may employ others to take the place

of the strikers, and he may promise to retain such employees in his employ even after the termination of the strike; under such circumstances, the employer's obligation to reinstate extends only to such of the striking employees whose places have not been filled during the strike. Where, however, the strike is the result of an unfair labor practice, the employer is under an obligation to discharge those employees hired to take the place of the strikers, and to offer to reinstate the striking employees". In section 332, page 895, it is observed, "An employer against whom a strike has been called, not as a consequence of his unfair labor practice but solely for the purpose of enforcing a demand by a show of strength, has the right to employ others to take the place of the strikers, and to promise such newly employed persons continued employment even after cessation or termination of the strike, and hence he is under no duty to reinstate the strikers upon termination of the strike, to take the places of those hired during the strike to take the place of the strikers."

16. (a) The first question that arises is whether the employer has been guilty of any unfair labour practice and if so, what. Mr. Pardiwalla on behalf of the employees has urged that the employer has been guilty of an unfair labour practice from the beginning and, therefore, he is bound to reinstate the striking employees on the principles mentioned above. For that purpose, he relies firstly on the speech of the Chairman of the Board of Directors on the 4th of December in which he is alleged to have given threats to the employees if they persisted in their demands, secondly, in not recognising the Union which was legally formed and in not negotiating with the Union, and thirdly, by backing out from the concluded oral agreement with the employees and in not passing a written agreement in terms of the oral agreement. As regards the first ground, I do not find any threat or words amounting to unfair labour practice in the speech of the Chairman. He has no doubt given a hint that the Head Office of the Company may be removed out of Bombay, and he observed that he was saying that not with a view to give any threat to the employees, but because he wanted to put that important fact before them. He said that if things were not done on reasonable basis, if their hands are forced, then they as Trustees have got to discharge their responsibility and duty and in doing so, naturally they might follow such policy as might be forced upon them by the precipitated action of the employees. This is the only passage in his speech which may be relied on as amounting to threat and unfair labour practice. If the management considers the demands of the employees unfair, and if they think to shift the head office elsewhere, they are at liberty to do so, and there is no unfair labour practice in that. The second ground urged is the non-recognition of the Employees' Union. The Union was formed in the beginning of July 1946, but it was not

registered as required under the Trade Unions Act till 13th February 1947. Mr. Pardiwalla has admitted that there was no section in the Trade Unions Act which compelled the Company to recognise the Trade Union, even though it may be registered and he further admitted, in my opinion rightly, that the non-recognition of the Union was not one of the reasons for going on strike, because that ground is not mentioned in the notice of strike. It is quite true that the Company all along refused formally to recognise the Union with which they were bound to negotiate, but at the same time there is abundant evidence to show that inspite of the Director-in-charge's saying that he would negotiate with the employees as the members of the staff and not as members of the Union, the Company's officers held consultation and discussion with Mr. Pardiwalla, the President of the Union, who was an outsider and also the Company wrote letters to the Secretaries of the Union. Exhibit 27 is a letter written by the Manager of the Company, on the 26th of October to Mr. Pardiwalla as President of the Empire of India Life Office Staff Union and Exhibit 83 is another letter written by the Director-in-charge himself to the President of the Union on the 13th of November to which Mr. Pardiwalla gave a reply on the 16th of November. The Secretaries of the Union wrote several letters to the Company in the capacity of official secretaries, and they were replied by the Company. The Company allowed the Union to hold its meeting in the office-premises and Mr. Markan has admitted in his evidence that he carried on negotiations with the officials of the Union, and had interviews with the President himself. But Mr. Pardiwalla says that although for all practical purposes they recognised the Union during the negotiations, it was wrong on the part of the Company to say later on that recognition of the Union could be granted. I do not see any unfair labour practice in that. It would have been another matter if the Company had refused to negotiate with the Union at all. The Company all along carried on negotiations with the officials of the Union as such and if it refused to accede to the recognition of the Union, it was within its right inasmuch as there was no legal compulsion to recognise the Union as Mr. Pardiwalla has himself admitted. As regards the third ground of backing out of the agreement, a good deal of evidence has been led by both the sides on the question as to whether the Company or the employees backed out from the oral agreement which had been arrived at and approved at the general meeting of the employees. The question of the concluded agreement has not much bearing in the present dispute because even though there might have been a concluded agreement and one party backed out of it, I have got the demands on which I have to adjudicate upon even though there might have been a concluded agreement. The only relevance of this point is whether the Company committed any unfair labour practice in not putting that agreement in writing according to the terms of the oral

agreement. A good deal of examination of witnesses on both sides has taken place on this point. I do not propose to discuss the evidence in detail. I am satisfied on the evidence that the Company did not back out of the oral agreement and in the draft which was prepared in the presence of the employees' representative, Mr. Sahani, not only were the terms of the oral agreement put down in writing, but some other terms which were agreed to at the time of the settlement of the draft were also incorporated. I have examined the drafts (Exhibits 8 and 82) along with the fair copy (Exhibit 20) and I believe the evidence of Mr. Markan on this point that there was no move on the part of the Company to back out of the agreement, on the other hand, the Company was anxious to incorporate all the terms of the oral agreement and the further terms which were agreed to at the time of discussion. After the draft was completed negotiations were held because the Company refused to recognise the Union for all purposes. For all these reasons, I hold that the Company did not commit any unfair labour practice before the strike began. On the general principles which I have stated above, the Company was entitled to engage new men in place of the striking employees. This Company is one of the big insurance companies in India and has got a number of branches throughout the country. November, December and January, as admitted by Mr. Sahani, are the peak months of work for the Company. Under the insurance law, the Company was bound to make arrangements for receiving new policies and premia, and making payments. The work of the branch offices depended on the instructions given by the head office in Bombay. The Company in Bombay, therefore, was bound to carry on its work during these months and there was, therefore, nothing wrong on the part of the Company to engage new men. It is true, as I have observed above and as the evidence shows, that most of the new employees were inexperienced, and some of them undesirable but the Company went on keeping them in service not only for the purpose of disposing of their work, but also for the purpose of showing to the strikers that the work could be carried on in spite of the strike. It is true that they were not quite successful in doing so and were anxious for some time to settle with the strikers. It was really a trial of strength between the Company and the strikers. The strikers thought in the beginning that almost all employees including sepoys and members of the subordinate staff were behind them and later on the Union even included some of the officers of the Company among the strikers. The Company would have therefore to accept the terms of the strikers, if they carried on the strike for some time. On the other hand, the Company thought if it could engage new employees and make a show that its work would be carried on in spite of the strike, the employees were bound to yield later on and resume work. But both sides remained obstinate with the result that as the strike went on, the

relation between the Company and its employees became more and more bitter from day to day. That explains the fact that although the strike was more or less peaceful in the beginning, the strikers indulged in objectionable demonstrations when they saw that the Company was determined to carry on its work without them. The Company's officers also showed a spirit of defiance against the strikers, as has been deposed to by one or two police officials. Some of the officers of the Company, no doubt, acted derisively towards the strikers, while they were escorting the new workers from and to the Company's offices. The result was that the exultation by the officers of the Company for being able to carry on the work notwithstanding the strike led to exasperation on the part of the strikers who had thought that they would be able to bring down the Company on its knees within a few days of the strike.

17. I may make a little digression here and state that it is very unfortunate that this dispute was not referred to adjudication till about two months and a half after the strike began. The Defence of India Rule 81-A under which the adjudication has taken place, really contemplates that the adjudication should take place either when there is an apprehension of strike which might lead to a breach of peace or immediately after the strike begins so that industrial peace may not be broken and production might not be hindered to the detriment of general public. It could not have been the intention of the authorities that a dispute should be allowed to drag on for an inordinate length of time before the adjudication orders are made. In such a case the whole object of the Defence of India Rules is likely to be frustrated and that is exactly what has happened in the present case. All the incidents which I have referred to from the 10th of December 1946 up to the 27th of February 1947 would not have taken place if the adjudication orders had been made as soon as possible after the strike and it is the prolongation of the strike and the exasperated attitude of the strikers which are responsible for all these incidents. The large number of incidents which took place has lengthened this inquiry even about the interim issues for reinstatement and compensation as if it were a big case in the Court of Sessions. However, I have to examine the situation as it is before me and to recommend what should be done in these circumstances. Looking to the extremely bitter relations between the parties and the animosity between the officials of the Company and the employees, I am absolutely clear in my mind that if I order the reinstatement of the striking employees just now, there is no hope of the Company's work being carried on properly and peacefully. The feelings exhibited between the parties not only during the pendency of the strike but during the hearing of the adjudication proceedings before me for nearly 6 weeks make it quite clear to me that smooth work of the Company would not

be possible at all between the present directors and officials of the Company, and the employees. The persons who would really suffer are the constituents of this old and established Company throughout the country. Even under the American law where power of reinstatement is given, that power is held to be discretionary in its nature as is observed by Ludwig Teller (*ibid*, Volume II, Section 319, page 852) "The Board's power of reinstatement is discretionary in nature, to be exercised in the light of all the circumstances of each case in the manner best calculated to effectuate the policies of the Act. In the exercise of that discretionary power, the Board considers the probable effect of the restoration of the working relationship upon future relations between the employer and the employees." At page 853 it is observed, "Recognizing that restoration of the working relationships would not only not produce harmony, but might also involve actual danger to the employer and his representatives, however, and for the further purposes of effectuating the general policy of the Act and securing the promotion of industrial peace the Board has read into the Act a proviso empowering the Board to withhold reinstatement orders in cases involving serious unlawful conduct by discriminatorily discharged or striking employees." These principles apply, to my mind, with great force in the circumstances of the present case. On account of the incidents that have happened, the Company is determined to carry on its work without the striking employees and the strikers are determined to force the Company to take them back and drive out the new employees. I am of opinion that there is no unfair labour practice on the part of the Company in employing the new persons, however incapable they may be because that is the concern of the Company and its constituents and not the concern of the striking employees. The striking employees have made it clear that if they are reinstated they are not at all willing to work with the new employees and the Company must dismiss them. But in my opinion, they are not entitled to take up that position on the proved facts of this case.

18. Although I hold that the Company did not commit any unfair labour practice before the strike began, in my opinion, it did commit an unfair labour practice when it gave notices of discharge to the strikers on the 21st of January. I have already discussed the reasons why the Company was not entitled to give such notices and also that they amounted to threat and pressure and were not *bona fide* notices of discharge. That being so, it is an unfair labour practice on the part of the Company. What would happen in such a case is described by Ludwig Teller (*ibid*, Volume II, section 371, page 999) "Where the employer commits unfair labour practices in the course of the strike, the employer having been guiltless of any unfair labour practices at the time the strike was called, his position becomes vulnerable only upon

committing such unfair labour practices. Hence, he must discharge all employees hired after the commission of such unfair labour practices, to make room for the returning strikers, but he need not make room for strikers whose jobs have been replaced by other employees prior to the time of the commission of such unfair labour practices." As most of the new employees have been engaged by the Company before the discharge notices of the 21st January, the Company is not bound to discharge them even though the discharge notices amount to unfair labour practice.

19. Another reason why the striking employees are not entitled to reinstatement is the manner in which picketing was carried on by them throughout the whole period of strike. The right of picketing by strikers in a peaceful manner is not and could not be challenged. In India such a right has not been created by legislation, but it has been well recognised in England and America. Under section 2 of the English Trade Disputes Act of 1906, it is provided that it shall be lawful for one or more persons acting on their own behalf or on behalf of a trade union or of an individual employer or firm in contemplation or furtherance of a trade dispute to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working. (See Complete Statutes of England—Halsbury, Vol. 19, page 686). Under the Trade Disputes and Trade Unions Act, 1927, this provision was restricted by making it an offence if the picketers attended in such numbers or otherwise in such manner as to be calculated to intimidate a person or restrict the approach to any house or lead to a breach of the peace. The word "intimidation" was extended to cover any behaviour which causes in the mind of a person a reasonable apprehension of injury to himself or any member of his family or dependant including injury in respect of any of his sources of income (*vide* H. Samuels "The Law of Trade Unions", pages 74, 75). The recent Trade Disputes and Trades Unions Act of 1946, however, repealed the corresponding Act of 1927 and it restored the Trade Union to the legal position as it was before the passing of the 1927 Act and that position was governed by the construction which was placed by the Courts before 1927 on the meaning of "intimidation" in section 7 of the Conspiracy and Protection of Property Act, 1875. According to that Act, in order to constitute "intimidation", there must be violence or threats of violence of such a kind as to justify a binding over to keep the peace. (*Ibid*, page 75). Under the present Law in England, it is, therefore, no offence if picketing is carried on by the strikers without intimidation as mentioned above. In the United States of America, where picketing is much more prevalent than elsewhere different states have got different laws about the manner in which picketing should

be regulated. The general view is that picketing is not *per se* unlawful and should not be enjoined i.e., prohibited when it is peacefully carried on and for lawful purpose. It is described as "marching to and fro before the premises of the establishment involved in a dispute generally accompanied by the carrying and display of a sign, placard or banner, bearing statement in connection with the dispute". It may have as its function "the ascertaining of the identity of non-co-operating workers or of patrons who continue to give their business to the employer involved in the dispute, or its function may simply be to apprise the public of the existence of a dispute or to bolster the morale of the workmen involved in the dispute : (Ludwig Teller, Volume I, Section 109, page 321). Its function is always taken to be a persuasive and not a coercive weapon. But it is illegal if it is connected with unlawful strike or if it is carried on unlawfully in a lawful strike. Even if picketing is not accompanied with violence its legality is affected by its excessiveness. Thus "following the employers home by patrol car must be avoided. Crowds of union men or sympathizers should not be permitted to loiter in front of business places as such may intimidate customers There must be no interference with employees who wish to work nor with the public desiring to transact business with them. The non-union man has the right to go through a picket line without being subjected to intimidation or violence." (*Ibid*, Ludwig Teller, Volume I, section 124, page 382). In one case pickets were totally prohibited because they gave 'threatening' looks' and thereby must be presumed to have intimidated the non-co-operating employees involved in the controversy. (*Ibid*, page 387).

20. A large amount of evidence has been led in this case as to the manner in which the picketing was carried on. The Employees' witnesses have stated that although there were groups of strikers standing near the gates, they behaved peacefully without any violence and merely shouted innocent slogans such as "shame, shame, blacklegs" etc. On the other hand, they say that it was the Company's officials who by their derisive conduct provoked the strikers into demonstrations. The Company has led oral as well as documentary evidence to show that picketing was carried on with violence, coercion, intimidation and also injuries to the new employees. I have discussed that evidence relating to various incidents which have been relied upon by the Company. It is no doubt proved that picketing was not accompanied by any violence at least near the Company's premises. The police officials have stated that the picketing was not carried on in any objectionable or violent manner. In my opinion, although picketing during the period of 2 months and a half was carried on without violence, it was not without intimidation and should be described as "excessive picketing." The oil as well as the nail incidents which have taken place were clearly of an objectionable nature.

Similarly the indecent expressions used towards women employees and especially towards the General Manager of the Company were not only objectionable but reprehensible. I do not propose to examine in detail the mass of evidence led on this point. It is only sufficient to say that there were several objectionable and unlawful episodes and although I am not prepared to hold each and every striking employee responsible for the objectionable picketing, those strikers whose names have been proved during these episodes should not be given any relief whether for reinstatement or compensation. As regards the remaining strikers, although I am of opinion that they cannot be reinstated in place of or along with the new employees for the reasons I have stated above, they are entitled to compensation for being deprived of their salaries on account of continuation of the lock-out by the employers from the 27th of February when the strikers came to the office to resume work. Both the parties are more or less guilty during the period. The employers were wrong in giving notices of discharge merely with a view to lock them out and compel them to resume work. Some of the employees were wrong in resorting to excessive and objectionable picketing during the strike. I am not saying anything here about the throwing of acid on the new employees because the criminal case is pending. But even apart from that, both parties are, in my opinion, wrong in adopting provocative measures against each other. Therefore, the relief of compensation to those strikers against whom nothing objectionable has been proved seems to be the proper relief and that being the case, the compensation should be given for the loss which they would not have suffered if the employer did not lock-out or continue to lock-out the employees during the period of the making of the reference order until the expiry of two months after the conclusion of the proceeding. In my opinion, these employees are therefore, entitled to their pay which they were drawing on the 27th February from that date till two months after the final conclusion of these proceedings i.e., the period during which the lock-out cannot be declared.

21. There now remains one point and that is about certain employees who are not included in this reference according to the Company, but who are according to the Union. These persons are called officers of the Company and as such do not come under the definition of a "workman" in the Trade Disputes Act, where "workman" is defined as meaning any person employed in any trade or industry to do any skilled or unskilled, manual or clerical work for hire or reward. The Company says that these persons were not clerks or not merely doing clerical work but they were officers doing supervisory work while the employees maintain that even though they might be called officers, they are doing work of a clerical nature and are, therefore, clerks. The term "clerical" or "clerk" has not been defined either in this Act or in any other

Acts where similar expression is used. We have, therefore, to refer to the dictionary meaning of this expression. Mr. Pardiwalla on behalf of the employees has relied on the description of the term "clerical service" given in Aiyar "Law Lexicon of British India", page 216, as meaning "strictly a service that involves writing". He also relies upon the description of "clerks" in Webster's Dictionary as "one employed to keep records or accounts, to have charge of correspondence, or the like, with or without administrative, executive, or other authority", as well as in Murray where "clerk" is described as an "officer who has charge of the records, correspondence, and accounts of any department, Court, corporation, or society, and superintends the general conduct of its business". On the other hand, Mr. Kolan relies upon a different meaning by Aiyar to the word "clerk" as "one mainly employed to keep record and accounts". He also relies upon another passage in Aiyar which says that "a 'clerk or servant' is a person bound either by express contract of service, or by conduct implying such a contract, to obey the orders and submit to the control of his master in the transaction of the business which it is his duty as such clerk or servant to transact". He also relies upon the description given in Murray as "one employed in a subordinate position in a public or private office, shop, warehouse, etc., to make written entries, keep accounts, make fair copies of documents, do the mechanical work of correspondence and similar 'clerkly' work". Mr. Pardiwalla has relied upon the decisions in *Cairney v. Back* (1906) 2 K. B. page 746 and in *re Beeton & Co., Limited* (1913) Chancery page 279. He has contended that a General Manager of a Company is also doing clerical work. Those cases are, however, different from the present case, because there the question was whether the person was a clerk or a servant as against persons who are not employed by the Company. In my opinion, the word "clerk" as observed in Webster's Dictionary is an indefinite term of wide application. It must be taken to convey a meaning in the context in which it is used. The words "skilled or unskilled, manual or clerical work" appear to me to limit the scope of the employees of any undertaking. If clerical work means work done by high officers like General Managers, one could have expected the definition of workman to mean all employees employed for hire or reward, instead of the words "persons employed to do manual or clerical work". The definition "clerical work in any trade or industry" must be limited to the work done by persons who are occupying a subordinate position and working under the orders or supervision of other servants of the Company under whom they work and who are generally designated as officers. By this test the employees, Ayem, Dhabar, Chikliwalla, Asina and Ichaporia must be regarded as officers and not as clerks, while Kurlekar, Rana and Dastur, must be regarded as doing work of a clerical nature. I do not lay particular stress on the Circular issued by the Company in which some of these

persons are described as officers. But looking to the nature of the work which they are doing, viz., employing several clerks under them and their work mainly being supervision of the clerks, they must be regarded as officers. I, therefore, hold that Kurlekar, Rana and Dastur should be regarded as employees included in this adjudication proceedings. Out of these three Dastur has left the Company's office, and is serving elsewhere and, therefore, he, along with the other employees who are now serving elsewhere, would not be entitled to any interim relief in these proceedings.

22. I will now summarise the conclusions to which I have come on the evidence led by both the parties.

(1) As the dispute had been referred to adjudication, when the employees were discharged for reasons connected with the trade dispute, they still continue to be such in spite of their discharge.

(2) Moreover, the discharge was not seriously meant to be such, at the time when the notices were sent. It was only a threat to the employees to resume work and the Company also contemplated in the end of January that the men must reconsider the demands with a view to a settlement in spite of the discharge notices. The notices really amounted in effect to a lock-out of the employees.

(3) The reasons given for discharge in the notices are not proved against each and every employee who has been discharged and the notices were indiscriminately given to all the striking employees even though some of them are proved to have not come near the Company's office during the strike period.

(4) When the employees presented themselves for work on the 27th of February under the order of adjudication, the Company was bound to treat the employees who are not guilty of violence and misbehaviour as its employees. The refusal of the Company to allow these employees to work amounted to a continuation of the lock-out.

(5) The Company was, however, entitled to engage new employees, if it chose to do so, to carry on its work after the strike began, as no unfair labour practice on the part of the Company has been proved till the 21st of January.

(6) Although, ordinarily, the strikers would be entitled to re-instatement, in view of the intimidating and harassing manner in which the strike was conducted and the bitter relations existing between them and the Company's officials, it is not desirable in the interests of the Company and its constituents, to immediately reinstate the strikers for work. The facts of the case show that owing to the continued bitterness for which both parties are more or less responsible, it is not at all probable that the Company's work in future would be peacefully carried on, at least during the pendency of these proceedings.

(7) Even though the strikers are not to be immediately reinstated for work in place of the new employees they still continue to be employees of the Company till the end of 2 months after these adjudication proceedings are finally over except those who have taken up service elsewhere.

(8) The Company is bound to pay compensation to all those employees who can be still regarded as being in its employment and the compensation should be the salary which they were getting on the 27th of February, from that date till the period mentioned above. However, the employees against whom criminal complaints are pending and the employees who have been found to be guilty of misbehaviour during the strike are not entitled to such compensation. These employees are Achadwalla, Sompura, D'Souza, Unwalla, Sachinwalla, Dongerkery, Katrak Jr., Sukheshwalla, Paliya, Zaiker, Sethna, Pillai and Purshottam Bhika. The question as to whether those employees against whom criminal proceedings are pending at present are entitled to such compensation will depend upon the result of the criminal proceedings. If they are discharged or acquitted, they will be entitled to compensation.

23. The question of pay during the strike period cannot be adjudicated upon at present as it depends on the final decision as to whether the demands for which the employees went on strike were justified or not. The question will be decided after the demands are considered. For these reasons my recommendations about the interim demands are as follows:

Demand No. XIV.—The Notices served upon the members of the Union except those who are not entitled to any compensation as held above should be withdrawn.

Demand No. XV.—This demand will be considered after the other demands are adjudicated upon.

Demand No. XVII.—All the outside persons appointed for work in place of the striking workers are not liable to be removed at least till the final disposal of these adjudication proceedings.

Demand 2.—(a) The employees have been discharged during the continuance of the trade dispute. (b) They are not entitled to immediate reinstatement and (c) Compensation should be paid to such of the employees as are held to be entitled to it. The compensation should consist of the salary (including dearness allowance) of each employee which he was getting on the 27th February 1947 from that date until 2 months after the final conclusion of these proceedings.

24. I desire to make it clear that this is only an interim recommendation and on the facts and circumstances proved before me, I do not think I can take the responsibility of recommending the immediate reinstatement of the employees for work. During the hearing of this dispute I made more than one attempt to bring

about a settlement for interim arrangement but both the parties were adamant in not yielding any ground to each other. I have, therefore, no alternative at present except to make the recommendations which I have done. However, the demands on the merits are still to be considered and if the employees wish to proceed with them and if there is sufficient evidence of such a change of attitude between the parties as to ensure peaceful and disciplined work of the Company in future, I shall be glad to see whether the interim recommendation on the demand for re-instatement requires re-consideration.

H. V. DIVATIA,
Adjudicator.

Bombay, 9th August 1947.

Bombay Government Labour Gazette, September 1941, pp. 59-83.

MESSRS. LEVER BROTHERS (INDIA) LTD.

AND

THEIR EMPLOYEES

Arbitrator:—The Honourable Mr. Justice H. V. Divatia, President, Industrial Court, Bombay.

The Arbitrator was appointed by Government in pursuance of a request made by both the parties jointly, after the employees had been on strike from 26th May to 19th June 1941.

1. Dearness allowance of 25% on Company's total wages bill to be divided among all the employees equally.

The Arbitrator recommended the adoption of the sliding scale which the Government of Bombay had persuaded the Bombay Millowners' Association to adopt, for index number 124-143, and to follow the Association's lead for numbers outside these.

2. (a) Increment in the rate of wages withheld by the Company for the year 1941.

(b) Proper grades with definite minima and maxima scales of pay for different occupations.

From the table supplied by the Company showing how many workers had been recruited year after year since 1934, how many of them had received increments, and in what years, as also how

many increments had been given in a particular year, the Arbitrator was convinced that the Company had been following a systematic policy of granting increments each year from 1936 to 1940. As a question of principle, therefore, remarked the Arbitrator, "once a concern introduces a system of granting increments to its employees until certain maxima in scales of wages are reached, I think that it is incumbent on that concern to grant increments to all its employees until the stage when the maxima it has laid down for different occupations are reached". And as the Company had in mind certain maxima, which should be reached by incremental stages for the different occupations, the Arbitrator further thought that it was only fair that the employees should know what they were, which would satisfy their demand. (b) Regarding the specific demand for 1941 increments, the Arbitrator remarked, "I cannot see my way to force the Company to grant increments to all its workers this year (1941). There is no precedent for this. The question whether an increment should be granted or not to any particular individual would depend on various factors connected mainly with personal efficiency in work", of which the Company alone was the best judge.

Regarding a scheme for scales of pay and increments the Arbitrator awarded that a scheme should be prepared by two representatives each, of the Company and the employees, with the guidance of the Assistant Commissioner of Labour, and be forwarded to the Arbitrator within 4 months from the date of the award, after which he would fix a date for consideration of any modification that might be needed and then make a further award on the subject.

3. Holidays should be so arranged as to secure 26 working days in the month.

The Company's representative made a generous gesture, expressing readiness to pay for holidays up to 5 days, in excess of 53, adopting the Millowners' Association's list of holidays, with 3 Christian holidays added.

The Award, therefore, was given in those terms, with a proviso (1) that no closure of the factory owing to *force majeure*, or for technical reasons, or on account of strikes or lock-outs, should be considered as 'holidays' for the purpose of this award; and (2) that, whenever possible, consistently with the Factory Act, Sunday was substituted for Christmas Day.

4. Increase in the rate of basic wages, the minimum to be Rs. 1-6-0 for a male and Rs. 1-2-0 for a female worker per day, making up Rs. 35-12-0 and Rs. 20-4-0 respectively per month of 26 working days.

It was urged that the Company's factory at Sewri was highly mechanised and rationalised, and one that had laid down a high standard of organization. If such a concern could not or would

not pay a living wage to its employees, the concept of a living wage could never be realised in India. It was therefore urged that the Company should make a beginning as above.

The Arbitrator controverted this ground by pointing out that 'rationalisation' in the Company's Factory meant something different from what it meant in a textile mill; that, while in the latter it meant one worker minding more machines i.e., doing more work, in the former, it meant the machine itself doing more work, leaving the human worker to do less work—that of mere superintendence of the machine. He therefore rejected this argument.

The Company, on its part, pointed out by facts and figures that the average daily earnings of its employees at the Sewri Factory were 23% higher than those of the workers in similar occupations in other soap factories in Bombay and 11% higher than those of Cotton Mill workers in Bombay City. The Arbitrator was convinced of this.

The dearness allowance awarded in (1) was going to add to the workers' earnings by 5%, and the securing of 26 work days in a month referred to in demand (3) by 15%. Besides, the concessions which the Company had already made before the dispute was taken before the Arbitrator, namely, 13 days' absence with pay every year, and 13 days' pay per year towards retiring Gratuity Fund, involved a further 8.33% to the workers' credit. Thus the employees had already been benefited to the tune of about 30% of their present wage. In view of this the Arbitrator did not see his way to place any further burden on the Company by asking it to grant an all-round increase in the wages also.

5. Change in the hours of work.

The Arbitrator made a provisional award as follows:

**Mondays to Fridays
and substituted**

Sundays

8 to 12-30 with an official break of 15 minutes at 9-30 and 9-45 (by turns) for tea.

12-30 to 1-30 tiffin interval. 1-30 to 6 with an official break of 15 minutes at 3-30 and 3-45 (by turns) for tea.

Saturdays

8 to 12-30 with an official break of 15 minutes at 9-30 and 9-45 (by turns) for tea.

12-30 to 1 tiffin interval.

1 to 4-30 with no break for tea.

The final award was to be given after 4 months, before which reports were invited from both the parties regarding the working of the provisional time-table.

6. Seven days' sick leave with pay, in addition to the 13 days' leave of absence with pay which had been already granted by the Company.

Rejected, in view of the various schemes and the general forward policy adopted by the Company in the matter of their employees' welfare.

7. Full wages for absence from work on account of injury arising from an accident.

On behalf of the employees, the Workmen's Compensation Act was found fault with for allowing only about half pay to an injured worker whose needs were greater than usual. The Arbitrator, however, pointed out that no country in the world paid normal wages in cases of disablement, particularly of a temporary nature; the reason being that the employer had to pay at the same time a substitute worker. For a general principle, the Arbitrator observed: "I think that it will be agreed that in all cases where state legislation secures certain advantages to certain sections of the community and imposes burdens on other sections of the community, an improvement in the conditions or the advantages already gained should be secured through further amending legislation so that such advantages may be obtained equally by all those who are entitled and that the burdens which the granting of such advantages places on others may also be equally imposed upon all of such persons. There is, of course, no objection to any particular employer granting greater or more generous concessions than those imposed upon him by legislation, provided that he does so of his own free will, but the burden of granting such additional concessions cannot be imposed upon him by his employees or by any third party.

"Particular circumstances such as a more hazardous character of any particular occupation coupled with greater frequency of accidents may warrant a more liberal measure of relief in the matter of compensation for workers engaged in such occupations, but even here additional relief should be secured through legislation".

The Arbitrator rejected the demand.

8. The promotion of a union of the employees and its recognition by the Company.

Based on mutual concession and agreement between the parties, the Award was as follows:—

(1) The Company should not stand in the way of the formation of a union of the workers employed in its factory at Sewri.

(2) If the workers in the Company's factory at Sewri form a Union, the Company should extend the recognition to such a Union if:—

- (a) The membership of the union is confined entirely to the workers employed in the Company's factory at Sewri;
- (b) The majority of the members of the Executive or the

Managing Committee of the Union are composed of the Company's own employees;

- (c) Any outsiders who may be appointed on the Executive or the Managing Committee of the Union are composed of the Company's own employees;
- (c) Any outsiders who may be appointed on the Executive or the Managing Committee are not connected with any other Union of Soap or Oil Workers in the City and Island of Bombay; and
- (d) The Union is registered under the Indian Trade Dispute Act 1926.

The Company should not object to a Union of its employees from affiliating to a federation of unions of soap and oil workers in the City and Island of Bombay and it should not withdraw its recognition of the union merely on that ground.

(Bombay Castle, 19th June 1947, No. 621/46, Bombay Government Gazette Part I, pages 2600 to 2609)

RAVALGAON SUGAR FARM LTD.,

AND

ITS EMPLOYEES

Adjudicator:—B. V. Manjeshwar Esq., B.A., LL.B., Assistant Judge and Additional Sessions Judge, Nasik.

Mr. C. K. Gadgil, B.A., LL.B., Public Prosecutor and Government Pleader, Nasik and Mr. J. P. Mukherji, Factory Manager of the Company's Sugar Factory at Ravalgaon, for the Ravalgaon Sugar Farm Ltd.

Mr. P. N. Pandit, Advocate, Nasik and Mr. G. J. Ogale, General Secretary, Ravalgaon Sugar Farm Workers' Union, Ravalgaon, for the employees.

A w a r d

This trade dispute between the Ravalgaon Sugar Farm Ltd., Ravalgaon (hereinafter referred to as "The Company") and its employees has been referred to me for adjudication by Government Notification, Political and Services Department, Bombay,

No. 621/46, dated 9th January 1947, issued under sub-rule (1) of rule 81-A of the Defence of India Rules as continued in force by section 2 of the Emergency Provisions (Continuance Ordinance, 1946.) The Government Order also directs that for the purpose of adjudicating this dispute, I should exercise such powers as are conferred on, and follow such procedure as is prescribed for, a Board of Conciliation under the Trade Disputes Act, 1929, and the Bombay Trade Disputes Rules, 1930.

2. In all 14 points have been referred to me for adjudication—6 points by the first Notification of 9th January 1947 and 8 points by a subsequent amended Notification, dated 24th March 1947—and they are as follows:

(1) Should the employees be granted bonus equivalent to two months' wages for the year 1944-45 and if so, on what terms and conditions?

(2) Should the employees be given increase in wages and if so, how much and from what date?

(3) Was the termination of service of the following persons justified? If not, is any order regarding their reinstatement and/or compensation necessary or desirable, and if so, what order?

Mr. P. K. Chaubal—Wireman.

Mr. D. M. Shimpi—Painter.

Mr. Shankar Trimbak.

Mr. B. R. Kulkarni (Typist Clerk).

Mr. Appaji Kallappa (Moulder).

Mr. J. V. Dixit—Mistri (Fitter).

Mr. Kallappa Babaji (Pujari).

Mr. Hari Ganu (Moulder).

Mr. Dagdu Tawaji (Fitter).

Mr. Dattu Hari.

Mr. A. P. Shete.

(4) Should the employees be granted dearness allowance on the following scale and if not, what other scale should be fixed and from what date?

Scale.

Monthly rated employees. Not less than Rs. 26 per month.

Daily rated employees. Not less than As. 12 per day.

(5) Should the daily rated employees be given one day off with pay every week?

(6) Should the employees in the Farm, Dairy departments, etc., who were transferred from the category of monthly rated employees into the category of daily rated employees be placed back into the former category?

(7) Should the hours of work of the employees working in departments such as farm, loco shed, trolley motors, tractors, dairy, etc., be fixed at 8 hours per day as in the case of workers employed in a factory?

(8) Should employees engaged on daily wages for over two years and whose work is of a permanent nature be employed on a monthly wage basis?

(9) Should the employees be provided with free quarters?

(10) Should electricity be made available to the employees free of charge?

(11) Should the employees be given a bonus equivalent to 2 months' wages for the year 1945-46 and if so on what terms and conditions?

(12) Should the employees on a monthly wage basis be given privilege leave of 24 days and casual leave of 10 days every year?

(13) (a) Should the employees be granted the following holidays every year:

(1)	Ashadi Ekadashi	...	...	1 day.
(2)	Nag Panchami	...	...	1 day.
(3)	Narli Purnima	...	...	1 day.
(4)	Gokul Ashtami	...	...	1 day.
(5)	Ganesh Chaturthi	...	...	2 days.
(6)	Pola	...	...	1 day.
(7)	Dasera	...	...	1 day.
(8)	Divali	...	...	2 days.
(9)	Holi	...	...	1 day.
(10)	After the season is over	...	...	2 days.

(b) Should Christian employees be granted the following sectional holidays:—Good Friday, Christmas Day and New Year's Day?

(c) Should Mohamedan employees be granted the following sectional holidays:—Bakri-Id, Ramzan and Moharrum Day?

(14) Should the employees on daily wages get their wages for the holidays mentioned above?

3. Notices were issued to the Company and to the Ravalgaon Sugar Farm Workers' Union representing the employees calling upon them to file their respective written statements on the 14 points referred for adjudication. A general notice in that behalf was also issued for the information of such of the employees as were not members of the registered Union or as did not desire to be represented by the Union. The parties concerned have accordingly put in their respective statements. The written-statements filed by the Union through its Secretary, with reference to 6 points mentioned in the first Notification and 8 points subsequently added by the second Notification are at Exhibits 11 and 33 respectively. Separate written-statements are also filed by some of the employees—Mr. P. K. Chaubal, D. M. Shimpi, Appaji Kallappa, J. V. Dixit, Kallappa Babaji, Hari Ganu Mahajan, Adinath Pasappa Shete and B. R. Kulkarni—at Exhibits 12, 13, 27, 28, 29, 30, 31 and 35, respectively. A written-

statement has also been filed on behalf of the Assistant Engineers and Assistant Chemists of the Company at Exhibit 18. The Company through its Manager Mr. Mukherji has filed its written-statements at Exhibits 16 and 40.

4. On 5th May 1947 when the hearing of the case was to commence I started discussions with the representatives of the parties in order to explore possible avenues for a compromise. The discussions continued on the following day also. On 7th May I was informed by the representatives of both the parties that an amicable settlement was arrived at on some of the points in dispute, viz., points Nos. 2, 4, 5, 6, 8, 9, 10, 12 and 14. They did not however like to file before me a regular memorandum of settlement for reasons not disclosed to me, but invited me to note down and place on the record those terms of settlement. I have accordingly noted them at Exhibit 59 under my signature and the signatures of the representatives of both the parties. The terms of the settlement are as follows:

Point No. 2.—No increase in wages should be given to employees.

Point No. 4.—At present employees get dearness allowance according to the scale fixed in March 1947. The scale is set out in file No 15 with Exhibit 41 and is as follows:

Rates of Pay.		Dearness Allowance Scale from 1st March 1947.	
Rs.		Rs.	
Up to 20	...	20	...
21 to 22	...	21	...
23 to 24	...	22	...
25 to 26	...	23	...
27 to 29	...	24	...
30 to 35	...	25	...
36 to 40	...	26	...
41 to 45	...	27	...
46 to 50	...	28	...
51 to 55	...	29	...
56 to 60	...	30	...
61 to 65	...	31	...
66 to 75	...	32	...
76 to 85	...	33	...
86 to 95	...	34	...
96 to 100	...	35	...
101 to 105	...	36	...
106 to 110	...	37	...
111 to 115	...	38	...
116 to 120	...	39	...
121 to 125	...	40	...
126 to 130	...	41	...

131 to 135	...	...	...	42
136 to 140	...	...	...	43
141 to 145	...	...	...	44
146 to 150	...	...	...	45
151 to 155	...	...	...	46
156 to 160	...	...	...	47
161 to 165	...	...	...	48
166 to 170	...	...	...	49
171 to 175	...	...	...	50
176 to 180	...	...	...	51
181 to 185	...	...	...	52
186 to 190	...	...	...	53
191 to 195	...	...	...	54
196 to 200	...	...	...	55

Above Rs. 200—Re. 1 for every Rs. 10 of salary.

The maximum will be Rs. 200.

For Adult Male Workers—

Wages per day.				Dearness Allowance.			
Rs. a.		Rs. a. p.		Rs. a.		Rs. p.	
0	8	0	to 0 9	3	0	10	0
0	9	6	to 0 10	9	0	10	6
0	11	0	to 0 12	0	0	11	3
0	12	3	to 0 13	0	0	11	9
0	13	3	to 0 14	3	0	12	3
0	14	6	to 0 15	9	0	12	9
1	0	0	to 1 3	0	0	13	3
1	3	3	to 1 5	6	0	13	9
1	5	9	to 1 8	3	0	14	6
1	8	6	to 1 11	0	0	15	0
1	11	3	to 1 13	6	0	15	6
1	13	9	to 2 0	3	1	0	0
2	0	6	to 2 3	0	1	0	6
2	3	3	to 2 8	3	1	1	0
2	8	6	to 2 13	6	1	1	6
2	13	9	to 3 3	0	1	2	3

Women and Children—

0	4	0	to 0 4	3	0	5	0
0	4	6	to 0 4	9	0	5	6
0	5	0	to 0 5	9	0	6	0
0	6	0	to 0 6	9	0	7	6
0	7	0	to 0 7	9	0	9	0

In addition to the above scale of dearness allowance the following employees of the Company should get extra dearness allowance from the date of the publication of this Award in the *Bombay Government Gazette* as follows:

Every monthly rated employee drawing basic salary of less than Rs. 97 per month—Rs. 2 per month.

Every daily rated adult male employee—1 anna per day.

Every adolescent and adult female employee— $\frac{1}{2}$ anna per day.

Point No. 5.—Daily rated employees should not be given one day off with pay every week.

Point No. 6.—Out of the employees in the Farm, Dairy Departments etc., who were transferred from the category of monthly rated employees into the category of daily rated employees, only those who have put in not less than 2 years service and whose work is of a permanent nature should be taken back into the category of monthly rated employees.

Point No. 8.—Employees engaged on daily wages for over 2 years and whose work is of a permanent nature should be employed on a monthly wage basis.

Point No. 9.—The employees should not be provided with free quarters.

Point No. 10.—Electricity should not be made available to the employees free of charge.

Point No. 12.—At present the privilege and casual leave allowable to the employees of the Company is regulated by the Revised Leave Rules set out in file No. 17 with Ex. 41. Those Rules are as follows:

REVISED LEAVE RULES

Rules for the grant of Privilege and Casual leave with pay applicable to the employees of the R. S. F. Ltd.

1. Employees will be entitled to privilege leave after completing one year's continuous service.

2. Privilege leave can be accumulated up to a maximum of earned leave for two years.

3. Casual leave will be granted after a continuous service for six months; but not more than 4 days leave at a time or a maximum of 4 days in a month.

3-a. For the purpose of casual leave, leave year means the period beginning from 1st July of any year to 30th June of the following year.

4. Permission to affix or prefix holidays to casual or privilege leave should be obtained previously.

5. At the end of the leave year (1st July to 30th June of the following year) unavailed portion of casual leave will lapse and no compensation will be paid for the casual leave so lapsed.

6. In the case of those who have entered into an agreement with the management, their leave will be granted as per their agreement.

7. Procedure for obtaining any leave (casual, privilege, without pay, etc.) shall be as per Standing Orders in force for the time being.

8. Officers are entitled to 1 month privilege leave for every completed service year and 15 days casual leave in every leave year.

9. The clerks, Supervising Workers who have been made permanent will be entitled to 15 days privilege leave for every completed year of service and 10 days casual leave for every leave year.

9-a. Supervising workers are those who are workmen as per definition of the Factories Act, but are exempt from the operation of the clause relating to overtime work and overtime payment for overtime work.

10. Those workmen who are entitled to overtime payment as per Factories Act will be entitled to privilege leave equal to 1/20 of the actual working days attended by them during the previous year. The year for this purpose will be counted from the date of their joining duties.

11. Mucadams, Store-keepers, who have been made permanent will be entitled to leave as allowed to permanent clerks, with effect from the date of completion of probationary period.

12. Permanent coolies working on Divisions are entitled to 7 days privilege leave for every year of service and five days casual leave for every leave year.

13. The above leave rules will be applicable with effect from 1st May 1946.

14. Those employees who have to their credit leaves earned previous to 1st May 1946 as per old leave rules will be allowed to avail of the same during the year following 1st May 1946.

15. Temporary, Casual, Apprentices and Probationers are not entitled to any leave with pay.

In addition to the aforesaid leave, an employee should be given 7 days sick leave with pay on satisfying the Company's Authorities.

Point No. 14.—Only such daily rated employees whose work is of a permanent nature and who are in the employ of the Company for at least 2 months prior to the occurrence of a particular holiday should get their wages for that particular holiday.

5. The aforesaid terms of settlement, which are recorded at **Ex. 59**, are attached hereto as Annexure "A" and I make my award in terms thereof in respect of points Nos. 2, 4, 5, 6, 8, 9, 10, 12 and 14.

6. This then brings me to the consideration of the remaining points—Points Nos. 1, 3, 7, 11 and 13—upon which settlement was not found possible and which are left to my adjudication.

7. *Points Nos. 1 and 11.*—I take these two points together as they relate to the demands of the employees for bonus equivalent to two months' wages for each of the years 1944-45 and 1945-46. So far as the claim for bonus for the year 1944-45 is concerned

it is not pressed at the trial on behalf of the employees. In the first place, it would appear from the Director's Report and Statement of Accounts for the year ending 31st March 1945 that the Company did not make appreciable profits during that year. Secondly it is common ground that all the employees as were not absent from duty for more than a week during the crushing season in that year were paid a bonus, called as Attendance Bonus, equal to 15 days' wages. Therefore in fairness the employees cannot again demand bonus for that year. Then as for the demand for bonus for the year 1945-46 it is contended on behalf of the employees that the Company has made large profits during that year and therefore the Company should pay reasonable bonus to the employees. This contention in my opinion must be given effect to. The Director's Reports and Statements of Accounts filed on behalf of the Company would show that the Company made huge profits during war period (except during the year 1944-45) and gave big dividends to ordinary shareholders—14 per cent. for the year 1942-43, 14 per cent. for the year 1943-44 and 5 per cent. for the year 1945-46. It cannot be denied by the management that these profits earned by the Company were due to the joint endeavour of capital as well as labour. It is therefore legitimate that labour should get some share in the profits as bonus. Though this may mean some financial burden on the Company, the Company should not grudge to make a small sacrifice of its profits in favour of the employees. It will keep the employees contented, give them incentive to work and contribute to the prosperity of the industry. Therefore I think it fair that the employees should get some bonus for the year 1945-46.

8. The question which would then naturally arise is what amount as bonus should be granted and to which of the employees. It is contended on behalf of the employees' Union that the bonus should be equivalent to 2 months wages and that it should be granted to all the employees without discrimination. This in my opinion is too high and unreasonable a demand. I think that a fair and equitable order would be that each of the employees (including those retrenched or discharged except those dismissed for misconduct) who were on the Company's Muster Roll during the year 1945-46 should get bonus and it must be equal to 1/12th of his total basic earnings during the year ending 31st March 1946. I therefore recommend accordingly.

9. *Point No. 3.*—This point relates to the reinstatement and/or compensation to 11 employees whose services were terminated by the Company. Those employees are P. K. Chaubal, D. M. Shimpi, Shankar Trimbak, B. R. Kulkarni, Appaji Kallappa, J. V. Dixit, Kallappa Babaji, Hari Ganu, Dagdu Tawaji, Dattu Hari and A. P. Shete. Out of these Shankar Trimbak, Dagdu Tawaji

and Dattu Hari have not appeared before me. The rest have appeared and contended that the Company had no justifying cause to terminate their services and that they were victimised because they were either members of the Workers' Union or took part in the Union activities. The management, on the other hand, says that these employees were discharged for valid reasons.

10. So far as Mr. *P. K. Chaubal* is concerned I was told by the learned pleaders for both the parties that he has made an amicable settlement with the Manager of the Company and that the terms of settlement are that Mr. Chaubal is to be reinstated as wireman, that he should join his duties in June 1947 on any date convenient to him, that from the date of his joining he should get a basic salary at Rs. 50 per month and such dearness allowance as is permissible to him on his salary and that he is not entitled to claim any compensation or arrears of pay from the Company. Both Mr. Mukherji and Mr. Chaubal have orally confirmed these terms before me. I therefore recommend that the Company should reinstate him on the terms as agreed between them.

11. I now deal with the remaining 10 employees one by one.

Mr. D. M. Shimpi.—He joined service in this Company as Painter on 26th July 1943. He was first a daily rated employee and then in 1945 was transferred into the category of monthly rated employee. His duty was to paint machinery, bungalows, sign-boards, etc. His services were terminated by the Company from 5th March 1946 and he was given one month's pay in lieu of notice. The case for the Company is that he was retrenched because there is no sufficient work to keep a permanent Painter and that whenever painting work is to be done the Company can get it done economically by taking the help of any of its employees. On the other hand Mr. Shimpi charges the Company with having victimised him because he was taking part in the activities of the Employees' Union. I do not at all think that this charge of Mr. Shimpi has any foundation. The Secretary of the Employees' Union showed me the membership register of the Union and it shows that the Union has about 1,200 members on its roll and that about 50 members are on the Executive Committee. When so, the Company has no reason at all to single out and victimise Mr. Shimpi for his union activities. On the other hand, I am satisfied that he was discharged from service by way of retrenchment because the Company does not need the services of a permanent Painter. Mr. Shimpi himself admits that since his discharge the Company has not employed anybody else as permanent Painter and that the painting work whenever required is got done by the Company from workers in the Civil Construction Department. (Ex. 66 para. 4). I therefore hold that the discharge of Mr. Shimpi was as a measure of retrenchment and, as such,

was justified. He is therefore not entitled to be reinstated or to compensation.

Mr. Shankar Trimbak.—His case does not now call for a decision because he has been taken back in service by the Company in April 1946 and is continuing in the service of the Company.

Mr. B. R. Kulkarni.—He joined service in this Company in 1936 as a daily rated employee. In 1938 he was taken on monthly basis. He worked first as a typist, then as Bench-Chemist and salesman in the confectionary department and in 1946 was transferred to the Farm Section as Mukadam. His services were terminated by the Company from 1st September 1946 and he was paid 15 days' pay in lieu of notice. The case for the Company is that he was discharged because there were complaints against him from time to time as to neglect of duties and insubordination. Mr. Kulkarni's contention on the other hand is that he was victimised because he was the joint Secretary of the Employees' Union. Upon the evidence on the record I am satisfied that his discharge was justified. In 1942 when he was working as a salesman in the confectionary department there was an inquiry against him for cheating the Company and as a result of the inquiry his increment was stopped in that year. (Ex. 72, para. 1). This is admitted by Mr. Kulkarni himself. In May 1946 he was transferred to the Farm Section as Mukadam in Division No. 4. Farm Mukadams and Farm labourers are required to live in the quarters provided by the Company on the Farm itself. But Mr. Kulkarni did not go to live there though ordered many a time and put off going to live in the Farm on some pretext or other. He used to come to the Farm late and return home early. He sometimes went on leave without permission or previous sanction. For this he was suspended for 7 days from 3rd July 1946. When he was avoiding to come and stay in the Farm, he was finally ordered by his departmental head Mr. Bablad on 12th July 1946 that he must come and stay in the Farm quarters. Mr. Kulkarni then gave a threat to Mr. Bablad that if he was forced to come and stay in the Farm he would create trouble and spoil the peace in the Division. Mr. Bablad sent a report accordingly to the Chief Agriculturist and as a result Mr. Kulkarni was discharged from service. As to these facts we have the evidence of the Farm Supervisor Mr. Bablad Ex. 82 and documents filed with Ex. 83. Mr. Kulkarni now denies all these allegations. But I believe the evidence of Mr. Bablad. Mr. Kulkarni admits that Mr. Bablad has no bias or prejudice against him to depose falsely. I therefore hold that Mr. Kulkarni's discharge was justified and he is not entitled to be reinstated or to claim any compensation.

At the close of the inquiry, however, I made a personal appeal to the Farm Manager Mr. Mukherji to reconsider, if possible, the case of Mr. Kulkarni and to reinstate him. Mr. Kulkarni is a Matri-culate and a young man of 32. When giving evidence he impressed

me as intelligent. I do not wish that such an intelligent young man should be thrown out of employment in these hard days. My personal appeal on his behalf has moved Mr. Mukherji and he has given me an assurance that the Company would reinstate Mr. Kulkarni if Mr. Kulkarni makes an application for reinstatement and promises to behave well in future. This is really a generous gesture on the part of Mr. Mukherji and I recommend that the Company should abide by the assurance given by Mr. Mukherji before me if Mr. Kulkarni applies for reinstatement and promises to do his duties faithfully.

Mr. Appaji Kallappa.—He joined service in this Company in October 1937 as a fitter and then as a moulder. He was discharged with effect from 1st September 1946 and was given 15 days' salary in lieu of notice. His complaint now is that he was victimised for his Union activities. The Company denies this and states that he was discharged because his work was found not satisfactory. The evidence of his departmental Head Mr. Lonkar (Ex. 81), who is the Engineer in the Company, would show that Mr. Appaji Kallappa's work as moulder had to be generally rejected because his moulds were found to contain blow-holes and were generally unserviceable. He was then assigned a job of casting mill-side plates, but he could not satisfactorily execute that work also though it was a simple one. His work was specially tested by Mr. Lonkar under the orders of the Chief Engineer and it was found not satisfactory and as a result he was discharged. I do not see any reason to disbelieve the evidence of Mr. Lonkar who has no motive to depose falsely. When an employer who has opportunities to personally see and judge of the work of his employee is not satisfied with his work and as a result the employee is discharged from employment it would not be proper for the Court to interfere with the discretion of the employer in this respect. I therefore hold that the discharge of Mr. Appaji Kallappa was justified and consequently he cannot claim reinstatement or any compensation.

Mr. J. V. Dixit, Mr. Kallappa Babaji and Mr. Hari Ganu.—These three were retired from service by the Company from 1st September 1946 and were given 15 days' wages in lieu of notice and 10 days' leave with pay. The case for the Company is that they were made to retire because they are too old to work. Mr. Kallappa Babaji admits that he is an old man of 65, but denies that he is unfit to work. He further says that he was victimised because his son Appaji Kallappa was taking part in the activities of the Employees' Union. Mr. J. V. Dixit and Mr. Hari Ganu deny that they are too old and state that they are aged 50 and 52 respectively. Mr. Dixit can assign no reason why the Company discharged him if he was fit to work. But Hari Ganu says that he was discharged because of his Union activities. I am completely satisfied that these three employees are unfit to work on account of age. Kallappa Babaji is 65 and from what I could see of him while in the witness box he is in-

capable of doing any work. Dixit and Hari Ganu, I have no doubt, have under-stated their age with a view to get back into service. I have noted in their depositions that they look older and I cannot at all persuade myself to believe that they are physically competent to work. In fact there is the evidence of the Company's Head Accountant Mr. Joshi Ex. 87 that these three employees are old and unfit to work. I therefore hold that their discharge is justified and they cannot claim reinstatement or any compensation.

Mr. Dagdu Tawaji and Mr. Dattu Hari.—These were workers in the oil-mill and oil-refinery departments of the Company. Their services were terminated as from 2nd September 1946 with 15 days' salary in lieu of notice. The case for the Company is that the oil-mill and oil-refinery departments were closed in 1946 as they were running at a loss for some years and therefore these 2 employees along with some others who were working in these departments were retrenched. As to this we have the evidence of the Company's Head Accountant Mr. Joshi Exhibit 87. Neither Dagdu Tawaji nor Dattu Hari has appeared in these proceedings to deny this. The Company was justified in closing the oil-mill and oil-refinery departments which were found not remunerative and in retrenching the employees of those departments. The Company was not bound to provide employment for them in other departments. I therefore hold that their discharge was as a measure of retrenchment and was justified. Therefore they cannot be reinstated or given any compensation.

Mr. A. P. Shete.—He joined this Company as workshop apprentice on 13th May 1940 and eventually was appointed as workshop assistant. He was dismissed from service on 9th October 1946. The notice of dismissal served on him mentioned three grounds for the dismissal viz. disorderly behaviour in the Company's premises, holding political meetings in the premises of the Company without permission and remaining absent from duty without taking previous sanction. Thereafter, upon his application the Company reconsidered his case and decided to reinstate him. Accordingly on 2nd January 1947 he was informed to rejoin his duties on or before 6th January 1947. But he refused to accept the order of reinstatement and to report himself for duty unless he was given salary of the period between the date of order of dismissal and the date of order of reinstatement. The Company thereupon informed him that as he refused to rejoin his duties he would not be taken back. These facts are admitted by both the parties and are also borne out by the documents produced with Exhibits 77 and 78. Upon these facts it is clear that Mr. Shete is himself at fault if the Company is now refusing to take him back. When he was reinstated and ordered to report himself for duty he had no justification to refuse and to insist on the payment of his arrears of pay as a condition precedent. It is argued by Mr. Pandit, the Pleader for the employees, that the first order of the Company

dated 9th October 1946 dismissing Mr. Shete was not justified and therefore Mr. Shete was right in demanding arrears of salary as a condition precedent to his rejoining the duties. I cannot accept this argument. Irrespective of the question whether the order of dismissal was right or wrong the Company had generously reconsidered his case and ordered him to report himself for duty on or before 6th January 1947. Mr. Shete's duty was first to comply with the order by rejoining the duties and then to agitate for arrears of salary on the ground that the previous dismissal order was unjustified. That was the proper course for him to take. Had he done so the Company might perhaps have been influenced to consider favourably the question of granting him arrears of salary as well. But as he refused to rejoin his duties the Company is now justified in refusing to take him back. I must however say that upon the evidence on the record the first order of the Company dismissing Mr. Shete was justified and therefore his insistence on payment of arrears of salary was untenable. It is admitted by Mr. Shete that at the material period he was the President of the Congress Committee at Ravalgaon and that Congress Leaders used to come to his quarters in the Company's premises often and that on those occasions other employees of the Company were also coming to his room for chat. He also admits that Mr. Mukherji, the Manager of the Company, had questioned him about this. (Exhibit 76, paragraph 8). Mr. Shete had no justification to hold political meetings in his quarters in the Company's premises without obtaining the previous sanction of the Manager. This is not all. It is in evidence that in September 1946 when the Company discharged Appaji Kallappa from service and sent a Bhayya Ganga Bisan to take possession of Appaji Kallappa's room in the Company's premises, which the Company was lawfully entitled to take possession of, Mr. Shete went out of his way in calling a Police Constable to prevent Ganga Bisan from taking possession of the room and in going to Malegaon and complaining to the Deputy Superintendent of Police as well as to the Secretary of the Taluka Congress Committee against the Company. (Exhibit 76, paragraph 10). These acts of Mr. Shete were outside his employment and his conduct was insulting and insubordinate to the Company and incompatible with the faithful discharge of his duty to the Company. An employer is perfectly entitled to dismiss his servant if the servant is guilty of misconduct inconsistent with the due and faithful discharge of his duties to the master. Therefore the order dated 9th October 1946 dismissing Mr. Shete from service was justified. That being so, he was not justified in claiming arrears of salary and in refusing to rejoin his duties when reinstated on 2nd January 1947. He cannot therefore now claim reinstatement or compensation.

12. *Point No. 7.*—It is common ground that while the hours of work in the case of workers working in the Factory are 8 hours

per day, the working hours of the employees in the Farm, loco-shed, trolley motors, tractors and dairy departments are about 9 hours per day. This cannot be said to be unreasonable. The nature of work of the workers working in a Factory is more strenuous than that of the workers working in other departments. In the Belapur Sugar Company Ltd., Haregaon, which is a similar concern, the hours of work of the employees in all the departments other than the Factory are about 9 hours and a half, i.e. from 7 a.m. to 12 noon and 1-30 p.m. to 6 p.m. (File No. 16 with Exhibit 41). Therefore I do not think it proper to reduce the hours of work from 9 to 8 in the case of this Company in farm, loco-shed, trolley motors, tractors and dairy departments of the Factory.

13. *Points Nos. 13 (a) (b) and (c).*—At present 7 Hindu holidays are granted by the Company, viz.,

Pola	...	...	...	1 day.
Dasera	...	...	...	1 day.
Diwali	...	...	...	2 days.
Holi	...	...	...	1 day.
Makar Sankrant	...	...	...	1 day.
and Akshāytritia	...	...	...	1 day.

Out of these, the first 4 are granted to all the employees, but the last 3 are not granted to the workers working in the Factory because as they come during the crushing season the working of the Factory cannot be stopped even for a day. No Christian or Mohamedan holidays are granted to Christian or Mohamedan employees because out of the total number of about 3,000 employees in the Company a vast majority are Hindus while the Christian are about a dozen and Mohamedans are about four dozen only. Now the demands on behalf of the employees are:

(1) That 11 Hindu holidays should be granted to all the employees, viz.,

Ashadi Ekadashi	...	...	...	1 day.
Nag Panchami	...	...	...	1 day.
Narali Purnima	...	...	...	1 day.
Gokul Ashtami	...	...	...	1 day.
Ganesh Chaturthi	...	...	...	2 days.
Pola	...	...	...	1 day.
Dasera	...	...	...	1 day.
Diwali	...	...	...	2 days.
Holi	...	...	...	1 day.

(2) That in addition, Christian employees should be granted Good Friday, Christmas Day and New Year's day as sectional holidays and Mohamedan employees should be granted Bakri-Id, Ramzan and Moharrum Day as sectional holidays and

(3) That over and above these holidays, all the employees should be given 2 day's holidays immediately after the crushing season is over.

To these demands it is replied on behalf of the Company that 7 holidays which are granted by the Company are adequate and that no more holidays should be allowed because it will prejudicially affect the sugar production. As for the sectional holidays the Company submits that they should not be allowed as the number of Christian and Mohamedan employees is negligible. I tried in vain to settle this difficult question amicably. It is true that in Government service the employees get more holidays, but the analogy of Government service cannot be applied to an industrial concern of public utility like the present. This is a seasonal sugar Factory. The crushing season is only for six months in a year, i.e., from November to April. Therefore too many holidays will hamper the sugar production. At the same time I think that the holidays which are granted by the Company are not quite satisfactory and need some revision. Ganesh Chaturthi is one of the most important festivals amongst the Hindus and yet no holiday is granted by the Company to the Hindu employees who form a vast majority. Secondly, all the holidays which are granted by the Company are Hindu holidays and not a single Christian or Mohamedan. No doubt the Christian and Mohamedan employees form a minority, but it would be unfair not to allow them their own holidays when the Hindu holidays are allowed. This discrimination is likely to foster disaffection and dissatisfaction amongst the employees of the minority communities and will be detrimental to the industry. Thirdly, as holidays falling during the crushing period are not allowed to workers working in the Factory it is legitimate that they should be permitted some other holidays as substitute. Therefore, in order to satisfy all the employees and at the same time to ensure proper sugar production I recommend as follows:

(1) The Company should grant the following holidays:

Pola	...	...	...	1 day.
Ganesh Chaturthi	..	...	...	1 day.
Dasera	...	...	...	1 day.
Divali	...	...	...	2 days.
Holi	...	...	...	1 day.
Makar Sankrant	...	..	...	1 day.
Akshaytritia	...	...	...	1 day.
New Year's Day	..	...	...	1 day.
Good Friday	...	...	...	1 day.
Christmas Day	...	...	...	1 day.
Bakri-Id	...	...	...	1 day.
Ramzan	...	...	...	1 day.
Moharrum	...	...	...	1 day.

(2) The aforesaid holidays should be granted subject to the following conditions:

(a) If any of the above holidays fall during the crushing

season they should not be granted to the workers working in the Factory.

(b) Dasera and Divali holidays should be granted to only Hindus.

(c) New Year's Day, Good Friday and Christmas Day should be granted only to Christians.

(d) Bakri-Id, Ramzan and Moharrum should be granted only to Mohamedans.

(3) The workers working in the Factory should be granted 2 days' holidays immediately at the close of the season.

14. In the result, therefore, I give my Award as follows:

Demand No. 1 is disallowed.

Demand No. 2 is disallowed.

Demand No. 3.—The Company should reinstate Mr. P. K. Chaubal, as per terms orally agreed between Mr. Mukherji, the Manager of the Company, and Mr. Chaubal viz, that Mr. Chaubal should get basic salary at Rs. 50 per month from the date of his joining and such dearness allowance as is permissible to him on his salary and he should not claim any compensation or arrears of pay of the period between the date of his discharge and the date of his rejoining the duties. The termination of service of Mr. D. M. Shimpi, Mr. Appaji Kallappa, Mr. J. V. Dixit, Mr. Kallappa Babaji, Mr. Hari Ganu, Mr. Dagdu Tawaji, Mr. Dattu Hari and Mr. A. P. Shete was justified and they are not entitled to reinstatement or compensation. The termination of service of Mr. B. R. Kulkarni was also justified and he is not entitled to be reinstated or to any compensation, but Mr. Mukherji, the Manager of the Company, has given me an assurance that as a special case he would reinstate Mr. Kulkarni, if Mr. Kulkarni applies for reinstatement and promises to do his duties faithfully. I recommend that the Company should abide by this assurance if Mr. Kulkarni is willing to carry out his part. The case of Mr. Shankar Trimbak does not call for a decision because he has been taken back in service by the Company.

Demand No. 4.—All the employees should get dearness allowance according to the scale fixed in March 1947 which is set out in file No. 15 with Ex. 41 and which is embodied in the terms of settlement arrived at between the parties in Ex. 59 a copy of which is annexed hereto as Annexure "A". In addition to the above scale of dearness allowance every monthly rated employee drawing basic salary of less than Rs. 97 per month should get extra dearness allowance at the rate of Rs. 2 per month and every daily rated adult male employee at one anna per day and every adolescent and adult female employee at half anna per day. This extra dearness allowance should be drawn from the date of publication of this Award in the *Bombay Government Gazette*.

Demand No. 5 is disallowed.

Demand No. 6.—Out of the employees in the Farm, Dairy Departments, etc., who were transferred from the category of monthly

rated employees into the category of daily rated employees, only those who have put in not less than 2 years service and whose work is of a permanent nature should be taken back into the category of monthly rated employees.

Demand No. 7 is disallowed.

Demand No. 8.—Employees engaged on daily wages for over 2 years and whose work is of a permanent nature should be employed on a monthly wage basis.

Demand No. 9 is disallowed.

Demand No. 10 is disallowed.

Demand No. 11.—The employees, including those retrenched or discharged except those dismissed for misconduct, and who were on the Company's Muster Roll during the year 1945-46 should get a bonus equal to $\frac{1}{12}$ th of the total basic earnings of each employee during the year ending 31st March 1946. This bonus should be paid within 2 months from the date of publication of this Award in the *Bombay Government Gazette*.

Demand No. 12.—In addition to the privilege and casual leave which is allowable to the employees of the Company according to the Revised Leave Rules set out in File No. 17 with Ex. 41 and which are embodied in the terms of settlement, Ex. 59, a copy of which is attached hereto as Annex "A", an employee should be given 7 days sick leave with pay if he satisfies the Company's authorities about his sickness.

Demands Nos. 13 (a), (b) and (c).—(1) The Company should grant the following holidays:

Pola	...	...	...	1 day.
Ganesh Chaturthi	...	...	...	1 day.
Dasera	..	...	...	1 day.
Divali	...	...	...	2 days.
Holi	...	...	...	1 day.
Makar Sankrant	...	...	...	1 day.
Akshaytritia	...	...	...	1 day.
New Year's Day	...	...	...	1 day.
Good Friday	...	...	...	1 day.
Christmas Day	...	...	...	1 day.
Bakri-Id	...	...	...	1 day.
Ramzan	...	...	...	1 day.
Moharrum	...	...	...	1 day.

(2) The aforesaid holidays should be granted subject to the following conditions:

(a) If any of the above holidays fall during the crushing season they should not be granted to the workers working in the Factory.

(b) Dasera and Divali holidays should be granted to only Hindus.

(c) New Year's Day, Good Friday and Christmas Day should be granted only to Christians.

(d) Bakri-Id, Ramzan and Moharrum should be granted only to Mohamedans.

(3) The workers working in the Factory should be granted 2 days' holidays immediately at the close of the season.

Demand No. 14.—Only such daily rated employees whose work is of a permanent nature and who are in the employ of the Company for at least 2 months prior to the occurrence of a particular holiday should get their wages for that particular holiday.

31st May 1947.

(Signed) B. V. MANJESHWAR,
Adjudicator.

True copy.
B. V. Manjeshwar.
Adjudicator.

EXHIBIT 59.

BEFORE B. V. MANJESHWAR, ESQUIRE, LL.B., ASSISTANT
JUDGE AND ADDITIONAL SESSIONS JUDGE, NASIK. ADJUDICATOR.

Terms of settlement arrived at between the parties on points
Nos. 2, 4, 5, 6, 8, 9, 10, 12 and 14.

On 5th May 1947 I started discussions with the representatives of both the parties in order to explore possible avenues for a compromise. The discussions continued on the 6th also. To-day the representatives have informed me that they could settle points Nos. 2, 4, 5, 6, 8, 9, 10, 12 and 14. They do not however like to file a regular memorandum of settlement, but invite me to note them down and place them on the record. The terms are as follows:

Point No. 2.—No increase in wages should be given to the employees.

Point No. 4.—At present employees get dearness allowance according to the scale fixed in March 1947. The scale is set out in file No. 15 with Ex. 41 and is as follows:

Rates of Pay.				Dearness Allowance Scale from 1st March 1947.	
Rs.				Rs.	
Up	to	20	...	...	20
21	to	22	...	...	21
23	to	24	...	...	22
25	to	26	...	...	23
27	to	29	...	...	24
30	to	35	...	...	25
36	to	40	...	...	26
41	to	45	...	...	27

Scales of Pay				Dearness Allowance	
46	to	50	...	...	28
51	to	55	...	...	29
56	to	60	...	...	30
61	to	65	...	...	31
66	to	75	...	...	32
76	to	85	...	...	33
86	to	95	...	...	34
96	to	100	...	...	35
101	to	105	...	...	36
106	to	110	...	...	37
111	to	115	...	...	38
116	to	120	...	...	39
121	to	125	...	...	40
126	to	130	...	...	41
131	to	135	...	...	42
136	to	140	...	...	43
141	to	145	...	...	44
146	to	150	...	...	45
151	to	155	...	...	46
156	to	160	...	...	47
161	to	165	...	...	48
166	to	170	...	...	49
171	to	175	...	...	50
176	to	180	...	...	51
181	to	185	...	...	52
186	to	190	...	...	53
191	to	195	...	...	54
196	to	200	...	...	55

Above Rs. 200—Re. 1 for every Rs. 10 of salary. The maximum will be Rs. 200.

Dearness Allowance Scale from 1947 March.

For adult male workers:—

Wages per day.				Dearness Allowance	
Rs.	a.	p.	Rs. a. p.	Rs.	a. p.
0	8	0	to 0 9 3	...	0 10 0
0	9	6	to 0 10 9	...	0 10 6
0	11	0	to 0 12 0	...	0 11 3
0	12	3	to 0 13 0	...	0 11 9
0	13	3	to 0 14 3	...	0 12 3
0	14	6	to 0 15 9	...	0 12 9
1	0	0	to 1 3 0	...	0 13 3
1	3	3	to 1 5 6	...	0 13 9
1	5	9	to 1 8 3	...	0 14 6
1	8	6	to 1 11 0	...	0 15 0
1	11	3	to 1 13 6	...	0 15 6
1	13	9	to 2 0 3	...	1 0 0

Wages per day.			Dearness Allowance		
2 0 6	to	2 3 0	...	...	1 0 6
2 3 3	to	2 8 3	...	...	1 1 0
2 8 6	to	2 13 6	...	...	1 1 6
2 13 9	to	3 3 0	...	...	1 2 3

Women and Children:—

Wages per day.			Dearness Allowance		
As. p.	As. p.			As. p.	
4 0	to	4 3	...	...	5 0
4 6	to	4 9	...	...	5 6
5 0	to	5 9	...	...	6 0
6 0	to	6 9	...	...	7 6
7 0	to	7 9	...	...	9 0

In addition to the above scale of dearness allowance the following employees of the Company should get extra dearness allowance from the date of the publication of this Award in the *Bombay Government Gazette*, as follows:

Every monthly rated employee drawing basic salary of less than Rs. 97 per month—Rs. 2 per month.

Every daily rated adult male employee—1 anna per day.

Every adolescent and adult female employee— $\frac{1}{2}$ anna per day.

Point No. 5.—Daily rated employees should not be given one day off with pay every week.

Point No. 6.—Out of the employees in the Farm, Dairy Departments, etc., who were transferred from the category of monthly rated employees into the category of daily rated employees, only those who have put in not less than 2 years service and whose work is of a permanent nature should be taken back into the category of monthly rated employees.

Point No. 8.—Employees engaged on daily wages for over 2 years and whose work is of a permanent nature should be employed on a monthly wage basis.

Point No. 9.—The employees should not be provided with free quarters.

Point No. 10.—Electricity should not be made available to the employees free of charge.

Point No. 12.—At present the privilege and casual leave allowable to the employees of the Company is regulated by the Revised Leave Rules set out in file No. 17 with Exhibit 41. Those Rules are as follows:

REVISED LEAVE RULES.

Rules for the grant of Privilege and Casual leave with pay applicable to the employees of the R. S. F. Ltd.

1. Employees will be entitled to privilege leave after completing one year's continuous service.

2. Privilege leave can be accumulated up to a maximum of earned leave for two years.

3. Casual leave will be granted after a continuous service for six months; but not more than 4 days leave at a time or a maximum of 4 days in a month.

3-A. For the purpose of casual leave, leave year means the period beginning from 1st July of any year to 30th June of the following year.

4. Permission to affix or prefix holidays to casual or privilege leave should be obtained previously.

5. At the end of the leave year (1st July to 30th June of the following year) unavailed portion of casual leave will lapse and no compensation will be paid for the casual leave so lapsed.

6. In the case of those who have entered into an agreement their leave will be granted as per their agreement.

7. Procedure for obtaining any leave (casual, privilege, without pay, etc.), shall be as per Standing Orders in force for the time being.

8. Officers are entitled to 1 month privilege leave for every completed service year and 15 days casual leave in every leave year.

9. The clerks, Supervising Workers who have been made permanent will be entitled to 15 days privilege leave for every completed year of service and 10 days casual leave for every leave year.

9-A. Supervising workers are those who are workmen as per definition of the Factories Act, but are exempt from the operation of the clause relating to overtime work and overtime payment for overtime work.

10. Those workmen who are entitled to overtime payment as per Factories Act will be entitled to privilege leave equal to 1/20 of the actual working days attended by them during the previous year. The year for this purpose will be counted from the date of their joining duties.

11. Mucadams, Store-keepers who have been made permanent will be entitled to leave as allowed to permanent clerks, with effect from the date of completion of probationary period.

12. Permanent coolies working on Divisions are entitled to 7 days privilege leave for every year of service and five days casual leave for every leave year.

13. The above leave rules will be applicable with effect from 1st May 1946.

14. Those employees who have to their credit leaves earned previous to 1st May 1946, as per old leave rules will be allowed to avail of the same during the year following 1st May 1946.

15. Temporary, Casual, Apprentices and Probationers are not entitled to any leave with pay.

In addition to the aforesaid leave, an employee should be given 7 days sick leave with pay on satisfying the Company's Autho-

rities.

Point No. 14.—Only such daily rated employees whose work is of a permanent nature and who are in the employ of the Company for at least 2 months prior to the occurrence of a particular holiday should get their wages for that particular holiday.

7th May 1947.

(Signed) B. V. MANJESHWAR,
Adjudicator.

(Signed) J. P. MUKHERJI,
Representative of the Ravalgaon
Sugar Farm Ltd.

(Signed) P. N. PANDIT,
Representative of the Ravalgaon
Sugar Farm Workers' Union,
Ravalgaon
[True Copy]
B. V. MANJESHWAR,
Adjudicator.

(No. 864/46, Bombay Castle, Bombay Government Gazette, extra,
dated 27th November 1947 Part I. pages 4495 to 4501,
Adjudication No. Ar. 3 of 1947)

BOMBAY MUNICIPALITY

AND

ITS EMPLOYEES

Adjudicator:—Sir Hashidbhai V. Divatia (President, Industrial Court).

Sir Jamshedji B. Kanga, instructed by Messrs. Crawford Bayley & Co., Solicitors for the Municipality.
Counsel Mr. S. V. Gupte for the employees.

A w a r d

This reference has been made to me under rule 81-A of the Defence of India Rules in a dispute between the Bombay Municipality and its employees represented by the Bombay Municipal Subordinate Staff Union. The employees concerned are only clerks, Head Clerks and Chief Clerks. There are about 1,160 clerks, 130

Head Clerks and 35 Chief Clerks. Both the parties agree that certain persons doing outdoor duties even though they are clerks are not included in this adjudication which is confined to indoor clerks in the offices. There are 19 demands in all. They are as follows:

(1) Whether the grades of the clerical staff should be fixed as follows, namely:

	Minimum.	Maximum.	No. of Years
	Rs.	Rs.	
Clerk ...	80	250	18
Head Clerk ...	250	310	4
Chief Clerk ...	310	370	3

(2) Whether every employee should be placed in the revised grades at a stage above his present pay and thereafter allowed increments as follows, namely:

For service of more than one year but less than two years—
1 increment.

For service of more than two years but less than four years—
2 increments.

For service of more than four years but less than seven years—
3 increments.

For service of more than seven years but less than ten years—
4 increments.

For service more than ten years—5 increments

(3) Whether effect to the grades and increments referred to in (1) and (2) above should be given retrospectively from the 1st April 1946.

(4) Whether those who have already put in 18 years service or more should draw the maximum of the revised grade at once.

(5) Whether House Rent Allowance should be paid at the rate of 15 per cent of an employee's pay or Rs. 20 per mensem, whichever is higher.

(6) Whether the Old leave rules should be made applicable to all the employees.

(7) Whether overtime allowance should be paid for work done beyond office hours and on Sundays and holidays, and if so at what rate.

(8) Whether Dearness Allowance should be paid on the present Government scale and with the same retrospective effect.

(9) Whether the payment of interest of Provident Fund amounts should be at not less than 4 per cent.

(10) Whether "average pay" for the purpose of leave or gratuity should be computed at the rate of pay drawn by an employee immediately preceding the date of his proceeding on leave or retirement as the case may be, or the average pay for 12 months immediately preceding such event, whichever is higher.

(11) Whether every employee should be made permanent after

one year's service.

(12) Whether Pre-War holidays such as Christmas should be restored without further delay.

(13) Whether Canteen on co-operative basis should be provided for the employees.

(14) Whether free medical treatment should be provided to employees.

(15) Whether direct recruitment to the supervisory posts should be discontinued.

(16) Whether the system of confidential reports on employees should be abolished.

(17) Whether the premium on the Fidelity Guarantee Fund should be paid by the Municipality.

(18) Whether and if so what conveyance allowance should be granted to members of the outdoor staff such as Senior Overseers, Junior Overseers, and Sub-Overseers, Assistant Sanitary Inspectors, Medical Assistants, etc.

(19) Whether promotion to higher posts should be according to seniority.

2. The most important of all these is demand No. 6 relating to the fixing of scales and grades of pay with adjustments. In 1931 certain scales and grades were fixed for the clerical staff as follows: Clerks Rs. 55—4—115—E. B.—5—140; Head Clerks Rs. 140—5—180; and Chief Clerks Rs. 180—10—240. These scales remained in force till April 1946. In 1945 the Municipality appointed Rao Bahadur D. V. Nadkarni as officer on special duty to inquire into and report on the scales of pay and other service conditions of the employees. He made his report on the 30th of August 1945 making several recommendations after a thorough examination into the prevailing salaries and conditions of the employees. His recommendations for the salaries were not however accepted by the Municipality. On the 13th of July 1946 the clerical staff decided to form a Union and intimated their rejection of the Nadkarni Report. On the 25th of July 1946 Mr. Modak the then Acting Commissioner recommended certain higher scales of pay but no action was taken thereon. On the 2nd of August the Union was formed and on the 5th certain demands were formulated asking for a scale of Rs. 80 to 250 for clerks within 18 years, Rs. 250 to 310 for Head Clerks within four years and Rs. 310 to 370 for Chief Clerks within three years. Subsequently the Standing Committee resolved in August 1946 to revise the existing scales with effect from the 1st of April 1946 so as to fix the grades of Clerks, Head Clerks and Chief Clerks at Rs. 70—6—112—8—160—E.B.—10—220; Rs. 200—10—260; and Rs. 260—15—320 respectively. It was also resolved to sanction the dearness allowance for employees drawing a salary up to Rs. 2,000 at the rate of Rs. 26 per month or $17\frac{1}{2}$ per cent. of the salary whichever is greater. This resolution was communicated by the Municipality to the Union

on the 27th August. On the previous day, i.e. the 26th of August, the Union had passed a resolution at a special general meeting appreciating what the Municipality had done for the subordinate staff so far and empowering the Union's Committee to negotiate for a further improvement on the basic scales of pay now sanctioned with a minimum of Rs. 80 and a maximum of Rs. 220, without an efficiency bar within 17 years. On the 18th of September 1946 the President of the Union wrote a letter to the Municipal Commissioner stating that there was a strong feeling among the clerks that the maximum should be raised to Rs. 220 so as to bring it to the same level as the maximum of the grade proposed for Head Clerks and Chief Clerks. As regards adjustments it was said that each clerk should get the difference of Rs. 15 in the grades and one increment up to five years of service and two increments up to ten years' service and above. The third increment was to be given only to those who had reached the maximum of the grade and had not drawn any increment for the last five years. The letter further stated that the Commissioner would be good enough in trying his best to get the above suggestions passed by the Standing Committee. As regards other demands, owing to the sympathy shown by the Commissioner there would be no difficulty in accepting them. On the 30th of September the President of the Union wrote a reply to the Municipal Commissioner in answer to the Commissioner's letter of the 27th of August mentioned above. In that letter the President stated that the Managing Committee of the Union had considered the revised scales fixed by the Standing Committee but they thought that the offer made by the latter was halting and that the grade should be fixed at Rs. 80 to 220 without any efficiency bar for the clerks, 220 to 280 for head clerks and 280 to 340 for chief clerks. Thereafter on the 21st of October 1946 the Vice-President of the Union wrote a letter to the Municipal Commissioner forwarding a resolution of the General meeting of the Union held on the 20th, accepting the minimum and the maximum for the clerical grade proposed by the Standing Committee at Rs. 70 and Rs. 220 but requested the Committee for reducing the period from 22 years to 20 years so as to make the grade as follows: Rs. 70—6—130—8—170—10—220. The principle of adjustment proposed was that the employee should be first placed in the revised scale and then increments should be added, and the fourth increment should be given in the case of persons who have put in more than 15 years' service. The Pass graduates should be given two increments and be started on Rs. 82 and Honours and double graduates should be given four increments and started on Rs. 94. The head clerks should be started at the maximum of the clerical grade, i.e. 220. Thereafter on the 8th of November 1946 the Corporation considered the recommendations of the Standing Committee about the revision of the scales of pay and resolved that the existing scales and grades of

clerks, head clerks and chief clerks were to be revised and fixed with effect from the 1st of April 1946 at Rs. 70—6—160—E.B.—8—200—10—220; Rs. 200—10—260 and Rs. 260—15—320 respectively. Graduates were to start at Rs. 80 and Honours and Double Graduates at Rs. 90. The Staff Union was duly informed of this resolution. This resolution of the Corporation was, however, not accepted by the Union and a warning of strike was given by the Union at a meeting held on the 30th of November. On the 2nd of December the Union in forwarding the resolution of 30th November expressed its willingness to negotiate with the Municipality. On the 6th of December the Municipal Commissioner wrote in reply that the Vice-President of the Union had already intimated on the 20th of October about the Union's resolution on the previous day accepting the minimum and the maximum in the clerical grade, i.e. Rs. 70 and Rs. 220 respectively, and as the matter had been discussed at length between the parties no useful purpose would be served by discussing the matter further. Thereafter on the 9th of January the President of the Union wrote a letter to the Municipal Commissioner forwarding a resolution passed by the meeting of the Union on the previous day. The resolution stated that the Managing Committee should take all steps including the taking of a ballot to decide whether a general strike was necessary to achieve the minimum demands, which among others were that the grades of the clerks should be Rs. 70—6—100—8—140—10—220 in 18 years, the starting salary for the graduates to be Rs. 82 and those for Honours and double graduates Rs. 94 without any efficiency bar, if their demands were not conceded before 15th January 1947. Thereafter on the 20th of January the Union intimated to the Municipal Commissioner by a resolution passed by its Managing Committee on the 15th of January that as the demands of the Union were not accepted by the Municipality, the members of the staff would go on strike from the 3rd of February 1947, and that on 23rd January 1947 there would be a token strike and march to the Corporation Hall to meet members of the Corporation in regard to their demands. Before the period of 14 days was over there was a token strike for half a day on the 27th of January instead of on 23rd. Ultimately the Government issued the present notification No. 864/46 under rule 81-A of the Defence of India Rules on the 1st of February 1947. The matter was fixed for preliminary hearing before me on the 9th of April and the parties were asked to file their written statements. The hearing of the dispute on the merits began on the 15th of September before me and it lasted for about a week.

Scales and Grades of Pay

3. The principal demands are the first four demands relating to the scales and grades of pay. It would be seen from the facts

stated above, that although the Union had accepted the minimum and maximum fixed for the clerks in October 1946, in making the present demands the Union goes back on the demands made in August 1946 whereby the minimum and maximum for clerks asked for was Rs. 80 and Rs. 250 respectively. Mr. Gupte who appeared on behalf of the employees urged that the scale recommended by the Pay Commission for Upper Division clerks should be taken as a model for the Municipal clerks. That scale is Rs. 80—5—120—E.B.—8—200—10/2—220. It is further urged that in any case the total emoluments of a clerk should not be less than those of the lowest division of clerks for which the total emoluments for a clerk serving in Bombay have been fixed by the Pay Commission at Rs. 55 basic pay, Rs. 35 dearness allowance, Rs. 15 house-rent allowance, and Rs. 7-8-0 as Compensatory allowance making up a total of Rs. 112-8-0 per month. The Union submits that they have asked for Rs. 80 as basic pay, Rs. 26 as dearness allowance according to the former Government scale and Rs. 35 according to the revised dearness allowance from the 15th of August 1947, plus Rs. 20 as house rent, amounting to Rs. 126 or to 135 if the dearness allowance is raised to Rs. 35. The Upper Division clerk starting at Rs. 80, according to the pay Commission would get Rs. 80, Rs. 35, Rs. 15 and Rs. 10, i.e., Rs. 140 in all in Bombay and it is submitted that the Union's demand even falls short of that amount. According to the Municipality the starting pay would be Rs. 70 plus Rs. 35 which is the present dearness allowance and the total earning would be Rs. 105 which falls short of the total monthly emoluments of even the lowest division clerk, viz. Rs. 112-8-0. For these reasons the Union demands the starting salary at Rs. 80 as against Rs. 70 fixed by the Municipality.

4. It is urged on behalf of the Municipality in reply that the starting salary of Rs. 70 granted by the Municipality compares favourably with other Government offices in Bombay. For instance, the clerks in the Accountant General's Office in the "C" grade start at Rs. 55; in the Income-tax Department also it is Rs. 55, in the Port Trust it is Rs. 65 and in the G.I.P. Railway it is Rs. 40. The starting pay given in the Post Offices in the second grade is Rs. 60 and Rs. 45. The start of Rs. 70 according to the Municipality is fixed for clerks who are matrics and under-graduates and reliance is placed on the observations in the Pay Commission's Report at page 136 that scale 1 of the last division clerk i.e., Rs. 55 to 130 would apply to the lowest grade of matriculate clerk while the scale of the Upper Division Clerk, viz., Rs. 80 to 220 would apply to persons with a University degree. On this ground the Municipality urges that the start of Rs. 70 for a matric or an under-graduate compares favourably with the corresponding starting pay of clerks as recommended by the Pay Commission in all the departments including the Government of India Secretariat, where the starting salary is Rs. 68. It is further urged that instead of having two divisions of clerks in the Municipality, one starting at

Rs. 80 and the other at Rs. 60 they had fixed only one division starting it at Rs. 70 between the scale of Rs. 60 in the lower division and that of Rs. 80 in the upper division. It is also urged that although the start is Rs. 70 the increment granted by the Municipality is Rs. 6 up to Rs. 160 as against the increment of Rs. 3, 4 and 5 granted by the Pay Commission and that even in the 80 rupees scale the increment is Rs. 5 up to Rs. 120. Finally it is submitted that in the 8th year of service when a clerk is expected to maintain a family of three consumption units, he would get Rs. 112 as basic pay and Rs. 40 as dearness allowance on the present Government scale at the cost of living index between 260 and 280 and thus get Rs. 152 per month which is more than the earning fixed for a clerk in the 8th year in the Big Banks at Rs. 137-8-0. For all these reasons it is urged that the starting salary of Rs. 70 especially along with the liberal annual increment of Rs. 6 for the first 15 years compares very favourably with the Government of India scales as well as with the Government or semi-Government Departments in the City of Bombay.

5. During the arguments both sides relied upon the financial position of the Municipality, the employees contending that the additional burden of the demands would not be unbearable for the Municipality and the Municipality contending that it was unable to bear the additional burden in view of the annual deficits and the proposals to increase the income for meeting the demands of the public for the amenities which the Municipality is bound to supply. According to the Union the additional burden on the Municipality over and above what it granted from April 1946 for basic pay would not extend beyond Rs. 5½ lacs if the demands were granted. The Municipality, it is urged, was in a position to bear that burden as it has got several funds at its disposal and there was considerable scope for expansion of its income and curtailment of other expenditure. Sir Jamshedji Kanga on behalf of the Municipality relied upon the report of the Law, Revenue and General Purposes Committee in which various ways of increasing the Municipal income were considered in view of the recurring deficits. It was estimated that unless other means of income were found there would be a deficit of Rs. 1,761.81 lacs in the next ten years. The estimate of the Municipality to grant the demands of the basic pay only would be Rs. 12½ lacs more in addition to the dearness allowance and house rent allowance. The estimated expenditure for introducing the revised scales which have been granted by the Municipality is about Rs. 86 lacs. The Municipality, therefore, contends that in view of the reasonableness of the scales and grades fixed by them which have even been accepted by the Union, the Municipality should not be saddled with any additional expenditure.

6. On the question of the efficiency bar the Union contends that there was no efficiency bar in the Municipal service till 1922 and

there was no recommendation about it in the Nadkarni Report also. It is further stated that the Municipal Commissioner has passed orders that at the stage of the efficiency bar fixed at Rs. 160 there should be an examination to cross the efficiency bar and rules have been framed for it. The Municipality contends that the efficiency bar is necessary in all services and the Pay Commission has also recommended it. It was admitted that the Commissioner had decided to hold an examination for crossing the efficiency bar but the orders had been subsequently passed that the examination would not take place for four years. In my opinion, there must be an efficiency bar in all scales of Government or private service, when the scale is spread over a number of years and there are two or more rates of increment in the same scale. In most of them there are two or three bars. In the scale fixed by the Municipality there is only one bar and in that respect it is better than the scales for Government offices. The efficiency bar should therefore be retained. As regards the examination I do not think it is advisable to hold any examination for crossing the efficiency bar 15 years after a clerk has entered the service. At that age it would be a burden on the clerk and he should not be kept in constant fear of passing an examination. It is not difficult to judge the efficiency of a clerk after 15 years' service from the reports about him during the period without holding any examination and I therefore suggest that the idea of holding an examination for passing the efficiency bar should be dropped. I will, therefore, retain the efficiency bar and also the maximum of Rs. 220 fixed for clerks but as regards the starting salary of Rs. 70. I think that it does not compare favourably with the minimum emoluments fixed by the Pay Commission for a clerk of the lower division. A clerk in that lowest scale in Bombay would start as I have stated above with the total earning of Rs. 112-8-0 whereas a municipal clerk starting on Rs. 70 per month and even getting the increased dearness allowance of Rs. 35 per month would earn Rs. 105 only and thus he would get Rs. 7-8-0 less than the Government of India clerk of the lowest division in Bombay. If he starts with Rs. 75 he gets Rs. 110 in the first year. It is true that in the Government of India scale there is a provision for house rent to the extent of Rs. 15 whereas there is no such allowance till this day for employees under the Government of Bombay. Similarly Compensatory allowance of Rs. 7-8-0 which is granted for the Government of India servants in Bombay is over and above the amount of dearness allowance granted in the Bombay Government scale. I learn that the recommendations of the Pay Commission as accepted by the Government of India are under consideration by the Government for their employees. The basic salary to be fixed is not still known but the dearness allowance has been increased and brought from the 15th of August last to the same level as that recommended by the Pay Commission on a cost of living index figure at 260. It is true that rents in Bombay are

controlled but it is also possible that there may be increase in the rents for necessary repairs to be made by the landlords. That being so the increase in house rent may be regarded as a possibility. Moreover the dearness allowance is fixed at a figure of Rs. 35 even though the cost of living may increase from 260 to 279 points. Taking all these circumstances into consideration I am of the opinion that the starting pay for a clerk should be fixed at Rs. 75 per month but that the maximum of Rs. 220 should remain the same. I recognise that the start of Rs. 5 more in the basic pay and the subsequent increments would entail additional annual recurring expenditure. For that reason I would make modification in the increments of Rs. 6 which is granted for the first 15 years. That increase as I have pointed out above, is more than any of the increments recommended by the Pay Commission up to the starting salary of Rs. 80. Instead therefore of giving uniform increment of Rs. 6 up to limit of Rs. 160 I would recommend the following scale: Rs. 75—5—95—6—125—7—160—E.B.—8—200—10—220. Thus the limit of Rs. 160 would be reached in 14 years after the first year as against 15 in the municipal scale. After 160 the scale would be the same as proposed by the Municipality. Thus the total period will be reduced from 22 to 21 years. In my opinion, the employees should have no grievance about this scale. They themselves had at one time agreed to a starting pay of Rs. 70 and now they will get Rs. 75 and in the scale that I have suggested they will reach the maximum in 21 years as against the 22 years in the municipal service. Nor should the Municipality have any substantial grievance because although the basic pay is increased by Rs. 5 the increments are adjusted in a manner which would reduce the burden of a uniform increment of Rs. 6 for a period of 15 years. This decision also disposes of demand No. 4 that the period for reaching the maximum should be reached in 18 years. The Pay Commission recommends that a 20 years scale would ordinarily be desirable and in certain cases they have put a period of 21, 22 and even 23 years. In my opinion, 21 years' period is quite reasonable for a clerk who enters service while he is a matric or undergraduate.

7. As regards the Head Clerks, the employees' demand is for Rs. 250—15—310 while the Municipality has fixed Rs. 200—10—260. At present there is an examination which a clerk has got to pass before he can become a Head Clerk and there is no demand that that examination should be abolished. But they object, apart from the amount of salary fixed, to the overlapping in the grade because the maximum of the clerk is fixed at Rs. 220 while the minimum of the Head Clerk is fixed at Rs. 200 so that a new Head Clerk of Rs. 200 gets less pay than the ordinary seniormost clerk who gets Rs. 220. The employees, therefore, want that the minimum should not be lower than the maximum in a clerk's grade. The Municipality's reply is that the employees themselves

had insisted on increasing the maximum in the clerks' grade from Rs. 200 to Rs. 220 and they had not apparently demanded that the minimum in the Head Clerks' grade should be raised to Rs. 220. Moreover, it is contended that there is also overlapping in the grades fixed by the Pay Commission. I think there is some force in the employees' contention that the minimum pay for a Head Clerk should not be less than the maximum of an ordinary clerk. It is true that some people might become Head Clerks after passing the examination in the middle of their career as clerks but there must be some who would not be able to pass the examination and may get a maximum of Rs. 220 and it is therefore rather invidious that an ordinary clerk who becomes a head clerk should start with Rs. 200. As regards the maximum I do not think the amount of Rs. 260 is low especially in view of the fact that there is a still higher grade of a Chief Clerk to which a head clerk may aspire. I therefore fix the head clerks' grade at Rs. 220—10—260. Thus the period also will be reduced from six to four years and an ordinary clerk who might become a head clerk in the last year of his service as clerk may rise to Rs. 260 in 25 years, instead of in 28 years according to the present scale. As regards the Chief Clerks the demand is for Rs. 310—20—370. The Municipality has fixed Rs. 260—15—320. The employees contend that the Chief Clerks correspond to supervisors in the Income Tax Department and therefore they should get more than Rs. 300 as starting pay. I think, however, that although a chief clerk may be the highest in the clerks' grade it is not a purely supervisory job and therefore he ranks lower than a supervisor. In my opinion, the grade fixed is quite proper and should be maintained. All these new revised grades should begin from 1st April 1946 as the Municipality itself gave effect to the revised scales from that date. This disposes of demands Nos. 1, 3 and 4.

8. There now remains demand No. 2 relating to the adjustment of the salaries of the present employees. The employees demand that every employee should be placed in the revised grade at a stage above his present pay and thereafter he should be given 1 to 5 increments according to the period of service. The Municipal Service Rule No. 24 is practically the same as the Fundamental Rule 21 of the Government but as a matter of fact the Corporation has given effect to another method which is more advantageous than the Fundamental Rule. According to that method, the adjustments were made on the following basis:—For less than one year's service—no increment; for service of 1 complete year—1 increment in the corresponding revised grade; for service of more than 1 and up to 4 years—2 increments in the corresponding revised grade and in special cases clerks getting the maximum Rs. 150 will be allowed to draw Rs. 176. No method of adjustment can satisfy all employees, junior as well as senior. The three factors which are to be considered in making adjust-

ments, are (i) seniority according to years of service, (ii) the amount of pay at the time of the revised grade and (iii) efficiency. Efficiency can only be judged from the employee's report and no general rule can be laid down on this point. It may be that a clerk senior in service is drawing a lesser amount of pay than another clerk who is junior who may be getting more on account of his greater efficiency. But the latter should not suffer at the time when the adjustments are to be made. At the same time subject to efficiency seniority of service should be taken into consideration. It is true that the method of point to point adjustment is more favourable from the employees' stand-point but that system ignores the element of efficiency of a clerk and a less efficient clerk is put at a higher grade than a more efficient clerk merely because of his years' service. The argument which is principally urged in favour of the point to point system is that a senior clerk must get a living or a saving wage at the time when adjustment is to be made and if he did not get an adequate amount of pay in the first years of service, there should be no reason why he should not get a wage which would be sufficient for maintaining his increasing family and also for saving some part of his pay after he became sufficiently senior in service. But the question of the total burden which would fall on the employers on account of this point to point method is also an element to be considered. In a large institution like the Municipality where there are 1,160 ordinary clerks, 130 head clerks and 35 chief clerks, the additional burden if the adjustments are to be made point to point will be very heavy and looking to the financial position of the Municipality which I have discussed above, the cost would be prohibitive to the Municipality. The only method, therefore, that is best suited is to adjust the salaries of the present employees by giving them such increments according to their years' service as would compensate them for their seniority. The Pay Commission has recommended the system of giving one increment for 3 years of continuous service but that is subject to a ceiling limit varying from Rs. 15 to Rs. 50 which would considerably reduce the amount of increments. The method adopted by the Municipality is a compromise between the point to point method and the method adopted by the Pay Commission. Every employee of more than 4 years' service gets at least 3 increments in the corresponding revised grade and thereafter he may get the increments under the new grade. In my opinion, this system is quite fair and I recommend that it should be confirmed. As I pointed out in the Banks' Award every employee of the Big Bank in the 8th year of his service would get at least Rs. 137-8-0 as his earnings including dearness allowance. In the grades and scales which I recommend, the Municipal clerks in the 8th year of service would get Rs. 113 as pay and Rs. 40 as dearness allowance, under the present Government scale, he would get Rs. 153 which is much more than the amount of Rs. 126 which has been considered by Mr. Justice Rajadhyaksha to be a fair wage for a family

of 2 adults and 2 children (or 3 consumption units) of Postal employees. For these reasons demand No. 2 made by the employees is rejected and the method of adjustment adopted by the Municipality should be maintained.

House Rent.

9. Demand No. 5 is about house rent allowance. The employees demand that house rent allowance should be paid at the rate of 15 per cent. of the employees' pay or 25 per cent. per month whichever is higher. It is urged that the Port Trust gives a maximum of 10 per cent. of the pay as house rent allowance and the Pay Commission has also recommended housing allowance. On behalf of the Municipality it is urged that there has been no rise in the rents on account of the Rent Restriction Acts and the present scale was fixed after a due consideration of the prevailing house rents. As I have observed above, the amount of the house rent has been considered as one of the factors in the basic pay as well as dearness allowance and one of the reasons why I have raised the basic pay from Rs. 70 to Rs. 75 is because of the house rent. In my opinion, therefore, this demand having been virtually considered in the demand relating to pay, cannot be granted in addition to pay. The demand is, therefore, rejected.

Leave

10. Demand No. 6 is that the old leave rules should be made applicable to all employees. The Municipality has got different leave rules for employees before 1931 and the employees thereafter. The old rules are more liberal than the new rules. The employees say that there should be uniformity and all the employees should be governed by the old rules which are liberal. It appears from Nadkarni report that new entrants from 1931 have given bonds in which they have agreed to be governed by the new rules. The employees contend that bonds had not been taken from all of them. Whatever that may be, on the merits, very little change is required. The first demand of the employees is that there should be indefinite accumulation of leave. That demand cannot be granted because in all services there is a fixed period which can be accumulated and not more. The Pay Commission has taken 120 days as the maximum period for which leave can be accumulated. That demand for indefinite accumulation cannot therefore be allowed.

11. The next demand is that old leave rules should be made applicable by virtue of which the employees were entitled to 12 months' leave with average pay. Under the new rules leave on medical certificate is given on half average pay. Reliance is placed on behalf of the employees on the recommendations of the Pay

Commissions that in calculating leave salary for the first 30 days it should be calculated on the average of the last 12 months' pay, whether substantive or officiating. In my opinion, that recommendations should be adopted and all the employees should be governed by that rule.

12. The only other demand is that leave not due is not allowed. Rule 9 of the Leave Rules provides that leave on private affairs can be granted to municipal servants for six months in all and not to the maximum at any time. In my opinion, there must be a similar rule for all employees that the Municipality may in its discretion grant leave on private affairs which is not covered by any of the other leave rules on half pay for a total period of 6 months during service and that the maximum enjoyed at any time should be 3 months. This leave will depend on the exigencies of service.

Overtime

13. Demand No. 7 is that overtime allowance should be paid for work done beyond office hours and on Sundays and Holidays. The employees contend that at present there is no overtime allowance for the clerks even if they are required to do overtime work, and they demand one and a half times the pay ordinarily earned during the hour for every hour of overtime work. The ordinary hours of work are from 10 to 5 Bombay Time, inclusive of half an hour's recess. The employees rely on the recommendations of the Pay Commission. The Commission in Paragraph 100 of the Report recommend that in some cases especially in the case of clerical work a mere time-rate for the extra hours will probably suffice. In certain other cases, one and a half times the normal rate will be reasonable. But in no case the claim for twice the normal rate is justified. It is urged on behalf of the Municipality that ordinarily clerks are not asked to work overtime save in exceptional cases but they agree to give overtime allowance at a time rate. In my opinion, the recommendation of the Pay Commission is reasonable and should be adopted. For every hour of overtime work the employee should be paid at the rate of one and a half hour's earning. That demand is, therefore, granted.

Dearness Allowance

14. Demand No. 8 is that dearness allowance should be paid at the present Government scale with effect from July 1944. The employees have been getting dearness allowance on Government scale. Since the time that these demands were made, the Government scale has been increased from 15th of August last, and, in my opinion, the Municipality ought to pay dearness allowance on that scale from that date. As regards dearness allowance paid

before, the employees contend that it was less than the Government scale after the 1st of July 1944. As it appears from Annex "A" to the statement filed by the Municipality, till the 1st of July 1944, the scale was roughly the same but from the 1st of July 1944, while the Government scale was Rs. 18 or 17½ per cent. whichever was greater, the Municipal scale was Rs. 18 or 10 per cent. Then from the 1st January 1945, when the Government scale was increased to Rs. 22 or 17½ per cent. the Municipal scale was Rs. 22 or 10 per cent. whichever was higher. From the 1st of April 1946, the Municipal scale and the Government scale was the same. As the Municipality has not followed the Government scale throughout, in my opinion, the employees have a just grievance for not getting their dearness allowance in that scale from the 1st of July 1944 till the 1st of April 1946. It is true that the Government did not grant 17½ per cent. in 1944 and 1945 and it granted it for the first time in April 1945 but by another resolution they made it retrospective from the 1st of July 1944. In my opinion, therefore, the Municipal employees should get the same dearness allowance which the Government employees got from 1st July 1944 to 1st April 1946. The demand, is, therefore, granted.

Demand No. 9 about interest on provident fund has been given up.

Average Pay

15. Demand No. 10 is about the manner in which the average pay is to be computed for the purpose of leave or gratuity. The employees want substantive pay on average pay for 12 months whichever is higher for leave as well as gratuity. As I have already referred to the recommendations of the Pay Commission and allowed it for demand No. 6, I think for the same reason this demand should be allowed as recommended by the Pay Commission at page 81.

Permanency

16. Demand No. 11 is that employees should be made permanent after one year's service. The employees contend that there are no probationers as such and the Municipality has understaffed departments and is employing temporary clerks for a long time who do not, therefore, get the benefit of provident fund and other amenities. It is urged that the Municipality must maintain certain permanent servants who may work in places of servants going on leave. A person has got to work temporarily off and on before he is confirmed. The temporary workers are at a disadvantage in not getting leave by right and it is granted only if no additional expenditure is involved. Reliance is placed upon the Report of Rao Bahadur Nadkarni at page 215 that efficiency will be im-

proved if a certain percentage of staff in each class based on the average number of persons who had gone on leave during the three preceding years is maintained as a Leave Reserve. The employees also rely upon the observations in the Pay Commission's Report at page 82, paragraph 149, that where persons are kept indefinitely, they should be allowed to earn leave on full pay as well as leave on half pay on the same terms as permanent employees in their grade. It is observed that service representatives are bitterly complaining that officers take undue advantage of the principle that leave is not a matter of right and frequently decline to grant leave when asked for. They have attributed this to inadequate leave reserve. In my opinion, a big employer like the Municipality should maintain an adequate leave reserve. It is true that for certain purposes the Municipality has got to employ its temporary staff, as for instance, road repairs during and immediately after the monsoons, elections, etc., and that such staff cannot be made permanent. At the same time if as a matter of fact an employee had been employed as a temporary employee for one year he may acquire certain privileges as an employee even though temporary for the purpose of leave and other amenities. But I think the demand as made about making employees permanent immediately after one year's service cannot be granted. I recommend that sufficient leave reserve should be maintained and that as recommended by the Pay Commission after completion of one year's service, temporary employees should be given leave on full pay as well as half pay and leave on medical certificate on same terms as permanent employees of their grade.

Holidays

17. Demand No. 12 is that pre-war holidays such as Christmas should be restored without further delay. I do not think that this demand can be accepted. The Pay Commission has remarked that the demand for more holidays than at present cannot be granted. Clerks get a day and a half in a week as holidays over and above certain holidays which are declared by Government as Public Holidays. It is true that before the war some of these were included in the holidays but in that respect all the big officers in the City should fall in line. The demand is rejected.

Demand No. 13 for canteens is not pressed.

Medical Treatment

18. Demand No. 14 is that free medical treatment should be provided to the employees. The employees contend that although the Municipality has got 11 free dispensaries no preferential treatment is given to their clerks. If possible, a special outdoor Department should be opened for the Municipal employees. The Municipality contends that it has got as a statutory duty to main-

tain dispensaries for the public and it would be invidious to give any preferential treatment to the Municipal employees above the other members of the public. I think that position is correct. I, therefore, reject this demand.

Recruitment

19. Demand No. 15 is that direct recruitment to the supervisory posts should be discontinued. As this adjudication applied only to the clerical grade and not to the supervisory or superior staff, I have no jurisdiction to entertain that demand. The demand is, therefore, disallowed.

Confidential Reports

20. Demand No. 16 is that the system of confidential reports on employees should be abolished. The employees rely upon the observations of the Pay Commission at paragraph 114 that every employee should be informed of any adverse entry against him in the service register. On behalf of the Municipality it is contended that the clerks are informed and if any adverse remarks are made their initials are taken. There is also a right of appeal to the Commissioner. That being so, I do not think that this demand may be granted. It is rejected.

Fidelity Fund

21. Demand No. 17 is that the premium on the Fidelity Guarantee Fund should be paid by the Municipality. The demand really is that the premium paid by the employees should be refunded at the time of their retirement from the service. An employee is required in lieu of funds or securities to contribute a certain percentage to the insurance fund maintained by the Corporation for the purpose of recovering losses due to any loss or misappropriation of Municipal property by any of the contributors of the fund. There is a proviso that if such Municipal servant ceases to hold a post requiring such security on account of transfer, death, retirement or resignation, he or his heirs shall be entitled to a proportionate refund from the last contribution to the insurance fund from the date of his ceasing to hold such post to the date up to which the said contribution is paid by him. It is said that a fund was started in 1941 and that general fund is kept for all the contributions to the insurance made by the clerks. Even if he had made no defalcations at all he does not get his contribution back. The Municipality recovers the defalcated amount from the total fund contributed by all the clerks and thus operates as a joint liability of all the clerks. The demand, therefore, is that the whole amount should be refunded to an employee at the time of his retirement from the service by the Municipality. This sys-

tem is defended as being beneficial to the clerks as a body. If for instance a clerk makes a defalcation of Rs. 3,000 and if he has contributed Rs. 1,000 till then, the whole of the amount of the defalcation is recovered from the fund. If a clerk has also taken out an insurance policy in this fund for Rs. 1,000 and he has contributed Rs. 2,000 only when he had made a defalcation of Rs. 3,000, the Municipality pays Rs. 1,000 from this fund and the rest is recovered as far as possible from the defaultant employee's provident fund. It is urged that this system prevails in the Port Trust also and it does not entail any heavy loss to the employee as the rate of contribution is very small viz., half a per cent. per annum. The demand as worded viz., that the premium on the Fidelity Guarantee Fund should be paid by the Municipality is entirely untenable but even the demand for refund does not seem to me reasonable once the employee has commenced to contribute his share in the fund. The share is maintained for the benefit of the clerks as a whole and if every retiring employee takes away the amount contributed by him, there would be very little amount left in the fund in order to reduce the liability of the contributor or any other clerk making any defalcation. As the fund is for the benefit of the clerks as a whole, I do not think that this demand can be granted. The demand is rejected.

The next demand about conveyance allowance to outdoor staff does not survive.

Promotion

22. The last demand is that promotion to higher posts should be according to seniority. The employees do not object to the Head Clerks being appointed after passing the examination, but from Head Clerks to Chief Clerks the promotion should be according to seniority. The Pay Commission has rightly pointed out in paragraph 110 of their Report that "The principle of seniority assumes that all members of a particular grade are equally fit for promotion. Such an assumption may not do much harm in the lower grades of the service; but it cannot be generally accepted when dealing with promotions in or to the top grades In the higher grades of the service, considerations of fitness must have precedence over the claim of seniority." This demand which is made merely on the basis of seniority cannot be granted. At the same time there should be no examination, in my opinion, for promotion from the post of Head Clerk to that of a Chief Clerk. Such promotion should be made on the basis of seniority as well as merits. The demand is rejected.

23. Finally, there are two demands which were urged at the time of arguments although they were not included in the demands in the Notification. It was contended that a fine of Rs. 2 and the deduction of half a day's wages for the token strike resorted

to by the employees should be cancelled. The Municipality contends that the token strike was illegal, that the half a day's absence should be treated as leave without pay and moreover those demands are not referred to in the Notification. I have no jurisdiction to consider these demands. They are, therefore, rejected.

H. V. DIVATIA,
Adjudicator.

Bombay, 19th Novmber 1947.



**SUMMARIES OF SOME AWARDS
FROM OTHER PROVINCES**

BENGAL AWARDS

1	French Motor Car Company, Ltd.	...	799
2	French Motor Car Company, Ltd.	...	799
3	French Motor Car Company, Ltd.	...	800
4	Bengal Chemical and Pharmaceutical/ Works, Ltd.	... ..	801
5	Bengal Chemical and Pharmaceutical Works, Ltd.	... ..	801
6	National Carbon Company (India), Ltd.	...	802
7	Bengal Silk Mill Co., Ltd.	...	803
8	Hooghly Docking and Engineering Co., Ltd.	...	804
9	India Rubber Manufacturers, Ltd.	...	805
10	Calcutta Tramways Co., Ltd.	...	806
11	Calcutta Tramways Co., Ltd.	...	808
12	India Electric Works, Ltd.	...	813
13	Burn & Co., Ltd.	...	814
14	Indian Standard Wagon Co., Ltd.	...	815
15	Indian Iron & Steel Co., Ltd. & Others	...	816
16	Indian Aluminium Co. Ltd.	...	818
17	Crown Aluminium Works, Belur.	...	820
18	Mackenzie & Co.	...	821
19	Varajlal & Co.	...	822
20	India Electric Works, Ltd.	...	823
21	Burn & Co.	...	824
22	Maya Engineering Works.	...	826
23	Steel Products, Ltd.	...	827
24	Bhartia Electric Steel Company, Ltd.	...	828
25	Burmah-Shell Oil-Storage and Distributing Co. of India, Ltd.	... ..	830
26	Edinburgh Press.	...	831
27	Robert Hudson (India), Ltd.	...	832
28	The Art Press.	...	834
29	Thacker's Press and Directories, Ltd.	...	835
30	The National Iron & Steel Co., Ltd. & Others	...	836

(Order No. 5981—Com. Government of Bengal, Dated 26-11-42)

MESSRS. FRENCH MOTOR CAR COMPANY LTD.

AND

THEIR WORKERS' UNION

Adjudicator:—Claims officer, War Injuries Scheme, Calcutta.

Demands and Awards

(i) Increase in dearness allowance.

Granted at Rs. 5/- per month to all workers, whether permanent, or temporary, drawing salary up to Rs. 100/-, 'Workers' to include Durwans, Coolies, Syces, Bearers, Bill Collectors, Peons and Sweepers.

(ii) Holidays with pay.

Granted 19 days' full holiday with pay in a year. A list of holidays to be posted at a prominent place.

(iii) Increase in overtime rate.

Company's rate of 25% extra for overtime was held as fair.

(iv) Increase in basic pay.

It was held that no case was made out for increase.

(v) No increase in working hours.

It was held that the Company was justified in increasing the working hours from 45½ a week to 48 a week.

(Order No. 2405-Com. Government of Bengal,
Dated 7th July 1943.)

MESSRS. FRENCH MOTOR CAR COMPANY LTD.

AND

THEIR WORKERS' UNION

Adjudicator:—Commissioner, Workmen's Compensation, Bengal.

Issues and Awards

(i) Responsibility for the strike.

Though the Company's action in insisting on the 8 Durwans to disown the Union was most injudicious, and gave rise to

further misunderstanding, the strike was not directly due to this. The responsibility for the strike lay upon certain undisciplined strike-leaders who brought it about without consulting the Union.

(ii) Reinstatement of 20 'wrongfully' discharged men. In no case was the termination of service held as wrongful.

(iii) Restoration of the old working hours.

It was awarded that the Company should either revert to the old system of 45½ hours per week or grant extra for 2½ hours.

(iv) Increase in dearness allowance.

It was mutually agreed that dearness allowance should be raised to Rs. 9/- per month.

(v) Leave facilities to temporary workers.

Granted.

Issues Nos. (vi) and (vii) regarding contractors and allowance for customers' work outside Calcutta were raised on a misconception of facts and hence no orders were made.

(Order No. 2398-Com. Government of Bengal.)

Dated 11th June, 1945.

MESSRS. FRENCH MOTOR CAR COMPANY LTD.

AND

THEIR WORKERS' UNION

Adjudicator:—R. Gupta, Esqr., I.C.S.

Demands and Awards

(i) Increase in Dearness allowance.

The Company paid Rs. 9/- as cash allowance and Rs. 10/4/3 in cash in lieu of subsidized rations. It was awarded that the latter be raised to Rs. 13/- per month.

(ii) and (iii) Reinstatement of certain workers discharged in previous strike.

No case was made out for reinstatement.

(iv) Uniform bonus.

The rate of bonus should be determined by the Company but it should be uniform for all the workers and not dependent on length of service.

(v) Introduction of a system of regular annual increments.

This was held as not possible for the Company.

(vi) The existing Provident Fund should be open to all Menial staff, which had been excluded, was allowed to join if

they desired, provided their monthly basic income was Rs. 20/- or more.

- (vii) First preference to ex-employees when vacancies occurred. Recommended, but no hard and fast rules could be laid down.
 - (viii) No contractor should be engaged for any work. In view of the prevailing conditions, it was held that Company should not be prohibited from employing contractors.
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(Order No. 578-Com. Government of Bengal,

Dated 13th Feb. 1943)

BENGAL CHEMICAL AND PHARMACEUTICAL WORKS LTD.

AND

THEIR MAZDOOR UNION

Adjudicator:—Commissioner, Workmen's Compensation, Bengal.

Demands and Awards

- (i) Increase in wages.

Rejected.

- (ii) Increase in dearness allowance.

A combined dearness allowance and emergency allowance of Rs. 9/- was awarded.

The Union undertook to exert its influence to ensure regular attendance.

(Order No. 1301-Com. Government of Bengal.)

BENGAL CHEMICAL AND PHARMACEUTICAL WORKS LTD.

AND

THEIR WORKERS.

Adjudicator:—Chief Presidency Magistrate, Calcutta.

Demands and Awards

- (i) Reinstatement of two 'wrongfully' discharged employees.

It was held that the discharge was not wrongful.

(ii) Increase in dearness allowance.

An increase of Rs. 5/8/- per worker was awarded in all amounts of dearness allowance, which was directed to be in cash only.

(iii) Abolition of Contract system.

It was held that there were no sufficient grounds for abolishing the system forthwith.

(iv) Provident Fund.

Granted, all employees being made to contribute compulsorily.

(v) Provision of uniforms to mechanical workers.

Granted, two sets to each worker.

(vi) Increase in wages.

No change was awarded.

(vii) Introduction of grade system with systematic increments.

It was held that war-time with its frequently changing conditions was not suitable for making any changes in the existing system.

(viii) One month's pay as bonus in a year.

It was agreed to leave the matter as it stood.

*(Order No. 2464-Com. Government of Bengal,
Dated 12th July, 1943.)*

NATIONAL CARBON COMPANY (INDIA) LTD.

AND

THEIR WORKERS

Adjudicator:—Commissioner for Workmen's Compensation,
Bengal.

Demands and Awards

(i) Increase in dearness allowance.

Granted at the rate of 7½ pies per hour per worker earning Rs. 30/- p.m. and at the existing rate to workers earning more than Rs. 30/- p.m. "Idle time" and approved sick leave being counted as actual hours.

(ii) Siren allowance.

Granted at the rate of as. 12 for one or more official alerts within 24 hours.

(iii) Supply of food-stuff at cheap rates.

Granted.

(iv) Provident Fund.

To wait for the present.

(v) Casual leave.

Rejected, but the company was asked to grant 6 holidays on full pay in a year.

*(Order No. 3272-Com. Government of Bengal,
Dated 22nd September, 1943)*

BENGAL SILK MILL CO., LTD.

AND

THEIR WORKERS

Adjudicator:—Commissioner for Workmen's Compensation,
Bengal.

Demands and Awards

(i) Dearness allowance.

The rates were fixed after taking into account the prevailing dearness.

The minimum rate in Winding Department was fixed at Rs. 10/- per week subject to weekly output being not less than 3 seers per day, per worker. Excess over 3 seers should be paid extra at the rate of 10 annas per seer.

No change in the rates prevailing in the Cleaning Department was called for.

(ii) Cheap grain shop.

Granted with certain conditions.

*(Order No. 1758-Com. Government of Bengal,
Dated 24th May, 1944.)*

HOOGHLY DOCKING AND ENGINEERING CO., LTD.

AND

THEIR WORKERS

Adjudicator:—Chief Presidency Magistrate, Calcutta.

Demands and Awards

(i) Dearness allowance.

Granted at the rate of 10 pies per hour. Monthly paid men were granted at the rate of Rs. 10/- per month.

(ii) Monthly working hours should be 192.

Rejected.

(iii) Overtime should be calculated on the basis of daily and not weekly hours.

The demand was not pressed.

(iv) Supply of salt and mustard oil; reduction in Tur-dal prices.

The demand was not pressed in view of the practical difficulties involved.

(v) Overtime wages to all classes of drivers.

The demand was not pressed in view of the existing practice of giving such overtime wages.

(vi) 'Khoraki' to night workers should be increased.

It was held that 'Khoraki' payment was in the nature of a gift and that the rate should not be enhanced.

(vii) Annual increment of Rs. 2 per month in general.

Held that time was not suitable for introducing any such system of annual increments.

(viii) Provident Fund, bonus, and privilege leave.

Privilege leave of 15 days on full pay after work for 276 days in 12 months, was awarded. No order was made as to bonus. The question of Provident Fund was deferred.

(ix) Discharge certificates and one month's notice before discharge.

15 days' notice was held as sufficient. Certificates were already being given.

(Order No. 3782-Com. Government of Bengal,
Dated 14th October, 1944.)

INDIAN RUBBER MANUFACTURERS LTD.

AND

THEIR WORKERS

Adjudicator:—R. Gupta, Esqr., I.C.S., Chief Presidency Magistrate, Calcutta.

Demands and Awards.

(i) General wage increase of As. 2.
Sanctioned.

(ii) Increase in dearness allowance.

The Company had lately raised the allowance from Rs. 8/- to Rs. 10/-. It was held sufficient, but supply of rations at certain rates was further sanctioned.

(iii) Half-holiday on Saturday with full pay, and

(vi) Restoration of $7\frac{1}{2}$ hours' work per day.

The increase from $7\frac{1}{2}$ hours to 9 hours a day was held as justified; but extra payment was awarded for 2 hours in place of $1\frac{1}{2}$ hours every day, and full wage for Saturday with 5 hours' work.

(iv) Profit bonus.

Rejected.

(v) 15 days' leave with pay.

Sanctioned, in addition to the existing 10 to 12 full-paid festival holidays.

(vii) Reinstatement of retrenched men.

The retrenchment was held as justified; but it was directed that these men should get first preference when vacancies occurred.

(Order No. 3746-Com., Calcutta 12th October, 1944.)

CALCUTTA TRAMWAYS CO., LTD.

AND

THEIR EMPLOYEES

Adjudicator:—Mr. R. Gupta, I.C.S., Chief Presidency Magistrate, Calcutta.

Demands and Awards.

1. Increase in basic wages and fixing of grades.

Granted—(a) Coolies and cleaners, Rs. 18-½-22; (b) Flagmen and pointsmen, Rs. 20-½-24; (c) Khalasis and Scrappers, Rs. 18-½-25; (d) Clerks, Rs. 40/-, pay clerks retaining their original start of Rs. 45/- and (e) Depot-cashiers to await Company's revision.

The Adjudicator prefacing his recommendations stated that he was not in favour of increasing basic wages through Adjudication proceedings. Relief for abnormal times should be in the shape of dearness allowance. Alteration in basic wages was only justified in certain exceptional circumstances such as where basic wage was barely on subsistence level, or where discrepancy existed as regards wages paid to workers doing the same kind of work.

2. Change of time-table so as to remove disadvantages with regard to rest, unusually long hours of work or compulsory overtime work at a stretch.

The Adjudicator suggested preparation of a new time-table securing (i) no more than 8 hours' work, as far as practicable, (ii) reduction of compulsory overtime work to the minimum, and (iii) provision for 20 minutes' rest for those who had to work 8 hours at a stretch.

3. Compensation for loss sustained by workers without dependents consequent upon the introduction of rationing.

Granted, in the shape desired by the workers: Rs. 2-10-0 per month being set off against their ration bill.

4. Free or cheap food canteens.

Canteens supplying light refreshments such as tea, biscuits, etc., rather than those supplying cooked meals (which were neither in great demand nor practicable) were recommended, to be run by the company and managed not through contractors but by the workers themselves under the supervision of the Company's

Labour Officer, on cost price basis.

5. Revival of the old or modification of the new practice of mutual exchange of duties by workers.

Allowed up to seven days, provided notice was given by both the parties in writing to the Head Starter.

6. Increase in leave facilities.

Granted—(a) 14 days' privilege leave to P.W.D. and Engineering staff with seven days' casual leave with pay. (b) Other workers to get 21 days with full pay, or 42 days with half pay, as privilege leave and 10 days' casual leave each year, (c) workers already enjoying better facilities to retain them. (d) The accumulation of privilege leave to be not more than two years.

7. Certain workers in the P.W.D. who had been working on temporary basis throughout their service, should be made permanent, and their pays and grades fixed in accordance with their previous service.

Granted—Coolies with 30 months' service during the previous three years to be made permanent in the grade of Rs. 18— $\frac{1}{2}$ —22; others to be retained on a temporary basis on a fixed pay of Rs. 18/- till qualified for permanency and occupying vacancies of permanent posts as they arose.

8. Advance amounting to three months' pay which was granted from the Provident Fund should have the interest thereon credited to the workers to give them the same advantage as those other workers who, for want of sufficient balance in their Provident Fund account, got an advance as a direct loan from the Company free of interest.

Rejected.

9. Increase in dearness allowance.

Granted—The dearness allowance was raised from Rs. 10/- to Rs. 16/-. Subsidised rations were to continue. Suggestion to link up dearness allowance with the cost of living Index number was not accepted because the existing number was admitted as inaccurate.

In his letter dated 13-9-44 to the Government, the Adjudicator remarked as follows: "I should only like to add that the impression left upon me was that some at least of the friction between the Company and its employees might be mitigated if the company were to give official recognition to the Calcutta Tramway Workers' Union which represented the workers at the hearings before me, and which appears to be a strong and well-established union representing the vast majority of the company's employees. The position at present is an absurd one, for, although the Union commands the whole-hearted allegiance of the employees, the com-

pany will have nothing whatever to do with the Union with a view to reaching an agreed solution. The recognition of the Union by the Company was not one of the points which I was called upon to adjudicate upon, yet, as the company, is a public utility concern serving the public of Calcutta, I feel constrained to make these remarks in the public interest”.

(Order No. 411-Com. of Bengal, Department of Commerce,
Labour and Industries, Dated 21st January, 1946.)

CALCUTTA TRAMWAYS CO., LTD.

AND

THEIR EMPLOYEES

Adjudicator:—R. Gupta, I.C.S.

Issues and Awards.

(1) Increase in dearness allowance.

The workers' case was based upon (i) the higher rates of dearness allowance prevailing in other parts of India and (ii) the existing allowance being far below the full compensation for the increase in cost of living.

The Company paid Rs. 25/8 per month as dearness allowance and this was higher than the rates prevailing in other concerns in Calcutta. A substantial increase was given following an Adjudication in 1944. The cost of living index number was falling. The other amenities such as uniforms, free medical attention, free travel to and from work, provided by the Company mitigated the impact of steeply rising prices. In view of these factors, the Adjudicator was unable to recommend any increase in dearness allowance.

(2) Setting up of a Wage-Board composed of the representatives of the Company, the workers and Government to fix question of minimum wages, scales, increments, etc.

It was held that the demand was beyond the powers and functions of the Adjudicator.

(3) Revision in the existing position regarding starting pay and grades.

The Adjudicator observed that except for very cogent reasons he would not like to interfere in this question which he held should be left to the gradual process of negotiation and bargain between the parties. The Adjudicator recommended the following few changes:—

(a) Unskilled workers.

The minimum wage be raised to Rs. 20/- and the maximum also correspondingly.

- (b) Conductors and Drivers (including Rolling Stock-Drivers). The existing scale was held as inadequate in comparison with the responsibility shouldered by these men. Their scale was recommended as—Rs. 26—1—40—2—50.
- (c) Ticket Inspectors, Starters, Time-keepers and Traffic Jamadars.

These posts were filled by promotion from Conductors and Drivers whose scales were revised in (b) above. The following scales were recommended:

Ticket Inspectors and Starters:—

Grade II = Rs. 55—1½—67.

Grade I = Rs. 67—2—75.

Time-keepers—Rs. 50—1—54.

Traffic Jamadars—Rs. 50—1—54 (Grade II).

Rs. 55—1½—67 (Grade I), and Special Grade

Rs. 67—2—75.

- (d) Engineering—Skilled workers—The following scale was recommended:—

Grade III Rs. 25—1—35.

„ II „ 36—2—56.

„ I „ 56—2—68.

The Depot workers also be paid similarly.

- (e) Chargemen—These posts were generally filled by promotion from the skilled workmen from Engineering Depots. Two grades—Rs. 60—2—74; and Rs. 75—3—84 were recommended.

- (f) Lorry and Van Drivers—These men being engaged on heavy vehicles, their grades were recommended as—Rs. 40—1—50 (Grade II) and Rs. 52—2—60 (Grade I).

- (g) Permanent way—

The Skilled workers in this department should be paid like the skilled workers in the Engineering section.

Lorry drivers should be paid as in (f) above.

- (h) Overhead wages staff—

Grade III was revised to Rs. 31—1—34, the remaining two being similar to those of skilled workers of Engineering Department.

- (i) Tower Wagon Drivers—These were recommended the same pay as Motor Car Drivers.

The Company was instructed to announce the number of posts in each grade. Where there were 3 grades, the number of posts in grade II and III should be the same. A vacant post should be filled up immediately by promotion irrespective of whether a worker below had reached his top grade. The following rules were laid down for bringing the staff into new grades:

- (i) “A man will come on to the new scale at the stage next above his pay on the old scale. This is a general rule

laying down the principle of the change over.

- (ii) "He may elect to go on the new scale either with effect from 1-4-46, or from the date of his next increment under the old scale. In the latter case his pay on the new scale will be calculated after taking into account his increment on the old scale.
- (iii) "After he goes on to the new scale his next increment according to that scale will be due after one year's duty."

- (4) Abolition of split cars other than 'office' cars.

The 'split car' system kept a worker tied down for 12 hours a day. The split duty left no time for a worker for his individual requirements. The Adjudicator fully sympathized with the workers in their demand and directed the Company to make necessary changes within six weeks. The Union demanded a joint Time-table Committee. The Adjudicator did not grant this but thought that if the Company recognised the union in proper spirit, it would certainly consider the men's suggestion when framing a Time-table.

- (5) Proper latrine arrangements at termini.
Granted.

- (6) Privilege leave.

The Traffic Staff was getting 21 days' privilege leave on full pay or 42 days' on half pay, provided they had completed 288 days of actual work in the preceding 12 months. The method of calculation worked rather harshly on employees and therefore the Adjudicator changed it as follows:—

- (i) A workman was entitled to 21 days' privilege leave after 280 days' work.
- (ii) The days of duty were to be counted from the date of last return from leave. Casual leave was to be included in duty days, but not Sundays or other weekly rest-days.
- (iii) Leave would be normally granted after 280 days of duty but the Company could grant, at its discretion, proportionate leave earlier.
- (iv) Accumulation of leave was allowed up to 42 days.

Workmen with more than 15 years' service were allowed 30 days' privilege leave. Their leave was also to be calculated as above. Depot staff also to get benefit similar to the traffic staff. Engineering and workshop staff got 14 days paid holidays out of 28 gazetted holidays, but they got no privilege leave. The Adjudicator therefore sanctioned 14 days' privilege leave in addition to the 14 paid holidays. The P.W.D. staff was also granted similar benefit.

- (7) Further leave facilities.

Rejected.

(8) & (9) Trollymen, Pointsmen, Flagmen, Shed-Jamadars Peons and Chaprasis of the Engineering Department should get

leave according to the Traffic section.

Rejected.

(10) Depot cashiers should get the same benefits as Head office Pay-clerks, in matters of pay, holidays and overtime.

The Depot cashier's work was closely bound up with that of the traffic staff, hence their office was open for 24 hours. The work was done in 3 shifts.

The Adjudicator did not agree with the union's contention about the comparison between the Depot cashiers and Pay-clerks in office in all matters. He awarded that the Depot cashiers be paid Rs. 3/- per day for 28 gazetted holidays. He held that no case was made out for introducing the same grades for Depot Cashiers as those for Pay-clerks, but awarded that the removal of efficiency bar between Grade III & II and vacant posts in Grade I should be filled immediately. Overtime payment was not sanctioned as such work was generally done owing to mistakes on the part of the staff.

(11) Improvement in shifts of Depot Cashiers.

Some of the work from Night-shift was directed to be done during Day-shift, thus reducing the number of men on night-shift. Mutual exchange of duties was also allowed.

(12) 15 days' casual leave for all staff.

Engineering workshop and P.W.D. staff got 7 days' casual leave and Traffic, Depot and Head-office staff got 10 days' leave. Only 3 days at a time could be taken and, in case of excess, the whole leave was treated as leave without pay.

The Adjudicator held that existing leave facilities were adequate. He, however, ordered that casual leave up to 7 days should be allowed to be taken in block.

(13) Free travel facilities to the Engineering staff.

Engineering staff was the only staff excluded from the privilege of free transport, the Company having been generous to the rest of the staff. The Adjudicator awarded that the Engineering staff also should get the same facility.

(14) Standing rules giving conditions of service, dismissals, payment of wages, etc., should be framed.

The Company was directed to publish these rules within 3 months.

(15) Provision of residential quarters to all the staff or house allowance.

Rejected, as being impracticable and far ahead of the prevailing conditions.

(16) Temporary staff to be made permanent.

There were a large number of men, with long years of service to their credit, still on the temporary list. The Adjudicator held this as unfair and directed that, except the staff on temporary departments such as rationing, etc., the whole staff should be made permanent after a year's service.

(17) Opening of additional canteens.

Granted.

(18) Three additional dispensaries.

Granted.

(19) & (23) Full pay for the period of suspension if re-employed after being found not guilty. Payment of wages to witnesses in respect of time spent.

Granted. The Company was directed to tighten up its procedure to eliminate delays in disposing of complaints.

(20) Providing pay-slips to each worker showing the details of their accounts.

The company agreed to make its pay-sheets available to workers for inspection.

(21) Promotions strictly according to seniority.

It was held that in deciding the question of promotion, the element of selection based on efficiency must play its part.

(22) & (27) Supply of uniform to all categories of workers.

The question was directed to be taken up when times returned to normal.

(24) Improvement in the system of employment of reserve drivers and conductors.

These men were required to call frequently and if 3 successive roll-calls were attended without getting employment, they were paid only $\frac{1}{4}$ of the day's wages. The Company's system resulted in hardship to the staff. Therefore the Adjudicator directed that the reserves should be divided into shifts, number of calls should be increased, one shift only being called at a time. Every endeavour should be made to absorb the whole shift before next call.

(25) Depot cashiers to reach their maximum after completing 25 years.

Rejected.

(26) Provision for safeguarding Depot-cashiers at the time of counting of cash in Head Office.

The suggestion that Inspecting cashiers should be present at the time cash boxes were opened in the Head Office was accepted.

(28) Discontinuation of open cars.

Company's assurance that the changes would be carried out as early as possible, was accepted.

(29) Increase in the number of cashiers at the Depot.

Rejected.

(30) Appointment of an Accident-Inquiry-Committee.

The union did not prove that the present system of holding inquiries required alterations, hence no change was made. No black-mark was to be recorded unless a driver was found wholly or partly guilty.

(31) Waiting room at Howrah Station.

This was not possible owing to Company's inability to secure land there.

(32) Overtime payment to the overhead section staff.

Granted.

(33) Demand relating to Depot Jamadars was not pressed.

(34) Inspectors should be paid for their checking work done in the tram in which they travel to and from their regular work. Rejected, as the work was nominal.

(35) Recognition of the union by the Company.

The Adjudicator recommended the Recognition, advising the Company to take a realistic view of the matter, and the union not to abuse the recognition when given.

*(Order No. 4496-Com. Government of Bengal,
Dated 22nd October, 1945.)*

MESSRS. INDIA ELECTRIC WORKS, LTD.

AND

THEIR MAZDOOR UNION

Adjudicator:—R. Gupta, Esqr., I.C.S., Chief Presidency Magistrate, Calcutta.

Demands and Awards.

(i) Increase in the dearness allowance of Rs. 19/8/-.

In view of there being no change in the cost of living, the existing allowance was held as sufficient.

(ii) The 14 days' leave with pay should not be reduced to 10 as contemplated by the Company.

The 7 days paid holidays and 7 days' casual leave sanctioned in the previous award was not excessive and should not be reduced to 10 days.

(Order No. 5072 Dated 9-9-42)

MESSRS. BURN & CO., LTD.

AND

THEIR EMPLOYEES

Adjudicator:—A. C. Hartlay, District Magistrate, Howrah.

Demands and Awards.

(i) Increment of Rs. 10/- per head per month.

The demand was made on two grounds, namely:—

(a) there was no system of yearly increments, and (b) cost of living had increased considerably.

It was held that the existing dearness allowance was inadequate for the large section of lower paid workers, so it was increased to 10 pies per hour. The Company's financial position was satisfactory and it could easily bear the increased cost.

(ii) Cheap food supply according to need.

Company's offer to supply essential commodities, subject to availability, at controlled rates and others at market rates was accepted by the representatives of the workers.

(iii) Permanent service.

The Company agreed to serve seven days' notice before discharge of employees with two or more years' service.

(iv) Provident Fund.

The Adjudicator would not compel the employers to start a scheme forthwith, but he strongly recommended its establishment at the earliest moment.

(v) Grade system, and (vi) yearly increments.

The Adjudicator recommended early introduction of a grade system combined with yearly increments.

(vii) Abolition of the system of piece and contract work.

The Company undertook to see that the piece rates did not result in payments falling below the daily rates.

The Adjudicator recommended progressive elimination of the contract system.

(viii) Full account of wages to be shown on the pay slip.

The Company agreed.

(ix) Formation of a Union.

The Company agreed to grant recognition after the Union was registered. The union was to be formed entirely from the factory workers.

(No. 2560-Com. Govt. of Bengal, Department of Commerce,
Labour and Industries, Calcutta, Dated 22-6-1945.)

INDIAN STANDARD WAGON CO. LTD.

AND

THEIR WORKERS

Adjudicator:—R. Gupta, I.C.S., Chief Presidency Magistrate,
Calcutta.

Demands and Awards

- (i) Rise in the basic minimums of different categories of skilled and unskilled workers.

The question of basic minimum wages should be decided for the Engineering Industry as a whole. The existing minimum wages of annas 8 for unskilled labour in the Asansol area was deemed fair. No increase was sanctioned for 'Blower boys' who were paid As. 8 per day or for office boys who were paid Rs. 10 to Rs. 14 per month.

- (ii) (a) Increase in dearness allowance in cash as well as in kind.

The allowance in kind (i.e. supply at concessional rate of food grains and other articles) was fixed at Rs. 11/6/11.

- (ii) (b) Cash allowance should be at a fixed rate.

Rs. 4/- per month was sanctioned to those getting Rs. 100/- or less.

- (ii) (c) Abolition of the practice of forfeiting totally the foodgrain concession for absence from work for part of a week.

Awarded that only proportionate deductions should be made.

- (iii) Reinstatement of and compensation to certain 'wrongfully' dismissed men.

In three cases dismissals were found justified. In other cases, the Company having already re-employed some of the men, and expressed its willingness to re-employ the rest, no compensation was awarded.

The Company was directed to open a 'Punishment Book' in which warning to workers should be recorded and workmen's signatures obtained. Except in cases of grave misconduct, a worker should not be dismissed until two warnings have been given to him.

- (iv) "Hot Bonus" to workers in the Smithy, Drop, Stamp, Press and Spring shop departments.

The question was left undecided in view of its being a techni-

cal matter.

(v) Production and Profit bonus to workers.

Bonus as an increased incentive to the workers was recommended for consideration of the Company.

(vi) Provident Fund and Gratuity.

Provident Fund was sanctioned. It should be optional and on the basis of equal contribution; workers' contributions not to be less than 5% of their monthly income.

(vii) Improvement in leave facilities.

A workman should be entitled to 12 days' leave with pay for 276 days' work in the year.

(viii) (a) Abolition of the practice of requiring a worker to sign a bond undertaking not to join a union.

Granted.

(b) Compensation to certain workers who were suspended for failure to give undertaking about not joining a union.

The Company's contention that the men were offered alternative employment before their department was closed was accepted by the Adjudicator and no award was made for compensation.

(No. 1100-Com.—Govt. of Bengal, Calcutta, 4th March, 1947.)

(i) INDIAN IRON & STEEL CO., LTD. WORKSHOP HIRAPUR.

(ii) STEEL CORPORATION OF BENGAL, LTD.

(iii) INDIAN STANDARD WAGON CO., LTD.

AND

THEIR EMPLOYEES

Adjudicator:—Mr. Justice William McCormick Sharpe, D.S.O.,
I.C.S.

Issues and Awards

In the course of hearing of the dispute the parties arrived at an agreement and the award was delivered in terms of the same.

(i) Recognition of the Union.

This was agreed to. The companies were to provide suitable accommodation for the union on rent. Joint Works Committees were to be formed. The Covenanted and/or First staff was not included in the union.

(ii) Minimum wages.

Men @ As. 10 per day and women @ As. 7/6 per day with effect from 1-2-47.

(iii) Dearness allowance.

Granted, Rs. 23/- per month from 1-2-47. The men's wages were not to fall below Rs. 26/- per month of 26 days in case de-

duction was made in the allowance as a result of a decline in the cost of living.

(iv) Increase in wages.

Agreed, from 1-2-47 as follows:—(i) for Indian Iron & Steel Co.—17½% (ii) for Steel Corporation of Bengal—12½% (iii) Indian Standard Wagon Co.—25%, and increase of 12½% on actual earnings, to piece workers.

(v) Point Sharing bonus.

Agreed, at the rate of 2 days' basic wages for every one per cent. dividend declared after 1-2-47 and paid to the ordinary share-holders of the three concerns.

No Pujah bonus was to be paid thenceforth.

"Extra wages scheme" of Indian Iron and Steel Co., was to be abolished.

(vi) Production bonus.

Indian Iron & Steel Co.—Scheme of production bonus was to be drawn up on the basis of the present actual average rated capacity of 40,000 tons of Pig iron per month and bonus would be payable when tonnage exceeded 50% of this amount. The scheme was to be so formed that for output of 40,000 tons of pig iron a bonus of 20% of basic wage would be payable to productive workers and a bonus of 2/3 of this amount to non-productive workers. The scheme was to apply to employees on the works only and to exclude clerical staff.

Steel Corporation of Bengal Ltd.—Their present scheme was to continue till the Duplex Plant came into operation, after which it was to be revised as soon as possible in consultation with the Union.

Indian Standard Wagon Co. Ltd.—No production bonus was to be introduced in view of the piece work system.

(vii) Provident Fund.

Indian Iron & Steel Co. Ltd.—The existing scheme was to be replaced by a Contributory Provident Fund scheme, on the basis of a month's pay as contribution by employees and an equal contribution by employers.

Steel Corporation of Bengal, Ltd., and Indian Standard Wagon Co. Ltd.—Similar schemes were to be introduced.

(viii) Retiring Gratuity scheme.

Indian Iron & Steel Co. Ltd.—Their existing scheme was to be extended to all the employees.

Steel Corporation of Bengal, Ltd. and Indian Standard Wagon Co. Ltd.—A similar scheme was to be introduced.

Services up to the date of the introduction of the scheme would be included in calculating payment.

(ix) Leave rules.

The existing rules would continue, but in addition, 2 days' festival leave per year with full pay should be allowed as from 1st Feb., 1947.

(x) Residential quarters.

Employees with more than 12 months' continuous service, who were not provided with quarters would be paid Rs. 3/- per month as House Allowance. After construction of quarters, the companies, in consultation with the union, might introduce a system of payment of reasonable rent.

(xii) Piece-work system.

This should continue in Indian Standard Wagons Co.

(xiii) The issue was mutually waived.

(xiv) Improvement in medical facilities.

Agreed.

(xv) Promotion.

Other factors being equal, promotion would be made on the basis of length of service.

(xvi) Acting allowance.

The system already in existence would be adhered to.

(xvii) Educational facilities.

One more Middle English School and 3 Primary Schools were to be started.

(xviii) Victimised and discharged men.

Individual cases were to be examined and if no agreement was reached, they were to be referred to Deputy Labour Commissioner, whose decision was to be final.

(Order No. 4154-Commerce, Calcutta, 10-11-44.)

INDIAN ALUMINIUM CO. LTD., CALCUTTA

AND

THEIR EMPLOYEES

Adjudicator:—Mr. R. Gupta, I.C.S., Chief Presidency Magistrate.

Demands and Awards

(1) Graded pay with regular increment.

When the proceedings commenced the employers announced their willingness to raise the wage from As. 1-3 to As. 1-6 per hour.

The Adjudicator did not think that any rule of automatic increase or promotion could be laid down, so far as the maximum rate or promotion from one class to another was concerned, but he held that every worker should get the normal rate after a fixed period. It was therefore awarded that, after three months' work, every worker should get normal rates if found efficient, or be discharged straight off or after a further trial of three months.

(2) Dearness allowance should be based on cost of living, and the immediate minimum dearness allowance should be Rs. 22/-.

The principle was granted, and after considering the rates paid by another Aluminium concern in the vicinity, and the rates prevailing at other places, it was held that all those getting less than Rs. 21-15-0 should henceforth be paid that much, while no increase should be made in the case of those already getting Rs. 21-15-0 or more.

(3) Profit bonus.

Rejected: it was held that no case was made out.

(4) Compulsory Provident Fund membership for old employees, and for the new, only after three months' work.

The latter was already agreed to between the parties. For the former also, the company was willing if there was no legal objection.

(5) Gratuity for old and invalid workers.

Rejected, for want of a sound case.

(6) Construction of suitable quarters for workers.

The time being inopportune, even the workers did not press the point, hoping that the demand would be conceded in due course.

(7) Accommodation and light for workers' night-school, library, and club.

Rejected. The Adjudicator could not bring himself to recommend the employers to provide these.

(8) (a) 15 days' sick leave on half pay, (b) 15 days' casual leave on full pay, and (c) 12 days' paid leave on festive occasions.

(a) Awarded in terms of the Company's offer, 7 days on the authorisation of the Company's Medical Officer, 2 days for cholera inoculation, 2 days for vaccination and 1 day for typhoid inoculation.

(b) The 12 days that the company was already allowing was sufficient. Its accumulation was recommended up to a period of two years.

(c) One Visvakarma Puja holiday that the company already allowed was regarded as sufficient.

(Order No. 4242-Commerce, Calcutta, 16th November, 1944.)

CROWN ALUMINIUM WORKS, BELUR

MANAGING AGENTS—JEEVANILAL (1929) LTD.

AND

THEIR EMPLOYEES

Adjudicator:—Mr. R. Gupta, I.C.S., Chief Presidency Magistrate, Calcutta.

Demands and Awards

(1) Reinstatement of certain workers.

18 out of the 19 workers who had stopped work or been dismissed having been re-engaged, no order was made. No sufficient case was made out for the 19th.

The Adjudicator directed that a punishment book should be maintained by the Company in which all warnings given to workers should be recorded, and thumb impression taken after communicating the warning. After two warnings, discharge would be regarded as justified.

(2) Increased wages and dearness allowance for packing department men.

Granted. Though they were contractor's men it was held that the distinction made by the Company in paying them less dearness allowance was not fair.

(3) One month's wage as profit bonus.

It was held that no case was made out.

(4) Gratuity for old and invalid workers.

It was held that no case was made out.

(5) Yearly increments.

Rejected.

(6) Abolition of piece-work rates.

It was held that no case was made out.

(7) Permanency for all workers after six months' work.

Awarded that after one year's service, a worker should be made permanent and be entitled to leave the membership of Provident Fund.

(8) Half holiday on Saturday.

Granted, by adjusting the 47-hour week.

(9) 15 days' sick leave with pay per year.

Awarded that each worker should get 6 days' sick leave in addition to the existing provision of 6 days paid holidays plus 12 days' leave on full pay.

(10) Payment of dues and compensation to a discharged worker. The Company was directed to pay, if any really due.

(11) Use of two rooms free of rent for workers' club, library and night school.

Rejected.

(12) Improvement of the existing quarters and construction of new ones.

The demand was not pressed because land was not available.

(13) Members of the Executive Committee of the Union to be allowed to leave at 5 p.m. on meeting-days.

Allowed to go at 5-30 p.m.

(14) Recruitment of new hands from relatives of the existing workers.

Company agreed to consider such cases favourably.

(Order No. 242-Commerce, Calcutta, 16th January, 1945.)

MACKENZIE & CO., MANAGING AGENTS, B.I.S.N. CO., LTD.

AND

THEIR TALLY CLERKS

Adjudicator:—Mr. R. Gupta, I.C.S., Chief Presidency Magistrate.

Demands and Awards.

(i) No discrimination in payment of pension between the clerical staff and the Tally clerks.

The Company paid pension to the tally clerks at rates less than those it paid to the other staff, on the ground that the latter had more responsible and onerous duties. The Adjudicator did not agree to this, because onerous duties carried better pay. He awarded that the method of determining pension should be uniform for all the staff.

(ii) No discrimination in salary between the Anglo-Indian or Indian-Christian clerks and the Indian clerks.

Granted.—It was held that there was no justification for discrimination on the ground of race or religion.

(iii) Fixed grades for clerks.

The Company's system of irregular increments, varying from individual to individual at the discretion of the Company, depending upon recommendations of supervisory staff, led to discontent and hence the grade was fixed by the Adjudicator as follows:—

5	8	
55—	—90	—138,
2 yrs.	2 yrs.	

plus Rs. 10/- as bonus, without prejudice to those who were getting more. First two years was the probation period.

(iv) Leave and holidays.

Rejected, as the existing facilities were held as adequate. Leave was, however, allowed to be accumulated up to two months.

(Order No. 321-Commerce, Calcutta, 24th January, 1945.)

VARAJLAL & CO., CALCUTTA

AND

THREE OF THEIR MANJHIS.

Adjudicator:—Mr. R. Gupta, I.C.S., Chief Presidency Magistrate.

Demands and Awards.

(i) Reinstatement of two Manjhis 'wrongfully' discharged.

According to the practice, the Manjhis were usually paid full wages when their boats were laid up for repairs, which lasted several months, sometimes even more than a year. Messrs. Varajlal had offered only basic wages without allowances, and it was held that so long as the Manjhis were retained in the service, their full wages with allowances should be paid. On this basis, one Manjhi was ordered to be reinstated, and payment was to be made to him with retrospective effect. In the other case, wrongful dismissal was not proved.

(ii) Full payment to Manjhis during periods when their boats were laid up for repairs.

Awarded that if the Manjhis were retained in service when their boats were laid up for repairs, they should be paid full wages with allowances.

(iii) Wrongful deduction of fine from wages. The issue was settled out of court.

(Order No. 820-Commerce, Calcutta, 28th February, 1945.)

INDIA ELECTRIC WORKS LTD., ENTALLY, CALCUTTA.

AND

THEIR EMPLOYEES.

Adjudicator:—Mr. R. Gupta, I.C.S., Chief Presidency Magistrate

Demands and Awards

(i) and (ii) Dearness allowance and cheap grain facilities to be given to workers on daily wages, on piece-rates, and to workers employed under contractors.

Daily workers were paid Rs. 5/- as War Allowance. It was awarded that this should be treated as part of dearness allowance. This was also directed to be paid to contractor's labour. The piece-rate workers were getting higher wages already, so this allowance was not sanctioned for them.

Subsidised rations of Rice, Atta and Dal were to continue but the distribution was so arranged that the benefit derived thereby and cash allowances together should bring uniformity for all labour. Temporary workers who had worked more than a month were also given dearness allowance like other workers.

(iii) Increase in the wages of unskilled labour on daily basis and of contractor's men.

Granted—raised from as. 12 to as. 12/6 per day.

(iv) Leave with pay to the above three classes of workers.

Awarded that, out of the 16 holidays then already being granted without pay, 7 should be with pay. In addition, seven days' casual leave with pay was also sanctioned by the Adjudicator. Contractor's men also were to get similar leave facilities.

(Order No. 840-Commerce, Calcutta, 1st March, 1945.)

MESSRS. BURN & CO., HOWRAH

AND

THEIR EMPLOYEES.

Adjudicator—Mr. R. Gupta, I.C.S., Chief Presidency Magistrate.

Demands and Awards

1. Increase in dearness allowance.

Granted.—The existing cash allowance of Rs. 10/8 per month was unaltered, but an increase in concession in ration rates was sanctioned so that an individual employee might get Rs. 8/12 as additional benefit. Rice, atta and dal should be supplied to one dependent at cheap rates totalling a benefit of Rs. 4/3; and in case there was no dependent in Calcutta, cash benefit of Rs. 2/- should be paid to such workers.

In dealing with the question of dearness allowance, the adjudicator made the following observations—"In other cases I have generally proceeded on the basis that the benefit allowed by most big firms in the way of subsidised rations should be left substantially unaltered and any increase to be given should be given by way of further cash payments. I have found that most of the big firms supply the staple articles of foodstuffs to their workers, partially if not wholly at concession rates and I have mainly confined myself to considering whether the cash allowance should be altered. But I think the time has come when some readjustment and alteration of these views should be considered. It has been strongly represented to me, and I think not entirely without justification, that comparatively large increases in cash allowance over the industry as a whole, where lakhs of workers are involved, are likely to have an inflationary tendency which must be guarded against. I feel also that in examining the question of what compensation should be given in order to meet the rise in the cost of living I have perhaps not given sufficient weight in the past to one factor, *viz.*, the increase in the total income of the worker as a result of additional work which has come to him consequent upon increased activity in industrial concerns in order to meet the demands of the war. I appreciate that this additional income is not by way of higher wages but rather by way of increased overtime work but the fact remains that due solely to the war conditions now prevailing the great majority of workers are able to work more and therefore earn more than they ever did in normal time. This increase in income is certainly a factor to be

taken into consideration in deciding how he should meet the increased cost of living, for this income directly helps him to do so. The correct approach to the problem would be, I think, to consider on the one hand the rise in the cost of living and on the other hand the increased income of the worker by way of increased work and dearness allowance, and other allowances if any, and then, if it is thought necessary to enhance Dearness Allowance, to do so as much as possible by means of payments in kind rather than in cash. This method would meet the objection that inflationary tendencies should be guarded against, and at the same time it would provide the worker at cheap rates with more of these items of foodstuffs, etc., which are essential for his existence." In the case of workers having no dependent in Calcutta, it was observed as follows—"I am of the opinion that he is entitled to some compensation though certainly not the whole cash value of the concession. I say he is entitled to some concession because although his family, living as they do in his village, may be feeling the pinch of increased cost of living less than people living in and around Calcutta, there can hardly be any dispute that, in many essential items of foodstuff, prices in the mofussil areas have also gone up, not to mention other needs like cloth, fuel, etc. I think therefore that single workers should receive some compensation.

- (2) Some alterations in the arrangement of the shop and
- (3) in the working hours of the shop.

Granted.

- (4) Association of workers' representatives with the management of the shop and payment of wages to such representatives.

Granted; there should be two representatives in the shop and they should be paid their wages as if they were on work.

- (5) Graded pay with regular increments for all types of workers.

The minimum scale of unskilled workers was raised to As. 12/6 and a corresponding increase was sanctioned for other classes.

"In my opinion it is quite impossible for the Adjudicator in these summary proceedings under Rule 81A to enter into and decide the question of graded pay with regular annual increments for all categories of workers. This factory is not different from any other factories in the Calcutta Industrial Area. They all employ workers of the same kind. I think any attempt to fix wages rates should be Industry-wise and not piecemeal. I understand that a start in this direction has already been made by the Labour Commissioner and I am of opinion that that is the correct way of approaching the problem."

- (6) Provident Fund.

The matter was left over till the Provident Fund Rules were announced by Government of India.

- (7) Piece-rates to be announced before the work was undertaken.

Granted, whenever it was possible to do so.

(8) Pooja Bonus of a month's pay.

Left to the Company's discretion.

(9) Supply of mill cloth at cost price.

No order was passed, as the supply of cloth was not guaranteed.

(10) Khoraki at Rs. 4/6 per week for involuntary stoppage, if wages were not paid.

The Adjudicator declined to give award on this issue in a general way. No specific instance was brought to his notice.

(11) Modification of Rules which deprived the worker of the benefit of cheap rations if he remained absent.

Workers were not allowed the benefit of cheap rations unless they worked for at least 5 days a week; otherwise the whole benefit was forfeited. It was awarded that cheap rations being part of dearness allowance, absentee workers should be given proportionate benefit thereof.

(12) Certificates to workers getting even Rs. 25/- or less, whether they left of their own accord or were discharged.

Granted, for one year's service and more.

(13) Wages for strike period.

Rejected, as the strike was held to be unjustified.

(Order No. 890-Commerce, Calcutta, 5th March, 1945.)

MESSRS. MAYA ENGINEERING WORKS

AND

THEIR EMPLOYEES.

Adjudicator:—Mr. R. Gupta, I.C.S., Chief Presidency Magistrate.

Demands and Awards

(i) Increased dearness allowance and (ii) rations at concession rates or cash allowance equal to the difference between Market price and concession rates.

The company calculated dearness allowance on the total earnings, *i.e.*, wages and overtime allowance. This method introduced an element of uncertainty. It was held that there was no justification for this as the dearness allowance was not payment for work done, but an allowance to meet the increased cost of living. The adjudicator directed that this method should be abolished. He awarded a cash dearness allowance of Rs. 14/- per month which was the average paid at that time.

In view of the genuine need of the employees the company was directed to reopen its ration shop and supply certain articles at concession rates to the worker and one of his dependents. This

would benefit a worker by Rs. 10/9 per month. As for those who were single, the adjudicator awarded that in addition to the concession that they would get on their individual ration, they be further given Rs. 4/- per month as compensation in respect of one of their dependents who might be living in his village house.

(iii) Increase in minimum rates.

A rise of 6 pies was awarded in the existing minimum of As. 12/- a day for unskilled workers and a similar rise to other classes of workers.

(iv) Reinstatement of 'wrongfully' discharged persons.

It was found that four persons were wrongfully dismissed. As reinstatement in their case would have been useless owing to strained relations, compensation equal to 3 months' wages was awarded. In other cases, where dismissal was found wrongful, reinstatement and payment of wages for the period from dismissal to the time of reinstatement was awarded.

The adjudicator directed that the company should maintain a register in which names of the workers and their offences should be entered, and signatures of workers obtained after communicating the punishment to them. Except for grave offences, workers should not be dismissed without giving them two warnings.

(Order No. 995-Commerce, Calcutta, 13th March, 1945.)

STEEL PRODUCTS, LTD.

AND

THEIR EMPLOYEES.

Adjudicator:—Mr. R. Gupta, I.C.S., Chief Presidency Magistrate.

Demands and Awards

(i) Increase in dearness allowance to daily-raters and contractors' men and (ii) rations to these workers at concession rates or cash allowance equal to difference in market rates and concession prices.

The Company was directed to reopen their shop and supply certain quantities of rice, atta, dal, mustard oil and salt at concession rates, which would benefit an employee individually to the extent of Rs. 5-13-2 per month of 4½ weeks, and with one dependent, to that of Rs. 11-10-4 per month.

The Adjudicator further awarded that the cash grant be raised from Rs. 7/8/- to Rs. 12/8/- per month.

Single worker having no dependent in Calcutta to get Rs. 4/- as compensation in lieu of subsidised ration for a dependent.

Dearness allowance as well as cheap grain concession was to be given to contractor's men also.

(iii) Leave.

The Company granted only four days as festival holidays. This was insufficient and it was awarded that the workers should get additional 10 days' leave per year with full pay after completion of 2nd year.

(The following four demands were put up during hearing of the case and the Adjudicator gave his decision and recommended Government to announce them in the interest of peace in industry).

(iv) Payment of wages to 50 workers for work done on the night of 29th October.

Wages had not been paid, it being alleged that workers had slept during that night. The allegation was not satisfactorily proved and it was awarded that the wages should be paid.

(v) Restoration of the old system of deducting wages for late arrivals.

According to that system, a worker was fined for the actual period he was late to the nearest half hour. The Company had changed this system, when the adjudication was pending, and even for one hour's late-coming half a day's absence was marked. As no satisfactory reason was shown for introducing this drastic change, it was awarded that the Company should revert to the old system.

(vi) Re-instatement of certain dismissed workers.

Re-instatement and payment of full wages were awarded where wrongful dismissal was proved.

(vii) Restoration of the old working hours and shifts.

As it was not shown that the new system was unjustified, no change was awarded.

The Company was advised to maintain a warning Register in which all warnings to the workers were to be registered and workers' signatures taken.

(Order No. 1086-Commerce, Calcutta, 17th March, 1945.)

BHARTIA ELECTRIC STEEL COMPANY, LTD., BALLYGUNGE, CALCUTTA.

AND

THEIR EMPLOYEES REPRESENTED BY UNION

Adjudicator:—Mr. R. Gupta, I.C.S., Chief Presidency Magistrate.

Demands and Awards

(i) and (iii) Increase in dearness allowance and supply of

Dal, Mustard oil and sugar at cheap rates in rations.

Dearness allowance paid ranged from Rs. 7-15-0 to Rs. 10-6-0 per month and supply of rations was made at controlled rates. The dearness allowance was much below the prevailing rates and was inadequate to meet the rise in cost of living. The Adjudicator therefore awarded additional cash dearness allowance of Rs. 11/- per worker per month and subsidised rations of 2 seers of Atta and 2 seers of rice per week at Rs. 8/- per maund. The Company was allowed to pay smaller cash allowance provided the difference was made good by additional supply of ration at subsidised rate.

(ii) Increase in wages for all types of labour.

The Adjudicator held that this question should be considered on a much wider basis and not piecemeal in the case of individual factories. He however awarded that the minimum starting wage of as. 11/- per day be raised to as. 12/6 per day.

(iv) Reinstatement of certain workers.

The demand was abandoned.

(v) (a) Bonus.

The company paid 20 days' wages as bonus in 1941 and 1942 and 21 days' wages in 1943. Its position now not being worse, it was awarded that 20 days' wages be paid as bonus.

(v) (b) Provident Fund.

Granted on the basis of compulsory contribution by employers and workers, at the rate of 6½% of wages. After one year's service, workers were eligible to join.

(v) (c) Leave facilities.

The Company granted only one day's paid holiday. This being far too behind the prevailing standard, it was awarded that every worker should get 12 days' earned leave and 6 days' casual leave with pay. This became due to a worker after 2 years' service. Casual leave should not be allowed in continuation of earned leave.

(vii) Wages for the period during which rolling mill department remained closed due to shortage of coal.

In 1943, the mills were closed for 12½ weeks due to shortage of coal. On resumption of work, those workers who returned were re-employed and were compensated by paying 3 weeks' wages and four weeks' ration at subsidised rates. The Adjudicator found this as insufficient and directed that half wages for the entire period and money value of the benefit enjoyed in subsidised rations less wages and benefits already paid should be given to all workers who were re-employed at the conclusion of the stoppage.

(Order No. 1768-Commerce, Calcutta, 2nd April, 1945.)

BURMAH SHELL OIL-STORAGE AND DISTRIBUTING CO.
OF INDIA LTD.

AND

THEIR EMPLOYEES

Adjudicator:—Mr. R. Gupta, I.C.S., Additional District and Sessions Judge, 24-Parganas, Alipore.

Demands and Awards

(i) Increase in cash dearness allowance.

The Company paid Rs. 12-8-0 in cash and Rs. 5-8-0 to Rs. 6 by way of concession in cheap rations to each employee. It was argued by the Company that most of their employees came from nearby villages where rise in cost of living was not as high as in the city. While it was agreed that in certain respects villagers might be better off, in others they had certain disadvantages. An increase of Rs. 2/- was therefore sanctioned by the Adjudicator.

(ii) Increase in minimum daily rates.

The existing minimum of as. 12/6 was held as adequate.

(iii) Re-instatement of certain 'wrongfully' dismissed men.

18 out of 19 cases submitted by workers were held as wrongful dismissals. All these men had put in long service and the charge of unsatisfactory conduct was not proved. However, no order for reinstatement was made, as all were by then employed elsewhere; but a month's wage was awarded as compensation.

The company was instructed to maintain a warning Register to record acts of misconduct. Dismissal should not take place until at least two warnings had been given.

(Order No. 1329-Commerce, Calcutta, 4th April, 1945.)

EDINBURGH PRESS, BOWBAZAR STREET, CALCUTTA.

AND

THEIR EMPLOYEES

Adjudicator:—Mr. R. Gupta, I.C.S., Chief Presidency Magistrate.

Demands and Awards

- (i) Increase in dearness allowance, (ii) Cheap food concession or cash compensation in lieu thereof.

In view of the increase in cost of living and higher allowances paid by similar printing presses, an increase of Rs. 10 to Rs. 15 was sanctioned in the allowance. It was not possible for the employers to give cheap food concessions even on non-rationed items, owing to shortage of space.

- (iii) Increase in minimum rates.

Adjudicator thought that it was impossible in a summary inquiry to fix wage rates for large numbers of categories of workers. This was the work of the Printing Industry as a whole and he suggested that the employers' and employees' organisations should take up the question. A minimum wage of Rs. 20 was recommended.

- (iv) Provident Fund.

Granted; workers and employers each to contribute 6½% of the wages.

- (v) Leave facilities.

Awarded 15 days' leave with pay. This was to be in addition to 15 paid holidays. Accumulation of leave for two years was sanctioned.

- (vi) Retrenchment and discharge rules.

The following rules were laid down by the Adjudicator:—

- (a) One month's notice or pay in lieu of the same should be given before retrenchment.
- (b) Juniors in service in each class should be selected first for retrenchment.
- (c) Preference to be given to retrenched hands in case vacancies arise.
- (d) Proper warning to be given before discharge. A warning book to be maintained by the employers. Dismissal was justified after two warnings. This was, however, not to apply to cases of insubordination or misconduct.

- (vii) Medical attention in cases of lead poisoning, and proper washing facilities for employees.

It was awarded that as soon as lead poisoning was suspected, workers should be treated at hospitals at Company's expense. The Company should provide proper washing facilities.

(Order No. 1769-Commerce, Calcutta, 2nd May, 1945.)

MESSRS. ROBERT HUDSON (INDIA), LTD.

AND

THEIR EMPLOYEES

Adjudicator:—Mr. R. Gupta, I.C.S., Additional District and Sessions Judge, 24-Parganas.

Demands and Awards

(1) Increase in dearness allowance and compensatory allowance.

It was decided that, in addition to the existing cash dearness allowance of Rs. 11/4, a worker should get rations at concession rates so as to be benefited to the extent of Rs. 9-6-8 per month, and concession ration to be given to one of his dependents so as to give him a further benefit of Rs. 2-14-6 per month, those with no dependents in Calcutta getting Re. 1/- instead.

The company had argued that while considering the question of dearness allowance, full weight should be given to the fact that workers' income had increased considerably owing to increased orders for war materials. Commenting on this the Adjudicator observed as follows:

"In my opinion it would be fair to give weight to the contention of the Company mentioned above. Although the increased income of the worker is the result of increased exertion on his part by working more overtime, the fact remains that because of the special conditions prevailing now the worker is able to earn a bigger income than he ever did in normal times. The question at issue should not be lost sight of, viz., what are the resources at his disposal by which the worker can meet the greatly enhanced cost of living. Now, this increased income is certainly helping him to tide over these hard times and therefore the company are justified in asking that it should be taken into account. At the same time I would like to express my emphatic disagreement with the view expressed by the Company in their written statement that "too much money" should not be paid to workers because it leads to increased absenteeism as soon as they find they can satisfy their needs by working fewer hours'. Such a statement may be true of the comparatively few workers who

are in the highest paid categories of skilled labour in this country but my own experience has been that so far as the great majority of labour in the Calcutta industrial area are concerned, the rise in the cost of living has been too sharp and too rapid to enable them to "satisfy their needs" as easily as the Company implies. They have, since prices began to rise, been continuously trying to make two ends meet with great difficulty. As regards the arguments advanced for the workers, I am unable to agree with them that dearness allowance should be raised to a figure which would cover the entire increase in the cost of living. No doubt such a dearness allowance would be a very desirable thing from a general point of view, but various practical questions involved form an insuperable obstacle to any such increase. For one thing a large number of firms would not be able to bear it. For another, the workers' argument takes no account of the fact that their total income has markedly increased due to increased work. Thirdly, at a time when everyone in every walk of life is having to make some sacrifices in order to meet these hard times industrial workers must also be prepared to do so. For instance, domestic servants or menials in Government offices do not get dearness allowance sufficient to cover the whole of the enhanced cost of living."

(ii) Increase in Minimum rates of wages to different classes.

Recommended that no worker should get less than as. 12/6 per day. Starting pay of all grades was to be decided on industry wide basis.

(iii) Provident Fund.

Granted.

(iv) Increase in leave and holidays.

Awarded 10 days' leave with pay in addition to the existing 7 days' paid holidays.

(v) Bonus.

In view of the increase in dearness allowance, no bonus was ordered.

(vi) Compensation to 100 workers who were out of work due to shortage of coal.

Awarded that such employees as were out of work due to coal shortage, should get half wages and full dearness allowance. "In my opinion there is no reason why the Company should not pay something to the workers thus affected. The average worker has hardly any margin of savings on which he can fall back when suddenly thrown out of employment in this fashion through no fault of his own. He still has to maintain himself and his family. The justness of this demand by workers has been admitted by the Jute Mills Association who have been paying workers for such involuntary unemployment. In a previous case decided by me relating to the Bhartia Company, where a similar question came up for adjudication, I gave my decision in favour of the workers and in the present instance I propose to do the same."

(vii) Proper medical facilities.

The facilities were adequate; but there were minor grievances. The Company was directed to remove them.

(Order No. 1772-Commerce, Calcutta, 2nd May, 1945.)

THE ART PRESS.

AND

THEIR DISCHARGED WORKERS

Adjudicator :—Mr. R. Gupta, I.C.S., Additional District and Sessions Judge, 24-Parganas, Alipore.

Demands and Awards

(i) and (ii) Reinstatement of six men 'wrongfully' discharged.

In a previous award in the dispute between the Press and its employees, a substantial increase in rates of dearness allowance was granted to workers. It was alleged that the Press attempted to get round the award by reducing the basic wages of some of the workers. Suits were therefore filed in the proper Court under the Payment of Wages Act, and following their refusal to withdraw the suits, the employees concerned were dismissed.

After perusing the files of the Government Labour Officer's report, which was made immediately after the dismissals, the Adjudicator found that the employers were inconsistent in their statements, while all other circumstances indicated that the workers' version was true. It was therefore held that the dismissals were wrongful, but to the extent that the men were dismissed without notice. The Adjudicator observed, "But the point for determination on this issue is whether their dismissal was 'wrongful'. I do not attempt any definition of the word 'wrongful' but obviously, in an instance like this, several factors have to be borne in mind. Speaking for myself, I think it would be impossible to lay down that an employer must continue to retain in his employ a servant in spite of the fact that that servant has filed a suit against him. It is obvious that when such a stage has been reached, relations between employer and worker must be in a very strained condition, and I cannot accept the proposition that while the worker is carrying on litigation against the employer the latter must continue to keep him in service and treat him with the same consideration which one expects from an employer towards his employees. I think in such circumstances the employer would be justified in terminating the services of the worker. But at the same time he cannot be permitted to do this by means of summary dismissal without any notice. I consider that the proper

course for him to adopt is to give one month's notice or in lieu of notice one month's pay. I do not think the worker can reasonably claim anything more than that." Accordingly one months' wages were awarded as compensation.

(Order No. 1867-Commerce, Calcutta, 11-5-1945.)

THACKER'S PRESS AND DIRECTORIES LTD.

AND

THEIR EMPLOYEES

Adjudicator:—Mr. R. Gupta, I.C.S., Chief Presidency Magistrate.

Demands and Awards

- (i) Increase in dearness allowance and (ii) cheap grain concession.

It was not possible for the Press to open a cheap ration shop, as the employees numbered less than 250. Comparing with the dearness allowance paid by other presses of similar size and in view of the rise in cost of living it was awarded that the allowance be raised from Rs. 12 to Rs. 15.

- (iii) Increase in basic minimum rates for different classes of workers.

The minimum wage was raised by the Adjudicator to Rs. 20/-. As regards fixation of basic rates the following observations were made.

"I do not consider it possible, in a summary enquiry of this nature, to fix minimum rates of pay for different categories of workers in the Press. In my opinion this is a matter which should be taken up for the printing industry in Calcutta as a whole, by representatives of workers and employers meeting under the Labour Commissioner. A great deal of technical knowledge is required for work of this kind which the Adjudicator does not possess. As both parties are represented by strong, compact associations, there is no reason why they should not sit down together and, under the guidance of the Labour Commissioner, arrive at a settlement on this point."

- (iv) Provident Fund.

Granted with 6½% contribution from each side.

- (v) Increased leave facilities.

Granted 10 days' leave with pay after service of 276 days in a year. Accumulation was allowed up to 2 years. The Company was allowed to reduce 20 paid gazetted holidays to 10, if they so desired.

(vi) Reinstatement of certain retrenched hands.

Dismissals were not proved as unjustified and hence no order was made.

(vii) Retrenchment procedure.

Granted as follows:

(a) One month's notice or pay in lieu thereof, if retrenched after six months' service;

(b) Generally retrenchment should begin with the junior-most.

(c) Generally, retrenched hands should receive first consideration when new employment begins.

(d) A Warning Register should be maintained in which all warnings should be registered and signatures of the employees taken. Dismissals were held proper after two warnings, except in cases of gross misconduct or insubordination, for which summary dismissal was within the rights of the employers.

(viii) Medical treatment for lead poisoning at Company's expense and proper washing facilities after work every day.

Granted. The Adjudicator observed, "I recommend that Government issue instructions to him i.e., the Medical Officer under the Inspector of Factories to visit this Press and all other presses of any size at regular intervals. If he detects or suspects any case of lead poisoning the worker concerned should forthwith be treated at the Company's expense until cured. The same medical officer should examine him at the end of the treatment and satisfy himself that the man has in fact been cured. I have recommended the medical officer under the Inspector of Factories because in my opinion he, being independent of the company and a Government servant, would enjoy the confidence of the labour."

(Government order 5091-Commerce, Dated 27th November and 5521-Commerce, Dated 19th December, 1945.)

THE NATIONAL IRON AND STEEL CO. LTD., THE NATIONAL SCREW AND WIRE PRODUCTS LTD., AND THE TATANAGAR FOUNDRY CO. LTD.

AND

THE WORKERS OF THE THREE CONCERNS REPRESENTED BY
THE BELUR IRON AND STEEL WORKERS' UNION.

Adjudicator:—R. Gupta, Esqr., I.C.S.

Messrs. A. W. Taylor and Rajani Mukherjee were appointed Assessors; but Mr. Mukherjee not appearing although notice of

the date of hearing was duly sent to him, and the Union intimating that they had no objection to the case proceeding without him, the Adjudicator heard the case with Mr. Taylor as the only assessor.

The award was forwarded to the Government on 24th January, 1946, with letter No. 32-Ex.

Demands and Awards

1. Increase of minimum basic wage from 11 as. to 12 as. 6 p. per day.

A large number of engineering concerns in the Calcutta area had been paying as much to unskilled workers, so now these companies also agreed to pay. The Adjudicator, however, drew attention to the necessary corollary that semi-skilled and skilled workers ought to get a proportionately higher rate.

2. Increase in dearness allowance, the increase taking retrospective effect from the time the Union made their first application for Adjudication. The dearness allowance then being given was as follows: earning up to Rs. 25, to get 30% of the wages; up to Rs. 49, 25%; up to Rs. 99, 12%; up to Rs. 300, 3%. The overwhelming majority of workers falling within the first category, most of the workers may be said to have been getting Rs. 7/8 or less.

In the first place, the Adjudicator rejected the Companies' plea that, in computing any dearness allowance, a Production Bonus and an Emergency allowance that was paid to the workers should be taken into account. The Emergency allowance here, he said, was nothing but a Production Bonus under a different name (as one of the Companies itself had admitted in a letter to the Labour Commissioner) and a Production Bonus, being based on production above a certain target figure, was merely an extra incentive to the worker to produce more, and as such had nothing to do with a dearness allowance.

As to fixing the exact amount of dearness allowance, the matter was almost already settled by the parties themselves citing the Bhartiya Electric Steel Company as the model. Other firms such as Messrs. Burn & Co. and Messrs. Braithwaite & Co. also had come very near the Bhartiya. So the Adjudicator awarded as follows:—

- (i) The Companies should give every worker foodstuffs (Rice and Atta, Dal, Sugar, Mustard Oil, washing soap, and tea) at concession rates, resulting in a monthly concession of Rs. 5/3/6.
- (ii) In addition, every worker who had a dependent's card registered at the Company's shop should get the full concession; if he had no dependent living with him, he should get Rs. 2/9/9 in cash in lieu of the dependent's conces-

sion.

- (iii) The cash allowance should be raised to Rs. 13 per month. The Adjudicator further directed that those who had been getting less than what was awarded should get the awarded allowance; while those who had been getting more should continue to get what they had been already getting.

As to the retrospective effect demanded by the Union, the Adjudicator thought that, in view of the very low dearness allowance that the Companies had been paying, it was quite reasonable to give retrospective effect, though not from the point of view taken by the Union. He found the date on which the Government had published its order sending the case for Adjudication as 27th November; so he fixed 1st December 1945 as the date for the dearness allowance to take effect.

3. (a) Workmen under the Companies' contractors should have the same privileges and facilities and rates of pay as workmen directly under the Companies themselves.

Granted; the Adjudicator observing: "They are doing the same kind of work, in the same factory, and discriminatory treatment must inevitably give rise to friction and trouble."

(b) the Companies should be made responsible for seeing that (a) is carried out.

Granted.

4. (a) Before a worker is dismissed for an offence, he should have been warned in writing twice, as was done in several other engineering firms.

The Companies agreed.

(b) The Rule in (a) should hold good in all cases, without exception.

Rejected; the Adjudicator observing: "I do not think it would be fair to deprive the Management of the right to dismissing summarily, and without warning, in special cases. I can conceive of cases where the 'two warnings' Rule could not be practicable, such as, for instance, where a worker assaults one of his superiors, or wilfully breaks a machine or tool or does something else equally serious." The Adjudicator, however, recommended that, in case the Union was not satisfied with the justice of any summary dismissal, it should bring the matter to the notice of the Labour Commissioner, who would, no doubt, bring pressure to bear on the employers if the dismissal had been unfair. He also directed the Company to report such cases to the Labour Commissioner.

(c) In every case of dismissal there should be a right of appeal to some outside authority, such as, for instance, the Industrial Courts in Bombay.

The matter was for Legislation, not Adjudication, said the Adjudicator.

5. (a) Nilmani Khamaru, 'wrongfully' dismissed, should be re-instated with full payment for the intervening period.

The man was dismissed on the very day he had been given an increment, merely because he was a prominent Union worker and as such had gone to the Management and requested them to grant similar increments to others.

The Adjudicator was not impressed by the Company's vague charge that the man's behaviour, after he had received the increment, was "very bad." Nor could he agree, when the Company expressed, at the hearing, that they were prepared to take him back provided he gave an undertaking "not to carry on strike propaganda" inside the factory. 'Carrying on strike propaganda' is a vague term", said the Adjudicator, "and no amount of undertaking is likely to stop Union workers from carrying on such propaganda if there is serious discontent among the workers over their conditions of work."

He therefore granted the demand in full.

(b) Jaygopal Singh, who was discharged on the ground of retrenchment along with 50 others, should be taken back as the other 50 had already been taken back soon afterwards.

The Company had refused to take him back because (i) his conduct, even before the discharge, had been "bad" and (ii) after the discharge, he had assaulted his direct superior, one A. B. Roy, Supervisor in the Screw Factory, at Belur station.

The Adjudicator was satisfied from the papers shown to him that both the charges were true and consequently refused to recommend Jaygopal's re-instatement, observing: "I think it would not be fair on the Company to direct them to re-employ this man if only because of the assault. Assuming for a moment that it was the result of a private quarrel, I think it would be impossible to maintain discipline in a factory if a worker who had assaulted one of his superiors outside the factory is allowed to resume work."

6. Cancellation of the order suspending for an indefinite period two leading workers of the Union, the Vice-President and the Treasurer, named Binda Singh and Mustakur Mustakin.

The Company charged them with having been 'negligent in their duties' and 'actually found fomenting trouble inside the factory premises.' Yet the Company were prepared to take them back provided they gave a written assurance 'of their future good conduct,' as they had stated in their written statement, or 'not to carry on strike propaganda,' as they had stated at the hearing.

The adjudicator was satisfied that the real cause of the two men's suspension was their Union activities; hence he could not support the suspension order. As to the undertaking demanded: if it be in terms of 'good conduct', no such undertaking was necessary, for if his conduct was not good, in the sense that he com-

mitted specific offences, there was a procedure laid down by which the Company could first warn and then dismiss them; if it be in terms of "not to carry on strike propaganda," it was both uncalled for and valueless. "Generally speaking," remarked the Adjudicator "workers use the strike weapon only as a last resort. It inflicts considerable hardships upon them. But if there are genuine grievances, and these are not redressed, workers may be expected to strike, and no amount of written undertaking given by Union leaders will prevent them."

The Adjudicator therefore held that the two men had been wrongfully suspended, and ordered that they should be taken back within 2 weeks of the receipt of the present award, and should be paid their wages from the date of suspension to the date of reinstatement.

BIHAR AWARDS

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(Order No. 46-X-57/44 Commerce. (Patna) 14-2-1944)

HINDUSTAN BICYCLE MANUFACTURING AND INDUSTRIAL
CORPORATION, LTD., PHULWARISHARIEFF, PATNA.

AND

THEIR EMPLOYEES

Adjudicator:—Rai Bahadur Bhuvaneshwar Prasad Pande (Retired District and Sessions Judge, Bihar).

Issues Determined

1. Whether the wages paid to the workers of the Corporation were inadequate; if so, what should be the basic rates of wages?

As this was the first case in the Province about the fixation of basic wage, the Adjudicator dealt at great length with the principles involved in the decision of the issue. He examined the term 'basic wage' and the factors involved in determining the same. He held the typical family to consist of five members, requiring $3\frac{1}{3}$ consumption units, and worked out the cost on food, clothing, housing, utensils, furniture, and on miscellaneous items such as washing and shaving, stimulants, medicines, postage, Trade Union subscription, travelling, etc., and arrived at certain basic rates of wages for unskilled workers, skilled workers and apprentices below 6 months' service. The other factors, viz. (i) the capacity of the industry to pay and (ii) the prevailing wages, were also considered and the basic wage was fixed as follows per mensem:—unskilled workers Rs. 15; semi-skilled workers Rs. 20; skilled workers Rs. 30; Apprentices below six months' service Rs. 15. In view of the not very sound financial condition of the Corporation the minimum basic wage was to be reached gradually within two years, the start towards increment being made retrospectively from 1st August 1943, as the strike had started on July 26 and the cause of the strike had been accepted as legitimate.

2. Whether the existing rates of dearness allowance allowed to the workers were adequate; if not, what dearness allowance should be granted?

After a careful and anxious consideration of the workers' needs, the Company's financial position, the increase in rates of wages, and the recent tendency of fall in price of foodgrains, a dearness allowance per month was awarded as follows: Rs. 5 to workers below Rs. 20 wages; Rs. 6 between Rs. 20 and Rs. 30; and Rs. 8 above Rs. 30. This was to come into effect from 1st August 1943.

(Order No. 171-XL-59/44-Commerce, (Bihar) 15-2-1944.)

SASAMUSA SUGAR WORKS, LIMITED, DISTRICT SARAN (BIHAR)

AND

THEIR EMPLOYEES

Adjudicator:—Rai Bahadur Bhuvaneshwar Prasad Pandey, (Retired District and Sessions Judge, Bihar).

Demands and Awards

Re-instatement, with retrospective effect from the dates they were entitled to service, of 15 workers who had been victimised in violation of an express agreement entered into on 12th March 1943 between the Management and the Union and resulting in the termination of the strike started on 4th March.

Granted.

The dispute turned on the interpretation of the words "13 fitters" and "permanently" in item 2 of the agreement which ran as follows:— "13 (thirteen) fitters to be kept permanently with the usual attending staff." The Management interpreted '13' to mean "any 13 of their choice"—not necessarily 'the particular 13 who were in service at the time of the strike and of the settlement,' and 'Permanently' to mean 'for the period commencing with the overhauling season and ending with the winding up of the crushing season' of the particular year viz. 1942-43, and not 'from year to year.'

Relying upon certain items in the above agreement, such as "Sick leave with pay for 15 days to be granted in a year," as also upon certain demands made previously from time to time, such as "our services must be permanent ones," "If on account of certain reasons the Proprietors may be obliged to stop all repair works for a few months then . . . the workers may be allowed to go home . . . with half salary in the shape of retaining every month," (25th December 1942), and "security of service," "no compulsory leave during the off season shall be given to the permanent staff i.e. staff which overhaul and repair the machinery during the off season" (Union's letter addressed to the Managing Agent on 4th February 1943), the adjudicator disagreed with the Management's interpretation, and holding that the persons had been victimised, ordered their re-instatement as demanded.

(Order No. 783-XL-56/44-L. (Bihar) 14-8-1944.)

INDIAN COPPER CORPORATION LIMITED

AND

MOUBHANDAR MAZDOOR UNION, AT MOUBHANDAR, IN THE
DISTRICT OF SINGHBHUM, BIHAR

Adjudicator:—Rai Bahadur Bhubaneshwar Prasad Pande (Retired District and Sessions Judge Bihar).

Demands and Awards

Similar to those in the dispute with the Mosaboni Union, (see p. 855), with the following additions and changes.

1. Recognition of the Union.

Granted. The Adjudicator was not impressed by the Management's objection that the Union was unrepresentative and unconstitutional in its activities.

2. Time-scale increments.

Under the existing system followed by the corporation, the workers had to work on fixed rates of wages for each grade. They earned increment in wage on promotion to posts carrying higher wages. Sometimes increments were given on the recommendation of the Heads of Departments for reasons of efficiency and sometimes also in consideration of lapse of time on the same rate of wage. A similar system prevailed in several other industries too. The Adjudicator could not take up the matter of modifying the system, as it was beyond the terms of reference.

3. (a) The practice of granting bonus to certain categories of workers in the Smelter, yellow metal store, Rolling Mill and Foundry Departments, to be extended to other categories of workers in the latter three departments.

(b) Introduction of 'Hot bonus' on the same lines as in the Tata Iron and Steel Company.

Neither of these fell within the terms of reference.

4. Appointment of a second Lady Doctor at the Moubhandar Hospital.

Rejected. There were less than 1800 employees at Moubhandar, and one Lady Doctor was enough. The Management, however, agreed to appoint a trained Dai whose services might be easily available in delivery and other cases.

5. Provision of a Creche.

The Management agreed.

6. The services of the Corporation's doctor to be available at all times of the day, and in serious or emergency cases, the doctor should attend the patient at his residence.

The Management agreed.

7. Provision of better latrine and Hotel and drinking water arrangements inside the works; and supply of boots, shoes, gloves and aprons to workers at hot places.

The Management were urged to give sympathetic consideration.

8. Provision of relief from the obnoxious gas in the smelter section.

The Adjudicator suggested that the Chief Inspector of Factories might be deputed by the Government to inspect the works and to suggest suitable remedies.

(Order No. 1923—XL. 102/46-L. (Bihar), dated 21st August, 1946)

THE TINPLATE COMPANY OF INDIA, LIMITED GOLMURI,
JAMSHEDPUR. (DISTRICT SINGHBHUM)

AND

THEIR EMPLOYEES

Adjudicator:—Rai Bahadur Bhubaneshwar Prasad Pande (Retired District and Sessions Judge).

Demands and Awards.

1. Re-instatement of 21 'wrongly' dismissed or discharged workers.

During 1941 to 1945, 2,500 men left the service of the Company. Out of these, 1,046 left on account of the critical situation of the war and 131 were discharged for one fault or another, some of them, according to the Labour Memorandum, wrongly. The Union represented the cases of 21 men and pressed for re-instatement of 21 specified persons. The management agreed to re-instate only 4, whom they specified.

The Adjudicator after examining each of the remaining 17 cases could order the re-instatement of only 2.

2. Standing orders and service conditions to be revised with a view to ensuring security of service.

The Adjudicator recommended a change in Rule 8 (about 'Duty') so as to provide facilities for Mahomedan workers to offer prayers in the shift period in the month of Ramzan. He further recommended changes in rule 9 (regarding discipline), providing employees ample opportunities for putting up their cases before any action was taken against them. The demand (in reference to Rule 14) that the workers should not be discharged without the concurrence of the Union was rejected.

3. 12½ per cent. general increase in the wages of all workers.

Rejected, the Adjudicator observing: "increase in profits may be a reasonable ground for demands for other monetary benefits such as increase in the profit-sharing bonus; but by itself it is not, in my opinion, sufficient ground for general increase in the rates of wages." Increment at a flat rate of As. 2/- was awarded to such daily rated workers as had not got increments in their wages during the period 1937-1945.

4. A satisfactory grade system with reference to maximum and minimum factory rates for both 'monthly' and 'daily' classes of workers.

The Company's employees were classified as monthly and daily. Monthly employees got increments up to a certain maximum. The system for daily rated workers did not ensure regular increments. The Adjudicator did not find this system satisfactory and thought that it was essential to adjust wages to the worker's growing needs, advancing age and duration of service. The Adjudicator directed the Company to prepare a scheme, on the lines of the one that was going to be prepared by a special officer of the Tata Iron and Steel Company for themselves, within 3 months of its introduction there.

5. Retiring gratuity.

Granted, one month's wages per year on completion of 15 years' service or more. The Adjudicator observed that though the Company had a Provident Fund to which every member contributed a portion, not exceeding 1/12, of his wage during the year, and the Company contributed an equal sum as its own contribution, and further that two months' wages as profit-sharing bonus was also added to the Provident Fund every year, still, as the labour representative contended, the amount accumulated in the Provident Fund was very low on account of the low rate of wages, and, being used up in clearing off debts incurred during service, was of no use as help in old age. The cost of living at Jamshedpur was higher than at other industrial centres. The Tata Iron and Steel Company at Jamshedpur paid much higher wages and yet had a gratuity scheme. The present Company was

growing prosperous with stable and sound financial conditions.

6. Wages for shutdown period.

Granted as a matter of right to workers employed before 1945, when the New Standing Orders and Service Conditions Rules were introduced, and recommended for others in the interest of peace and contentment. While discussing this point the Adjudicator observed: "The new service conditions as laid down in para 10 cannot govern the cases of the employees who have been in the employment of the Company from before the promulgation of the new rules, unless it is proved that the new conditions of service were explained to the workers and were willingly subscribed by them. There is no such evidence. Therefore the conditions of service of such workers must be governed by established practice and ordinary trade wages . . . In this industry the practice is that in such event the workers are paid wages for the period of shutdown, but the extent of wage payment varied from time to time. Before 1937 the employees were paid half the wages. In 1937 they were paid wages for double the period of shutdown. In 1945 they were paid half the full allowances. In such circumstances the question arises whether on the terms of employment wage was payable to workmen for the days the Company did not provide them with work, while they were ready and willing to perform work, during the period of shutdown for repairs and overhauling. The answer to the question depends upon what implication the Court is to raise for the purpose of making the contract between the master and the servant, which in this case is not fully expressed in writing, such a reasonable contract as would be entered into by two business men. The legal principle of implied warranty would seem to govern the case. Now the Court has to regard the matter from the point of view not only of the master, but of the workmen also. Both master and workman have to make their living. The master makes his living by raising a profit; the workman makes his living by earning wages. The master's profits are ascertained as an ordinary rule *de anne in annum*. But the workman has to live *de die in dien* and his wages presumably do not leave a large scope for saving for a future day when no employment is forthcoming. What then are we to infer would be a reasonable bargain such as the parties must have intended to make. The employees are in the permanent employment of the Company. Therefore the contract is one by which the workman is obliged to remain at work until the expiration of the notice of discharge. So there is binding obligation on the workers to work and it seems to me that there must be a necessary implication that unless restricted by something else an employer ought to find work to enable the workman to perform his part of the bargain, namely, work. Therefore the workman has an implied right on his part by the contract

of employment to be provided, while the employment lasts, with a reasonable amount of work to enable him to earn his wages. It would be strange if such a right is not implied, for otherwise the bargain is of a very one-sided character. The workman must be at the beck and call of the master whenever required to do so, and yet he cannot, though ready and willing to work and to earn his pay, earn a single penny unless the master chooses; and this state of thing may go on for a period until either party chooses to terminate that engagement on the expiration of the notice for discharge."

7. Superannuation and premature retirement.

The existing rule gave the Management right to retire any employee either if found physically or mentally unfit, or on attaining the age of 60 years. The Adjudicator agreed that there should be an age-limit in the interest of employees themselves, as also on general principle, to provide opportunities to young men for employment in the factory. The contended cases were to be referred to a Medical Board for review.

8. To stop favouritism and other unfairness in promotion.

After examination of some cases, the Adjudicator came to the conclusion that the Management were not always guided by any fixed principle. He commended to the General Manager the discussion in para 115 of the Bihar Labour Inquiry Committee, where questions of promotion and seniority had been succinctly discussed, and advised him to follow the principles recommended therein.

9. Provision of quarters by the Company.

Granted. Out of 3547 employees quarters were provided for 880. 500 houses were built with the aid of the Company. The Company was advised to draw up a programme immediately and start construction of quarters on a progressive scale, the whole scheme to be completed within 7 years.

10. Medical organization.

The Company maintained a hospital with 4 doctors, one qualified maternity nurse, 5 compounders, a Dai and an ambulance. There were 8 beds in the hospital. The Adjudicator directed that a competent doctor be appointed within three months, the number of beds be increased to 16 within one year, and 8 more be provided in the second year. He also ordered construction of a waiting shed.

11. The intensification of work.

The idea behind this demand was to secure an increase in the number of men in some of the sections and to make up the deficiency in the normal strength of hands in others. After carefully

going through all the complaints the Adjudicator awarded increase in the complement of each department.

12. All employees be given Service Book containing entries governing the conditions of service, etc.

The Management agreed.

13. The men in the Shearing and Opening sections should be given the same privilege in the matter of wage as in the Finishing section.

Granted.

14. Acting allowance to monthly paid employees.

Granted.

15. The works hotel should not be managed directly by the Company, as it led to inconveniences to the Labour Staff.

Rejected; but the Manager agreed to remove the inconveniences.

16. Restoration of the Hindustan Mitra Mandal Building to the Union.

Granted on amicable settlement between the parties.

17. The Mills Committee to be restored.

The Manager agreed to this, as also to the procedure suggested by the Union for a satisfactory functioning of the Committee.

18. Improvement in the present unsatisfactory system of recruitment.

The Adjudicator laid down certain rules on the principle agreed upon by both the parties.

19. Modification of the form of Provident Fund Pass Book for entry of certain additional information such as date of appointment, date of joining the Fund, etc.

The Management agreed.

20. The minimum basic wage of an unskilled worker should not be less than Rs. 30/- per month.

The Management gave undertaking on the lines similar to that of the Steel Company at Jamshedpur to the effect that the minimum would not fall below Rs. 26 per month of 26 working days.

21. Revision in dearness allowance including the food subsidy which was a part of it.

Granted, in view of the sound financial capacity of the company, on the same scale as that of the neighbouring concern of the Tata's, from 1st March 1946, even during the period of privilege leave.

22. Compensation for the first seven days after an accident, not provided for in the Workmen's Compensation Act.

Granted: full wages with dearness allowance and food subsidy for the period of first seven days or less.

23. Supply of a copy of the annual balance sheet to the Union.

Rejected. The Adjudicator thought that the auditors' certificate should be sufficient for calculation of the dividend.

24. Extension of the General Production Bonus scheme to the clerical and other monthly staff inside and outside the works.

Granted only in the case of those connected with Production work.

25. For calculation of bonus, the production arising out of unopened packs from the Tatas should be treated on the same level as the Hot Mill Production.

The benefit of the bonus was extended to those men who were engaged on that work only.

(Order No. 817-XL.58/44-L. (Bihar) 29-8-1944.)

TATANAGAR FOUNDRY COMPANY, LIMITED, TATANAGAR,
DISTRICT SINGHBHUM.

AND

THEIR EMPLOYEES

Adjudicator.—Rai Bahadur Bhuvaneshwar Prasad Pande (Retired District and Sessions Judge, Bihar).

Demands and Awards.

1. Remedying the following and similar irregularities in respect of marking attendance and making payment:—Overtime work to a maximum of 10 hours a day was given for months together, which seriously undermined the labourers' sustaining power; out of these again, only 2 to 4 hours were noted as 'overtime' to be paid according to the 'overtime' rates prescribed by the Factory Act, the rest being recorded for 'allowance' to be paid at the labourer's ordinary rate; shorter extra hours were recorded than actually put in by the labourer; even the full number of ordinary days actually put in were cut—actual eight hours being often recorded as 4 or 5. Workers after being admitted and engaged

in work for some time, were suddenly turned out as being in excess, the late hour depriving them of their chance of being employed elsewhere also. When work was interrupted owing to a break-down in the machinery or owing to rain (in the case of field work), short attendance, that is, the actual number of hours put in, was given, instead of the whole day. Men admitted into the works and remaining at work for full hours, had often their attendance struck off on a mere report of the Mate that they had done no work!

The Adjudicator drew the attention of the Management to the fact that all this contravened the provisions of the Factory Act and the Payment of Wages Act, besides amounting to unfair treatment of the poor labourers. The Adjudicator ordered certain changes in the method of keeping records and calculations. The Adjudicator also awarded that the workers should be paid for the whole day in the event of interruption of work arising from no fault of theirs. The adjudicator also advised the Company to change its practice of cutting attendance or striking it off entirely.

2. Remedying irregularities in Payment of Wages on the part of the contractor, (to whom certain sections of the works had been transferred by the Company), such as delay in payment, deducting Re.1 each for a fund whose nature was never disclosed to the labourers, deducting as hotel or foodgrain charges in respect of a hotel and foodgrains shop that the contractor had started on his own account.

The Contractor having been removed by the Management, the Adjudicator hoped that no occasion would arise for such complaints in future.

3. Remedying grievances resulting from contravention of the Workmen's Compensation Act in various ways, such as (a) inadequate insurance, (b) evading compensation for temporary disablement, etc.

The Management were ordered to make effective arrangement, within 3 months, for a more accurate report of compensation cases.

4. Proper medical aid and a sufficient stock of medicine.

Granted. A whole-time qualified doctor (instead of a part-time, as the one then was) was ordered to be appointed within 3 months; also provision of boots, gloves, and aprons to workers exposed to fire.

5. Female workers should get full benefit, and in a larger measure, of the Management's Maternity leave-with-pay scheme.

The Adjudicator could only advise the Union to do propaganda work to induce the female workers to take greater advantage of the scheme, and the Management to take sympathetic interest in due execution of the privileges offered by the scheme.

6. 10 days' leave with pay annually, to all workers who had completed one year's service. (This was one of the terms of the settlement before the Conciliation Board).

Granted. The Management was ordered to implement the term without any further evasion.

7. A Provident Fund (This was one of the terms of the said settlement).

Granted. The Company was ordered to bring it into operation within 3 months.

8. Profit sharing Bonus (This was one of the terms of the said settlement).

Granted. The Company were ordered to bring the scheme into operation with effect from 1st April 1943, as announced by themselves.

9. Security of service, as agreed upon before the conciliation Board, under the following scheme:

(a) "The Company shall henceforward treat the period during which there is stoppage of work as compulsory leave without pay, and

(b) "All such workers as are given compulsory leave shall be re-employed, as soon as work is resumed, on the same pay which they received, and to the same jobs which they held, before such leave."

Granted. In fact, the Company had instructed the re-employment officer to act accordingly; yet it happened that, in the absence of a regular system of communication with the men gone home on leave, they often returned much later than the actual re-start of the work, with the result that their places had to be filled up with any new men that were available, and then they had to accept whatever position and pay were available, which might be both low.

The Adjudicator recommended keeping a regular list of workers entitled to compulsory leave, and placing the re-employment work in charge of a responsible officer.

10. Recognition of the Union as agreed upon under the settlement.

Granted. The Management was asked to renew immediately recognition of the Union, as a "well-organized Union is an urgent necessity for amicable removal of many of the evils that existed in this industry, both in the interest of the industry and of the employees, and for restoring good relations."

11. Stopping the practice of discharging workers, on a mere report of the Works Manager, without serving a charge-sheet and getting explanation.

Granted.

12. Service Rules.

Granted. The Company was asked to introduce service rules within six months.

13. Re-instatement of the 5 supervising workers suspended on 21st April for an indefinite period, and of 502 workers in the moulding and casting sections discharged on 13th May 1943, on the ground of sabotage and general inefficiency.

Granted. The charge of sabotage was found to be groundless, and inefficiency was found to be due to the Management's failure to supply sufficient foodstuffs to the workers. Two of the suspended workers had been taken back already and 502 discharged workers were re-employed after two weeks under a contractor to whom the sections of the works were transferred by the Management. The Adjudicator ordered the other 3 men also to be re-instated with full wages from the date of suspension.

14. General increase in the level of the basic rates of wages, as the existing rates of wages were inadequate for the primary needs of the workers; a coolie to get As. 10 (instead of As. 8), a Reja As. 8 (instead of As. 6), the others no fixed rate.

The Adjudicator after consulting in detail various aspects of the case, principally the living requirements of a common worker in Jamshedpur (using the figures supplied by the Bihar Inquiry Committee's Investigator for Jamshedpur Centre), fixed the minimum basic wage at Rs. 18/- per month; while the Employees' demand in the case of coolies and Rejas was only Rs. 16/4 and Rs. 13 respectively, which was therefore readily granted. Unskilled workers other than coolies were also awarded an increment of As. 2 per day like the coolies. In the case of other workers engaged in a variety of occupations, the occupational approach was found impracticable in fixing the minimum basic wage. They were therefore classed only under two heads: semi-skilled and skilled, the former to get not less than Re. 1/- and the latter not less than Rs. 1/8/- per day. The question whether the Company had the capacity to pay did not arise at all, since the Government Railway Board had agreed, as one of the conditions of their orders, to meet whatever wage-increase might be determined by tribunals set up by the Central or Provincial Government.

15. Increase in dearness allowance.

Granted, according to the scale framed by the other concerns at Jamshedpur, viz. Rs. 10 for total emoluments not exceeding Rs. 100.

16. Supply of foodstuffs at cheaper rates.

The Company, having failed to be member of the Food Supply Committee organized under the auspices of the Government, was

unable to supply foodgrains at fixed quotas and at cheaper rates. Therefore the only practical course was to pay additional allowance viz. Rs. 3/8/- for 'family' employees and Rs. 2/8/- for others.

17. Dearness allowance should be granted retrospectively from October 1942.

Rejected.

Increase in rates of wages, dearness allowance and cheap food-grain allowance was to come into operation with effect from 1st August 1943.

(Order No. 1259-XL.56/44-L. (Bihar) 24th November 1944.)

INDIAN COPPER CORPORATION, LTD.

AND

THEIR EMPLOYEES AT THE MOSABONI MINES, IN THE
DISTRICT OF SINGBHUM, BIHAR

Adjudicator:—Rai Bahadur Bhuvaneshwar Prasad Pande (Retired District and Sessions Judge, Bihar).

Demands and Awards

1. Increase in the Ration of Foodstuffs and Kerosene.

The Adjudicator could not accept the labour demand in its general form for the supply of foodstuffs for dependents in general; the only natural dependents that he recognised were the wife and minor children under 14 years of age. As to quantities of foodgrains, he thought the demand inexpedient, as entailing a violent departure from the prevailing arrangements of foodstuff among industries in the Division. The corporation's scale was not intended to meet the entire rationing needs of an employee, but only the essential minimum, while the employees were expected to supplement their additional needs out of the balance of their earnings. The supply scheme formulated by the Jamshedpur Food Supply Committee also appeared to be based on a similar principle. Five principal industries at Jamshedpur and the Deputy Commissioner of Singbhum were members of that Committee; such a scheme, formulated as it was by expert businessmen with intimate acquaintance of labour conditions and by a responsible representative of the Government, was entitled to great weight.

The Adjudicator, therefore, recommended this scale as better meeting the employees' needs, except in the case of Sugar. In view of the fact that consumption of sugar varied with one's income, the Adjudicator recommended a three-class scheme.

As to Kerosene oil, the Adjudicator recommended some changes in the scales that were in force.

2. Compensatory dearness allowance of Rs. 30 p.m. for income-groups up to Rs. 60, and Rs. 35 above Rs. 60.

The Corporation's scale was formulated ab initio as a percentage of actual income, which had resulted in the low-income groups being poorly benefited. The Jamshedpur scale up to Rs. 100 income-groups was Rs. 10. The Labour's demand was too high for the Industry to meet; so the Adjudicator recommended as follows:

Up to Rs. 100 per month	...	Rs. 10 per month
Between Rs. 100 and Rs. 150	...	Rs. 13 per month

3. Prices of articles to be deducted from the wages, instead of being taken in ready cash, as was being done at Jamshedpur and in a number of other places in Bengal.

Rejected. Government having started rationing on their own account, ready payment was the only way to obtain foodstuffs.

4. Redress of grievances such as not getting one's foodgrains till the next third period of a month if the date fixed in the first third period in the month was missed; absence of separate place for women-buyers, absence of waiting sheds, lack of small coins, extremely bad quality of rice, etc.

The Adjudicator urged sympathetic consideration of these demands on the part of the corporation.

5. The wage of a coolie to be increased from as. 7 to as. 9 and that of a Reja from as. 5 to as. 7, per day.

Granted. The Corporation's objection to an increase was that the conciliation Board had granted an increase of anna 1 five years before and that increase in the cost of living since was being met by compensatory allowance, partly in kind and partly in money. The objection was refuted by the Adjudicator showing from the Conciliation Board's report that the increase of an anna had not been the result of any settlement of fair and equitable wage but only as a compromise for the time being. He then went on to determine the basic rates of wages for the lowest class of unskilled workers, on the following principles:

- (a) The rates of wages should insure the subsistence, in health and comfort, of the worker and his family as citizens of a civilized country.
- (b) The unit of the family in Bihar, as accepted by the Bihar

Labour Inquiry Committee, was man and wife and three children under 14 years of age.

- (c) The consumption units for such an average unit of a natural family worked out, on the scale of dietic requirements given in the revised edition of Health Bulletin No. 23 published by the Indian Research Fund Association, as 3.3 adults.
- (d) The necessities of life in the case of an unskilled worker, 'regarded as a human being living in a civilized country', were, as indicated in the report of the Royal Commission of Labour in India, 1931, food, fuel and lighting, clothing, house rent, washing, barber charges, household utensils, bed, sickness expenses, events of life (births, marriages, and deaths), expenses incurred by custom and religion, travelling, occasional indulgences and pleasures open to the illiterate, and obligations arising from indebtedness. (Travelling, sickness expenses, and house rent were to be omitted in the present case).
- (e) The normal need of an average Indian engaged in heavy manual work was 3000 calories per day (Health Bulletin No. 23), and cereals were to be provided on that scale.

On the above principles, the food expenses for a normal family unit came to Rs. 11-5-4½ pies, and expenses on other items to Rs. 4-10-0.

The Tata Iron and Steel Co., Ltd. at Jamshedpur, and the Tin Plate Company of India Ltd., at Jamshedpur, paid as. 9 and as. 8 to as. 10 respectively per day to a male coolie, besides giving several advantages in the way of loans etc., which were much greater than in the Indian Copper Corporation. The Adjudicator, therefore, allowed the demand on finding, after a careful examination of the trade condition and financial position of the Corporation, that the Industry had the capacity to bear the increased expenditure which his recommendation entailed.

6. Contractors' labourers to have the same allowance and privileges as the labourers employed directly by the Corporation. (This was the demand as stated in the Government Notification, but, during Adjudicator's inquiry, the demand put forward by the labour was 'a complete abolition of the system of the Corporation's work being done by contractor's labourers'. The latter demand, being clearly outside the scope of the terms of reference, was rejected by the Adjudicator).

The kinds of work for which the corporation employed contractors were: supply of timber, loading and unloading of materials and construction of buildings and structures. These kinds varied greatly from time to time and the periods of employment of the labourers on such work were also uncertain. The labourers for these kinds were appointed on piece rates or daily rates of wages, according to the nature of the work. It was, therefore,

difficult to lay down an absolute rule regarding the rates of wages for these labourers. Some labourers were paid more, and some less than the corporation's coolies and Rejas, according to their capacity or according to the law of supply and demand. Still the General Manager had now intimated that thenceforth steps would be taken to ensure that acceptance of tenders from contractors would only be made on the understanding that wage rates paid to their labour were based on the corporation's minimum rates to the coolies and Rejas. Further, it was but fair, urged the Adjudicator, that such of the labourers, as, though recruited through contractors, were found to be permanently needed for the Corporation's work both inside and outside the works, should be put on the same footing as the Corporation's direct employees. He could not recommend the same for casual labour.

7. Recognition of the Mosaboni Mines Labour Union by the corporation.

Consideration deferred. The Management's objections were:—(1) the Union was not representative of the employees; (2) its activities were not conducted on healthy and constitutional lines; (3) its business was not conducted in a 'legitimate' manner.

The Adjudicator upheld the Management's objection (1) on the following grounds:—(a) though out of 5240 employees at the Mines, there were 4050 on the Union's roll, yet the disappointingly low realisation of the total subscription for 11 months—April 1943 to March 1944—namely, Rs. 862-14-0, at the rates: women 1 anna, men getting as. 8 per day 2 annas, men getting Re. 1 per day 4 annas, and above that 8 annas, per month greatly detracted from the bonafides of the membership; (b) the Union had not yet established sufficient contact with the workers at the Mosaboni Mines, as was shown by the fact that, during the three days' sitting held there by the Adjudicator, not a single higher rated worker had appeared at the inquiry, as also by the fact that, though the grievance of the Nepali workers (who had replaced the Santhal workers) being put by the Management on temporary basis was a reasonable one for representation to the authorities, the Union had never moved in the matter, which showed that the Union did not keep itself sufficiently in touch with the labour conditions at Mosaboni.

The Adjudicator also upheld the Management's objection (3) (after putting the word 'business-like' in place of 'legitimate') on the following grounds: (a) the president of the Union did not attend the Inquiry even for a single day; (b) accounts of the Union had not been written for the past eight months.

The Adjudicator did not uphold objection (2), as the Management could not give any instance of illegal or unconstitutional activities on the part of the Union. Yet, though he felt that a labour organisation conducted on healthy lines was an urgent necessity at Mosaboni, which was situated far from a town, he

could not, under the circumstances as they stood, recommend recognition of the Union at that stage of its activity, as it would only encourage indolence and inactivity. He, therefore, deferred the consideration till after 6 months from the announcement of Government's order on the award, when he recommended the union to make application for recognition to the General Manager and, in case of the latter's refusal, to the Commissioner of Labour, whose orders should be final.

8. Clear definition of the conditions of service, particularly in respect of promotions, and discharges and other forms of punishment.

The procedure adopted at the inquiry was: the labour representative was asked to submit a draft of the proposed rules. The Management submitted their comment on the draft. Discussions took place on these two documents with reference to the existing rules. And in the light of these discussions certain amendments were made in the existing rules and certain fresh rules were added with regard to permanency (after 6 months), filling in of the service card, promotions according to seniority, appointment of outsiders (only when nobody was available from the existing staff), punishment (not before the offender's explanation was heard), etc.

9. Substantial modification of the existing leave rules and Provident Fund Rules with a view to (a) securing larger periods of leave in the former case, and (b) 1/12th (instead of 1/20th) contribution in the latter.

Rejected. The Adjudicator did not feel justified in interfering with what had been settled by the conciliation Board.

10. The local Santhal workers employed for underground work on the desertion, owing to the War, of the permanent Gurkhas, were deprived of the status of permanency, though practically working from year to year, by being served with a notice of discharge after 11 months and being re-appointed after one month; they should be treated as permanent.

Granted. The permanency was to begin from the date of their appointment, the yearly period of breaks in service of one month or so being treated as leave without pay. The Adjudicator observed: "It seems to be wholly inequitable and unjust to those workers to keep them on temporary basis in the expectation of filling up the vacancies by Nepali workers at some future time, simply because the management hold the view that Nepalis are more efficient workers for underground work. The Mine is located in a territory inhabited by Santhals; they have some claim on the Industry in the matter of employment. The fact that the Management have retained those men in service for some years, may be 3, 4, 5 is sufficient proof of the fact that they have rendered efficient service."

C. P. AWARD

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I	Central India Electric Supply Co., Ltd.	... 863
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(Order No. 1488-342-VII, Commerce and Industry Department,
Nagpur, 15th February, 1944.)

CENTRAL INDIA ELECTRIC SUPPLY CO., LTD.

AND

THEIR EMPLOYEES AT BILASPUR AND KATNI

Adjudicator:—Labour Commissioner, Central Provinces and Berar.

Demands and Awards—Bilaspur

1. Confirmation of employees due for confirmation.

Awarded that those who were due for confirmation should be confirmed as from 1st January 1945.

2. Two employees who had been confirmed should be given the prescribed scale.

Granted.

3. Fixed scale to be granted to some of the employees corresponding to wages ruling elsewhere.

Deserving cases were recommended.

4. Increase in wages.

Awarded that the wages should be increased and brought in line with the prevailing M.E.S. rates fixed for Bilaspur.

5. Free quarters.

Desirability of providing houses should be considered after the termination of the war.

6. Dearness allowance for those who were not paid the same.

As the salaries received by these employees were inclusive of dearness allowance, there was no case for giving additional dearness allowance to them.

In their written statement workers made additional demands for (1) free medical aid, (2) Provident Fund, (3) free electric lights, and (4) supply of grains at reasonable rates.

The existing arrangement for medical aid was found satisfactory. Provident Fund and electric light demands were rejected as the Company was not in profit. The Company was asked to move the Deputy Commissioner for supply of grains.

Demands and Awards—Katni

1. Basic wages and dearness allowance of new employees engaged on consolidated wages should be shown separately.

Existing practice was allowed to be continued.

2. Wages and allowances of old employees should be raised and brought in line with the wages prevailing for new employees in corresponding positions.

Awarded that the revised scale sanctioned by the Company should be brought into force at once and dearness allowance should be applicable to old employees. The coolies should be given special allowance to bring their wages in line with those of new coolies.

3. Provident Fund.

Desirability of introducing Provident Fund should be considered when the Company made some profit.

4. Rent-free quarters.

This question should be taken up for consideration after the war.

5. Free medical aid.

The Management was directed to pay some allowance to the Medical officer for treating their employees.

6. Revision of leave rules.

Employees should be allowed 10 days' casual leave in addition to the existing facility of one month's privilege leave.

DELHI AWARD

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(No. LR. 17/(2). New Delhi, 19th March 1945.)

THE DELHI ELECTRIC SUPPLY AND TRACTION CO. LTD.

AND

THEIR EMPLOYEES

Adjudicator.—Mr. D. G. Jadhav, Conciliation Officer (Railways) and Supervisor of Railway Labour.

Demands and Awards

(Originally there were 8 demands, but three of them were withdrawn and one settled by the parties themselves. This left only the following for adjudication).

1. Dearness Allowance at the flat rate of Rs. 30/- p.m. irrespective of the different scales of pay obtaining in the different departments.

The minimum monthly income of the Company's employees was Rs. 34 (Rs. 15 as minimum basic wage, Rs. 12 as dearness allowance, and Rs. 7 as food concession). This was not sufficient for the family's maintenance, held the Adjudicator, when the cost of living had risen thrice the pre-war conditions. The other amenities that the Company was providing had no reference to the present rise in cost, because they had been there even before the War. To grant dearness allowance on a sliding scale on the basis that the higher paid men received higher allowance, as contended by the Company, would still further lower the labourers' standard of living, and therefore their efficiency, while progressive states and civilized societies were actually trying to raise the standard of the lower grade employees with a view to raising their efficiency. As to what extent dearness allowance was to cover the rise in cost, the Adjudicator would not take note of the Gregory Committee's recommendation of 'full compensation', though requested to do so by the employees, if only because the Committee's report had not yet been made a public document. He was in favour of partial covering, because, on account of the opportunities of work provided by the War even to the other members of the Employee's family, the money actually available for family expenses was greater than before. He therefore awarded dearness allowance as follows:

Up to Rs. 200 pay, Rs. 18; beyond that, 10% of the pay.

2. Bonus.

- (i) Annual Bonus equal to 2 months' pay during the war and one month's pay thereafter, as a fair share of the profits.

The Company had been paying one month's pay for past three years, and would pay as much that year also, but they were not prepared to accept that the workers could claim it as a matter of right or as a fair share of the Company's profits.

The Adjudicator, however, observed: "It is true that bonus is an ex-gratia gift by the employer to his employees, and that the employees cannot claim it as a matter of right; but when an undertaking earns enormous profits during abnormal times without investing any extra capital or without expending more than usual charges for its maintenance and minor repairs, or for the replacement of its machinery, it should be understandable that a major portion of the profits it earns, it earns largely through the efforts of its labourers and as such labour is by common consent entitled to a share in it in the form of bonus in consonance with its efforts."

- (ii) The bonus should include the total earnings excluding overtime but including dearness allowance and the concessional value of the cheap grains at such rates as would be awarded by the Adjudicator.

The Company generally paid the bonus at the rate of the basic pay but that year the Agent had recommended the inclusion of dearness allowance.

The Adjudicator then awarded the Bonus as follows:—One month's pay (monthly wage plus dearness allowance) as bonus every year to all its employees including clerks. It should be paid in cash and for the year ending 31st December on profits earned during that year.

3. House Rent Allowance: 10% of the pay, Rs. 5 being the minimum.

Rents in the city were excessive, with the result that many of the workers had to sleep on footpaths to the detriment of their health, efficiency and capacity.

The Company stated that, from the point of view of the work, there was no necessity for the staff to be provided with quarters. If the city landlords were hard on the employee-tenants, the Company was prepared to give them the necessary legal aid.

The Adjudicator observed: "Facts may be quite different from what the law says that they should be, and in these days of congestion I shall not be surprised if there is a great divergence between law and fact. If that is so then there is a real hardship on the worker. This hardship must be great as rent constitutes one of the most important items in the cost of living", and awarded allowance as follows:

Equal to the rent actually paid by an employee over and above 10% of his pay, subject to a further maximum limit of 10% of pay.

4. Food concession.

Awarded cash payment of Rs. 8/- per month in lieu of cheap grains to all the employees drawing pay up to Rs. 200/- p.m.

5. Increased scales of pay, with annual increment instead of biennial, as had been proposed by the Company.

The Adjudicator, after calling for information from similar concerns all over India, came to the conclusion that the scales of the Company did not compare un-favourably with theirs. On the final day the Company was even prepared, in deference to the Union's desire, to make the increments annual. The Adjudicator thereupon awarded the Company's scale with some revision. He further recommended that in adjusting the salaries under the new scale, care should be taken to see that no worker received less than in the old scale; also that the Company should formulate rules for regulating, amongst other things, the grant or withholding of increments, grade to grade promotions, etc.

MADRAS AWARDS

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(G. O. Ms. No. 2680, No. 455, dated July 10, 1946.)

FORT ST. GEORGE GAZETTE, MADRAS.

MESSRS. SPENCER & CO. LTD., MADRAS

AND

THEIR EMPLOYEES

Adjudicator:—Shri P. Markandeyulu, M.A., B.L., Principal Judge, City Civil Court, Madras.

Issues and Awards

(i) Whether Management's failure to reply to the workers' letter demanding a holiday on Tamil New Year day was sufficient and valid reason for cessation of work in the afternoon 12th April 1946.

The strike was held illegal as the requisite 14 days' notice was not served.

Answering the preliminary objections, the Adjudicator observed: "It is argued that this reference for adjudication under rule 81-A of the Defence of India Rules is incompetent in that the conditions mentioned in it are not satisfied. The rule in question says, among other things, that if in the opinion of the Central Government it is necessary or expedient so to do for maintaining supplies and services essential to the life of the community it may, by general or special order, make provision for referring any trade dispute for conciliation or adjudication in the manner provided in the order. Now the Government order appointing me adjudicator says that in the opinion of His Excellency the Governor of Madras it is necessary for the maintenance of supplies essential to the life of the community to refer the trade dispute for adjudication. It will be noticed that the words "Supplies and Services" are not mentioned in the Government order but only the word "Supplies." It is argued that as the result of the omission of the words "and Services" from the Government order the reference is incompetent and ultra vires. I cannot accede to this contention. It is conceded that Messrs. Spencer & Co. supply to the public many essential articles mentioned in the schedule to rule 81-D of the Defence of India Rules, such as bread, sugar, meat, fish, medicines, etc. In my opinion the sale of essential articles to the public is both a supply and a service and the word "Services" in rule 81-A means very much the same thing as the word "Supplies". I am of opinion that the words "Sup-

plies and Services " in the context are synonymous and there is no need to mention the word " Services " also in the order referring the trade dispute for adjudication.

"The second objection raised on behalf of the company is that in spite of the strike the company has been able to supply essential articles to the public as before, that there was never a cessation of supplies at any time and that therefore the local Government had no power to refer the dispute for adjudication. This contention also is equally unacceptable. It is not necessary that the supply of essential articles should actually be cut off and the public be put to considerable inconvenience before a trade dispute could be referred for adjudication. It is sufficient if there is a danger or threat to the maintenance or continuance of supplies and services. In the present case, it is conceded that there were about 800 workers on strike about the middle of April 1946. Their feelings must have been considerably excited by the fact that they had been suddenly thrown out of employment by the notice published by the Company on 12th April 1946, of which Exhibit P. 13 is a copy. The existence of a large body of disgruntled workers who might get out of hand at any time is certainly a danger to the maintenance of supplies and services essential to the life of the community. In this view, the reference for adjudication is justified.

"Another argument advanced on behalf of the company is that when G. O. No. 2308 was passed by the Government on 14th June 1946 referring the matter for adjudication there was no relationship of employer and employed between the management and the strikers and therefore the reference is incompetent. The argument is that it is only a trade dispute that can be referred for adjudication, that a trade dispute arises only between employer and employed, whereas there was no such relationship between the management of the Company and the strikers on 14th June 1946, when the reference was made. Even this argument cannot be accepted. The relevant date for judging whether the relationship of employer and employed subsists between the parties is not the date on which the reference for adjudication is made but the date on which the workers went on strike and their services were dispensed with. On 12th April 1946, at any rate till about 4 p.m., the relationship of employer and employed subsisted between the management and the workers and the reference for adjudication can be made at any time subsequently. This objection also is untenable."

Answering the workers' plea that the strike was not connected with a trade dispute it was observed: "It is argued by Mr. Ramachandran for the workers that the strike in the present case is not illegal inasmuch as it was not connected with any trade dispute. He contends that the dispute between the management and the workers was only with regard to a holiday and that that does not amount to a trade dispute. He relies on two decisions of the

Industrial Court of Bombay reported in the Labour Gazette of December 1945 at page 267, 268, and 269 in which it has been held that where a section of the workers in a mill absent themselves on a particular day because their request for a holiday on that day has not been conceded by the management, it does not amount to illegal strike. The reason given is that the dispute about a holiday does not amount to an industrial dispute. These two decisions are given under the Bombay Industrial Disputes Act of 1938 but not either under the Trade Disputes Act or under section 81-A of the Defence of India Rules. A trade dispute is defined as follows in section 2, clause (J) of the Trade Disputes Act, 1929; "Trade Dispute" means any dispute or difference between employers and employers or between employers and workmen or between workmen and workmen, which is connected with the employment or non-employment or the terms of the employment or with the conditions of labour of any person." In my opinion the question whether a holiday should be given for the Tamil New year's day or not is a matter connected with the terms of the employment of the worker and the conditions of his service, and it therefore amounts to a trade dispute. I would add that if the question whether a holiday should be granted on the 13th of April or not did not amount to a trade dispute, this reference for adjudication itself would be incompetent. According to clause (c) of Rule 81-A of the Defence of India Rules it is only a trade dispute that could be referred either for conciliation or adjudication. For the foregoing reasons I hold that the strike indulged in by the workers on the afternoon of 12th April 1946 was not justified and is illegal.

(ii) Whether the notice by the management on 12th April after the strike terminating their services amounts to lockout and is legal; and whether the new conditions imposed for re-employment invalidated the lockout.

It was held that the lockout was proper and legal, but the management's action in dismissing men, etc., was regarded as harsh and vindictive. "I have gone through a number of awards given by adjudicators in Bombay and other places and find that the adjudicators have decided trade disputes not on strictly legal grounds but on grounds of equity, natural justice, fair play and public policy. The fact that about 700 workers who were till recently leading a contented and happy life in the service of the company have been suddenly thrown out of employment is a matter of grave public concern and cannot be viewed by the Government with equanimity. I am of opinion that all the workers who went on strike on the 12th of April 1946 and on subsequent dates should be re-instated in their places under the old conditions of service and that some penalty should be imposed on them for having indulged in an illegal strike. The loss of wages for the period from the date of strike till their re-instatement would, in my opinion, be a sufficient penalty. If for any

reason it is not possible to re-instate all or any of the strikers then they should be paid some reasonable compensation for the termination of their employment. I am of opinion that the payment of wages and dearness allowance from 12th April 1946 till to-day would be a reasonable compensation.

(iii) Bonus.

Previously, two months' wages as bonus was agreed upon between the parties and the management were to put up a notice stating the terms and conditions, based on attendance, satisfactory service and conduct. This notice was however not put up. It was therefore held that the management broke the agreement. The Adjudicator therefore gave his award: "I am of opinion that all the workers who were in the service of the company on 31st December 1944 and continued to be in service till 12th April 1946 should be paid a bonus of two months' salary without exception. It is argued by the learned counsel for the Company that bonus, as the term itself implies, is an ex-gratia payment and that it cannot be claimed as of right. This contention is perfectly correct and no court of law will allow the claim. But as already stated, learned adjudicators in trade disputes have invariably granted bonus to the workers on grounds of equity and natural justice though the claim is not enforceable in a court of law. Mr. K. S. Krishnaswami Ayyangar, formerly a Judge of the Madras High Court and now the Chief Justice of Cochin, was recently appointed adjudicator by the Cochin Government in a trade dispute between the Burmah-Shell Oil Storage and Distributing Co. (Branch) at Ernakulam and The Mineral Oil Factory Workers' Union, Ernakulam. His award is published in the Cochin Government Gazette, dated 27th Makaram 1121 (9th February 1946), Part I at page 387. With regard to bonus, the learned adjudicator observes as follows at page 390:

It is, however, strongly urged that bonus is, as the term itself indicates, an ex-gratia present of money payable at the will and pleasure of the employer and not demandable as of right by the employee. Judged by the rules of positive law, the legal position here taken up must be conceded to be correct. My jurisdiction, however, is wider and I am entitled, as other adjudicators before me in similar inquiries have done, to take into account factors other than those which a court of law would recognize and see what is just and fair in all the circumstances of the case and not what are the limits of a legally enforceable right of liability as between the parties. It is from this wider angle that the question has been considered by almost all the learned adjudicators, with only a few exceptions, in the several cases which are found reported in the Indian Labour Gazette of Bombay. The dissentients will generally be found among persons who still cling to the theory that bonus is a form of present made out of pure generosity. Within the last few years, however, the position of labour in the social and economic structure of the community has attracted

wide attention all over the world and there can be no gainsaying that the contribution which labour makes to the economic well-being of society has largely come to be recognized. Steadily and step by step, labour is coming to its own. Traditional notions regarding the relative value of capital and labour in the production of profits are, it seems to me, undergoing a change under our very eyes, the change being in favour of labour. In the large majority of cases in which bonus has been claimed, at any rate, during the period covered by war, adjudications have been rendered allowing the claim, though, in some, it has been rejected.

(iv) Relief to workers.

As awarded above in (ii) and (iii).

(G. O. Ms. No. 27118 Dated 12th July, 1946.)

MADRAS ELECTRIC TRAMWAYS

AND

THEIR EMPLOYEES

Adjudicator:—Rao Bahadur M. Venkatramayya, Retired District and Sessions Judge.

Demands and Awards

(i) Increase in basic wages.

Granted (i) Coolies: B class—As. 12- $\frac{1}{2}$ -14; A class—As. 14- $\frac{1}{2}$ -16 (ii) Women and boys—As. 10- $\frac{1}{2}$ -14 (iii) Semi-skilled workers Re. 1-1/16-1 $\frac{1}{2}$. Workers with trade test qualifications to get Re. 1-4-0, (iv) Skilled (a) Rs. 1 $\frac{1}{4}$ -1/8-1 $\frac{1}{2}$; (b) Rs. 1 $\frac{1}{2}$ -1/16-2; (c) Rs. 2-1/8-3 with efficiency bar at Rs. 2-8-0. (v) Exceptionally skilled Rs. 3 $\frac{1}{4}$ -3 $\frac{1}{2}$ (vi) Conductors and Motormen Rs. 30-1-50.

Revision in monthly paid workers—10% increase to those getting Rs. 50 or less; 5% to those between Rs. 50 and Rs. 75, and 3% to those between Rs. 75 and Rs. 100.

The following extract from the award will be found interesting: "It is strongly urged before me that this is not the proper time to revise basic wages and that whatever increase the workers appear to require may be given in the nature of an allowance, viz., dear food allowance. It is said that the revision of basic wage can only be taken up when the times are normal and that the present must be said to be abnormal because we are having the after-

effects of the termination of the war. There are a few points which cannot be ignored in considering the subject. The wages fixed in 1930 are low on the face of it. In 1943 when the Tramway workers applied for increase of wages, the Government stepped in and said that owing to the prevalence of war and the pre-occupation of everybody in its prosecution, that was not the time for asking for revision of wages, and that it could be done soon after the war ended. The war terminated nearly a year ago. Eruptions of labour discontent are noticeable throughout the country. The workers seem to feel that this is the time for the revision of wages and that view, I find, is also shared by some authorities on labour problems. The war has had two effects on the workmen. Their services were largely requisitioned for purposes connected with the prosecution of war and they responded in large numbers and by working long hours. They were given high wages and salaries and were promised better employment after the war. So much so that workmen in some concerns left their jobs and went in for new jobs. There were, of course, regulations preventing the desertion from duty in essential services. And those who stayed firm at their posts like Tramway Company's workers obviously were hoping for the betterment of their conditions soon after the war. Similar must have been the state of affairs in many other concerns in the country, with the result that the workmen are not in a mood to show patience or contentment. They cannot be put off any longer. The second effect is a sense of labour's importance in the economy of life and consequently high expectations.

"Another factor which should be remembered is that if there is an increase in the basic wage, there will be improvement in the financial position of the worker, who will be able to contribute more to Provident Fund and also, when he takes leave, he may thereby have certain advantages. It is a difficult problem to decide when the times are normal. Whether the lowest level of prices was reached in 1930 or 1939, it is clear that financial depression throughout the world took place between 1930 and 1932. Between 1930-31 and 1938-39 things cannot be said to be normal either. What is the test by which we can say conditions or times are normal? The future investigator into the economic conditions will be equally at sea to say whether what people say normal conditions existed in any year. Some persons would forecast 1948 would be normal. If certain standards are laid down as denoting normal times, we can say whether times are normal or not. If the prices come down next year by 25 per cent., would that be said to be normal? It is futile to speculate on this problem and no one can say with any degree of reasonable probability for how many years the existing conditions will last. For how long, then, can we ask the grumbling worker to wait?

"With regard to the fixing of wage, there are numerous factors to be considered. First and foremost: What is the minimum amount required for the maintenance of a family of the labour

class? In the absence of an enquiry into the conditions of living of the workers in the Tramway Company any opinion expressed cannot be exact. But there was an enquiry into the family budgets of the industrial workers in Madras in the year 1938. Taking the labour unit of 3.6 or 4 which I think at present is the unit of labour family, one can immediately lay down Rs. 30 as the minimum required. In the opinion of Dr. Aykroyd, the cost of a well-balanced diet in South India was five to six rupees per man in 1936. But this amount is exclusive of some items such as sugar. He opined that, for these extras, 25 per cent. must be added. Therefore the minimum requirement of a labour family would be $4 \times 6 = 24$, + 25 per cent. of it, namely, Rs. 30. Mr. Rao suggested Rs. 36 as the minimum for railway workers. And before me, the demand made is that Rs. 35 should be fixed as the minimum wage. I must emphasize the fact that I am not fixing any minimum wage for the tramway worker or any other worker. I am trying to-day to determine what increase made to the basic wage of the several classes of workmen at present will be reasonable. Fixation of a minimum wage, and standardization of wages can only be done after a comprehensive enquiry into labour conditions with special reference to a particular industry.

“One other point that is brought out is: comparison of wages paid by the Madras Electric Tramways with the wages paid in Madras city by the Corporation of Madras, by the Port Trust and Public Works Department to their employees. I do not give any consideration to such a comparison. Where it is distinctly proved that the wages are low, it is no use pointing to other persons who are paying less. One should try to raise the lower paid to a higher level. If the Corporation of Madras pays Rs. 16 for a man coolie, it does not mean that the Corporation's example should be followed by others. If what is mentioned is a fact, I can only say that the workmen in the Corporation of Madras are in such a helpless position that they cannot help themselves to get better terms. I am told that in the Public Works Department coolies' wage is Rs. 13. There, again, I should think that it is not a concern which should be copied by others. Coolies and skilled workers are said to be pouring in for employment at existing rates. I do not know if this is really true. However, this too is not a point to be considered in the fixation of a reasonable wage. All are agreed that every endeavour should be made to raise the standard of living. By keeping the men at the starving level of wage, in a locality, one can make them agree to any conditions. This class of worker, namely, coolie, knows only two things, hunger and fear. He has no courage to speak boldly to his employer, he has not even the sense of proportion in many matters. In almost all cases, he is illiterate, ignorant and uneducated. And therefore in many of these cases it is useless to even ask him either what he wants or whether he is prepared

to work either for Rs. 10, Rs. 15 or Rs. 20. This is a matter in which, so far as India is concerned, the State has to interfere and fix reasonable wage, commensurate with the required rise in the standard of living."

(ii) (a) Recuperative leave of 10 days in addition to 21 days' leave allowed; (b) Wages for holidays; (c) increase in the sick leave.

(a) Rejected, (b) granted for 7 holidays, (c) granted for 15 days on half pay and dearness allowance and further 30 days without pay if proper application was made within 14 days.

(iii) Additional one month's bonus for 1945-46.

In view of the prosperous condition of the Company, $\frac{1}{2}$ month's pay as bonus was awarded, in addition to two months' bonus previously paid (one usual and one Victory bonus).

(iv) Gratuity.

The existing system should be brought into force as a rule.

(v) Overtime to Traffic department men for work in excess of 8 hours.

Not granted. Overtime at $1\frac{1}{2}$ time should be paid for work in excess of 10 hours.

(vi) Relaxation of conditions relating to absenteeism on circular days.

Granted. It was awarded that the number of circular days should be reduced, and Sunday, unless it was a festival day, should not be a circular day. Small bonuses were recommended as reward for perfect attendance on Circular days.

(vii) Abrogation of rule regarding deposit of Rs. 15/- against uniforms.

Refund of Re. 1/- per month was granted from the first month for nine months, at the end of which the balance was also to be refunded.

(viii) Re-instatement of six discharged or dismissed men.

In one case, though dismissal was held as reasonable, re-instatement was recommended in view of that employee's long service.

(ix) Appointment of a lawyer to defend Motormen, (x) 8 hours work for overhead wiremen, (xi) Coolies to get hammermen's wages whenever asked to do the latter's work, (xii) Uniforms and footwear to line-cleaners, (xiii) Two conductors for every bogey car, (xiv) Extra wages for work in the sixth pit where use of machinery was on a larger scale.

The existing arrangements of the company having been found more or less satisfactory, the Adjudicator did not recommend any action.

(G. O. No. Ms. 3186, Madras, 20th August, 1946.)

MOTOR TRANSPORT COMPANIES IN NELLORE DISTRICT

AND

THEIR EMPLOYEES

Adjudicator:—P. N. Ramaswami, M.A., I.C.S., District and Sessions Judge, Nellore.

Demands and Awards

(i) Maintenance of service register for the employees.

Settled by mutual agreement; service register to be maintained and standing orders to be prepared.

(ii) Provident Fund.

The demand was not pressed.

(iii) No worker to be discharged without consulting the Labour Officer.

Settled by mutual agreement: no worker to be discharged without a formal charge made against him, and opportunity given to him to meet it.

(iv) Payment of dearness allowance separate from pay.

Agreed to mutually.

(v) Payment of Batta.

Granted As. 12 daily if breakfast and meals were not provided by the employers.

(vi) Leave with pay.

Granted for 15 days; but only 10 days' leave to be taken at a time.

(vii) Hours of work and rent.

The Adjudicator divided the 38 Nellore routes into four groups, A, B, C and D and fixed 4, 6, 10 and 15 days as off days in a month.

(viii) Scale of pay for workshop employees.

The scale of minimum wages for different classes and scale of dearness allowance was fixed.

(ix) Time scales for running staff.

Scales were fixed as under:—

Drivers	minimum pay Rs. 30/-	p.m. + D.A.	at Govt. rates
Conductors	" " "	20/-	" " "
Checking Inspectors.	" " "	20/-	" " "
Cleaners	" " "	15/-	" " "

Annual increment of Re. 1/- for drivers and annas 8 for others subject to a maximum of Rs. 55/- was also sanctioned. While

discussing the claim for rise in wages the Adjudicator observed: "The workers, in order to establish their demands for a rise, concentrated upon the following lines of evidence. Firstly, they attempted to show that the prices have been rising and showed no tendency to fall. This is not disputed. But this general knowledge of rise in prices will not help us beyond showing that a case has been made out for an increase in pay as the present scales of pay are not known to have been fixed upon any known level of prices and there are no index figures showing rise of prices of retail sales and which will enable us to calculate any percentage of increase to be given. Secondly, the workers attempted to show that in order to obtain all-round amenities and of which they say that they have been foregoing some in the past, their pay should be increased. No one will dispute that employees should get wages which would enable them to secure as many amenities as possible. It is the birthright of every worker. The point is, however, complicated by the additional consideration, namely, whether these amenities claimed by them are enjoyed equally by other sections of workers, and secondly, whether the Transport Industry which is in its infant stage now can bear the extra expenditure? This is, however, one factor which I have taken into consideration in fixing the minimum of pay and dearness allowance. Thirdly, the representatives of the workers urge that large profits were being made by illegal and legal means by the employers and that they should be made to disgorge a portion in the shape of increased wages. There is no evidence to prove that swollen profits were being made In this connection the workers' representatives stressed two points, namely, that profits were swollen by the lower cost of operating bus and lorries on gas plants aid, secondly, by systematic overloading without issuing tickets and bringing the amounts into account. So far as the allegation of lower cost of operating buses and lorries on charcoal instead of petrol is concerned, it is found to be definitely based upon a mistaken impression. On the other hand, I have had the costs worked out per mile. It is found that the average for producer gas vehicles is 47.65 pies per mile and the average for petrol vehicles is 42.04 pies per mile. The reasons why buses and lorries driven on charcoal do not prove more economical than the petrol-driven vehicles are the abnormal increase in the price of charcoal and the increase in the bills for repairs and maintenance in the case of the producer gas-operated vehicles which deteriorate more rapidly than petrol-driven vehicles. In the case of the United Bus Service they have been able to demonstrate that there has been an increase in the fuel cost from 10.27 per cent. in 1943 to 17.91 per cent. in 1946 and that there has been increase in repairs and maintenance from 28.72 per cent. in 1943 to 39.12 per cent. in 1946. I have given my anxious consideration to this allegation and I am unable to accept the statement that the producer gas-operated buses and lorries are cheaper to run than the petrol-driven

vehicles. I may incidentally point out that it is also the experience in America where these charcoal-driven vehicles are being rapidly converted into petrol-driven vehicles owing to the former proving more costly to run than the latter. In regard to the second allegation, there is no doubt that during scarcity of transport illegal profits were made not only by the employers but also by drivers and conductors, except in the United Bus Service. In the case of other personal proprietorship companies, there has been systematic overloading and the sharing of the loot between the proprietor and the employees without bringing this into account. In fact, in the case of the employers of Vellore, when the drivers and conductors asked them for a share of the profits, the former have boldly turned on the latter and pointed out that these employees were making as much as Rs. 10 per day and that therefore no question of giving them a share of war profits arose as they had already shared it albeit in illegal manner. It is therefore unprofitable to pursue this line of enquiry, as the extra illegal profits made have already been divided. We have therefore to depend upon the prevailing rates of pay and the legitimate increases which have to be given thereon, in order to assure fair and reasonable wages which will not be financially ruinous to the companies and bring about their liquidation instead of their expansion."

*(Development Department, Government of Madras.
G. O. No. Ms. 3189, 20th August, 1946.)*

RAJAH MILLS, MADURA

AND

THEIR EMPLOYEES

Adjudicator:—P. Ramkrishna Ayyar, Esqr., M.A., I.C.S., District and Sessions Judge of Ramnad.

Issues and Awards

1. Was the discharge of certain employees valid and proper?

The allegation of the labour union was that the employees were victimized for active participation in the trade union. The Adjudicator found the allegation groundless. However, he recommended re-instatement of five of them, and the next acting chance to two who were only badlis, without payment of any arrears of wages. He also suggested that a good many of the workers who had been retrenched in the ring-frame department could be re-

employed if his recommendation as to the proper strength in that department was approved by Government.

2. Is it necessary for the management to appoint a manager and delegate powers to him?

The union's contention was that the proprietor being absent frequently owing to his having business in several places, the workers had to wait for several days to get their grievances redressed, and meanwhile to remain suspended under the orders of the head jobber. They therefore wanted a person with technical textile qualifications and experience to be appointed as Manager so that he could look into the grievances then and there. The Proprietor, on the other hand, stated that the mill was a small one, owned by a single individual, who resided in the compound itself and rarely absented himself from headquarters, and that the heads of the various departments heard and redressed grievances except certain special cases requiring the proprietor's personal attention. Under these circumstances he thought an additional person as Manager only an unnecessary burden.

The Adjudicator found that not all the allegations of the union were supported by facts. The parties, however, agreed to follow a certain procedure: a day and specified hours were to be fixed every week for the proprietor to hear the complaints; in his absence, the spinning supervisor in charge of the shift was to hear them and dispose of them in his discretion, reserving the more important ones for the proprietor to be heard on the next occasion.

3. Is the dearness allowance adequate and if not how to revise it?

The union's contention was (i) that the present flat rate of Rs. 26 was inadequate, being fixed three months back, and (ii) that dearness allowance should be on a sliding scale linked to the cost of living index.

The Adjudicator thought that the present rate compared very favourably with the rate paid in Government services as also with those in the other mills in Madura, besides having an advantage that it did not fluctuate with the basic wages, as in some of those mills. He therefore did not think it advisable to have it revised as long as the cost of living index fluctuated within the region of 20 points either way. Regarding a cost of living sliding scale he remarked, quoting from the Bombay Textile Labour Enquiry Committee's report, p. 393, that these scales "assume importance in times when rapid fluctuations take place in the value of the monetary medium, especially at the time of rapid rise in prices", that "except in times when prices are rising rapidly, the majority of points, in respect of which differences are likely to arise between employers and employed regarding wages, cannot be covered by a cost of living sliding scale." "The maximum period of increase in prices is over," said the Adjudicator, "and

the change if any in the coming months, will be towards a state of gradual fall; or at least equilibrium will be maintained without steep fluctuations. It does not appear necessary to prescribe a sliding scale in such circumstances."

The union had certain grievances in respect of dearness allowance in the case of the following classes of workers:

- (1) Workers in the reeling department; (2) Halftime doffers;
- (3) Engine workshop operatives.

The grievance in (1) was that turning out a minimum of 20 hanks per day to entitle one to the full flat rate of dearness allowance was too much for women reelers, in whose case it should be only 15 hanks. The Adjudicator, however, found from certain remarks of the President of the Textile workers' union himself, in the letter addressed by him to the Labour Commissioner, that the output in the reeling department depended upon various factors such as the quality and quantity of the yarn and the methods of distribution adopted by the reeling supervisor, and not on the question whether the reeler was a man or a woman.

In (2) the demand was that the half-time doffers should get full dearness allowance of Rs. 26, and not merely half of it, on the ground that a dearness allowance was granted to neutralize the increase in the cost of living, irrespective of the period of employment. The Adjudicator held the argument and the demand as unfair.

In (3) the demand was that piece-workers also should get dearness allowance, along with the permanent workers. The Adjudicator's finding was that piece-rate workers who had already, or who would thereafter, put in more than two months' continuous service, should be paid rates calculated on the basic wage and dearness allowance which were paid to permanent workers engaged in a similar item of work.

4. Should the same rate of wages be paid to male and female doffers?

The union wanted the rate to be the same on the ground that the work done was similar. The Adjudicator agreed, pointing to a similar system obtaining in the Madura mills also. He remarked: "The question of giving them (the female doffers) only doffing work or asking them to help in spinning (also) in the ring-frame department is a matter for the discretion of the management, but, on account of an arbitrary assignment of work, they ought not to be paid less than the wages paid to persons with a similar designation".

5. Has there been unjuſtifiable reduction of the number of workers in the ſeveral departments?

The complaint mainly referred to the retrenchment in the number of ſpinners in the Ring-frame department. Looking to the Ring-frame departments of ſeveral other mills in Madura, and to the

fact that the machinery in the present mill was very old and therefore caused a good deal of strain on the workers, the Adjudicator calculated that, for the 26 frames in that mill, the proper strength required was 71 spinners, besides the half-time doffers, whereas the mill had, before retrenchment, 52 spinners assisted by 25 full-time doffers, besides a number of half-time doffers, and, after retrenchment, only 40 spinners and 18 doffers, besides the half-time doffers.

The Adjudicator suggested that the simplest course for the management, under the circumstances, was to designate the 18 doffers, who did spinning work, as spinners, and re-employ 13 more of the retrenched spinners. A change would be necessary only when a much larger proportion of frames spun 205.

6. Should compensation be paid to the workers who had to remain idle by reason of the machinery breaking down?

The complaint particularly referred to the breakdown and 'playing off' in April 1946, first on the 10th due to a storm, and secondly on 23rd owing to a sudden breakage of a slubbing frame. The first resulted in the complete stoppage of work for 3 days and reduction of work for a few more days. The second dislocated the work about a week.

The Adjudicator said that there was no legal provision nor precedent for paying compensation for loss of employment due to causes similar to the above. The model standing orders framed by Government of India provided that, when notice was given within one hour of the breakage, the workers were not entitled to any wages for the period they were left idle. A circular of the Public Works Department of the Government of Madras provided for compensation when the involuntary employment was due to shortage of coal or raw materials, or to changes in the lines of production, if the total unemployment was for more than 7 days in the half-year. An award of Justice Vasudev (Bombay Government Gazette, 13th April 1946) had given a compensation of 75% of the wages, when the unemployment was due to stoppage of coal supply, but there the unemployment had continued for 22 days. The case in hand did not show a complete stoppage of more than a week, or even failure to give notice within an hour as required by the standing orders. Moreover, the stoppages were due to causes beyond the control of the Management. The Adjudicator therefore rejected the demand for compensation.

7. In what respects did the standing orders require revision?

The union had proposed revision in certain respects. But the Adjudicator thought that the proposals did not raise any problem of immediate urgency, that they were of a general nature affecting all industrial undertakings in the country, and that they should be deferred pending a general country-wide survey.

8. Is any bonus due to be granted for 1945-46?

9. Is it necessary to close the night shift?

(The two issues hung together because the management contended that it was continued loss that had made them stop both the bonus and the night-shift).

The records showed that the management had been suffering continuous loss in the years 1944-45, 1945-46, and 1946 up-to-date, part of the loss, moreover, being due to the increase in dearness allowance from Rs. 3 to Rs. 26. In spite of the loss, the management had given 2 months' wages as bonus in 1944-45 and one month's wages as bonus for Dipavali in 1945-46, when they had actually suffered a loss of more than a lakh of rupees. Under these circumstances, the Adjudicator did not think it fair to direct the management to give any bonus until such time as the production figures improved and there was profit.

As to closing the night-shift, which threw about 350 workers—almost half the total number—out of employment, the loss, proved by the management against the union's attack, was a sufficient reason, declared the Adjudicator. The notice of closure already given by the proprietor was not regarded by the Adjudicator as sufficient and proper. He therefore directed another one month's notice to be given on the date that the Government passed orders on the Adjudication report. The retrenchment was directed to be made strictly according to seniority, and, in case of resumption of the night shift, priority of employment was to be given to the retrenched workers.

*(Development Department, Government of Madras
G. O. Ms. No. 3225, 23rd August, 1946.)*

SHRI RAMA VILAS MOTOR SERVICE, LIMITED

AND

THEIR EMPLOYEES

*Adjudicator:—*P. Rajagopalan, Esq., I.C.S., District and Sessions Judge, Madura.

Issues or Demands and Awards

1. Was the strike that commenced on 24th April 1946 illegal or at least unjustified?

The issue was objected to by the employees' union on the ground of its being outside the Government order. The Adjudicator overruled the objection, saying that, if decided in the affirmative, it was likely to affect the question as to what extent the

demands put forward in the strike should be allowed. The point of illegality was admitted by the company itself, at the conclusion of the inquiry, as untenable. The company, however, maintained that it was unjustified, since it had carried out the terms of the settlement of March 8 by which the first notice of strike had been withdrawn. The union's case was that the company had not carried out the terms of the settlement. The Adjudicator, however, held that the company had not defaulted performance of any of the obligations imposed upon it by the settlement, yet, holding that there were real disputes to be settled between the parties in spite of the settlement, he would not call the strike as unjustified.

2. Were the Employers justified in dismissing any or all of the 17 employees? (Of these 2 had been re-employed since, 2 more had got employment elsewhere. This left only 13 cases).

The Adjudicator made it clear at the outset that the inquiry before him was not in the nature of an appeal against findings of fact arrived at by the company, and that it was to consist only in seeing whether the company had observed principles of natural justice and equity in punishing the employees.

Going through the evidence the Adjudicator decided that 10 dismissals were justified. The remaining 3 were recommended to be re-appointed as they were found to have been removed from service without a proper inquiry.

3. (a) Were the rates of basic wages and dearness allowance adequate?

(b) Was the current batta adequate?

(c) Was the bonus paid to the employees adequate?

(a) The current minimum wage for employees in the workshop and the mechanical section, as also for menials in the office and time-keepers on the transport side, was Rs. 10, that for conductors and drivers Rs. 12 and 20 respectively, and that for office-clerks Rs. 15. The union's demand changed from time to time: for instance, at one time they demanded Rs. 45 for conductors and Rs. 60 for drivers; at another, they accepted the present rates as reasonable. It was impossible for him, remarked the Adjudicator, to fix a satisfactory basic wage, by reason of the limited nature of an Adjudication inquiry and the scantiness of the data. The question bristled with difficulties. A theoretical answer based, for instance, on the nutrition norm provided by Dr. Akyrod and on the conception of a normal family, etc., was only a partial guide; one had to look to the financial position of the company as well. The principle of demand and supply led only to a contract not necessarily ensuring the minimum requirements of a worker. The whole question could only be settled by legislation and a draft bill had already been published by the Government of Madras. That,

however, need not postpone his award. Finding then that the present scale did not suffer in comparison with those of the other companies, and that they had been actually accepted as reasonable by the parties before the second notice of strike, he would not recommend any revision of them.

Still, it was declared by the Adjudicator as obvious that Rs. 30 denoted the poverty line, and that those below it suffered to a greater extent than others by a rise in the cost of living. To neutralize the latter, a dearness allowance was given, which should be higher in the case of those below the poverty line. Of all the systems of dearness allowance in vogue, the Adjudicator thought the sliding scale system as the best, and awarded 3 annas a point to those whose basic wages were Rs. 30 and below, and 2 annas to the rest, directing however to see that the dearness allowance was so adjusted that no one whose basic salary was just above Rs. 30 got less by way of combined basic wage and allowance than those who got Rs. 30.

(b) The batta of the driver was greater than that of the conductor, as the basic wage of the former was higher. The union wanted one uniform rate for both, namely, Rs. 1-12-0 per day if the total mileage covered was less than 100, and Rs. 2-4-0 if it exceeded 100. At the settlement on March 8, however, the union had accepted the enhancement to one rupee as sufficient. Some of the other companies paid more and some less than that. The Adjudicator, however, held that batta could not be isolated from the other conditions of service and the other amenities that the company was providing. Taking all these factors into consideration the Adjudicator thought that the present batta, not comparing unfavourably with that paid by the other transport companies, and not being proved by evidence as being inadequate to cover, as it was meant to do, the out-of-pocket expenses of the driver and conductor when on duty, did not call for any revision.

(c) Before dealing with the question of inadequacy of the bonus, the Adjudicator disposed of two points raised by the company, namely, (1) that a bonus being a payment made *ex gratia*, it was not open to the union to dispute its adequacy, and (2) that adequacy of bonus should not be viewed as an industrial dispute capable of adjudication. The Adjudicator could not accept this. To explain the principles underlying the grant of bonus he quoted several authorities:

Mr. Nanavutty (Bombay): "Trade disputes concerning the bonus should be rescued from the sordid antipathies inevitable and tacitly inherent in the everyday relationship between capital and labour, and should be lifted on to the clear and serene atmosphere of broad economic and political consideration."

Mr. Justice Chagla (Bombay): "It is almost a universally accepted principle now that the profits are made possible by the contribution that both capital and labour make in any particular in-

dustry, and I think it is also conceded that labour has a right to share in the increased profits that are made in any particular period."

Mr. Krishnaswami Ayyangar, Chief Justice of Cochin Court: "Judged by the rules of positive law, the legal position (that a payment made *ex gratia* was not demandable as of right by the employee) must be conceded as correct. My jurisdiction, however, is wider and I am entitled, as other Adjudicators before me in similar enquiries have done, to take into account factors other than those which a Court of Law could recognize, and see what is just and fair in all circumstances of the case and not what are the limits of a legally enforceable right or liability as between parties".

In the opinion of the Adjudicator himself: "The legal sanction accorded to a bilateral contract between the employer and the employed does not render it inviolable when an industrial dispute arises for adjudication. The unilateral right claimed by the company, that the company alone could decide what payment *ex gratia* it could make, can have no higher sanctity in the settlement of an industrial dispute. The grant of a bonus is a concession that can be wrung out of an unwilling employer should circumstances justify such a step. It should, however, be made clear that the bonus is a share in the profits made by the company. Grant of a bonus is not meant to make up any deficiency in the ordinary remuneration payable to the employee under contract or an award. If there are no profits at all there can be no question of a bonus . . . Where the profits made are abnormal, obviously there can be no justification in withholding from the employees, who helped to earn those profits, a reasonable share of those profits. The difficulty arises, however, where the profits earned are low. What would constitute fair profits for a transport concern it is very difficult to answer as an academic question".

The difficulty was particularly great, said the Adjudicator, in the present case, since the company, on the ground of its being a private company, was not prepared to make its financial position public, for reasons that did not merit any censure. Nor had the union placed before him the requisite data to help him decide whether the payments of bonus made in the past were adequate. The company had paid one month's basic wages as bonus in November 1945 and another in April 1946. These payments were not inadequate, in the opinion of the Adjudicator, to judge from the meagre data available. As for 1946 and after, the Adjudicator was not in a position to suggest any definite principles for determining grant of bonus. He, however, advised the company not to invite a crisis by withholding a reasonable bonus when the profits justified a grant. For instance, if the profits earned in 1946 were not less than those earned in 1945, there should be no justification for not paying as bonus at least two months' wages. The Adjudicator rejected as unsound the principle of taking into account the bonus that had been paid by other companies in the

area. The question must be decided, said he, on the financial position of the particular company concerned.

4. (a) Four (in place of two) sets of uniform consisting of shorts and shirts, two caps, and two pairs of chapals to each employee.

Held that the present scale of supply was adequate; only the concession should be extended to employees in the workshops at the outlying branches.

(b) Free medical attendance.

Held that it was not practicable at that stage; the only concession the company should give was to pay for a medical certificate if one was required.

(c) Provision of free family passes.

Held that the existing concession was adequate.

(d) Provision of co-operative stores.

Held that the company was not bound to make such a provision.

(e) Increase in the number of holidays with pay.

Held that the present provision of 14 holidays a year with pay was adequate.

5. The basis for calculating the wages of drivers and conductors; the basis for deduction of work not done by a driver or conductor on the dates on which he was bound to work; revision of the system of calculating the wages earned or of wages to be deducted.

Held that the present system adopted by the company did not need any change, as it caused no hardship to the employees.

6. (a) were the hours of work for the Checking Inspectors too long and unduly onerous?

Held that they were not, except on the Madura—Tirumangutam beat, for which the company was asked to employ a double shift.

(b) Prescribing the maximum number of hours per week for workers in the workshops in the outlying branches.

The hours were limited by the Adjudicator to 12.

7. (a) The basis for calculation of the hours of work for drivers and conductors.

Held that the hours of work should include, besides the actual scheduled running time of the bus, one hour for subsidiary work on each day of work.

(b) Was there any case of a driver or a conductor being employed for more than 54 hours in a week?

Not a single such case was found. The only route that involved even 50 hours was the Madura-Poolangurichi route. The maximum number of hours recommended was 48 per week.

(c) 75 miles per day should be reckoned as a working day.

Held to be unreasonable and impracticable.

(d) Was the contention of the union justified that the existing hours of work on every one of the 13 routes were onerous?

The Adjudicator found that it was not, and the union itself agreed with him during the inquiry.

(e) 36 hours as the maximum running time per week for conductors and drivers.

Held to be unreasonable.

8. Charcol cleaners should be promoted as conductors, and conductors as drivers, on obtaining the requisite licenses from the Police, in preference to outsiders.

The award was given in terms of the agreement arrived at between the parties, namely, that a list of employees qualified to be appointed as conductors and drivers should be drawn up by the company after subjecting the candidates to suitable tests, and that at least 50% of the vacancies should be filled by men included in that list.

9. No one should be employed continuously on night-shifts.

The finding was that the incidence of a permanent night shift could not be avoided in the case of 25 of the cleaners employed in the workshop at Madura. It was, however, suggested that the hardship of continuous night work could be mitigated by an allowance of 12½% of the basic wages, and further that vacancies in the groups of day-workers and workers on alternating day and night shifts should be filled to relieve the incidence of continuous night shift, even though such a transfer might involve loss of the extra allowance recommended above.

(G. O. No. Ms. 3533—Madras, 16th September, 1946.)

BUCKINGHAM AND CARNATIC MILLS CO., LTD., MADRAS

AND

THEIR WORKERS

Adjudicator:—Sri P. Markandeyulu, M.A., B.L., Principal Judge, City Civil Court, Madras.

Issue and Award

1. Whether the workers were entitled to wages and dearness allowance during the period of the strike, from 8th June 1946 to 24th July 1946.

On 8th June 1946 the workers in the night shifts in the Carnatic Mills struck work following a dispute between a section of the workers and the Punjabi watchmen, in which some workers received injuries. The workers refused to enter the mills on the morning of 10th June. The workers of the Buckingham Mills, a sister concern, also struck work that morning.

It was held that there was no justification for workers of the Carnatic Mills for not entering the mills on 10th June 1946, much less for those of the Buckingham Mills. It was further held that there was no ground to ask for discharge of the Punjabi watchmen. Therefore there was no claim which could be sustained in a Court of Law and the strike was illegal for want of notice of 14 days.

Some objections were raised on behalf of the workers stating that the cessation of work did not amount to a strike. The award on these points was as under:

"It was argued by Mr. Venkataraman for the Labour Union that the cessation of work on the part of the workers from the night of 8th June did not amount to a strike as defined in the Trade Disputes Act of 1929 but was only a "spontaneous stoppage of work" due to a "genuine apprehension for their personal safety." This is an ingenious argument but does not bear scrutiny. In the first place it was conceded by the Union in its negotiations with the Management and the Government that the cessation of work on the part of the workers did amount to a strike. The question that is referred to me for adjudication is, whether the workers are entitled to wages and dearness allowance during the period of the strike. The settlement arrived at between the parties in the presence of the Secretary to Government, Development Department, uses the word strike in a number of places (vide Exhibit D-21 (3). Further, the word strike is used in Exhibit D-15, dated 21st June 1946 which is a copy of a letter addressed by the President of the Union to the Management. The first sentence in the letter is "This is to inform you that on Wednesday, June 19th, a ballot was taken of the workers on strike in Wadia Park etc. etc." In the second, it is not necessary that the strike should be decided on some days in advance. Even if the workers acting in concert suddenly decided to stop work it would still amount to a strike (see the definition of strike in sec. 2 of the Trade Disputes Act).

"It was next argued by Mr. Venkataraman that the strike was not a deliberate and wanton act on the part of the workers designed to put pressure on the Management to get rid of the Punjabis but was the result of a genuine apprehension of danger to their personal safety. He puts the same argument in a different way. The Management failed to secure reasonable conditions of safety for the workers within the mill premises and therefore the workers were justified in stopping away from work. Mr. O. T. G. Nambiar for the Management argues that this contention is quite irrelevant for the purpose of this enquiry as there is no provision of law under

which workers on strike are entitled to wages for the period of the strike and he further points out that in the present case the strike is illegal as the requisite 14 days' previous notice was not given as required by clauses I of L. R. 16 (10) of the Government of India Order, Department of Labour, dated 19th December 1942. He also argues that this reference must be answered on strictly legal grounds and that there is no room for the application of any equitable or moral considerations. I quite agree that the workers' claim for wages cannot be sustained in a court of law and also that the strike in the present case is illegal for want of the requisite 14 days' notice. But I hold the view that it is open to an adjudicator to give relief to a party on equitable grounds even if his claim be not enforceable in a court of law.

"The contention of the Union proceeds on the assumption that the strike began on the morning of 10th June and that the immediate cause of it was the failure of the Management to disarm the 30 or 40 Punjabis inside the mill gates or to send them out of the mills in order to secure conditions of safety for the workers. This assumption is not correct. The strike actually began in the Carnatic Mills on the night of 8th June when the workers refused to work after they got back to their respective departments. It was really a stay-in-strike. The workers had been let out at 9-30 p.m. for the one hour's recess and some of them came back at about 10 p.m. and, after indulging in a fight, went back to their respective departments, but would not work. They did not then decline to go back to work unless the Punjabis were sent out of the mills. From this it follows that the abstention from work on the part of the workers on the morning of the 10th June was really a continuation of the strike which had begun on the night of 8th June.

I am also of the opinion that there was no justification for the workers not going back to work on the morning of the 10th."

(G. O. No. Ms. 3564, Development Department, Madras,
18th September, 1946.)

COIMBATORE CEMENT WORKS, MADUKKARAI

AND

THEIR WORKERS

Adjudicator:—P. V. Parameshwara Ayyar Esqr., B.A., B.L., Additional District and Sessions Judge, Coimbatore.

Demands and Awards

(ia) (i) Revision of wages.

Formerly, the initial wages, or as it is sometimes called, the basic wages, were 7 annas a day for male and 4 annas a day for female workers. Pre-war rates on a subsistence level were 6 annas for male and 3 annas for female workers, but the management were always paying one anna more. At the time of filing the statement, the management increased the rate to 8 annas for male and 6 annas for female workers, but contended that the increase given was out of generosity and not because workers were entitled for any reason to an increase. The management was giving dearness allowance to meet all increase in the cost of living. From February 1946, dearness allowance was granted at 2 annas a point for every rise in the cost of living above 100. As the rise in the cost of living was met by the grant of dearness allowance, it was contended that there was no basis for increasing the wages themselves. The Adjudicator did not agree with this view. The standard of living had improved owing to fall in prices in the last two decades and no suggestion which would drive back the families to lower standard was acceptable. When the war brought on an enormous increase in the cost of living, this increase was not merely on account of the rise in prices but was also the result of the rise in the standards of living, which had come to stay, of even the poorest worker. The awarding of dearness allowance for the increase over 100 points in the cost of living, will not therefore sufficiently compensate for the increase in the cost of living. There should be an increase even for the increased standard of living, to which all the workers must have become accustomed, and therefore even for the first 100 points in the index of the cost of living. Even on the basis adopted by the management, wages should be 200 annas (100 by 2) to meet the cost of the standard of living as in pre-war days. And as the management had always been paying one anna more it should be added to this. It was therefore awarded that

the minimum for males should be 9 annas and for females 6 annas per day.

It was contended that there were various occupational diseases in cement factories and that therefore the workers' wages should be above those obtaining in other factories. On the basis of reports, it was however found that in India there were no special or peculiar occupational diseases for workers in cement industry and therefore it was held that no increase on that account was called for.

In opposing the demand for increase in wages, the management laid stress upon the amenities such as medical relief, educational facilities, additional disability compensation, welfare and benefit funds, recreation club, etc. It was held that all these amenities further tended to increase the standard of living and they were not sufficient answer to the claim of the workers that fruits of their labour should be tangibly in their hands.

In order that older hands should benefit, it was awarded that all the workers who were getting from 7 annas to 9 annas should get an increase of 2 annas, and those getting from 10 annas to 15 annas should get an increase of 1 anna. No increase was necessary to other highly paid employees.

The workers represented for an increase in the rates of skilled workers. The Adjudicator did not think, on the material before him, that any special increase was necessary beyond the general rise recommended by him.

(i) (a) Designations, grades, categories, strength, and methods of promotion should be fixed.

It was found from the record that all workers had their designation, and that they had ample opportunities of knowing them. The Adjudicator however suggested that when the designation was changed, the worker's card should be got signed by him.

As regards fixing categories, and the strength of classes in the categories, it was awarded that the categories should have the strength fixed in each class and whenever a person who was not in any particular class was made to do work of that class, he should be given the wages of that class. Lathe-boys when working as lathe-operators, welding-boys when working as welders, coolies when working as moulders, should get wages of the respective class. If a person was found fit to do 'Kalasi' work after his being tested for a reasonable time, he should be given at least 25% more than the minimum wage.

(i) (b) Graded increase in wages and promotions on the basis of service and efficiency.

It was found that the management was giving promotions according to efficiency. As the categories and strength of each class in them was fixed, it was held that, by reason of the decision on (i) (a) above, promotions were safeguarded. As regards increments on a time-scale basis, the Adjudicator thought that the time-scale basis could be adopted only by an institution with unlimited

resources, and that it was not suited to a concern whose profit-earning capacity was necessarily limited. It might lead to the closure of business for want of resources to meet increased wages. The Adjudicator quoted the following passage from "Industrial Supervision—Organisation Controls" by Dr. Vernon G. Schauffer, Ph.D., and Willies Wessler and others:—"Automatic promotions by annual increments are not advisable, because:

- (a) petty policies are formed, allowing for likes and dislikes;
- (b) men who do not deserve promotion are promoted because they are in the promotional channel;
- (c) there is an increasingly small number of positions as the jobs advance, yet every man is encouraged to think that he will be ultimately promoted to the top;
- (d) precedents and traditions are established, which make flexibility to meet unusual circumstances impossible."

It was therefore awarded that promotions should be only on an increased efficiency judged by the management and that promotions should not be granted on an automatic time-scale basis.

- (2) Increased dearness allowance; (2-a) equal dearness allowance to women and men.

The existing rate of 2 annas per point was held as sufficient. It was awarded that women workers should get the same dearness allowance as men.

- (3) Bonus proportionate to the number of days worked, without the stipulation of minimum attendance period.

(3-a) Bonus for 1944-45 to be given to those to whom it had not been given.

(3-b) Four months' bonus.

(3-c) Bonus for 1944-45 at the increased rate.

It was awarded that workers should be given yearly bonus proportionate to the wages earned by them in the bonus year irrespective of the number of days worked. The bonus of 2/12 of the earned wages that was granted by the management for 1944-45 was held as fair as there were no extra profits in 1944-45 over those of previous years.

- (4) 15 days' sick leave and 15 days' casual leave in addition to the statutory provision of 10 days.

Demand for casual leave with pay was rejected. 7 days' sick leave with pay was granted.

- (5) Abolition of the system of getting work done for the factory by contractor's workers.

The Adjudicator recommended that early steps should be taken to abolish the system of having any workers under a contractor, and that this should be done within a reasonable length of time.

- (6) Rent-free houses to all workers.

The management had already constructed 176 quarters housing 235 people and further construction of 360 quarters was under consideration. These quarters were given rent-free to such workers as were urgently called for work. But the management declined

to take liability to house all workers and the Adjudicator agreed to the contention of the management that no industry could afford to house all its workers. The wage-rates covered the cost of residence and hence the claim for free-quarters or house rent was really a claim for increase in wages. The wage question was already fixed and therefore no award was granted.

(7) Recognition of the workers' union.

It was awarded that the union should amend its rules so as to make them conform to the conditions laid down by the management and approved by the Adjudicator, and that after such amendment, the Union should be recognised.

The following were some of the conditions approved by the Adjudicator:

(a) No outsider should be admitted as honorary member or office-bearer if he is a dismissed government servant, or office employee of an industrial concern or if he has been convicted of an offence involving violence or moral turpitude.

(b) Resolution for a strike should not be arrived at except by a majority of $\frac{2}{3}$ of the number of workers, whether members of the union or not.

(8) Wages and dearness allowance for the period of strike.

It was held that neither party could be completely acquitted of blame for the strike. The Adjudicator therefore awarded that half the wages and dearness allowance should be paid to the workers. At the time of payment of bonus for 1945-46 these half wages should be taken into account.

As an advice to the management and the workers the Adjudicator passed the following remarks: "The aim in all settlements or decisions regarding trade disputes is to make the parties reconciled and prevent the exploiting of old grievances and hatreds to find occasions for future vindictiveness. It is to be hoped that after the recognition of the Union any differences that may arise between the workers and the management will be adjusted amicably and speedily and that the Union will not force the management to mechanise the whole process of the production of cement and deprive a large number of workers of their work or urge the management to close down the factory by bringing about the situation of its being unremunerative to run the factory. It is also to be hoped that the management will not insist upon their having a high return of dividend for the share-holders but would always concede the highest that is possible for them for the welfare of the workers."

(G. O No. Ms. 3840, Development Department,
9th October, 1946.)

MADURA MILLS COMPANY LTD., MADURA & VIKRAMASINGAPURAM

AND

THEIR EMPLOYEES.

Adjudicator.—District and Sessions Judge of Ramnad

Issues and Awards

(1) Cancellation or modification of standing order No. 21.

There were three parties to this dispute: (a) the Madura Mills Ltd. (b) Madura Labour Union (Est. 1929) representing workers at Madura, and Papanasam Labour Union (Est. 1930), representing workers at Vikramasingapuram, and (c) the rival unions—the Madura Textile Workers' Union and Vikramasingapuram Textile Workers' Union, (Est. in about 1944) under the leadership of communists.

Following a strike in 1937, the mills recognised the Madura Labour Union and, with its co-operation, carried out substantial labour welfare measures, such as co-operative stores, Labour welfare Associations, a residential colony, etc. The Labour Associations were managed by the Union, and these and other institutions received subsidies from the management. The Mills' contributions and subsidies to these welfare projects amounted to over a million rupees during the period 1940-46.

In early 1943, the mills decided to give two months' bonus for 1942, one month's in cash and the other month's to be credited to the nucleus of a contributory provident fund. The Textile Workers' Union agitated for payment of the whole bonus in cash, and after some time agreed to the mills' arrangements. Shortly afterwards, there were complaints about wrongful dismissals, and, for the first time, the workers were informed of the standing order No. 21. In November 1943, the Textile Workers' Union conducted a production week, and indicator readings were taken without the consent of the management. This led to suspensions, further dismissals and protests. Agitation was carried on against standing order No. 21, in 1944 also. In 1946, the Textile Workers' Union served notice of strike on the mills.

The standing order No. 21 was as follows:

A. "The company's policy is to recognise one union only, which must be non-political and non-communal in character. The recognised union is at present the Madura Labour Union. The company

will not entertain representations from political or communal bodies purporting to speak on behalf of its workers."

B. "Any worker who is found to work in a manner that will prejudice the above policy, may be dismissed as being guilty of misconduct under Standing Order 17."

This order was framed in 1943, in consultation with the Labour Union. It was alleged by the Textile Unions that the Labour Unions were company unions. Besides, the standing order deprived the workers of their fundamental right to form themselves into free trade unions unfettered by the management.

After taking a review of the trade union movement in India, the Adjudicator observed: "The Trade Union movement is still in its infancy, where the workers are illiterate and often badly disciplined, where they are often unable to draw the distinction between politics and labour welfare. The movement has to be allowed to grow in a normal way, and such restrictions as are placed on it must be so designed as to make the growth follow proper lines. Statutory checks must be placed to achieve this object. Freedom of association, and the right to negotiate with the employer, and to be heard by the employer, should be provided for by statute in the case of registered unions. Recognition by the employer ought not to be made compulsory because a statutory recognition cannot be the same as recognition through the employer's free will. Rival unions should not be prohibited as such, but the existence of only a single union in a particular locality and a particular undertaking, should be provided for, having reference to the conditions in that area or in that undertaking. The last mentioned saving clause will be necessary in cases where rival unions are deliberately fostered by the management to split the movement, or where, as in Madura, the temper of the workers against the background of rival unions, has been proved to be inconsistent with peace and harmony. Agreement in the nature of close shop may be provided for by legislation, but they should be subject to the approval of the Registrar, and jealously watched, to see that the real advance of the movement is not paralysed by the formation of company-fostered unions."

Analysing the existing order clause by clause, the Adjudicator took strong exception to the latter portion regarding dismissals, etc. Commenting on this, the Adjudicator observed: "In practice, this clause has worked in the following manner. Workers are given freedom to join either the Madura Labour Union or the Papanasam Labour Union or the Madura Textile Union or the Papanasam Textile Union, but as long as they continue to be merely members of the latter two unions, they are not penalised under this clause; but when they actively espouse the cause of the Madura Textile Union or the Papanasam Textile Union at the time of elections, or actively pursue any policy laid down by the rival union, for example, take indicator readings in a contest for maximum production, or actively support rival candidates put up by the rival

unions for elections to the co-operative stores, the axe is applied, and they are removed under the above clause The real question is that while no one can fetter the discretion of the management to recognise one union only, can the management say that the workers, while being permitted to join a rival union, should not work actively on behalf of it? This principle goes against the fundamental right of freedom of association which every worker has. Throughout the present enquiry, it struck me forcibly, that it will be going against human psychology if we are to tell a body of workers, 'You can if you like join a rival union; but you should do nothing more than that, and if you take an active part as a member, you are liable to be dismissed'. Bearing in mind the illiteracy of the workers, and their emotional temperament, it will be too much to ask them to remain passive, after joining a rival union. It is this aspect of the manner in which the standing order has worked, that has led to more than one explosive situation in Papanasam and in Madura, and to more than one deplorable act of violence on rival bodies of workers including murder and maiming. Even during the progress of the present enquiry the fact that a solemn judicial tribunal was going into the dispute, was not sufficient to deter the violence of the workers. One worker was assaulted outside the premises of the court with a soda water bottle soon after the enquiry, and on subsequent dates of hearing police bandobust had to be secured to obtain a peaceful atmosphere for the enquiry. On another hearing date, the workers' representative, Mr. Krishnaswami, could not attend, because he apprehended physical violence on the way to court. On the final days of the enquiry, feelings had risen to such a pitch, that firing had to be resorted to in the mill area, and throughout one whole night, the District Superintendent of Police had to be on duty in the mill area . . . the clause in the Standing Order providing for passive membership and at the same time discountenancing active membership, in a rival union, has been the fertile seed of rivalry and violence, against the background of the psychology and mental make-up of the workers at Madura and Papanasam. I am of the emphatic opinion that the clause now under discussion, cannot be allowed to remain, either on grounds of principle, or on the advantages of practice."

All the parties favoured the principle of one union at a time. The Adjudicator therefore suggested for adoption the following new order in place of the old.

"There shall be only one union for the workers in the Madura Textile Mills at Madura and another at Papanasam. Its membership must not depend on political or communal affiliations. In activities connected with the day to day work of the mill, it should be non-political and non-communal in character. It should be registered under the Trade Unions Act. It shall be representative of the workers, and its representative character shall be decided by a vote of the majority of the workers, the elections being held by a secret ballot under the auspices of the Commissioner of

Labour. After the representative union is decided upon thus by ballot, all the workers in the mill who do not belong to the union, will have the option of joining the union or remaining neutral, till the time of the next ballot which shall be taken on the expiry of every three years. In the interval, there shall be only two classes of workers viz., members of the representative union and neutrals. Any worker joining a rival union in the interregnum will be liable to be removed. On the expiry of three years, all the workers will be entitled to vote on the issue as to whether the existing union retains their confidence or not, and if the vote goes against it, the workers will have the liberty to organise themselves into a new union, within a period of three months from the date when the result of the ballot is known. If the new union shows a membership of 25 per cent of workers, it shall be the representative union and it will be so designated by the Commissioner of Labour after examining its books. For every succeeding three years, the same rule about ballot will apply and during the interregnum the same rule of workers being only members of the representative unions or neutrals, will be enforced strictly. If, after dissolution, there is more than one union formed with membership of over 25 per cent., the one with the larger membership will be designated as the representative union. It will be open to the management to recognise the representative union thus selected and no other."

The Adjudicator said that he was aware that there were some features of a 'close shop' in the old standing order, such as power of recruitment given to the union. But it was not a thorough-going 'close shop' system, because it permitted rival union members to work in the factory, and only put a gag on their militant activity. His suggestion in a sense went a step further towards 'close shop,' allowing only union men and neutrals.

The standing order could be brought into force, after taking a secret ballot on the issue as to which of the unions enjoyed the confidence of the majority of the workers who cast their votes.

(2) Reinstatement of certain victimised workers.

The management was under the bonafide belief that the standing order under which action was being taken was in the best interests of the management and labour. The workers knew the risk they were taking. Therefore, while it was held that the workers should be reinstated, no compensation for the interim period was awarded.

*(G. O. Ms. No. 4010 Development Department, Madras
Dated 24th October, 1946)*

INDIAN METAL AND METALLURGICAL CORPORATION, METTUR

AND

THEIR WORKERS

Adjudicator:—C. S. Chowdri Esqr., District Judge (Salem).

Demands and Awards

(i) & (ii) Increase in basic wages and dearness allowance.

Awarded that unskilled workers be paid in future at annas 6 per day. 2/5th of their present wage was recommended as the basic minimum for skilled workers and adult women workers. Dearness allowance was in addition to be given on the basis of cost of living index rates as adopted by the South Indian Mill Owners' Association.

(iii) Bonus.

No bonus was awarded as the concern was not in profit.

(iv) Reinstatement of dismissed workers.

The Adjudicator found no justification for continuation of strike by workers after the dispute was referred to Adjudication. He observed: "Strictly speaking the Management would be justified in refusing to take back any of these workers. But seeing that most of these workers are ignorant persons and mere tools in the hands of others and taking into consideration the general atmosphere around them when they resorted to this strike I am not recommending any drastic action against these workers. As I am not satisfied that there was any justification for the strike which started on 6-3-1946 I am not recommending payment of wages for the period of strike."

(G. O. Ms. No. 4265, Development Department, Madras,
18th November, 1946)

CITY MOTOR SERVICE

AND

THEIR WORKERS

Adjudicator:—Sri Rao Bahadur M. Venkataramayya, B.A., B.L.

Demands and Awards

(i) Reinstatement of a certain worker.

Not granted, as the workman in question was held to have been guilty of misconduct.

(ii) Dearness allowance on the basis of cost of living index number, and payment of arrears of allowance.

“The company was paying Rs. 7-8-0 only. In February-March 1946, this question was taken up with the Commissioner of Labour and the management agreed to pay a dearness allowance of Rs. 15/- a month. It was being paid and now the Union on behalf of the workers demand that the dearness allowance should be as on the S.R.V.S. scale. There is no question of res judicata in matters such as this. The only manner in which this point can be considered is whether what is being paid is or is not reasonable. Generally speaking, in matters such as this, every endeavour should be made at uniformity. If in the same industry a particular wage or rate of allowance exists, one should recommend that that should be adopted.”

Payment of arrears was not sanctioned.

(iii) Casual leave of 10 days to all workers. 14 days' casual leave with pay was granted. This included 10 days' statutory leave.

(iv) 14 Festival holidays and double wages for work on these holidays.

Demand was withdrawn. The management agreed to pay double wages for work done on festival days.

(v) Two months' wages as bonus.

Rejected.

(vi) Whether the discharge of 72 men from body-building department was justified.

On the evidence before him, the Adjudicator could not say that the discharge was unjustifiable.

(G. O. No. 4704, Development Department, Govt. of Madras,
31st December, 1946)

MESSRS. PARRY & CO. LTD.

AND

THEIR EMPLOYEES

Adjudicator:—Rao Bahadur M. Venkataramaiya, B.A., B.L.,
Retired District and Sessions Judge.

Issues and Awards

- (i) Dearness allowance of Rs. 26/4 to menials and Rs. 30/- to clerks or in the alternative, higher scales of pay; and
- (ii) the date from which these increases were to be given effect to.

The firm raised, with effect from January 1947, the initial salaries of clerical staff from Rs. 30 to Rs. 45 and that of the chokras from Rs. 12 to Rs. 17, on reaching the age of 20, and a grade rising up to Rs. 30. The dearness allowance was Rs. 4/- when the cost of living index number was 125. An increase of Re. 1/- was granted for every rise of 5 points, and at the time of Adjudication, the dearness allowance came to Rs. 29/9/- per month. The non-clerical staff was also paid dearness allowance on the same scale and the inferior staff was given an allowance of As. 2 per point.

The employees demanded dearness allowance at a flat rate of Rs. 30/- per month. The Adjudicator held that a flat rate system was not sound. The firm was giving the allowance all along on a sliding scale, and the employees having accepted it since 1940 without demur, it was not proper to disturb it on the plea that some other concerns were granting at a flat rate. It was not desirable to compare one company with another on one ingredient only so as to make it absolutely equal. The Adjudicator held that the rise given in the wages of the clerical staff and the existing dearness allowance were together adequate.

During the Adjudication proceedings, the Company offered to increase the wages of the inferior staff by Rs. 5/- and to grant a special Head office allowance of Rs. 3/-. It was held that total remuneration was adequate, so no revision was granted.

There were some men in the employment of the company who were not paid any dearness allowance. At the instance of the Adjudicator, the company put some of them on the permanent list and granted them dearness allowance.

- (iii) Wages for the strike period.

Granted, the Adjudicator holding that the strike was the only alternative left for the employees. The employers did not even care to reply to the representation of the employees and matters were allowed to drift. Hence a strike was inevitable.

(G. O. Ms. 661, Development Department Govt. of Madras,
20th February, 1947)

SAYANI GLASS FACTORY, MADRAS

AND

THEIR EMPLOYEES

Adjudicator:—Shri Rao Bahadur M. Venkatramayya, Retired District & Sessions Judge.

Issues and Awards

- (i) Whether the discharge of 76 men on 26-11-46 was justified.
- (ii) Whether the dismissal of permanent workers who struck work on 27-11-46 was justified.

The Sayani Glass Factory, Perambur, was working since 1940/41 and was dependent on Government for the allotment of soda ash. In November 1946, the soda ash supply diminished and the management put up a notice on 12-11-46 stating that if the supply did not improve, they would discharge workers after 15 days. On the same day the workers' union wrote to the management that the plea of want of soda ash was a 'bluff' and that they would go on strike if the notice was not withdrawn. This letter was posted on 13th and received by the management on 14th November. The management terminated the services of 76 men on 26th, and on 27th all men struck work. The management terminated services of all the workers on 2nd December, but the trouble increased. Adjudication was ordered on 18th December and the strike was called off on 20th December. However the management did not allow the men to resume work, relying on the dismissal of 2nd December.

The Adjudicator referred to the observations in the Whitley Commission Report and also to the decision of Justice Wassooodev in a case reported in Bombay Labour Gazette of December 1945, on the subject of notice required for terminating the service. He too agreed that a shorter period of notice was beneficial to workers and held that the 15 days' notice served on 12-11-46 to monthly paid men was quite in order. The strike notice having reached the management on 14th December, the strike on 27th December was short by a day or two of the prescribed period of 14 days and therefore it was held that the strike on 27th December was not in accordance with law. Perhaps the dismissal of the rest of the workers on 2nd December was in accordance with law, but was held to be unreasonable and unjustifiable, as it was promised

earlier that they would be discharged on 12th December if by then the supply position was not improved. The failure to allow men to resume work after the adjudication order was made was held as an unjustifiable act in the face of the Defence of India Rules; but the position had become complicated in view of the fact that there was not much work at that time. The Adjudicator therefore awarded that discharged and dismissed men should be paid 14 days' wages from 20th December. Such of them as had resumed earlier need not be paid. The discharged or dismissed men should be given first preference for work when material became available.

(iii) Minimum period for confirmation of workers as permanent.

It was awarded that after one year's continuous service, a man might be deemed as permanent.

(iv) Fixation of wages and scales of dearness allowance.

This question was settled only a few months before in conciliation proceedings, and the management was paying according to that settlement. As nothing had happened since then to justify an increase, it was held that no revision was necessary.

ORISSA AWARD

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(Order No. 2927-Com. Government of Orissa, 19-7-1944)

MESSRS. ORIENT PAPER MILLS AT BRAJRAJNAGAR,
SAMBALPUR DISTRICT (ORISSA)

AND

THEIR EMPLOYEES

Adjudicator.—Mr. D. G. Jadhav, Conciliation Officer (Railways) and Supervisor of Railway Labour.

There were in all 23 demands made by the Orient Paper Mill Workers' Union. With the help of the Adjudicator the parties were able to arrive at a settlement on most of the demands. The important demands related to fixation of basic minimum pay, dearness allowance, and bonus. The Adjudicator found the ruling wage of Rs. 21/- (basic Rs. 9/-, production bonus Rs. 9/- and dearness allowance Rs. 3/-) inadequate. But he observed that there were many practical difficulties in fixing up a basic wage level of the workmen during the period of war, when everything was unstable. The basic wage of an employee was to be fixed having regard to a reasonable standard of living. It was not correct to fix an arbitrary standard of minimum wage level for the different classes of workers in a factory, without reference to the economic conditions prevailing in the locality, the nature of work done, the proficiency and skill required by the different classes of workers, the supply of skilled and unskilled labour, and the financial condition of the factory itself. Besides, the Adjudicator thought, the mills could not in fairness be asked to fix the minimum wage when there was no minimum wage legislation in the country.

Demands and Settlements

(1) Minimum wage of Rs. 18/-; (2) revision of dearness allowance; and (5) 25 per cent, increase in wages and three months bonus.

Withdrawn, the Company undertaking not to reduce or withdraw the current wage of Rs. 18/- and dearness allowance of Rs. 3/- till the end of the European War.

(3) Security of service and letter of appointment.

Withdrawn from adjudication; the former being within the purview of the Labour Tribunal, and the latter, in view of the Company having already decided to issue the letter.

(4) Scale of pay, gradation of service, provident fund, insurance for sickness and permanent disablement.

Withdrawn, as the Provident Fund and insurance against sickness and permanent disablement were matters of all-India concern and were already receiving the attention of the Central Legislature; while the scales of pay and gradation of service were already in force.

(6) One month's leave with pay and ten days' casual leave.

Withdrawn in view of the impending Central Legislation on the subject.

(7) Re-instatement of workers dismissed in connection with the 1940 strike or any other strike thereafter.

Withdrawn, in view of the Company's willingness to reconsider the cases.

(8) Re-instatement of the seven workers dismissed in connection with the latest strike and payment of full wages to them.

Withdrawn, in view of the Company agreeing to re-instate five persons, and pay them half the wages.

(9) Full wages for the strike period, i.e., 17th May to 28th May, 1944.

Withdrawn in view of the Company's agreeing to pay half the wages.

(10), (11), and (12): Recording of overtime work, payment of wages in accordance with the payment of Wages Act, no night work for women, widening of mill gates and stopping of body search of women-workers by the Darwan.

Disallowed by the Adjudicator as those grievances could be redressed under the appropriate Acts.

(13) Eight Festival holidays, without any compulsion to work.

Withdrawn, in view of the Company's explanation that 4 holidays were already being given, and that nobody was compelled to attend.

(14) Provision of quarters or rented houses to workers.

Withdrawn, as there were 250 quarters already built and 100 under construction.

(15) Removal of certain grievances about the rationing system. Withdrawn, as the Company gave satisfactory explanation.

(16) Provision of sufficient number of beds in the hospital; the hospital doctor to attend on sick workers living outside the quarters and to issue medical certificates to them when necessary. Withdrawn, in view of the Company's agreeing.

(17) Re-instatement of workers dismissed for 5 minutes' late attendance or for one or two days' absence. Withdrawn.

(18) Easy work for persons disabled as a result of accidents and provision of jobs to the heirs of workers who had died in the service of the Company. Withdrawn.

(19) Promotion of skilled and trained workers.

Withdrawn, in view of the existing wages and wage system.

(20) Revision in the Finishing Department rates.

Withdrawn, in view of the existing wages and wage system being actually better than elsewhere.

(21) Regular jobs for daily workers and revision of their pay and dearness allowance.

Withdrawn, the Company giving a satisfactory explanation.

(22) Removal of certain officers of the Company.

Withdrawn at the suggestion of the Adjudicator.

(23) Recognition of the Union.

Withdrawn, in view of the impending Central legislation on the subject.



SIND AWARDS

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(Order No. 810-M/42 8-7-1942)

(i) M/s. COWASJEE & SONS (ii) M/s. BRIGSTOCKE, EDULJEE AND CO.
(iii) M/s. PESTONJEE BHICAJEE (iv) M/s. DINSHAW & CO., AND (v)
M/s. BURJORJEE COWASJEE, STEVEDORES IN THE PORT OF KARACHI

AND

LABOUR EMPLOYED BY THEM

Adjudicator:—M. A. Sayyid, Commissioner of Labour, Sind.

Demand and award thereon:

War-allowance.

In view of the cost of living having gone up considerably, a war allowance of $12\frac{1}{2}\%$ was awarded.

(Order No. 810-M./42 3-8-1943)

(i) MESSRS. COWASJEE & SONS, (ii) MESSRS. BRIGSTOCKE EDULJEE & Co. (iii) MESSRS. PESTONJEE BHICAJEE, (iv) MESSRS. DINSHAW & Co., (v) MESSRS. BURJORJEE COWASJEE, STEVEDORS
IN THE PORT OF KARACHI,

AND

THEIR EMPLOYEES

Adjudicator:—A. P. LeMesurier I.C.S., Commissioner of Labour, Sind.

Demands and Awards

1. 25 per cent. war allowance.

Rejected, as the matter had already been settled by a recent adjudication. If that award referred to daily paid workers only, then this would also apply to the same.

2. Number of workers in a gang should be according to the agreement between Stevedores and workers for loading and unloading on board ships.

The decisions of the conference held on 24th October 1929 were to be followed.

3. Tindals and Sarangs be taken as regular employees on a monthly basis, with privileges enjoyed by other office servants, and their salary be increased proportionately.

Rejected. Broadly speaking, the Sarang was a regular employee of the firms, whereas the Tindal was not. But there was considerable diversity in practice amongst the firms. The Sarang supervised from 2 to 4 gangs of labourers. He also recruited the labour for the next day's or night's work. There was considerable difference in the modes of payment also. Some Sarangs were paid a monthly wage. Others were paid on a daily basis plus a retaining fee. The method in each case largely depended on the trust which a Stevedore could place in the individual Sarang. The Stevedores complained that some Sarangs were not regular in attendance. So the Adjudicator did not feel called upon to order a uniform system of remuneration. Nor did he feel called upon to award regular leave rules, pension and gratuity. By this he did not imply that he absolved the firms of any moral obligation to reward long and faithful service, or to consider reasonable requests for leave and holidays; but that he considered any attempt to graft uniformity on mere casual labour as bound to fail.

A Tindal was merely the head of a gang. He was not even recognized by some firms. The case for making him a permanent employee on a monthly basis was far weaker than that of the Sarang.

4. Over-time to all workers be paid at $1\frac{1}{2}$ times the ordinary wages.

Rejected for the time being, the matter being left over to be reconsidered when decasualization took place. The labour employed then was of a casual nature, and it was right to pay overtime work pro-rata according to the time worked. If special rates were given for overtime in the case of casual labour, it would place too much of a premium on going slow during regular working hours. In no part of India was special overtime rate paid to casual labour.

5. Night shift workers to be paid full night for half night's work.

Rejected, though the Adjudicator felt considerable sympathy for the demand, and recommended that the problem be approached through de-casualization of labour.

6. Time for engaging the workers be fixed so that the workers might not have to wait for a long time.

The grievance was reasonable, and as a remedy it was directed that the Stevedores should, within four months, arrange to engage and pay their labour directly and not through the agency of Sarangs or Tindals.

7. Workers working on Sundays and holidays be paid at the over time rate.

Rejected. The demand had no force in the case of the labour actually employed, viz., casual, who worked only for 15 to 20 days in a month.

8. In case there were less number of workers in a gang than per agreement in emergency cases, all the workers be paid equally the amount of wages of the full number of workers required in the gang.

Granted. Payment was made per gang, not per individual. If the gang was below the strength laid down by the resolution of the conference (of dock labourers and Stevedores after the strike) held on 24th October 1929, the Stevedores could hold the Sarangs or Tindals responsible, but had to pay the full gang rate. However, the matter was to be revised again when payment through the Sarang or Tindal ceased.

9. Tindals be made from the senior workers and be paid extra allowance of Rs. 1-4-0 per day in emergency cases.

Rejected. (i) The Tindal was merely a gang leader, and the firms must be allowed to recognize whom they chose as a gang leader. They presumably recognized any one whom they found useful for bringing labour and obtaining work from the other members of the gang. (2) Tindalage i.e., allowance of a Tindal (apart from his work as a workman in the gang), was actually paid separately, under a resolution of the conference of 24th October 1929, over and above the payment to be made to the gang as such; it was not deducted from the workmen's wages. Recognition of a Tindal and paying him Tindalage was a matter for the discretion of each firm. However, this decision did not confer any authority on individual firms to discontinue their present payments of Tindalage or Chithi to Tindals. Should any firm decide to do so, it was to notify the Commissioner of Labour one month before.

10. Winchmen and Area abeswalas be paid at the same rate of wages as workers employed in gangs on board ships.

Granted.

11. Instead of two men, three should be engaged on wagons for loading and unloading on the wharf.

Rejected. The number two was in accordance with the agreement at the 1929 conference, and the dock work had not become more arduous since, to necessitate an additional hand.

Demands by Karachi Dock Workers' Union and awards thereon:

1. Each gang working on the cranes should consist of 6 men and not 4 men as at present.

Rejected.

2. Each gang working in batches should consist of 10 men as agreed to between the parties in 1929.

The numbers in each gang should be as shown in the resolutions of the 1929 conference.

3. On 8 holidays per year and on Sundays, workers should be paid $1\frac{1}{2}$ the usual rate.

Rejected.

4. Over time (done between 6 p.m. to 8 p.m. and 5 a.m. to 8 a.m.) work should be paid at the rate of $1\frac{1}{2}$ times the ordinary rate.

Rejected.

5. Registration of dock labour should be undertaken. Accepted in principle.

(Order No. 617/27-M/42 (a) 11-8-1942)

THE EAST INDIA TRAMWAY CO. LTD., KARACHI

AND

THEIR WORKERS

Adjudicator.—The Honourable Mr. Justice C. M. Lobo.

Issue and Award

The amount of loan which the Company had agreed to advance to such of its employees as required it for removing their families from Karachi to any other place in India, and the terms and conditions upon which such loan might be advanced by the Company.

Awarded that those of the employees who were subscribers to the Provident Fund should be allowed to draw loan from the Fund, while the others from the Company itself, equal to their 3 months' pay, interest in the former case being borne by the Company, in the latter there being no interest at all. The company was allowed to take reasonable precautions to ensure proper use of loans. The loans were to be repaid in 24 monthly instalments.

(Order No. 731-M 42 12-5-1943)

THE EAST INDIA TRAMWAY CO. LTD.

AND

THE KARACHI TRAMWAY WORKERS' UNION

Adjudicator:—A. P. LeMesurier I.C.S., Commissioner of Labour,
Sind.

Issues and Awards

1. Whether increased rates of dearness allowance should be paid to the employee; if so, from what date.

Dearness allowance was raised from Rs. 6-8-0 per mensem to Rs. 10 per mensem. As a strict award this was to take effect from 12th February 1943 but the Adjudicator recommended to the Company to give effect to it earlier i.e. from 1st January, 1943.

Discussing the merits of this award the Adjudicator observed: "In support of this demand it is argued that the Company holds a monopoly and has been making large profits . . . I enunciate the principle that the profits earned by a monopoly are not the sole concern of the shareholders and its employees. If the profits were unduly large, I should consider this a matter of concern for the general public, who might expect a reduction in fares or extended service. In framing my award I have taken into consideration the general conditions of service and the rates of dearness allowance by other concerns of similar standing. I have also satisfied myself that the Company can meet the extra liability involved."

2. Whether certain acting Inspectors, whose confirmation had been delayed on account of their membership of the Karachi Tramway Workers' Union, should be confirmed and if so, on what terms.

The Adjudicator observed: "This point arose out of the decision of the Company, in July 1940, to demand a written undertaking from conductors due to be appointed as Inspectors that they would resign membership of the Tramway Workers' Union, since it was a condition of recognition of the Union that it should not include in its membership supervisory staff I am convinced that there was move amongst certain conductors to avoid resigning on their being made Inspectors My award is to confirm the offer made by the Company on 15th January 1943 (largely at my instance). On the clear understanding that the conductors, when appointed as Inspectors will cease to be members of the Union,

the Company will proceed forthwith to fill the vacancies in the Inspector's rank, and will raise any Inspector so appointed to the grade he would now be in had he accepted a post as Inspector when it was offered to him on the conditions laid down by the Company."

3. How the duty hours of the Traffic Staff should be reckoned.

The eight-hour working period was calculated exclusive of the time taken to bring a tram to its starting point and to return it to the shed and for conductors to turn in the balance of the tickets and takings. The Adjudicator awarded the above extra time at fifteen minutes for single shift duty and 30 minutes for two-shift duty, at ordinary rate of pay in addition to normal rate.

4. Whether an allowance in lieu of quarters should be paid to the employees of the East India Tramways Co.; if so, at what rate; if not, whether the Company should provide night resting accommodation instead.

Rejected. The Company was advised about the desirability of providing a night resting room for early joiners.

5. Whether any revision in the pay of the Company's workshop and traffic staff was necessary; and whether a system of graduated increment should be introduced for the workshop staff.

Consideration was "deferred till 1st July 1943 when the Company should decide in the light of the terms of these recommendations what revised rates it is prepared to offer, if any, for the Workshop Staff and the Traffic Staff. It is not suggested that this should be referred back to the Adjudicator. It may be left to the parties to decide between direct negotiation and arbitration."

6. Whether any break is required in the 8 hours' shift for drivers and conductors; and if so, what modification of the present station to station time limit is necessary.

The status quo was to be maintained.

7. What change, if any, is necessary in the present system of the Company in respect of the weekly rest and holidays.

Two public holidays per year were allowed to each employee, but the weekly rests were maintained as they were.

8. Whether the Company should pay bonus to its employees; if so, on what terms and conditions.

Decided in the negative, the Adjudicator observing: "The Union in its latest statement claims the authority of Mr. Justice Broomfield in support of the principle of the bonus. I have read his Adjudicator's Report in the Dispute between the Bombay Electric Supply and Tramways Company, Bombay, and its employees.

dated 26th June 1942. I can find nothing in that document which can be called upholding the principle of the bonus. The Company was already as a matter of habit paying bonuses and had been doing so in the past. The Adjudicator merely recommended that the old war allowance which had been paid since 1919 should be treated as part of pay in the calculation of the bonus. There is also a passing reference to a dictum of Mr. Justice Chagla that the "distribution of increased profits amongst workers is better achieved by the giving of an annual bonus than by further increase in wages." But on the subject of an annual bonus of one month's pay the Adjudicator declined to make any recommendation.

"Since I made my recommendation in the Dalmia Cement concern's dispute, the issue has become more general. In the Dalmia Cement case there had been a constant history of strife between the management and the workers. In this case, while I would not suggest that there has been harmony, the parties have agreed to differ without going to the length of a strike or lock-out. I therefore consider it necessary to make a recommendation in more general terms.

"The Company has undoubtedly been making a profit on its running during the past years. The Union demands that out of these earnings a bonus equivalent to two months' salary shall be paid. To this the Company objects on the ground that it already treats its workers generously and has already increased their pay.

"There can be no doubt that whatever name an additional payment out of profits may be given, this payment inevitably comes to be regarded as a part of regular wages. This is clearly illustrated by the history of the bonus in Bombay, where it is a regular feature in certain industries . . . However if a concern considers it preferable to compound with the demands of its employees on the basis of a bonus, Government has not so far been concerned to interfere. Even the Income-Tax Department allows for the payment of bonuses. However, the position is different if Government is called in to decide between the parties in a dispute. Government is concerned to secure improvement in the general standard of wages and in the conditions and terms of employment and provision to meet the increased cost of living. On the other hand, it is equally concerned to see that if profits are abnormal, the proceeds should go to the national exchequer. I can see no reason why, after securing reasonable wages (according to present conditions), fit conditions of employment and due allowance for the high cost of living, Government should divert by its own action sums of money, the bulk of which would otherwise go to the national exchequer. If it is considered that too much of this profit goes to the shareholders, the remedy does not lie in what can only be partial re-distribution amongst a limited section of the industrial population of India.

"Though for the reasons given above I reject this demand on

principle, I consider it fair to add, in view of the reasons advanced by the Union, that the financial position of the Company, so far as I have been able to judge it, is not such that it should be expected to make the concessions demanded by the Union, the cumulative effect of all of which would be quite beyond its capacity. The Company enjoys a monopoly in its trams but has the responsibility of maintaining a service in all conditions. So far as buses are concerned there is no legal monopoly, though in the circumstances it is not a matter for surprise that there is no active competitor at present. But even as a monopoly the Company is under the primary obligation of providing the best service compatible with a reasonable profit. The public will certainly be concerned that the service is maintained even when profits diminish. To impose a bonus on the Company is to promote a clash of interests between the employees and the public. A certain degree of divergence is unavoidable, but whereas proper wages, suitable conditions and adequate dearness allowance are prior claims on the Company's revenue, I do not suppose that the suggestion that the continuance of the bonus in leaner years should take precedence over the maintenance of the full service would be at all popular. I consider that of necessity an Adjudicator must confine his recommendations to matters of obligation and necessity and leave the question of windfalls and bakshish to private arrangement. I accordingly reject this demand."

(Order No. S 68/9-L./45 9-8-1946).

THE EAST INDIA TRAMWAY COMPANY LIMITED, KARACHI,

AND

THE KARACHI TRAMWAY WORKERS' UNION, KARACHI

Adjudicator:—The Honourable Mr. Justice G. B. Constantine,
I.C.S., Judge of the Chief Court.

Demands and Awards

1. The Company should give up the policy of demoting the bus drivers without justification.

The demand not being pressed by the Union, no order was thought necessary.

2. (a) Workers on Company's leave day should be paid 2/26th or at least 1/20th of their monthly pay, instead of 1/30th;

(b) they should be paid 1/30th of the dearness allowance also for that day.

(a) rejected, as the Traffic Staff whom the matter concerned had been customarily given only 2 days' leave, and it was only latterly that they had been favoured with 2 more, which, therefore should not be considered as regular "Company's leave days" demanding greater payment than work days.

(b) granted.

3. The Company did not maintain and repair the buses properly; they should be made to do so.

The demand was not pressed; in fact, owing to war-time difficulties in getting material, the matter was out of the Company's control.

4. The Workshopmen i.e. the employees subject to the Factories Act, now that they were paid, as the result of Mr. Le Mesurier's Adjudication, monthly instead of weekly, should be paid 4/26th extra per month, that is to say, for the four weekly days of rest.

Rejected; the number of weekly rest days had been taken into account when converting daily rates to monthly rates.

5. The Inspectors should be permitted to join the workers' Union.

Not pressed, in view of the fact that the Company had agreed to recognize a separate Inspector's Union, having objected thus far, as a point of discipline, to allowing them to join their subordinates on an equal footing in the workers' Union.

6. Extra remuneration should be given to traffic clerks for handling cash.

Granted Rs. 3/- extra per month as cash allowance.

7. The Company should pay a bonus in respect of the financial year 1945-46.

Nothing could be decided as the balance-sheet for the year was not yet ready. If the Company should declare a dividend of more than 7 per cent., the Union was at liberty to raise the demand again.

8. Full winter uniform should be supplied to starters, Chowkidars, oilmen, dropgatemmen, linemen and others who had to attend duty regularly early in the morning or late at night in winter.

Granted. The men were to be supplied with long warm trousers and an overcoat once a year.

9. Like conductors, Traffic Clerks and conductors acting as Traffic Clerks, should be supplied with a pair of shoes every 15 months.

Granted, even to chowkidars and peons, to avoid making invidious distinction.

10. A gratuity should be paid to those workers who had not joined the Provident Fund.

No order was made as the Union's spokesman could not produce any such workers, the demand being considered as a purely academic one.

11. Oilmen and dropgatemmen should be given extra remuneration in view of the fact that they had to travel to join their duties.

The demand appeared to the Adjudicator as having been raised through a misunderstanding. Nor did the Union press it.

12. The practice of giving assistance to conductors at important junctions by means of spare conductors should be restored.

Rejected. The system was tried and, in the opinion of the Management, had proved a failure.

13. The Inspectors promoted from conductors in August, should also be given Inspectors' white uniforms, like the regularly promoted Inspectors, before May 1st, according to the Company's yearly practice.

Rejected, as it would mean asking the Company to go against its practice and supply the white uniform to people promoted to Inspectors any time during the year.

14. The Company should cease to detail Traffic Clerks to act as Inspectors.

Granted in a limited fashion, namely, that Traffic Clerks appointed to act as Inspectors, should be extra to the establishment of Inspectors; they should not displace conductors-promoted Inspectors (who were often their seniors in service) and make them go back to their regular post of conductor, and thereby lose the benefit of promotion, temporary though it be.

15. The Company should give Mr. Lalkhan, a bus driver, post of bus conductor, as the former post aggravated his suffering from asthma.

Not pressed by the Union, having arrived at a compromise with the Company whereby the latter had offered to make Mr. Lalkhan Master Driver.

16. Bus drivers should be recruited according to seniority from tram drivers, tram drivers and conductors from among the lower grades already in service, in preference to outsiders; and a tribu-

nal consisting of representatives of the Management and the Union, presided over by a nominee of Government, should consider the case of any man passed-over, if the Union appealed on his behalf to the Tribunal.

The demand was dropped; in fact, the Company did, in actual practice, recognize the seniority and the claims of the lower grade staff with regard to fitness.

17. The item had been dropped before Adjudication was ordered.

18. Conductors and drivers whose duty ended after trams had stopped at night, should be allowed to travel by bus between the Regal Cinema and the City.

Granted partially, that is to say, in the case of those men only who came off duty after 11 o'clock; provided (1) they did not board a bus until it left and (2) it had sitting room. The Company was recommended to provide a special staff bus in such a case.

19. Linemen should be given turbans or other headgear.

Rejected, as in these days a headgear was not essential, many people being found working without one.

20. The two conductors Sarupchand and Madansing, should be restored to their position as acting Inspectors.

Of these, Sarupchand had already been so restored; in the case of Madansing, the demand was rejected as, during his presence as a witness before the Adjudicator, the latter saw nothing in the man to make the Adjudicator consider that the Company's discretion had not been exercised rightly.

21. To fix the number of years after which the Company was bound to pay full amount of its contribution to the Provident Fund to a workman leaving its services; and to decide whether the Company had any power to alter the rules of the Provident Fund.

The following substitutions were ordered in the Rules of the Company's Provident Fund (the original terms are shown in brackets):

In Rule 8: "One fourth (one eighth) of the monthly contribution of subscribers who had 'more than five years and less than seven' (less than five) years' service.

One half (one fourth) of the monthly contribution of subscribers who had more than seven (five) and less than ten years' service.

Three-fourths (one-half) of the monthly contribution of subscribers who had more than ten and less than fifteen years of service.

(The stage 15-19 years in the original, was dropped).

The whole of the monthly contribution of subscribers who had

more than fifteen (nineteen) years of service."

On the completion of 7 (10) years' service a further contribution equal to the Company's contribution, with the interest accrued thereon, as shown in the books of the Fund, standing to the credit of that subscriber.

On the completion of 10 (15) years' service a further contribution equal to half of the Company's contribution, with the interest accrued thereon, as shewn in the books of the Fund, standing to the credit of that subscriber.

On the completion of 15 (19) years' service a further contribution equal to one-third of the Company's contribution, with the interest accrued thereon, as shewn in the books of the Fund, standing to the credit of that subscriber.

In rule 13 dealing with going out of service either through dismissal or voluntarily, the words "or shall voluntarily leave the service of the Company (otherwise than by reason of ill-health or other avoidable cause) before the expiration of his term of service" should be deleted.

22. One month's notice or pay in lieu of notice should be given to employees discharged by the Company.

Rejected. No alteration was necessary in the Company's practice of giving fourteen days' notice or pay in lieu of notice.

23. The Bus drivers' allowance should be increased.

Rejected. Bombay rates were not a safe comparison for Karachi. Nor was it desirable that a piecemeal increase of pay should be made for a particular category of workers upon considerations which applied to all the workers.

The Company's Demands and Awards thereon

24. The existing Traffic Clerks should be allowed to be replaced by more capable men.

Rejected. The Traffic Clerks were recruited from conductors and it was very desirable to maintain that avenue of promotion in spite of their making mistakes in their work from time to time.

25. The Management should be at liberty to use its sole discretion whether to appoint Inspectors from existing conductors or by direct recruitment from men not already in the employ of the Company.

Rejected. The contention that Inspectors promoted from conductors were liable to identify themselves with the latter and consequently show slackness in supervision was not a sound one; even a direct recruit might prove slack.

26. The management should be at liberty to terminate inefficient members of the workshop staff, itself being the sole arbiter, and the Union was to be barred from raising the question

of such termination of service.

Rejected. If suitable Standing Orders were framed and if full records of conduct were kept there would be little conflict between the Union and the Company on this ground.

27. The Company should be at liberty to return to the scale of payment laid down in the Workmen's Compensation Act in respect of injured workmen.

Granted in a modified form, viz., that if a man was absent for three days or less owing to an accident, then no wages were payable, but if he was absent more than three days then he would be paid full pay and allowance for the days absent including the first three days, subject of course to the Company's Doctor's certificate.

(Order No. 828-M/42 26-1-1943)

SIND FLOUR MILLS, KARACHI.

AND

THEIR EMPLOYEES

Adjudicator:—A. P. LeMesurier I.C.S., Commissioner of Labour,
Sind.

Demands and Awards

(1) The minimum wages of the workmen should be fixed at Rs. 32 instead of Rs. 29 as then prevailing.

Rejected, as it was held to have been the subject of a previous adjudication, as also in view of the previous Adjudicator's letter on same in September 1941.

(2) If a permanent appointment fell vacant by retirement or death of a workman, it should be filled up immediately; and the six appointments already lying vacant should be filled up immediately.

Substantially granted.

(3) Those workmen who had not been given uniforms should be given them forthwith.

No orders were passed, as the Adjudicator considered himself not obliged to do so, observing: "The Factory Act lays down what workers shall be provided with uniforms. Whether other concerns give uniforms to particular workmen is surely a matter between the workmen and the Company. It is not a matter of

public concern or the workmen's fundamental rights. Beyond requesting the Chief Inspector of Factories to confirm that uniforms have been provided in strict conformity with the Factory Act, I decline to pass any order."

(4) The ex-Engineer of the Mill, Mr. Shaikh Muhammad, should be paid gratuity for his full service, at the rate of one month per year, plus his Provident Fund amount and his salary up to 30th June, 1942.

The Company was directed to pay Mr. Shaikh Rs. 5,500, as was done by the previous Adjudicator. The present adjudicator observed: "This was hardly a suitable matter for adjudication in a dispute between the union and the Mills. From the pay quoted (by Mr. Shaikh) viz., Rs. 247-8-0 p.m., it is clear that his membership of the Union was something of an anomaly. I cannot see how Mr. Shaikh's gratuity on discharge is a question which affects the condition of the body of the labourers in the mill. He was in fact more in the position of an officer or an executive on contract . . . If he insists on taking his stand as a member of the Union and as an ordinary employee, I must declare that my predecessor's award of the 19th June applies to him."

(5) The drivers and fitters should be given an increment of Rs. 5 instead of Rs. 2.

An increment of Rs. 3/- was granted as a compromise.

(6) The periods of service, etc., of fifteen of the workmen which had not been entered correctly should now be correctly recorded.

The question was not resolved by the Adjudicator. Instead, he asked the Mills to produce the necessary books before a Committee composed of one nominee of the Company and one nominee of the Union, the Committee then to report to the Commissioner of Labour whose decision was to be deemed as final.

(7) Free medical treatment should be given to the workmen of the Mill.

The demand was not pressed, and the Adjudicator did not propose to pass any order thereon. He did not see what, in the way of medical attention, a small undertaking of that size—employing not more than 150 people—could do.

(8) The Provident Fund account books should be given to the workmen.

The demand did not arise, as the Provident Fund draft rules had not yet been approved by the Commissioner of Income-tax.

(9) The skilled workmen in the Mill Department, who did not get Sunday allowance, should be given the same as the Engine staff were.

Rejected. The Adjudicator observed: "I reaffirm my predecessor's decision in the interests of continuity. Moreover I approve it in principle. The fact that the Engine Room Staff has secured better terms in an agreement is not a sufficient reason for placing an additional burden on the Mill through adjudication."

(10) Receipts for loan deductions should be passed at the time when deductions were made.

Rejected, the Adjudicator seeing no occasion to go beyond asking the Chief Inspector of Factories to confirm the statement in his letter that the provisions of the Payment of Wages Act were observed.

(11) War allowance.

The Adjudicator merely suggested that some dearness allowance having been already given, bringing the concern in line with the other Mills of Karachi, the same should be paid from the date on which it was paid by the latter.

In his concluding remarks the Adjudicator observed: "There is little doubt that Mill management was endeavouring to be rid of certain workers whom it regarded as troublesome. I am prepared to concede that the Makrani element is difficult to handle. There is also a section of the Mills employees which is content, or at any rate not actively discontent. But having said so much, I am not prepared to approve of the methods which the Management has so far adopted even while adjudication was in progress. I place these views on record, because I see little prospect of settled conditions so long as the Management believes that astuteness is an efficient substitute for straightforward dealing. At the same time I take this opportunity of suggesting to the Union that adjudication is not intended to provide a means of obtaining concessions which could not be obtained by normal methods. A real effort must be made to distinguish between urgent demands and matters for which negotiations can pursue a normal course."

(Order No. 793-M/42 S-2-1943)

DALMIA CEMENT LTD.

AND

DALMIA CEMENT FACTORY WORKER'S UNION

Adjudicator:—A. P. LeMesurier I.C.S., Commissioner of Labour,
Sind.

Demands and Awards

(1) Increment according to the grade fixed be immediately given to all the workers to whom it is due.

No order was passed, but the Company was directed to submit their schedules of pay showing minimum and maximum pay figures of each grade and the standard increment granted in normal

years, the Adjudicator observing: "when a quasi-automatic increment is claimed, Government service is usually held up as the example. Actually the automatic accrual of increment in Government service is more a natural development of the vastness and impersonal character of the machine than deliberate design. But in any case as yet industry as a whole does not concede the automatic increment. Among other reasons are the increasing liability on the finances of the concern which this creates and the relatively limited resources with which the concern can meet it and the fact that industry claims the right to pay a man what he is worth to the business. I am not prepared to introduce a new principle in this individual adjudication. I will merely enunciate that the discretion of the management is subject to the principle that if a worker is worth retaining he is entitled to an increase in pay after serving a substantial time with the firm."

(2) Two months' salary as profit bonus be given to all including daily wage workers.

Rejected, the Adjudicator observing: "Bonuses have been awarded in adjudication in Bombay. But I think that this demand in the present circumstances must be unusual. The relations between the Company and the workers have been a history of constant strife. Production has been far below capacity, though for this I would not place the sole responsibility on the workers. A bonus implies a reward for diligent service. In this case the sole ground for the claim is a share of the profits. But profit-sharing implies a share of the risks of losses. I am unable to support this demand for casual profit bonus."

(3) All workers on machinery be given summer and winter uniforms.

The matter was ordered to be referred to the Chief Commissioner of Factories through the Commissioner of Labour.

(4) Increasing privilege leave by 5 days, thereby making it 30 days per year.

Rejected, in view of the privilege of 3 years' accumulation attached to the leave of 25 days a year, conceding, however, that the 4 days' 'festival' leave should not be included in the 25 days, as hitherto, unless it was taken during privilege leave.

(5) All temporary workers be made permanent if they had completed 6 months in service and should have all the privileges of permanent men.

No direct order was made, but the Company was ordered to supply the Commissioner of labour with revised lists of temporary and permanent workers, with reasons for withholding confirmation, and to abide by the Commissioner's advice.

(6) A. R. P. Light shades be provided by the Company for the workers' quarters free of charge, and lights should be allowed all night, as stoppage of lights in the quarters after 10 o'clock in the night was seriously harming the workers especially when there was illness.

No order was made.

(7) Workers imprisoned under the Defence of India Act and Rules be taken back on the expiry of the term of their imprisonment, failing that, 6 months' salary of the term of imprisonment, two months' bonus salary and one month's notice salary be paid to them.

Rejected.

(8) Workers' welfare funds be handed over to the Union's control, with conditions attached, if necessary, about the manner in which the money was to be spent.

Rejected as premature, but the Company was directed to deposit the draft rules with the Commissioner for Labour for scrutiny and advice before getting them approved.

(9) Appointing a joint council of representatives of the Union and the Company to settle all disputes after the above demands were conceded, and referring questions of dismissal to the above council. In case of disagreement a Government official should decide as the sole arbitrator and his decision should be binding on both the parties.

Rejected as premature, with the following observations: "In the present circumstances there is not the smallest hope of such a Committee's functioning successfully and the result would be that each matter would invariably have to be referred to Government official mentioned in this demand. It is useless for the Adjudicator to order any alternative arrangement at this stage. But it is suggested that a labour advisory board might be considered, consisting of the Labour Officer as the Secretary and representatives of the Union and the non-Union labour. This board or committee might meet at least once in every quarter and be presided over by the resident manager. . . . The Board or committee, which I have suggested, should not have any executive function, since I am convinced that that will not have any beneficial effect. The function of the Board will be advisory and will ensure that grievances are brought to the notice of the 'Manager'. The success or failure of this body depends on whether or not the relations between the management and the workers improve."

(10) Increase in war allowance by 25 per cent. of the present salary.

It was directed that groups a, b, c and d be merged into one group and be paid Rs. 9/- per mensem according to the period for which they received their basic pay. The other grades were left undisturbed.

(Order No. S.—68/3-M/45 13-10-1945)

- (i) THE TEXAS COMPANY (CHINA) LTD. BAREL PLANT, KARACHI.,
- (ii) THE STANDARD VACUUM OIL CO., BARREL PLANT, KARACHI.

AND

THEIR EMPLOYEES IN THE FACTORY

Adjudicator:—Mr. Siraj-ul-Haq A. Hassanali.

Demands and Awards

(1) Fifteen days' yearly privilege leave should be given to employees. (2) Seven days' casual leave should be introduced, and (3) Workers should be granted excess leave of one month in a year without pay.

Rejected, as the leave actually granted under the standing orders by the above Companies was much more and beneficial than that demanded by the workers.

(4) Uniforms should be given to the workers.

Rejected, as workers needed no uniforms while at work.

(5) Provident Fund scheme should be introduced.

Rejected, as the rules regarding pension and death benefit schemes and special Terminal allowance of Standard Vacuum Oil Company and Death and Disability rules of Texas Company were more beneficial.

(6) At least one month's pay should be given as bonus.

Rejected. Bonus was held as free and voluntary gift and could not be enforced. Besides it was not proved that the Companies had made profits.

(7) No worker should be discharged without 15 days' notice or 15 days' wages in lieu of notice.

The demand was dropped by the workers as being already provided for in the Standing Orders.

(8) Union of workers should be recognized.

On the recognition of the Union the award was as follows: "Mr. Fatechand, Advocate, on this point contends that it is outside the purview of the jurisdiction of the adjudicator, for recognition of Union is not a trade dispute. I agree and decide accordingly (vide section 2, clause J of the Trade Dispute Act of 1929 which defines 'TRADE DISPUTE'). Paras 1 and 3 of the reference clearly show that I have only to decide Trade disputes between the parties. In my opinion recognition of Union is not a Trade Dispute. I therefore cannot adjudicate on this point."

(9) One Mr. Balkrishna, a worker of the Texas Company, who

was wrongfully dismissed, should be re-instated and his wages paid for the period from 17th May 1945 to the date of his re-instatement.

Granted. It was held that Balkrishna was discharged without any just or reasonable cause and wages from the date of discharge to the date of re-instatement were ordered to be paid.

(Sind Government Gazette, Extra, part I pages 194-213 8-3-1947)

(Sind Secretariat March 8, No. S—, 68/13147)

THREE OIL CONCERNS AT KARACHI

AND

THEIR WORKERS

Adjudicator:—Mr. C. M. Lobo, Retired judge of the Chief Court of Sind.

(A) *Standard Vacuum oil Company—Demands and Awards*

- (i) Dearness allowance announced by the Company in August 46, should be with effect from May 46, as in the case of clerks.

Granted. There was nothing on record to support the Company's contention that while the dearness allowance to the labour had been revised from time to time the same had not been done to the same extent in regard to the clerical staff. It was therefore held that there was no good reason for differentiating between clerical and labour staff, and that the dearness allowance of Rs. 28/- sanctioned should be with effect from May 1946, for workers also.

- (ii) All workers (paid on daily rate basis) should be put on permanent list, paid monthly, and should enjoy all the privileges enjoyed by the monthly salaried staff.

By comparison with other employees in the city it was found that in point of total earnings the lowest paid daily rated worker in the oil companies was no worse off than majority of monthly rated workers in Karachi. In fact, he came next after the two best paid workers in all the labour employing concerns. The argument that the daily rated workers were exposed to insecurity owing to their being liable to be laid off was not held to have much force in the case of these companies as there had been no occasion during 35 to 40 years to resort to this measure. The only disadvantage the daily rated employees suffered from was that they were entitled only to 14 days' notice of discharge as against a month's notice allowed to the monthly rated. It was therefore awarded that the daily rated workers should be entitled to a month's

notice before discharge. The demand for being put on the permanent list was rejected.

(iii) & (iv) Compensatory allowance and quarters or rent allowance to all workers; or wage increase in lieu of both.

As the total monthly earnings of a lowest paid worker in this concern were better than those of many other concerns, it was held that there was no case for additional remuneration on this ground. However, scope for rise in wages in other concerns was much better and from this point of view some amelioration of conditions was warranted. It was therefore awarded that a house-rent allowance of Rs. 4/- should be given to those who did not get house rent or allowance.

(v) One month's leave with pay in addition to existing 10 day's leave with pay, 7 festival holidays with pay, 7 day's sick leave on full pay and further 14 day's on half pay to those with more than 6 months' and less than 10 years' service.

It was contended that a good proportion of workers came from distant places and going and coming alone involved 8 to 10 days' travel. The leave provided for was therefore inadequate. Besides several other concerns in the city granted better leave facilities. The Adjudicator did not see any good reason for interfering with existing rules and rejected the demand. He observed: "I think it is fair to say that if workers find it necessary and advantageous to come to large cities for work hundreds of miles away from their native place they undoubtedly anticipate separation from their families for considerable periods of time. They cannot in reason expect to visit their native place except occasionally, and it appears to me that the provisions for accumulation of leave with pay provided for in the standing orders enables a careful worker to accumulate in a period of three years at least $1\frac{1}{2}$ months of leave on full pay. Under the standing orders he is entitled to add to this two months' further leave without pay."

(vi) Two uniforms per year.

The representative of the Standard Vacuum oil Company stated. "We supply uniforms to those employees who come in contact with the public, such as drivers, chowkidars, and peons, to whom uniforms (coat and trousers) are issued every three years. They are collected at the end of each cold weather and sent to the cleaners for cleaning. When cleaned they are repaired and stored for issue the following cold season. Worn-out uniforms are scrapped and new ones issued. Summer uniforms are issued every second year. At present, owing to shortage of cloth, a summer uniform consists of 2 shirts and 2 trousers. Regular uniforms for summer, to which we will revert when cloth is available, consist of coat, trousers, shirt and turban (to watchmen and chowkidars). Drivers and peons get coats, trousers and shirts."

The demand was rejected, the Adjudicator observing: "In my opinion this demand for uniforms for all workers is not a justifiable

demand. A uniform does not mean clothing and is ordinarily intended to be worn by those members of an establishment who come in contact with the public, in order to identify them as members of a particular establishment. Reading the evidence on this question as a whole, it is quite clear to me that in every case where employers provide uniform it is for this purpose and not for the purpose of supplementing the worker's wardrobe''.

The Company had a pension scheme and the amount of pension was 1¼% per annum of the total salary earned during the service. There was also a Death Benefit Scheme which applied to all the workers. The beneficiary got allowance equivalent to one month's salary for each year of service subject to a maximum of 12 months. The salary was the last drawn salary. In the case of a retired workman dying, the beneficiary got 12 months' pension. There was also a scheme of Special Termination Allowance which entitled a workman to get one month's pay last drawn, for each year of service, subject to a maximum of 12 months' pay. The Adjudicator considered these provisions as satisfactory and rejected the demand.

(viii) Coats, Socks and gloves for chowkidars.

The Demand for socks and gloves was dropped. The Company agreed to supply full uniform, including coats for summer, when cloth became available. For winter, chowkidars wanted an overcoat owing to extreme cold, and the Adjudicator granted same

(ix) Recognition of Union.

It was held that the question of Union was not a trade dispute in terms of Sec. 2 (J) of the Trade Disputes Act 1929. The Adjudicator found that the Standard Vacuum Oil Company Workers' Union was truly representative of workers and was properly constituted and registered. However, pending legislation about statutory recognition of Trade Unions, the Adjudicator only recommended that the union might be recognised.

(B) *Burmah Shell Company—Demands and Awards*

(i) Workers with six months' service should be put on permanent list and their grades of pay fixed.

Rejected for the reasons stated in A (ii) above.

(ii) One month's leave with pay.

Rejected for the reasons stated in A (v) above.

(iii) Uniform for all workmen.

Rejected for the reasons stated in A (vi) above.

(iv) Double wages for work on Sundays.

Sunday was, as a rule, an off-day and it was only in exceptional circumstances that men were called out for work on Sunday. They were paid 1½ times the daily wage and were given an off-day next week. The Adjudicator considered this as fair and did not suggest any change.

(v) Quarters for workers and, pending construction, quarter allowance.

Granted Rs. 4/- per month to those who were not provided with quarters.

(vi) All important holidays to chowkidars.

Rejected. In practice Hindu chowkidars worked on Mohomedan holidays and vice versa and this was held as enough and equitable.

(vii) Supply of summer uniform to chowkidars, and uniform to be the property of chowkidars.

The uniforms as supplied were held as sufficient. The uniform being a badge of service and not clothing, the workman had no right to claim it as part of his wardrobe. The demand was rejected.

(viii) Warm coats to chowkidars in winter.

Granted.

(ix) Double wages for night work to Khalasis.

If night work was overtime it was paid at double rates, and if it was in substitution of day work, it was paid at ordinary rate. No change was awarded.

(x) Overtime payment in lieu of off-day.

Rejected.

(xi) Carpenters to be provided with tools or allowance in lieu thereof.

The company was prepared to lend tools to carpenters but they usually preferred to use their own tools. No order was therefore passed.

(xii) Abandonment of the system of discontinuing workers after three months' work and re-employing them as freshers after some time.

The practice was already stopped.

(xiii) All genuine cases of overstay of leave due to sickness, etc., should be condoned.

It was found that in all bonafide cases of overstay of leave, the period overstayed was condoned. No award was therefore made.

(xiv) Full payment of wages during disablement by injury while on duty.

Demand was dropped.

(xv) Notices of discharge on certain workers should be withdrawn.

Rejected, as retrenchment was found to have been carried out on reasonable and equitable basis.

(xvi) (a) Mauripur staff should be on par with Keamari and Head-office staff in matters of summer uniform; (b) The uniforms should be the property of the workers.

(a) This was already so. (b) Rejected.

(xvii) Sweepers working at Mauripur should be made permanent.

' According to Company's rule, all were made permanent after 3 months' probation. In view of this no order was passed.

(xviii) Starting salary of Rs. 60/- to drivers.

Rejected, holding that Rs. 45/- as starting pay with Rs. 20/- as dearness allowance was fair.

(xix) Jamadars and coolies at Mauripur should get Rs. 35/- and Rs. 30/- respectively per month.

Rejected, as the existing wages of these men were fair.

(xx) Benefit of Provident Fund to be given to workers after 3 months' service at Mauripur.

This was already so.

(xxi) Railway fare to workers when on leave and proceeding to their native place.

Rejected. It was held that no case was made out for grant of travelling allowance.

(xxii) Summary dismissal of workers should be discontinued.

Demand was dropped.

(xxiii) Restoration of the cut in house-rent allowance.

No order was made in view of Award on No. 5 above.

(xxiv) Reinstatement of two workers.

Rejected, as the dismissals were found in order.

(xxv) Dearness allowance as in the case of clerical staff.

Granted.

(xxvi) Recognition of Union.

Recognition was recommended.

(C) *M/s Callex (India) Ltd.,—Demands and Awards*

(i) Workers with six months' continuous service should be put on permanent establishment and their grades be fixed.

Granted as per B (i) above.

(ii) One month's leave with pay.

Rejected.

(iii) Uniform to all employees.

Awarded as per B (iv) above.

(iv) Double wages for Sundays.

Rejected.

(v) Quarters or allowance in lieu thereof pending construction.

Granted Rs. 4/- as allowance.

(vi) Overstay of leave due to bonafide causes should be condoned.

Awarded as per B (xiii).

(vii) Pay for the period of strike.

As the strike was not justifiable, workers were not entitled to pay for the strike period.

(viii) Reinstatement of a certain motor-driver.

The driver was engaged on probation. He was found rash and his services were terminated, as they could be, under the contract. The demand was rejected.

(ix) Recognition of Union.

Recommended.

(x) Provident Fund Similar to that of Burmah Shell Co.

The Company had already decided on starting a Provident Fund.

(xi) Dearness allowance with retrospective effect as in the case of clerical staff.

Granted.

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(Order No. 3543 (L)/XVIII—254 (L)/43, Lucknow, 23-12-1944)

U. P. ELECTRIC SUPPLY CO. LTD., ALLAHABAD AND LUCKNOW

AND

THEIR EMPLOYEES

Adjudicator:—J. E. Pedley, Labour Commissioner, U. P.

Demand and Award

Bonus as a share of extra profits made by the Company during the year ending March 1944.

The Adjudicator, finding from the audited balance sheets that the profits for the year were less than in previous years and that no appropriations were made even for reserve funds, rejected the demand. The fact of large reserves having been made when profits had been large was no ground, said he, for granting bonus relating to the profits of a subsequent year. "It has been held by the Industrial Court, Bombay", observed the Adjudicator, "that where extra or unusual profits cannot be proved to have been made, the claim for a bonus falls to the ground."

(No. 1538 (L)XVIII—131 (L)/46, Lucknow, 8-6-1946)

U. P. ELECTRIC SUPPLY COMPANY LTD., LUCKNOW

AND

THEIR EMPLOYEES

Adjudicator:—K. R. Malcolm, Labour Commissioner, U. P.

Demands and Awards

In the beginning, an objection was raised by the Company that the union was no longer a registered union, as its registration had been cancelled, and that therefore it could not legally represent the employees. And further that the Union's letter could not terminate the previous awards and Government orders on them. This objection was held to be in the nature of an objection against the

Government order itself. The Adjudicator was, however, bound by that order and, having been ordered, he had to proceed. The 1943 order was enforced for the duration of war and, the emergency limiting the duration of the war having been over by March 1946, the award had automatically terminated, even if it were held that the notice by the union did not terminate the award.

(i) Revision of the scale of dearness allowance.

The existing scale was fixed in 1943. The employees demanded dearness allowance on the Textile scale, but the Adjudicator found that the Company could not pay the same as it was in a different position. He awarded that the 1943 award scale should continue, but that it should be linked to the general cost of living index number, Cawnpore.

(ii) Bonus for 1945.

Rejected, in the absence of even an implied contract.

(iii) Revision of the grades of pay of sub-station and switch-board attendants.

Granted.

(iv) Reinstatement of Matai, an employee.

Matai, being held by the Police authorities who had investigated the charge of theft against him, as having connived at a theft, was dismissed by the Company on the request made by the police for departmental action. In view of this, the demand was rejected.

(v) Reinstatement of Gangooli, an employee of the Company.

The Company informed that Gangooli was still in their service. No order was therefore necessary.

*(Government of the United Provinces, Labour Department
No. 1912 (L)/XVIII—131 (L)/46 Dated, Lucknow,
12-3-1947)*

U. P. ELECTRIC SUPPLY CO. LTD., LUCKNOW

AND

THEIR EMPLOYEES

Adjudicator:—Mr. H. C. Joshi, Conciliation officer, U. P.

Demands and Awards

An employee named Matai, who was alleged to have been dismissed, after 20 years of service, for 'negligent conduct', should be given his gratuity.

The Employers refused to pay it on the ground that the gratuity scheme provided gratuity after retirement, and retirement was defined as 'termination of service by reason other than dismissal due to misconduct, neglect, etc.'

Except on two occasions in the last year, Matai's record was clean. The circumstances leading to dismissal created strong suspicion, at the most, but no conclusive proof of an offence. Under the circumstances, the Adjudicator held that the withholding of payment of gratuity to Matai was not justified in equity and that the interpretation put by the employers on the clause defining 'retirement' ignored the very spirit underlying the scheme.

Matai was awarded his gratuity.

(No. 3041 (L)/XVIII—1966 (L)/46; Lucknow, 10-8-1946)

U. P. ELECTRIC SUPPLY CO. LTD., ALLAHABAD

AND

THEIR EMPLOYEES

Adjudicator:—B. B. Singh, Labour Commissioner, U. P.

Demands and Awards

(i) Bonus, as a share of profits, for 1945.

In 1943, claim for bonus was disallowed by the then Adjudicator on the ground that accounts had long been closed. In 1944, in a new adjudication, bonus claim was rejected as the company had not made any excessive profits. In the present dispute also, it was held that no case was made out for grant of bonus. It was observed: "The only criterion for the award of bonus should, in my opinion, be whether there is any explicit or implied contract between the Company and its employees for the payment of bonus for services rendered in the past or as reward for good work in future or on a profit-sharing basis. This view was taken also by my predecessor in his award dated 10th April, 1946, on the issue of bonus in the sister concern of U. P. Electric Supply Company Limited, Lucknow, as enforced in G. O. No. 1538 (L)/XVIII-131 (L)/46, dated June 8, 1946. There is admittedly no case of explicit contract for payment of bonus here. The Company have never paid any bonus to its inferior class of employees in the past. The analogy of other local firms who have paid bonus does not apply: simply because the Company has paid bonus to its superior

staff, it cannot be inferred that there is an explicit contract for payment of bonus to the inferior class of employees as well. The accounts of the Company do not show any excessive profits."

(ii) War bonus for the war period.

Rejected on the ground that no express or implied contract existed and that there was no proof of excessive profits on the basis of which bonus was demanded.

(iii) Revision of the scale of dearness allowance.

The existing scale was fixed on adjudication in 1943 and it was based on the subsidiary cost of living index number, Cawnpore. The employers, however, did not supply cheap rations which formed an important consideration in the preparation of the subsidiary index number. In view of this the Adjudicator awarded that the scale which was already in force should be linked to the general cost of living index number.

(iv) Revision of the basic wages.

Granted partially in the case of coolies, Assistant linesmen, substation and switch-board attendants (senior and junior).

(v) Recognition to the Electric Workers' Union, Allahabad.

It was held that recognition could not be compelled.

(vi) Revision of the conditions for payment of gratuity.

The Company had already deleted the words 'discretion of the Manager' in the rules, and it met the objection of the employees. The other rules were found in order.

(vii) Revision of the system of granting holidays to different sections of the staff.

The demand related to the running staff only, who did not get 12 days' extra leave for festivals like the other staff. The demand was granted, holding that no invidious distinction should be made in the grant of leave.

(viii) Revision of the system of granting casual leave.

Rejected, as the existing rules were quite fair.

(ix) Revision of the practice of recording overtime in the Mains department.

According to the existing practice, if a worker worked continuously for 8 to 10 hours after 5 p.m. the hours of overtime up to midnight were recorded under one date and hours after midnight were recorded under the following date, which carried a lower overtime rate. It was contended that, the work being continuous, overtime should be paid at the same rate as that for the earlier period. This was agreed to by the Company.

(x) Revision of the system of granting sick leave.

The Company insisted on production of medical certificate from a registered medical practitioner before grant of leave. The Adjudicator suggested that in cases of village-employees certificates from registered Vaid or Hakim may also be accepted.

(xi) Abolition of the system of obtaining coal coolies through a contractor.

No change was recommended.

- (xii) Grant of dearness allowance to two employees for the period of suspension.

As a special case, the Company agreed to grant dearness allowance during the period of suspension though its rules provided grant of dearness allowance for working days only.

- (xiii) No transfer from one department to another without employee's consent.

The Company usually did not take coolie work from persons not engaged in manual work. The Adjudicator suggested that if there was infringement of this rule, the matter should be referred to the Commissioner in Conciliation proceedings.

(Order No. 2434 (L)/XVIII-210 (L)/46, Lucknow 10-8-1946)

UPPER GANGES VALLEY ELECTRIC SUPPLY CO., LTD., MORADABAD

AND

THEIR EMPLOYEES

Adjudicator:—B. B. Singh, I. C. S., Labour Commissioner, U. P.

Demands and Awards

The preliminary objection that the strike notice did not include the signatures of any of the employees working in the 22 substations of the company outside Moradabad and that therefore these proceedings should govern the employees at Moradabad only, was held to have little force, because the order referring to this dispute clearly mentioned all the employees irrespective of the station where they were working. Besides, some issues in the dispute particularly referred to rural employees. Hence it was held that the award should cover all the employees at all the stations.

1. Revision of basic wages.

The company had altogether 90 men, and the demand related to the wages of (i) Lines men (ii) Assistant lines men, (iii) Coolies and (iv) Telephone attendants. After considering the prevailing scales in similar concerns, and the earnings of casual labour, the Adjudicator awarded some increases in the basic salaries and grades.

2. Revision of scale of dearness allowance.

Awarded that the scale prevailing in the Electric Supply Company at Lucknow, should be followed as the cost of living at Moradabad was practically the same.

3. Revision of the system of giving holidays to different sections.

No increase in the existing leave facilities, viz., medical leave for 15 days on full pay and 15 days on half pay, privilege leave of 15 days, and special privilege leave every third year to employees over 5 years' service, was sanctioned. Certificates from registered Vaidas or Hakims should be accepted from rural areas.

4. Revision of the system of granting leave.

No change was suggested in the company's practice of not granting leave without providing for relief. It was however suggested that the applicant should be informed whether or not his leave was sanctioned.

5. Travelling allowance for the employee's family on the occasion of transfer.

It was held that the present system of travelling allowance and daily allowance to the employees was sufficient.

6. House rent to employees.

This demand was made for the city employees under the impression that quarters were provided free of charge to rural employees. This was not however the case. The rural employees were allowed to sleep in company's offices for their (employees') convenience. No house rent was therefore awarded.

7. Revision of the working hours of the staff in rural areas.

It was found that the work in rural areas was not heavy, nor the hours of work long. No revision was therefore sanctioned.

8. Quarters for linesmen and assistant linesmen at Aroha.

No change was made in the existing arrangements.

9. Compulsory scheme of life insurance.

The company had a gratuity scheme which provided better insurance than one given by the provident fund scheme. No change was therefore suggested.

10. Compulsory contribution to Provident Fund.

No change was suggested in the existing system according to which 6½% contribution was to be made by the employees drawing up to Rs. 300/- and 5% above that.

11. Free supply of electricity for private consumption by employees.

Rejected. It was however recommended that the company should arrange for a light in their offices in rural areas.

12. Provision of lodging arrangements for relieving staff sent to outstations.

It was suggested that the relieving staff should take over charge immediately, and failing this, the staff should not be charged for using the office for sleeping at night.

(Labour Bulletin Vol. VI, Labour Department, U.P. p. 77-81)

KANPUR ELECTRIC SUPPLY CORPORATION, LTD., KANPUR

AND

THEIR EMPLOYEES

Adjudicator:--Mr. M. Ahsan, Conciliation Officer, U.P.

Demands and Awards

1. A share in the reserves, now that the corporation was about to be wound up.

The Adjudicator observed: "It has been admitted that these reserves have been created out of the yearly profits and the workers have shared a part of these profits in the past. In other words, the sharing in the annual profits (in the form of bonus) has been accepted as a legitimate claim of the workers. The claim has been further strengthened by linking the annual profits with the annual dividend. Since the amount put in the reserve has never so far been paid as dividend, no bonus could have been distributed on that amount. After the winding up of the corporation on 15th September, 1947, the reserves will cease to exist for the purpose they are actually meant and will naturally convert into profits on which, if not awarded, the employees will lose claim."

The Adjudicator therefore awarded that the Employers would distribute 50 per cent. of the reserves, after meeting liabilities, if any, against them, to the employees, proportionately to their length of service and salary, after they had closed their accounts for the current year.

2. A 'farewell bonus'.

The matter did not come within the purview of an 'Industrial dispute.' The Adjudicator, therefore, left it to the good grace of

the employers, who agreed to consider the demand sympathetically.

3. The money in the Provident Fund account of the employees including employers' contribution should be transferred to the successors of the present Managing Agents.

The award was that in case the successors, namely, the Government, refused to take on the Provident Fund, the employees should be paid the entire amount to their credit on the day of transfer, namely, 15th September, 1947; otherwise the only condition should be that no new rules, if framed at all, would adversely affect the employee's entire provident fund on the day of the transfer.

4. Bonus in respect of the current year, up to 15th September. Accepted by the Employers.

(Government of the United Provinces, Labour Department)

No. 2150 (L)/XVIII—197 (L)/46, DATED, LUCKNOW, 21-3-1947

MARTIN AND COMPANY, MANAGING AGENTS OF THE ELECTRIC SUPPLY UNDERTAKINGS AT MEERUT, MUTTRA, MORADABAD, AGRA, BAREILLY, LUCKNOW, BENARES, AND ALLAHABAD

AND

THEIR EMPLOYEES THERE

Adjudication:—Was made by a Board.

Demands and Awards

(Nos. 1, 2, 3, being then under Government consideration, were not published).

4. Payment of difference between the subsidiary Index Rates and the General Index Rates of Dearness allowance, which were higher, from 1st April 1943 to 31st March 1946.

The former, which were lower, had been awarded by Adjudicator Malcolm on the supposition that the concern was going to open a cheap grain shop (which idea never materialized), otherwise he would certainly have awarded the latter, the higher ones, subsequently awarded by Adjudicator Singh.

5. Higher Rate of Dearness Allowance than the General Index Rates.

The difference was, therefore, recommended to be paid by suitable instalments within 3 years.

Rejected, the present allowance being considered as adequate.

6. Recognition of Employees' unions.

One of the objections taken by the Employers was that such unions foment trouble; the Adjudicator held that they rather avoid it by making negotiations smoother. Another objection was that these unions were guided by outsiders; the Adjudicator pointed out that as the employees in their ignorance did not know any law, outsiders were a necessity, as recognized by Government themselves by allowing a maximum of 50% outsiders, in their Trade Disputes Bill.

The Adjudicator recommended recognition of a union if more than 50% of the workers in that particular concern were its members. If there were more than one union in one place the larger one was to be recognized.

7. Revision of grades of pay.

15. Revision of the present system of determining scales of pay on promotion.

The Adjudicator recommended a Committee of 3 to frame a scheme, one representing the Employers, one the Employees, and the third the Government.

8. Revision of conditions of service as laid down in the service book.

The question was considered under the following three demands.

9 (a) Increase in the number of holidays.

The Adjudicator recommended Bank holidays with retention of those already being given by the Company. All holidays were to be whole days.

(b) Dearness allowance should be assessed on over-time payment also, and not merely on the Basic pay.

Granted.

(c) (1) Casual leave of 15 days in a year—rejected.

(2) 15 days' leave for over 6 month's work if the man could be spared—the Adjudicator recommended that arrangements must be made to spare him as soon as possible.

(3) Additional 15 days' leave during the year was optional with the Company—the Adjudicator recommended that the Company must allow it if the man wanted it urgently.

(4) In case it was impossible to give the due 15 days' leave, payment should be made instead, at the man's basic rate of pay.

(5) Pay should not be forfeited for the days of absence after the end of the regular leave.

Granted, provided reasonable cause was shown.

10. Revision of Provident Fund Rules: Provident Fund for even those getting less than Rs. 20 p.m.

Rejected.

11. Revision of Gratuity Rules: dismissal for gross misconduct should forfeit only one year's gratuity. If loss is caused to the Company, it should be recovered from the gratuity. Gratuity scheme should not be given up except with the sanction of the Industries Department or the Labour Commissioner.

12. Company should not employ contractor's labour.

Rejected. The company found that labour cheaper, and stopping it would in no way benefit the workers.

13. Uniforms to certain specified employees.

Granted.

14. In the charge sheet the offence should be specified.

Granted. It was further recommended that if a worker wanted his case to be adjudged by a person who was not a member of the Managing Committee he should be allowed to refer his case to a Court of law or to some suitable person from the Labour Department.

16. Supply of electricity at concession rates.

Granted, at cost price and on payment of half the fitting charges.

17. Free medical facilities.

Granted. For serious cases Government free hospitals were recommended.

18. Increase in Conveyance allowance.

Granted, from Rs. 5 to Rs. 6. No allowance was to be granted for leave days.

19. Permanency after 3 months.

Granted. In computing the 3 months, discontinuance of service should not be taken into consideration.

20. Free quarters.

The Board was not in favour of providing free quarters or any quarters at all. They left the question to be considered by the Government after a few years when the prices and the wages would go down.

(No. 716 (L)/XVIII—20 (L)/45, Lucknow, 21-3-1941)

SWADESHI BIMA COTTON MILLS, ALIGARH

AND

THEIR EMPLOYEES

Adjudicator:—Mr. Abdus Shakur, Labour Officer, U.P.

Issues and Awards

1. Dearness Allowance equal to that given elsewhere in Aligarh district.

In the course of the hearing the demand was modified as: an increase in the rates of dearness allowance if and when the current cost of living was exceeded.

The Adjudicator recommended the Management to adopt the sliding scale, prepared by himself, for paying dearness allowance when the cost of living index figure would go beyond 300 points.

2. Contract of employment—either express or implied, its terms, and whether they were followed.

It was found that no such contract existed.

3. Procedure to be followed by the concern in terminating their employee's services.

The Manager volunteered to adopt, with suitable modification, the standing orders adopted by the Employers' Association of Northern India, Cawnpore.

4. Bonus from the previous year's profits.

It was found that no bonus had ever been given, on the ground that no profits had ever been made. On the same ground there was to be no bonus this year also.

(Order No. 1011 (L)/XVII—47 (L)/45, Lucknow, 14-4-1945)

H. BEVIS & Co.

AND

THEIR EMPLOYEES

Adjudicator.—K. R. Malcolm, Labour Commissioner, U.P.

Demands and Awards

- (i) Dearness allowance on the Textile Mills' scale to all the employees of the Mills.

Awarded that any department which normally operated as part of the textile mills should be paid dearness allowance according to the Textile Mills' scale of the Employers' Association of Northern India—Watch and Ward staff, clerical staff and cartmen all should be paid. Brush and tent departments were not held to be part of the Mills and no change was awarded in their dearness allowance.

- (ii), (iii) and (iv) Payment of difference between the scale of dearness allowance and wages paid by the Mills till then and the scale of dearness allowance and the scale of wages which should have been paid.

It was discovered in June 1944 that the dearness allowance which was being paid was less than what was sanctioned by the Employers' Association. The Mills had promised to pay the difference during previous six months, but the actual payment had been delayed.

After the general strike of textile employees in Cawnpore in 1938, an increase of 12½% was granted on employee's basic earnings. Narain Cotton Mills had sometimes paid, and sometimes not paid, this increase.

The method of payment followed by the mills was very haphazard and it was found practically impossible to calculate the difference due to employees over such a long period. Therefore certain averages were taken by sample method and it was awarded that the Mills should pay their employees difference for the previous three years. In this connection the Adjudicator observed as follows:—

“It is necessary to consider whether compensation to be paid on account of the short-payments was for the whole of this period or only for part of it, and, if so, for what part. An order under Rule 81 of the Defence of India Rules is an executive order of Government and there is no limitation of any period on account of which Government could order compensation to be paid. Under the

ordinary process of law there are two methods by which a factory worker drawing less than Rs. 200/- per mensem can claim arrears of short-payment. First under the payment of Wages Act, which is a criminal enactment, he can make a claim for short-payment up to six months previously and the employer is also liable to penalties under the criminal law. Secondly, he can claim arrears due to him by a suit in the ordinary Civil Courts for which the limitation is three years. If he has instituted proceedings in the Civil Court he cannot claim under the Payment of Wages Act, but proceedings under the Payment of Wages Act are no bar to a claim in the Civil Court. The Government is not bound to observe the limitations imposed under the Civil Law when passing an order under Rule 81 of the Defence of India Rules; but it appears to me that some limit should be observed for the period up to which it is reasonable to order the employer to pay compensation. I consider that as the civil law admits that a claim is alive up to 3 years, this period should be adopted for awarding compensation in the present proceedings. The payment of arrears due on account of short-payment of dear food allowance for the six months from December 1943 to May 1944 was made on the intervention of the Chief Inspector of Factories. The workers themselves first formally demanded the payment of arrears for the whole period since dear food allowance was started, in January 1945. I, therefore, consider that compensation should be paid for the short-payments since January 1942."

(Order No. 2259 (L)/XVIII-190 (L)/45, Dated, Lucknow,
14-8-1945)

BIJLI COTTON MILLS LTD. AND RAMCHANDRA COTTON SPINNING
AND WEAVING MILLS, HATHRAS, DISTRICT ALIGARH.

AND

THEIR EMPLOYEES

Adjudicator:—A. Shakur Esq., Labour Officer, U.P.

Demands and Awards

1. Increase in wages.

The increase was urged on the ground that basic wages had been reduced during the slump period between 1929 and 1934. No evidence was however produced to prove this allegation. The

employees also asked a certain increase in the basic wage of certain weaving workers in Ramchandra Mills.

After considering all the arguments on both the sides, it was held that no case was made out for increase.

2. Increase in dearness allowance.

It was held that the dearness allowance paid by the mills was adequate, only that it should be linked up with the cost of living index. The Adjudicator himself suggested a suitable scale which the mills should adopt for the future.

3. Bonus.

The mills were paying half-yearly bonuses for the past several years. The second instalment in July 1945 was however withheld on the ground that there was reduction in the number of Government orders and the prospects of profits were therefore reduced. As the bonuses were being given for the current year, the Adjudicator held that, in view of the changed circumstances, refusal was fully justified.

4 and 5. Contract of employment governing termination of employment.

The Management of both the mills were advised to adopt the Standing Orders of the Employers' Association of Northern India.

BIJLI COTTON MILLS LTD. AND RAMACHANDRA COTTON SPINNING
AND WEAVING MILLS, HATHRAS, DISTRICT ALIGARH

AND

THEIR EMPLOYEES

Adjudicator:—A. Shakur Esqr., Labour Officer, U. P.

Summary of Demands and Awards

1. (a) General increase in the basis wages, in both the concerns, by $12\frac{1}{4}\%$;

(b) in respect of the following kinds of weaving work in the Ramchandra Cotton Spinning and Weaving Mills, a special increase as follows:

Susi cloth 15%, Drop Box Loom 15%, 50" to 60" (Broad) Loom 10%.

The demand (a) was based on an alleged cut in the wages during the slump period of 1929-34, which was sought to be restored; neither Ram Babu Lal, nor Hira Lal knew anything of the alleged cut, nor could the employees' representative prove its existence. The demand therefore was rejected.

With regard to (b), the weaving master of the mill stated that for making Susi cloth of 20% colouring a rate was given which was $7\frac{1}{2}\%$ higher than that for making plain cloth, and that it was 5% higher than that given by Ahmedabad Mills. As for Drop Box Looms though they were meant for check cloth, actually they were utilized, said the weaving master, for plain cloth, the weaver working on them accordingly being paid plain cloth rate. Regarding the broad looms, the weaving master disclosed that the rate was already 30% higher than that for narrow looms.

The demand therefore was rejected.

2. Increase in the dearness allowance, the rate then being Re. 1, As. 15-6, As. 15, for rupee of basic wages, up to Rs. 25, between Rs. 25 and 60, and between Rs. 60 and Rs. 100, respectively.

These rates did not, thought the Arbitrator, compare unfavourably with the rates at Cawnpore where the cost of living was in many respects higher. Again, Hathras being totally rationed, grain from the Mill-shops was allowed to the extent of as many units as the card-holder possessed, while in the rural areas it was allowed for one unit only. The Mill-workers at Hathras had some agricultural interests also. So the Arbitrator rejected the demand for increase; but as he found that the rates allowed were not linked up with any recognized cost of living Index figures, he recommended a sliding scale for figures 125 to 350 for different wage categories.

3. The Companies should be made to pay the half-yearly July instalment of the bonus that they had refused to pay.

The Companies' plea was that, owing to cessation of hostilities, Government orders had been considerably reduced, in fact, one of the Companies, viz., The Bijli Cotton Mills Ltd., had then not a single Government order on hand. Further there had been a considerable reduction in the Government-controlled rates of yarn, while the price of cotton had gone up very high. The Companies were, therefore, unable to anticipate their profits for the current year.

The Adjudicator, being convinced, rejected the demand.

4. Contract governing termination of employment.

The Companies agreed to adopt immediately the standing orders introduced by the Employers' Association of Northern India of which both the Companies were members. These Standing orders contained full provision for such a contract.

(No. 2796 (L)/XVIII—230 (L)/45, Lucknow, Sept. 29, 1945)

THE MORADABAD SPINNING AND WEAVING MILLS, LTD., MORADABAD

AND

THEIR EMPLOYEES

Adjudicator:—A. Shakur, Labour Officer, U.P.

Demands and Awards

1. 50% increase in basic wages.

(i) Awarded that Minders and Piecers of the Mule Frame Department were to continue to get 50% of their normal wages as stoppage allowance together with the basic wages, for counts lower than $12\frac{1}{2}$ S, according to the formula $X/20$ of Y, where X represented a particular count manufactured and Y the rate for 1000 lbs. of 20 S; and that the rate of 20 S should be raised from Rs. 2 to Rs. $2\frac{1}{4}$ /- per 1000 lbs. with consequential adjustments in rates applicable to other connected wage categories.

(ii) The basic wage-rate applicable to the Ring Piecers should be raised from As. 9 to As. $10\frac{1}{3}$ per 100 lbs. of 17 S, subject to a minimum of Rs. 15/- per month.

(iii) There should be no other change in the current rates of basic wages.

2. Increase in Dearness Allowance.

The existing scale was held to be adequate up to the cost of living index figure 300. For higher figures up to 350, the Adjudicator recommended a scale prepared by himself for the basic wages from below Rs. 25 to Rs. 60 and upwards.

3. Bonus for the year 1945 to be paid, following the precedents of 1943 and 1944, before the close of the year 1945.

No order was made, the Adjudicator observing: "No concern can reasonably be required to anticipate its profits for a particular year. The bonus for 1944 has already been paid and it is at this stage premature to demand the same for the current year."

4. Fireman Tulsi, being 'wrongfully' dismissed, should be re-instated.

It was found that there existed no sort of service contract between the parties, nor was there any practice, that made a

month's notice before discharge obligatory on either party. Hence the allegation of "wrongfully" did not hold at all, and Tulsi could not claim any compensation, not only on this ground but even on the ground of equity, as his attendance record both in 1944 and 1945 had been bad. As to reinstatement, he had already got it.

(No. 3345 (L)/XVIII—122 (L)/44, Lucknow, Nov. 22, 1945)

JOHNS' SPINNING MILLS, AGRA

AND

THEIR EMPLOYEES

Adjudicator :—Mr. N. R. Malcolm, I.C.S., Labour Commissioner U.P.

Demands and Awards

1. Increase in the rates of basic wages, specifically.

(i) the rates for counts below ten should be raised to As. 3/6 and As. 3 per 100 lbs., and those for higher counts should be Rs. 3/6 and Rs. 2/10 per 1000 lbs., for the Minder and the Piecer respectively.

It was submitted on behalf of the employers that the rates had been increased two years before; to which the employees' reply was that, in spite of it, their total earnings had gone down; which, on evidence, was found by the Adjudicator to be far from true.

(ii) Wages in the Frame department should be so based as to give every worker at least Rs. 30 per month as basic wages.

The Adjudicator thought this beyond the Mill's capacity.

(iii) A minimum wage of Rs. 15 per month for all operatives.

The demand was based on the Cawnpore Labour Inquiry Committee's Report of 1938, which had never been enforced even in Cawnpore, much less did it deserve to be enforced in Agra where the conditions were different. The Workers getting less than Rs. 15 were the women waste pickers who got Rs. 9/2/3, and the doffer boys who got Rs. 11/15/3. Yet the wages in this mill were higher than in any other mill outside Cawnpore except the Moradabad Spinning Mills, which were working one

hour more, *i.e.*, 10 hours. The Adjudicator, however, recommended an increase of half an anna per day for the women waste pickers.

(iv) The grades for the workers of the Mechanic department should be the same as in most of the Cawnpore mills.

The pay of mechanics being largely dependent on skill and experience, a higher pay for them in some of the Cawnpore mills was no ground for a general increase in their pay in the Johns' Mills, Agra.

2. Dearness Allowance.

(i) It should be linked to the cost of living index figures prepared for low—paid government servants at Agra, not Cawnpore, as the figures then used were.

The Adjudicator was not prepared to accept the view that Agra living was dearer than Cawnpore.

(ii) It should be paid at a flat rate, *i.e.*, as the Adjudicator understood it, at so much per day instead of as a percentage on basic wages, as the practice was.

The existing system was recommended by the Labour Commissioner in the previous award after consideration of the financial position of the mills, and the present Adjudicator did not think that the position had changed to such an extent as to justify the introduction of a different system which would probably involve a considerably greater expenditure. The employers, however, were prepared to give an increase of 2 annas in the rupee on the rate of payment of dearness allowance to the employees drawing up to Rs. 18 per month as basic wages, when the index figure was between 301 and 320.

It was therefore recommended that war dear food allowance should be paid on the scale of so many annas per rupee of basic wages, as shown in the schedule prepared by the Adjudicator. If an employee's dearness allowance plus basic wages totalled less than the amount of dearness allowance plus basic wages of a man drawing the maximum of the grade next below, he should receive dearness allowance equal to the difference between his basic wages and the basic wages plus dearness allowance of that employee.

(No. 819 (L)/XVIII—13 (L)/46 Lucknow, 8-3-1946)

BENARES COTTON AND SILK MILLS, LTD., BENARES

AND

THEIR EMPLOYEES

Adjudicator:—Mr. Abdus Shakur, Labour Officer, U. P.

Demands and Awards

1 2. Mr. Hargend Singh and Mr. Laxmi Narayan, 'wrongfully' dismissed, should be re-instated.

Rejected, the dismissal being held as correct under the standing orders.

3. Arrears of bonus equal to 3 months' basic wages as a share of the profits made in the financial years 1941-42, 1942-43, 1943-44.

The profits for 1941-42 had to be set off against previous losses; out of the profits for 1942-43, 2 months' wages were already given as bonus; 1943-44 was a year of losses, yet $\frac{1}{2}$ month's wages were given as bonus. In view of this, and considering the unstable financial position of the concern, the Adjudicator rejected the demand for arrears.

4. Bonus for 1945, in addition to that already paid.

Rejected, the accounts of the year 1944-45 being still under audit.

5. Wages and rates of wages prevailing at Cawnpore.

As wage rates in a particular area depend on a variety of factors, the mere fact of Cawnpore having higher rates was no proper guide. Taking similar concerns in similar places, such as Lucknow and Hathras, the rates of this mill were not grossly inadequate. The demand was, therefore, rejected.

6. Dearness Allowance: as originally demanded, Rs. 35 per month; as revised in the course of the proceedings, at the rate of Cawnpore Textile Mills, where it was based on a sliding scale linked to cost of living index.

The Adjudicator recommended a sliding scale prepared by himself for different wage categories up to Rs. 150/- and linked to the general cost of living index figures at Cawnpore, from 126 to 350 points.

7. The concern should be prohibited from retrenching its employees.

Rejected, the Adjudicator holding it as an inherent right of a concern to retrench surplus labour.

8. The concern should be prohibited from engaging new hands in place of retrenched workers.

No decision was called for, as the Adjudicator found that retrenchment and re-employment were carried out strictly according to the standing orders, no case of infringement being cited by the employees.

9. Compensation for involuntary unemployment.

Rejected, "as there is no statutory obligation on an employer to make compensation to his employees for unemployment brought about by causes beyond his control."

10. Recognition, by the Employers, of the Benares Cotton and Rolling Mills Mazdoor Sangh.

Rejected, for want of a statutory obligation.

11. Originally, a uniform; as modified later, 24 yds. of cloth per year, for a worker and his dependents at the mill rate.

Rejected, as the prices, sale, and distribution of cloth were entirely under Government control, the management having no hand in the matter.

12. Co-operative Society: (a) workers should have representatives on the Managing Committee; (b) there should be no compulsion on workers to become members of the society.

(a) There was nothing, observed the Adjudicator, to prevent the workers from increasing their membership so as to be able to send representatives from their own class.

(b) Granted.

13. A bonus of -/1/- per rupee of basic wages was given per month when absence did not exceed one day. (The workers' demand was that absence due to political strike should not be taken as absence so as to deprive a worker of a bonus under the above rule).

Rejected, looking to the purpose of the rule, viz., to encourage good attendance.

14. The mill grain-shop should be re-opened for sales to the residents of the Benares regulated town.

As this had already been done under Government orders, no recommendation was necessary from the Adjudicator.

(Order No. 978 (L)/XVIII—21 (L)/46, Lucknow, 25-3-1946

MESSRS E. SLETON & CO., LTD., MIRZAPUR

AND

THEIR EMPLOYEES

Adjudicator:—A. Shakur Esqr., Khanbahadur, Labour Officer,
U. P.

Demands and Awards

(i) Revision in basic wages.

It was held that the question of fixing basic minimum was one which could only be properly dealt with by a Wage Fixation Board, and not by an Adjudicator. After considering the figures of wages as earned there by male as well as female labour, it was held that no change was called for.

(ii) Compensation for involuntary unemployment.

Rejected; it was observed: "In the absence of legislation, making it obligatory on all employers to make compensation to their employees for stoppages of work, created by causes over which they have no control, I do not consider it fair to recommend that this concern should be required to pay any compensation for unemployment brought about by such causes."

(iii) Annual Bonus.

Rejected as the profits were not enough.

(iv) Stopping threats of discharge or dismissal without notice.

The concern had adopted the standing orders of the Employers' Association of Northern India, and all dismissals or discharges were governed by those orders. In the absence of concrete instances of wrongful dismissal or discharge, the demand was rejected.

(v) Increase in the grace period of 5 minutes allowed for late attendance.

Rejected, holding that the period of five minutes was fair.

(vi) Revision of the procedure for marking attendance of the workers who were "played off".

The management used to mark "played off" workers as absent. This they agreed to change as desired.

(vii) Increase in the number of tokens allowed for letting workmen out for smoking, etc.

The Adjudicator thought that the 32 tokens provided by the management for 372 employees were sufficient.

(viii) Supply of blankets in the cold weather.

The management agreed to sell rejected blankets if permitted by Defence Department.

(Order No. 3690 (L)/XVIII—325 (L)/46, Lucknow, 3-9-1946)

J. K. COTTON SPINNING AND WEAVING CO. LTD., CAWNPORE

AND

THEIR EMPLOYEES

Adjudicator.—B. B. Singh, Labour Commissioner, U. P.

Demands and Awards

(i) Revision of the method of payment of dearness allowance.

The employees demanded payment of dear food allowance on the basis of general cost of living index and not on subsidiary cost of living index because the employers did not supply full quantities of the articles. This was however a misconception on the part of labour in that the subsidiary number was prepared after taking into consideration the difference in prices due on short supply. It was therefore held that no change was called for.

(ii) Bonus to retrenched employees.

The employers agreed to pay.

(iii) Recognition of the Mill Committee.

The employers offered to receive deputation of workers from different departments to hear grievances with a view to redressing them. It was suggested by the Adjudicator that this should be given a fair trial.

(iv) Revision in the existing system of payment of wages in the Weaving Department.

The wages were distributed after the working hours. The employees however desired distribution within working hours. In view of short working hours and the prevailing practice in majority of textile mills in Cawnpore, the Adjudicator did not suggest any change.

(v) Revision of basic wages.

It was contended that frequent changes in trade numbers and sizes of various pieces, resulted in reduction in wages, and it was demanded that payment should be made on yardage basis. The management conceded this point.

(vi) Bonus and dearness allowance to female labour.

On inspection of books, it was found that female labour was employed through contractors, and that their contractor's wages were raised from As. -/2/6 in 1940 to As. -/7/6 in 1946. Cheap grain concession was also extended to them. The mills were directed to see that the benefit fully reached the female labour.

(vii) Dearness allowance and bonus to Building and Tailoring department employees.

Employers agreed to pay to permanent employees.

(viii) Compensation for days on which employees were "played off".

Rejected. It was observed: "There is a ruling of the Bombay Industrial Court that an employer is not under obligation to pay a worker for the period during which he is played off. Under the Standing Orders, an employer can play off a worker for a total number of 12 days only in the month. The playing-off means stoppage of work due to factors outside the control of either the employer or the employees, like the shortage of coal, or of raw material due to transport difficulties, which is now fully regulated by the Government, and I do not think it will be equitable to make the employer pay full wages for the period an employee is played off. No employer would like willingly to play off a worker, as the stoppage of work will harm the employer more than the employee. In the interest of good business alone, therefore, an employer is not likely, in my opinion, to abuse the system of playing off. If there is, however, any abuse an aggrieved worker can always come up to me in appeal. The question of paying subsistence wages to the employee for the period he is played off involves a big general question, and it cannot be properly settled in this individual adjudication award."

(ix) Dearness allowance for holidays.

Rejected. "Dear Food allowance should also be paid for the full 30 days of the month and not on the basis of 26 working days. The analogy of cheap grain concession, in my opinion, does not apply to Dear Food Allowance. The total money value of cheap grain concession is taken into account as a whole in working out the subsidiary cost of living index on which the Dear Food Allowance is finally calculated. Dear Food Allowance has been paid on 26 working days ever since the system began. It cannot be lightly disturbed in an adjudication proceeding applicable to only one mill."

(Government of the United Provinces Labour Department.

*No. 1827 (L)/XVIII-536 (L)/46, dated Lucknow, 29th
March, 1947)*

J. K. COTTON SPINNING AND WEAVING MILLS, CO. LTD.,
CAWNPORE

AND

THEIR EMPLOYEES

*Adjudicator :—*M. Ahsan, Esq., B.A., Conciliation Officer, U.P.

Issues and Awards

1. Was Mr. C. P. Verma entitled to continue his service as a C grade clerk in his old post of a dak despatcher or any other post of equivalent status?

2. Was Mr. Verma entitled to the pay from 15th October, 1946, to the date of his re-instatement?

The two issues were considered together.

Mr. Verma joined as telephone clerk; in course of time he was transferred as Dak despatch clerk, with D grade. From there he was transferred to the grain shop as registration clerk. The employees alleged that this was done to harass him on account of his trade union activities.. The allegation had no proof. From there he was transferred to the grain issue department as issue clerk. This was taken by him as derogatory to his status. He therefore refused to take charge of the post, even after two letters of warning from the management, one of them explaining to him that the transfer was not meant to lower his prestige. Then they dismissed him. The post was found to be of D grade *i.e.* of the same grade as his former post. His claim that he had been promoted to C grade was not proved.

The Adjudicator, therefore, upheld Mr. Verma's dismissal, but since he had not been given the opportunity, as usual, to express his agreement to the transfer by signing a particular form, he was awarded two months' basic wages as compensation.

3. Should Mr. Verma be granted any or all of the following reliefs:—(a) one month's pay in lieu of notice; (b) full amount of accumulated Provident Fund including the Employer's contribution; (c) a declaration to the effect that he would be entitled to a bonus for the year 1946.

(a) and (b) yes; for (c) it was left to the Labour Commissioner to consider the demand, when a bonus was declared by the employers.

(No. 3948 (L)/XVIII—201 (L)/46, Lucknow, Sept. 21/22, 1946)

PREM SPINNING AND WEAVING CO. LTD., UJHANI

AND

THEIR EMPLOYEES

Adjudicator :—B. B. Singh, I.C.S., Labour Commissioner, U.P.

Demands and Awards

(i) Revision of existing rate of dearness allowance.

The workers demanded dear food allowance on the textile scale of Employers' Association of Northern India, or a flat rate of Rs. 30 per month. "The workers have, however, failed to establish that the efficiency of workers, or the supply of labour or the margin of profit in this concern, is on a level with the textile mills at Cawnpore. And as all scales of D.F.A. are to be judged in the background of a concern's capacity to pay, I do not think that a sufficient case has been made out for applying Employers' Association's textile mills scale of D.F.A. to this concern. At this scale a wage earner of Rs. 10/- per mensem would be entitled to a D.F.A. of Rs. 39/- per mensem on a cost of living index of 350 and this is much more than the flat rate of Rs. 30/- per mensem which the workers have demanded in their written statement. It is not disputed that this concern is more or less on the same level as Ramchandra Cotton Spinning and Weaving Mills and Bijli Cotton Mills at Hathras and Swadeshi Bima Cotton Mills at Aligarh. And I think that it should pay a similar scale of D.F.A. to its workers." The Adjudicator worked out a scale on similar basis and suggested that it should come into force from the second fortnight of February, 1946. Temporary workers should be made permanent after two months' work and should get the basic minimum wage of Rs. 10/-. The scale was linked with the general cost of living index and running of the grain shop was made optional. Cheap cloth benefit was, however, to continue.

(ii) Bonus.

The award on this issue was as follows:—"The workers demand bonus equal to one year's pay on the basis of excessive profits, alleged to be Rs. 36 lakhs, made by this concern during the last six years. The accepted principle for considering the demand for bonus as a trade dispute is that it must be proved that there is an explicit or implied contract in the terms or conditions of employment. No such proof is forthcoming in this case, as this concern has never paid any bonus in the past. It

is also inequitable to demand bonus for profits said to have accrued during the last six years. In the absence of any proof or circumstance from which it could be inferred that this concern had bound itself to give bonus to its workers as a share of its profits, I cannot recommend the grant of a bonus as demanded by the workers. On the above recommendation the question of profits accruing to this concern becomes immaterial. This concern has, however, been running literacy and physical training classes, a scheme of compulsory insurance, for which it pays the premium on behalf of the workers, runs the club, supplies cheap cloth, which the management claims as compensatory measures in lieu of payment of bonus. This being so, these beneficial measures prevalent in this concern should continue."

(iii) Fixing of minimum wages and (iv) increments.

"The employees' representatives are, however, unable to refer me to any instance in any textile mill having a scale of annual increments in the basic wages. This will be a novel feature and I do not think that it is possible to consider it in all its implications in these summary proceedings. On the material before me I do not feel justified in pronouncing any opinion as to what should be the minimum basic wages in this concern. And I give no finding on issue No. 3. This question should better be tested by a Wage Board or left over for such time as a Minimum Wages Act is passed. On the data supplied by the workers it is not possible to hold that any case had been made out for giving an increase in the rate of basic wages or of prescribing a scale for annual increments. The finding on issue No. 4 is, therefore, in the negative."

(v) 15 days' casual leave and 15 days' sick leave, with pay, in addition to 10 days as provided in the Factories Act.

"At present, this concern gives only 10 days' leave with pay each year. There are no rules for sick leave, although they have been allowing some sick leave, for which no period is fixed, in genuine cases, according to their discretion. This, I think, is anomalous. The demand for 15 days' casual leave was made before the new Factories Amendment Act gave 10 days' leave with pay in a year to all workers. This demand can, therefore, be regarded as having been partly met. The demand for 15 days' sick leave with pay in a year appears to me reasonable and I recommend that this should be allowed."

(vi) Extra privileges to those who do not get overtime.

No case was shown where overtime was not paid for working overtime.

(vii) Compensation for lock-out from March 28 to April 18, 1946.

The award on this issue was as follows: "It is common ground that this concern remained closed from March 28, 1946, to April 18, 1946, due to a lock-out notice put up by the management without any previous notice, consequent on the receipt of

a strike notice from the Mazdoor Sangh embodying certain demands. It is argued that this was not technically a lock-out, because there was no trade dispute in the strict sense of the term, as the management had not by then expressed any opinion on the demands presented by the Mazdoor Sangh. The correspondence which the management had with the Sangh, however, shows that the management had implicitly refused to entertain the demand. It cannot, therefore be said that there was no trade dispute and consequently no lock-out. In the notice which the management put up, they themselves call it a lock-out. Besides, this concern re-opened on April 18, 1946, only after it was reminded through this department that the lock-out declared by this concern was illegal, inasmuch as no previous notice of the lock-out was given, as required under the Defence of India Rules. In the circumstances, I do not think that it can be conceded that there was no illegal lock-out. In the absence of any extenuating circumstances, the management must be required to pay full wages to its workers for the period from March 28, 1946, to April 18, 1946, when the mill remained closed on account of the illegal lock out. The issue is decided accordingly. The argument that no compensation is usually paid to the employer in cases of illegal strikes, is beside the point, so far as this issue goes. Each case must be judged independently on its own merit."

(No. 4481 (L)/XVIII—429 (L)/46, Lucknow, October 19, 1946)

CAWNPORE TEXTILE MILLS, LTD., CAWNPORE

AND

THEIR EMPLOYEES

Adjudicator:—H. C. Joshi, Esqr., Conciliation Officer, U.P.

Demands and Awards

1. The Three-Loom system in the Weaving Department should be discontinued.

The Employees contended that it had injured the workers' health to the point of causing death to some of them. The Adjudicator found this unproved. Even at the introduction of the system, when the question of health was gone into thoroughly by the Labour Commissioner in conjunction with the Textile Expert, the alleged result was decided as unlikely to happen.

Further in Cawnpore itself the Laxmi Ratan Cotton Mills had been running a 4-loom system without any such trouble.

The Adjudicator, therefore, rejected the demand.

2. Improvement in the material used in the Winding Department.

The employees' contention was that owing to the bad quality of cotton resulting in frequent breakages and hence in reduction of production, the workers got less payment for no fault of theirs, as the payment was based on the weight of production. The Adjudicator found from the Mill's register of ounces per spindle, counts, and tests of yarn in mixture that the employees' allegation was baseless. He therefore rejected the demand.

3. Increase in the number of Bobbin Carriers in the spinning (Ring) Department.

The Employees contended that 5 carriers for 48 machines were too few. The Employers replied that, with the supply of modern facilities such as Dunlop Conveyor and others, the work of the carriers had been easier; they were also paid more than before. Still, after personally inspecting the factory, the Adjudicator came to the conclusion, and awarded accordingly, that the Mill should engage 8 carriers in all, 2 in the top-room and 6 on the ground floor.

4. Increase of workers in the Carding Department.

The Adjudicator was convinced from the Mill's record that the reduction that had been going on since 1934 had a system and sound reasons, such as changes in the quality of the material manufactured, labour-saving devices in the new machines, etc. He was satisfied that there was no appreciable dearth of workers as alleged. However, he recommended 4 workers instead of 3 in the Top room to look after 3 draw frames and one slubbing.

5. Adequate conservancy arrangements;

(a) Sweepers to remove the spit boxes inside the department.

Granted by the Employers before the hearing.

(b) More latrines and urinals.

The Adjudicator found that the 23 seats constructed at present were quite sufficient for the number of workers viz. 1000, according to the Factories Act.

(c) The latrines and urinals should be at a greater distance from the factory.

The existing distance was 20 ft., but as the Factories Act did not specify the distance, the Adjudicator could not recommend the demolition of the existing structures. However, he recommended keeping them clean and hygienic.

6. (a) General revision of Basic wages, and (b) substitute to have the same wages as the permanent worker.

The Employers contended that (a) should not be taken up in adjudication proceedings but in its proper place viz., the Wage Fixation Board. Since the Employees' grievance was not that they got lower wages than in similar concerns in the town, but that they wanted a general revision, the question, depending as it did on a number of factors such as demand of labour, availability of raw material, workers' cost of living, etc., was too complex for him, observed the Adjudicator, to decide in the proceedings before him. As to (b) there was a difference between the two workers, viz., the substitute was paid on a daily wage basis, while the permanent worker was paid on the basis of piece work.

7. (a) One month's privilege leave with pay in one year, (b) casual leave without pay according to the worker's requirements, (c) sick leave with half pay for 2 months and thereafter without pay.

The Employers pointed to 10 days' paid leave under the Factories (Amended) Act, and contended that the question of leave, being of All-India importance, should not be decided for an individual mill. They also stated, that, one-fifth of the workers being of the 'substitute' category, no question of leave being refused unnecessarily arose at all.

The Adjudicator was convinced of this after personally visiting the mill, and rejected the demand.

8. The Employers should start a Co-operative Society for the benefit of the workers.

A Registered Co-operative Loan Society was already in existence for 6 years, and there was no need to start a new one. If there was any dissatisfaction with the working, it should be referred to the Registrar of Co-operative Societies.

9. Proper and sufficient medical facilities.

The Adjudicator on personal inspection found the facilities sufficient in accordance with the Factories Act, with a certain drawback, on which he recommended that at least one qualified compounder with first-aid appliances be appointed, in addition to the Medical officer, also a dresser who should be readily available during the working hours.

10. Food-shops to be kept open during working hours, instead of only during recess periods.

The Employers' objection was that this would interfere with work. Moreover, they had arranged their working hours so that every three or four hours there was half an hour's recess, in which, again, the services having been increased from 2 to 5, the workers were able to get their requirements within 15 minutes.

The Adjudicator recommended the opening from 7 a.m. to 7-30 a.m. and again from 11 a.m. to 11-30 a.m. for the first shift of workers only.

11. More water-taps and further away from Urinals and latrines.

The Adjudicator awarded 10 water taps to be fixed up near the food shop, and 10 near the rest room, in consultation with the Chief Inspector of Factories, before 1st January, 1947.

12. Revision of the system of preparing wage slips, so that wages were written separately from D. F. A.

Granted.

13. Supply of 16 yds. of cloth per unit per year, in addition to the 24 yds. already being given.

Rejected; as the increase in the quota lay entirely in Government's hands.

14. Recruitment of mill workers should be through Labour Exchange appointed by local Government; it should not rest on the pleasure of the Employer.

As no such Government machinery existed, it was no use, observed the Adjudicator, going into the merits of the respective systems.

15. A rest-room inside the mill to accommodate at least 200 workers and furnished with electric lights and fans, benches and chairs.

The Adjudicator found on inspection that the rest shelter provided was not at all properly equipped. He therefore ordered the supply of a proper rest shelter within a month, the certificate of the Chief Inspector of Factories as to its adequacy being sent to the Labour Commissioner.

16. The existing management of the grain shop being unsatisfactory, a committee should be appointed to manage the shop in which the workers should have 75% representatives. Further that rations should be distributed within 2 or 3 days of the disbursement of wages

The Adjudicator found the existing management all right according to the Rationing Rules of the Government. He only recommended a sympathetic treatment of the workers and their convenience and made certain suggestions therefor.

17. Wages should be distributed during working hours as was being done in the year 1928-29.

Rejected, in view of reduction in the hours of work.

18. A clock in every department.

Granted.

19. Taking food should be allowed as of right during working hours. if one felt hungry.

Rejected.

20. A separate staff for oiling and cleaning the machine.

The Adjudicator pointed out the unsuitability of a separate staff, and awarded extra wages to the workers themselves for cleaning and oiling the machine—the wages at the rate of half an hour every Wednesday coming to 2 hours a month.

21. Provident Fund.

The Adjudicator, while expressing full sympathy with the workers' demands, considered the question as not fit to be taken up in Adjudication proceedings.

22. Recognition of the Mill Welfare Committee, as had also been done by the J. K. Textile group.

The Adjudicator observed that until the alleged Welfare Committee was registered, its recognition was out of the question. Moreover the question deserved to be decided on a provincial basis. In any case he could not compel recognition in Adjudication proceedings.

23. Festival days of all communities as general holidays with pay.

The Adjudicator agreed with the Employers that the question was not for Adjudication proceedings.

24. Half an hour's grace for late attendance until arrangement was made for sounding sirens, and thereafter of 15 minutes.

Rejected; but the Adjudicator recommended sounding of sirens half an hour before the starting of a shift, as used to be done before the War.

25. Life Insurance for every employee, the premium being paid out of Provident Fund accumulation.

Rejected, as, in the opinion of the Adjudicator, the demand could only be considered on an all-India basis.

26. Revision of shift hours.

The Employers objected that fixing of shift hours was a prerogative of theirs. While conceding this, the Adjudicator expressed himself as not precluded from effecting a slight modification within the Factory law. And he did suggest certain modifications partially satisfying the employees' demand.

27. The Wednesday cleaning period of half an hour should be increased.

Rejected.

(Order No. 4991 (L) (1)/XVIII—467 (L) 46-Lucknow,
November 21, 1946)

SWADESHI COTTON MILLS CO. LTD., CAWNPORE

AND

THEIR EMPLOYEES

Adjudicator :—H. C. Joshi, Esqr., Conciliation Officer, U.P.

Demands and Awards

- (i) Strict adherence to 8 hours' work a day.
Rejected, as no case of non-adherence was proved.
 - (ii) Inclusion of dear food allowance and bonus in wages.
 - (iii) & (iv) Provident-scheme and old age pension scheme.
 - (v) & (vi) One month's medical leave and one month's privilege leave with pay.
 - (x) Warning notices to be treated as cancelled after expiry of one month from issue thereof.
 - (xi) Change in the present system of running the machine with electricity.
 - (xii) Increase in Offers and Spares.
 - (xiv) & (xv) Improvement and alteration in the present method of distribution of wages.
 - (xviii) Apprentices to be enrolled as substitutes after a week's training.
 - (xxi) Supply of rations to the persons who either lost or damaged their cards.
 - (xxii) Additional Electric Fans in the Mills.
 - (xxiii) Revision of wages and dear food allowance.
 - (xxiv) Substitutes employed after 1st April to be made permanent.
 - (xxv) Sounding of Sirens.
 - (xxvi) 40 yards of cloth annually.
- All these demands were rejected.
- (vii) Supply of cloth.
- Order made in terms of Company's offer, *viz.*, 24 yards per unit, in addition to 10 yards, to card-holders per year within town-limits, and 24 yards per unit up to 2 units and extra 10 yards to card-holders outside town-limits.
- (viii) Improvement in issue of rations.
- Some modifications were suggested in the hours of work of the grain shop.
- (ix) Change in the system of granting leave.
- The procedure in standing orders should be followed.

(xiii) Improvement in arrangements for feeding, drinking water, bathing, etc.

Mills were directed to keep their rest shelter at the disposal of workers. Two water-taps were also to be affixed.

(xvii) Additional information in wage slips or Boards showing rates of wages to be hung up in each department.

The Adjudicator directed that more particulars should be shown in the slips.

(xix) Whether Belan coolies were engaged in the 'Binta' (weaving) Department.

The existing practice was allowed to be continued.

(xx) Clock in room No. 3.

Granted.

(xxvii) Supply of cloth to those who could not purchase it in time owing to defects in ration cards.

No cases were brought to the notice of the Adjudicator.

*(Order No. 4989 (L) (i)/XVIII—467 (L)/46, Lucknow,
November 22, 1946)*

MESSRS. KOKAMI MILLS, CAWNPORE

AND

THEIR EMPLOYEES

Adjudicator :—Captain S. T. S. Zaidi—Conciliation Officer, U.P.

Demands and Awards

(i) Change in the system of granting leave.

Grant of leave without submission of written application was held as unsound from the point of view of administration and discipline.

(ii) Opening of all the water-taps supplying drinking water.
Rejected.

(iii) Increase in the number of piecers from 4 to 5.

Existing arrangements were found adequate.

(iv) Wage-slips with all particulars to be given to workers.
Granted.

(v) Water-tap and shade at the gate.

Granted.

(vi) Restoration of old gear in Kirat department.

Rejected.

(vii) Fans in some departments.
Rejected.

(viii) Wages for the period during which mill was closed in August 1946.

This question, as it related to a general principle, should wait till the framing of New Standing Orders.

*(Labour Bulletin, Vol. VI, No. 2, P. 53, Labour Department,
United Provinces)*

NEW VICTORIA MILLS CO., LTD., CAWNPORE

AND

THEIR EMPLOYEES

Adjudicator:—Mr. M. Ahsan, Conciliation Officer, U.P.

Demand and Award

Reinstatement of (1) Mohammad Hakeem, (2) Nawale Ali, (3) Sheo Baran, and (4) Sham Lal, alleged to have been 'wrongfully' dismissed.

The dismissal of all the four was due to "being found sleeping on duty". The Adjudicator disbelieved the entry in the log-book, finding in it various discrepancies and inconsistencies in the light of the evidence of other witnesses, and recommended all the four to be re-instated with wages for the period of unemployment to be paid within 15 days of the enforcement of the award.

*(Labour Bulletin, Vol. VI, No. 2, p. 56, Labour Department,
United Provinces)*

NEW VICTORIA MILLS CO., LTD., CAWNPORE

AND

THEIR EMPLOYEES

Adjudicator:—Mr. M. Ahsan, Conciliation Officer, U.P.

Demands and Awards

1. Reinstatement of 12 retrenched workers.

The Adjudicator found the retrenchment justified, as the quantity of yarn being sent into the Reeling Section had fallen considerably for more than six months before. In fact the retrenchment was due much earlier.

2. The employers should be required to pay 10 days' wages to the aforesaid 12 workers for each of the two years 1945 and 1946 in lieu of 10 days' leave for each of these years.

The employers agreed to pay, within 15 days of the receipt of the order.

3. Bonus to the 12 workers for the year 1946.

The employers had already given it to some, and agreed to pay it to the rest, within 7 days of the receipt of the award.

*(Government of the United Provinces Industries (A) Department
No. 741 (L)/XVIII-536 (L)/46, Dated, Lucknow, 12-2-1947)*

J. K. COTTON MANUFACTURERS CO., LTD., CAWNPORE

AND

THEIR EMPLOYEES

Adjudicator:—Capt. S. T. H. Zaidi, Conciliation officer, U. P.

Demands and Awards

1. Re-instatement of certain employees 'wrongfully' dismissed for their activities in regard to the Staff Union.

The Adjudicator was convinced of this, but thinking that no useful purpose would be served by ordering re-instatement, ordered 6 months' grade pay including D.F.A., as compensation.

2. From 1st March to 30th September 1946, the Mill was closed for 31½ days for either lock-outs or strikes or break-downs in machinery, and the monthly-paid staff, though ready to work, had their wages deducted for these days. The staff claimed these wages citing the practice in the other mills in Cawnpore.

The Employers produced a contract to support their case for deduction, but the Adjudicator called that contract not only unfair but quite unjust and recommended refund of the wages.

3. Certain clerks and Supervisors were alleged to have been prevented from entering the Mill for some period from October 30. They demanded wages for that period.

The allegation was found to be unfounded, and the demand was rejected.

4. Amendment of certain conditions of service.

The Adjudicator recommended his own amendments.

5. Clerks and Supervisors should be consulted with regard to their proposed transfer.

The Adjudicator rejected the demand, though he recommended that transfer should not be to a lower position, or to higher responsibility without extra payment.

(Government of the United Provinces Industries (A) Department
No. 972 (L)/XVIII-612 (L)/46, Dated, Lucknow, 17-2-1947)

THE TEXTILE SEWING AND FINISHING CO. LTD., AND
TESCO HOSIERY, CAWNPORE

AND

THEIR EMPLOYEES

Adjudicator:—Mr. S. T. H. Zaidi, Conciliation officer, U. P.

Demands and Awards

1. Bonus of 4 as. per rupee of wages.

Granted. The Adjudicator observed: "The payment of bonus may or may not be a legal right, but it is certainly a moral and social right which can be decided in adjudication proceedings. Moreover, an implied contract between the employers and the employees can be inferred for payment of bonus in view of the fact that the concern paid bonus to its employees at the rate of -/1/- per rupee for the year ending 30th September, 1946..... Similar other concerns had been paying bonus to their employees at the rate of -/4/- per rupee in Cawnpore. There is no reason for me to hold that the paying capacity of this concern is in any way inferior to that of other similar ones".

2. Higher dearness allowance.

Granted, according to the Adjudicator's own scheme.

3. Higher Basic wages for knitting and winding.

Rejected, as the wages demanded were found to be higher than in other concerns.

4. Daily hours of work to be not more than 8.

Granted. Any overtime was to be paid as directed in the Factories Act.

5. Reinstatement of certain workers 'wrongfully discharged for their union activities'.

Rejected. The allegation was false, the workers having been legally discharged by a regular notice of 14 days.

*(Government of the United Provinces Industries (A) Department
No. 971 (L)/XVIII-534 (L)/46 Dated, Lucknow, 18-2-1947)*

CAREW AND CO., LTD., ROSA, DIST. SHAHJAHANPUR

AND

THEIR EMPLOYEES

Adjudicator:—Mr. H. C. Joshi, Conciliation officer, U. P.

Demands and Awards

1. Warm Knickers and Bundies to be supplied annually.

The matter came under the Factories Act, and the Adjudicator promised to refer it to the Chief Inspector of Factories.

2. Quarters to every worker.

The question deserved to be tackled on All-India or provincial basis: it was unfair to force it on an individual concern, in the absence of any law.

3. Recognition of the Employees' Union.

The question was deferred till the Bill making recognition obligatory, then pending before the Central Legislature, was passed.

4. Workers on 8 hours' shift should be given 30 minutes' rest-interval. This was compulsory under the Factories Act and was actually being given, but not at a stated period every day because of the peculiar nature of the work.

The Adjudicator agreed but recommended that, as far as practicable, the rest-hour should be so fixed that the workers may have an idea of the time when they would get rest.

5. Workers to be given all the gazetted holidays.

Rejected, the holidays that the concern was already giving being held to be sufficient.

(No. 3532 (L)/XVIII-325 (L)/46, Dated, Lucknow, 2-9-1946)

J. K. HOSIERY FACTORY, CAWNPORE

AND

THEIR EMPLOYEES

Adjudicator:—B. B. Singh, Labour Commissioner, U. P.

Demands and Awards

1. Dearness Allowance.

- (a) Though the Textile Mills' scale had been adopted, a deduction of -/6/6 per day was being made; this deduction should be stopped.
- (b) The loss suffered owing to this deduction for the past 5 years should be re-imbursed.
- (a) was granted, not (b).

2. Increase in Basic wages, which were lower than in the sister Factory, viz., the Mishra Hosiery Factory.

Though the Basic Wages might be lower, the total earnings were higher than in any other similar concern in Cawnpore. On this ground the demand was rejected.

3. Revision of the rate at which jerseys were supplied to the employees.

Settled by the parties in of course of the hearing.

4. Twelve needles on knitting machine, instead of 4; only beyond twelve were the breakages to be charged to the workers.

Besides the fact that needles were difficult to get, the fine to the workers on account of breakages was not so heavy, being only Rs. 95 over 600 workers, for instance, which fine, again, was credited to the Welfare Fund of the workers themselves.

The demand, therefore, was rejected.

5. Leave with full pay: one month's privilege and 15 days' casual, as for the clerical staff.

The Adjudicator did not consider the comparison with the clerical staff as fair, and observed that it was not possible for him to go beyond the 10 days' paid leave, under the Factories (Amended) Act, in Adjudication proceedings applicable to an individual mill.

6. When left unemployed compulsorily, employees should continue to get at least half the pay and full dearness allowance.

The Employers' standpoint was that the factors which caused compulsory unemployment, such as shortage of coal or raw material, were beyond their control.

The Adjudicator observed that the issue raised a broad question of general policy and that he would not be justified in deciding it in those adjudication proceedings. He suggested, however; that it should be tackled at the time of framing the new standing orders when Employers and Employees would both have their say and could go right up to the Industrial Court.

7. Holidays should be general and not communal; a list of these should be prepared by the Employers' Association to be followed by all Employers alike.

The Adjudicator, on learning that all such attempts on the part of the Association had failed owing to disagreement among the workers themselves, did not think any revision possible under the circumstances.

8. On the pay slips, the various items, viz., Basic wages, Dear food allowance, cash value of cheap grain concession, fine, etc., should be noted separately, and the slips be given to the workers 48 hours in advance of the actual payment.

Separation of the items was granted.

9. Calculation of Dear food allowance should take into account the fact when the full amount of goods at concession rates was not actually supplied by the Mill.

That calculation was done in a fair manner, having already been explained in a meeting of local labour leaders by the Adjudicator's predecessor; there was, therefore, no case for changing the system, observed the Adjudicator.

10. The system of issuing urinal passes should be abolished, as being both humiliating and interfering with physical needs.

Granted. The Adjudicator directed the management to find some other method of checking wastage of time.

11. Recognition of the Employees' Mill Committee.

The management agreed to receive a deputation of workers from different departments on a fixed date in each week, when a representative from the Labour office and from the Employers' Association could also be present to hear the workers' grievances.

The concession met the demand half-way, observed the Adjudicator, and was worthy of a trial.

(No. 3537 (L)/XVIII-325 (L)/46, Lucknow, 4-9-1946)

J. K. JUTE MILLS, CAWNPORE

AND

THEIR EMPLOYEES

Adjudicator:—B. B. Singh, I.C.S., Labour Commissioner, U. P.

Demands and Awards

1. Dearness allowance should be paid at Textile Mills' scale instead of at Jute Mills' scale as was done till then. The former neutralised the rise in the cost of living, at the index figure 324, by 68%, while the latter only by 51%.

The Employees' contention was that as the increase in the cost of living was commonly shared by all the workers, irrespective of the industry in which they might be employed, they would like to have the higher scale of the textile workers.

The Adjudicator, while not conceding the workers' demand, recommended a change in the Jute Mills' scale whereby the neutralisation would be 2% more, i.e., 52%.

2. Recognition of the Workers' Mill Committee.

The Employer objecting on the ground (i) that the committee was not a registered body, and (ii) that such a committee only added to indiscipline, as he had unhappily found a few years before, the Adjudicator made a suggestion to the Employer, to which he agreed, that he should meet the representatives of each department in a body on a fixed day, at a particular hour, to hear and redress grievances, if any. A representative from the Employers' Association, as also of the labour office, could also be present at the meeting.

3. Dear food allowance (then given only for 26 days in a month) should be given for 30 days, like cheap grain concession and wages.

The Employer contended that it was a general question to be taken up with the Association, and not decided individually. The Adjudicator thought that, if the demand was granted, the resulting increase in the cost was beyond the Mill's capacity to bear. Moreover, he observed, that the increased benefit decided upon in (i) would go a great way to satisfying the Employees' demand.

4. For the days on which the employees 'were "played off" they should get full or at least minimum sustenance wage, plus dear food allowance.

The Employer contended that 'playing off' was caused by factors outside his control, and sometimes necessitated by large-scale (up to 21% on one occasion) absence of the workers themselves.

The Adjudicator pointed out that the principle of 'playing off' without wages was recognised by the Industrial court of Bombay, and was common to the Bombay, Ahmedabad, and Calcutta Mills. Further, 'playing off' could not extend beyond 12 days under the standing orders. Paying of minimum sustenance involved a general principle and should be tackled, not in isolated adjudication proceedings, but in course of the new standing orders that were about to be framed under the new Standing orders Act.

5. Dear Food Allowance should be calculated on the general cost of living index, and cheap grain concession should be discontinued.

The Adjudicator thought that this would not be to the benefit of the workers, who, it seemed, had not properly understood the system of preparing the subsidiary cost of living index. The demand, therefore, was rejected.

6. Increase in the rates of Basic wages.

The Employees contended that there had been a cut twice in previous years. This was not only denied by the Employer but it was shown by him that actually there had been an increase. The Adjudicator was satisfied and further pointed out that the existing rates were actually higher than those in Maheshwari Devi Jute Mills at Cawnpore and Sahjanwa Mills in Gorakhpur District. He, therefore, rejected the demand.

7. In the pay slips, basic wages, total dear food allowance, fines, etc., should be shown separately.

Granted, as already undertaken by the Secretary of the Employers' Association.

8. The workers in the Building department and Mistrikhana should be paid dearness allowance and bonus or gratuity.

The Employer stated that the permanent workers had been paid dearness allowance and bonus like other permanent workers, and on the same scale and that there had been no discrimination made. Further he showed his willingness to compensate if it was shown that lower rates had been paid. Finally he produced an application by the workers themselves stating that they had no grievance in the matter.

Order No. 1104 (L)/XVIII-81 (L)/46, Lucknow, 26-3-1946)

1 & 2. BALRAMPUR SUGAR CO., LTD., BALRAMPUR AND TULSIPUR,
DISTRICT GONDA

3. DIAMOND SUGAR MILLS LTD., PIPRAICH, DISTRICT GORAKHPUR

4. SARAYA SUGAR FACTORY, SARDARNAGAR, DISTRICT GORAKHPUR

AND

THEIR EMPLOYEES

Adjudicator:—K. R. Malcolm, Labour Commissioner, U. P.

Issues and Awards

1. Revision of basic wages and dearness allowance.

It was held that no recommendation was necessary with regard to the minimum wages and dearness allowance for the lower categories of employees in the Balrampur, Tulsipur and Saraya Sugar Factories, which should continue to pay the basic minimum wage of As. 8 and dearness allowance of As. 4 per day to daily paid employees, or a minimum of Rs. 22/8/- to monthly paid employees. The Diamond Sugar Mills were directed to pay the above minimum with effect from 15th January.

With regard to higher category, the Adjudicator did not think it necessary to make any recommendation, excepting for the employees engaged on clerical work including Purzi weighment and payment clerks who should get a minimum wage of not less than Rs. 30 per month inclusive of dearness allowance. Discussing the question of minimum wage, the Adjudicator observed, "The sugar industry is subject to numerous regulations and controls. Almost every stage of process is subject to some regulation. The price of cane is fixed, the ex-factory price of sugar is fixed and the amount of profit which the factories are expected to make on the average is calculated. There is, therefore, very little margin for the sugar factories to increase their expenses under the various heads. Since they cannot increase the ex-factory price of their produce, I do not consider it would be reasonable or just, that in an adjudication under Rule 81-A of the Defence of India Rules the Adjudicator should enforce upon the factories increments of expenditure which are actually not covered by the estimates of expenses which were allowed for by the Government in the fixation of the sugar price. To do so would be in effect upsetting the decision arrived at by the Government authorities who are charged with the regulation of the sugar industry The Sugar

Controller for India has fixed the ex-factory price of sugar as from March 5, 1946, on the assumption that a minimum wage plus dearness allowance of annas 12 per day or Rs. 22-8 per mensem would be paid''.

2. Retaining allowance to the seasonal staff.

It was held that the demand for retaining allowance was such as could not be reasonably enforced, as the factories were not willing to pay it. No general recommendation on this was therefore made, though some of the employers were actually giving some sort of allowance to some of their higher staff.

3. Bonus for the year 1944-45.

Neither the Balrampur and Tulsipur, nor the Saraya factories made gross profits exceeding 10% of the block capital and therefore it was held that it was not justifiable to require them to pay a bonus. The Diamond Sugar Mills which had declared a bonus to attract their labour should pay it according to their announcement.

4. Extra bonus for the year 1943-44 from the Sugar Mills at Balrampur and Tulsipur.

It was held that the demand put forward so long after the year to which it related could not be sustained unless there were particularly strong reasons to support it. The Balance-sheets of these mills did not indicate any such reasons. The demand was therefore rejected.

5. Standing Orders for discharge and dismissal of employees.

The Adjudicator directed that the Standing Orders of the Indian Sugar Mills' Association should be adopted.

6. Re-employment of such of the employees of the previous season as had not yet been employed in the current season.

The allegation that certain men were not re-employed because of trade union activities was not substantiated. The demand was therefore rejected.

7. Re-instatement of 'wrongfully' dismissed employees.

In the two cases where the Adjudicator found that the dismissal was wrongful, he awarded re-instatement on a rate of pay which they were drawing before their dismissal and awarded 7 days' wages as compensation for notice pay.

8. Change in the working hours.

No recommendation was made as the Factory Act regulated these matters.

9. Revision of leave and holiday facilities.

No change was awarded in the leave and holiday facilities exist-

ing for the permanent employees. Seasonal workers were awarded at the rate of $1\frac{1}{2}$ day for each month of work during the season. For periods other than completed months 10 days would entitle to half-a-day's leave. If leave was not availed of, it should be paid for.

10. Old age pensions.
Rejected.

11. Compulsory Provident Fund
Rejected.

12. Free quarters or house rent allowance.

It was awarded that permanent employees who were not provided with quarters should be paid allowance at the rate of 10% of their monthly basic wage.

13. Clubs and Canteens for the employees.

It was held that maintenance of canteens and clubs could not reasonably be enforced in an adjudication under the Defence of India Rules.

(Order No. 1105 (L)/XVIII-110 (L)/46, Lucknow, 26-3-1946)

UNITED PROVINCES SUGAR COMPANY, LTD., GORAKHPUR

AND

THEIR EMPLOYEES

Adjudicator:—K. R. Malcolm, Labour Commissioner, U. P.

Demands and Awards

(i) 3 months' wages as Bonus for 1944-1945.

The employers had granted two months' wages as bonus for 1943-44 season while only one month's for 1944-45. Employees wanted three months' wages as bonus. The demand was rejected. "Bonus out of a share of profits cannot be claimed as a matter of right every year. The general idea underlying the payment of bonus is that if a concern has had an unusually profitable year, some part of the extra profits should be distributed as an award and encouragement to the workers. In the calculation of the ex-factory price of sugar no provision has been made for the payment of bonus, and, therefore, it is to be presumed that the

Government of India does not consider that the payment of bonus is a normal obligation on the sugar factories. In the calculation of the ex-factory price of sugar Government of India allows for a gross profit of 10 per cent., out of which is to be made payment of taxes and provision for reserves, the balance being available as distribution for profits. It would appear to me to be reasonable that if a sugar factory had made a gross profit exceeding 10 per cent. on the block capital, which is not necessarily the same as the share capital, then the factory could reasonably be expected to pay some part of the excess over this amount as bonus to its employees. The United Provinces Sugar Co. Ltd., have shown to me confidentially their accounts for the year 1944-45. The season 1944-45 was decidedly a less favourable season for the sugar factories than the preceding season in which two months' bonus was granted. I consider that the payment of one month's bonus as declared by the factory is reasonable for the season 1944-45."

(ii) Fixing of basic minimum wages.

No alterations in the Company's scales were recommended. "The question of fixing a minimum wage including dearness allowance arose at the beginning of the present crushing season 1945-46 in connexion with the suggestion of the Bihar Government that minimum wages plus dearness allowance in sugar factories in Bihar should be as. 12 per day or Rs. 22/8/- per mensem. In the calculation of the ex-factory price of sugar by the Government of India all the items of expenditure on manufacture are calculated in considerable detail with the assistance of the advice of the Director of Imperial Institute of Sugar Technology in consultation with the Joint Sugar Commission, United Provinces and Bihar, and after discussion with the Joint Sugar Control Board of U. P. and Bihar. Every item is carefully calculated according to the most reliable statistics. The item of wages is similarly calculated and the price of sugar, fixed for the present season, was based on the assumption that the same rates of wages and dearness allowance would be paid as had been paid in the previous crushing season. In calculating the cost of manufacture separately for the United Provinces and Bihar, the cost of manufacture for Bihar came to a slightly lower figure than that for the United Provinces. In order to preserve equality of sugar price one series of rates for the ex-factory price of sugar is fixed for both the Provinces and there was, therefore, a slight margin for an increase in wages in Bihar. In the United Provinces, on the other hand, there was no such margin, but it appeared desirable that similar rates of minimum wages should prevail in both the Provinces. Discussions were accordingly entered into by the Sugar Controller for India and representatives of the United Provinces and Bihar Governments with representatives of Indian Sugar Syndicate, a body of which all factories in the United Provinces and Bihar are members. These discussions began early in January, 1946, and after full examination

of the figures the Sugar Controller for India eventually raised the ex-factory price of sugar on March 5, 1946, by 6 annas per maund for each of the different grades of quality. This 6 annas per maund, however, was not ordered only on account of the increase in minimum wages and dearness allowance, but was also in part granted in order that the factories might be able to put larger sums into reserves to be utilized eventually for replacement and repairs of machinery, since it was realized that there has been considerable difficulty during the war years in obtaining replacements. Many of the factories need replacements and the price of machinery is higher than before the war. In order to keep the industry in a healthy state it was desirable to provide funds which they will be able to allocate to reserves. The amount out of the 6 annas which was calculated to represent an increase in minimum wages and dearness allowance, was sufficient to allow for the payment of 12 annas per day or Rs. 22/8/- per mensem of minimum wages and dearness allowance to all factory employees."

(iii) Fixing minimum wages for clerks and (iv) Revision of the scale of wages of clerks and workers.

Awarded that the minimum wages for clerical staff should be Rs. 30/- inclusive of dearness allowance.

(v) Provision of sheds on cane-carrier.

No order was passed owing to building materials being not available, though it was considered desirable to have sheds.

(vi) Leave.

Awarded 15 days' leave, including sick leave per annum with pay, to permanent employees and $1\frac{1}{2}$ day for each month for seasonal employees. For periods other than completed month, workers were entitled to $1\frac{1}{2}$ days' leave. Pay for the amount of leave earned should be given to seasonal employees if leave was not availed of.

(No. 1539 (L)/46 Lucknow, 8-5-1946)

BARHNI SUGAR MILLS, BARHNI, DISTRICT BASTI

AND

THEIR EMPLOYEES

Adjudicator.—A. R. Shakur, Esqr., Khan Bahadur, Labour Officer, U. P.

Demands and Awards

1. The Employees who had taken part in the two strikes organized a couple of months before, and who had been discharged under the Rule regarding absence without leave exceeding 4 days, should be re-instated.

In spite of the fact that the second strike, which was a prolonged one, was definitely illegal and had involved a loss of about 2 lacs, the Employers generously offered to take all the men back, provided they returned by a certain date.

2. Workers should be paid wages for the strike periods.

Seeing that the short strike of January 27 must, in view of the vague notice issued by the workers' union on December 26, have taken the management by surprise and caught them totally unprepared to meet the situation, and that the long strike which began on February 23 was totally without notice and illegal, the Adjudicator rejected the demand.

3. Minimum wage rate of -/12/- per day, i.e. Rs. 22/8/- per month.

The language of the demand when first made showed that the -/12/- included dearness allowance, but during the Adjudication proceedings the union Secretary stated that it did not. The Adjudicator considered the latter statement as clearly an after-thought, and rejected it. The wage-rate of -/12/- (in place of 9 as.) had already been started by the Employers, under instructions from the Indian Sugar Mills' Association, from 1st March 1946. The Adjudicator, however, made it payable from January 15, 1946, and split it as -/8/- for basic wages and -/4/- for dearness allowance.

4. Revision of chowkidars' pay.

Being treated as employees of the lowest wage category the chowkidars also had their wage rate raised, along with others,

from 9 as to 12 as. from 1st March. The Adjudicator considered this as fair.

5. The attendance of wagon coolies should, as formerly, be recorded in the register in Form 'P', prescribed by section 41 of the Factories Act.

The Adjudicator recommended the matter to be referred to the Chief Inspector of Factories, to be dealt with under the Factories Act.

6, 7. Revision of the procedure for terminating workers' services, and of the conditions on which leave was given.

The Employers had in the meantime prepared standing orders and Rules for the purpose, and the Adjudicator thought them as quite fair.

8. Free quarters or house rent in lieu of them.

More than half (of the total 750) of the workers needed no quarters, as they lived in their own homes in villages near by. The others had been provided with adequate quarters, and, in fact, no complaint as to their insufficiency had ever been made to the Employers hitherto. On the statement of the Employers, unchallenged by the Employees, the Adjudicator rejected the demand.

(Order No. 5695 (L)/XVIII-256 (L)/46 Lucknow)
December 6, 1946

ODUH SUGAR MILLS LTD., HARGAON (SITAPUR)

AND

THEIR EMPLOYEES

Adjudicator:—H. C. Joshi, Esq., Conciliation Officer, U. P.

Issues and Awards

1. Retrenchment of such workers as were 'wrongfully' discharged.

After examining individual cases some workmen were held as having been wrongfully dismissed and orders were therefore issued for their re-instatement. Permanent staff from the retrenchment should get half of their pay including dear food allowance from

the date of retrenchment to the day of appointment. Retainers should get their retaining fees.

The employers contended that even if the dismissals were wrongful, re-instatement could not be ordered as the law did not permit specific performance of service. On this the Adjudicator observed as follows:

"I am, however, unable to subscribe to the view-point of the employer that re-instatement cannot be ordered. In this case of abnormality, under which we all are living, any action which tends to disturb the social and economic equilibrium of the society, has to be checked and to my mind, the Defence of India Rules, under which the present proceedings are being conducted, were primarily promulgated to achieve this end".

2. Prohibition of transfer of an employee from one post to another without his consent.

Rejected.

3. Cancellation of transfers made after the strike of March 1946.

As it could not be proved that the transfers were mala fide, the demand was rejected.

4. Standing Orders.

The adoption of Standing Orders framed by the Indian Sugar Mills Association should be adopted.

5. Recognition of the Union and discussing matters with it.

It was suggested that the matters should await the legislative enactment on the subject.

(*Labour Bulletin*, Vol. VI, No. 2, p. 49, *Labour Department*,)
United Provinces

AIRA SUGAR FACTORY, LAKHIMPUR-KHERI

AND

THEIR EMPLOYEES

Adjudicator.—Mr. H. C. Joshi, Conciliation officer, United Provinces.

Demands and Awards

1. Recognition, on the part of the Employer of the Aira Sugar Factory Employees' Union.

The Employer did not object to recognition in principle, but would like, in the interest of uniformity, to postpone recognition till the passing of the New Trade Union Bill made it obligatory for every Industry to recognize a trade union.

The Adjudicator, however, saw no reason to defer recognition on such merely technical grounds. He, therefore, awarded recognition after the union was duly registered.

2. The Employer should be required to open a club and library for the benefit of the employees.

The Adjudicator considered this as absolutely necessary for the welfare of the employees, and recommended that a building be provided for the purpose, before the next crushing season, and two English and two Vernacular dailies, as also two monthly Vernacular magazines, with some in-door and outdoor games also.

3. A bonus equal to 3 months' pay, for the year ending 30th September 1946.

The Employer objected, saying that he had not made any profits. He did not show the accounts, as the same were not ready.

The Adjudicator, following the Bhatia Committee in the principle that bonus was only payable when a concern made a profit, recommended that the Employer should pay 25% of his profits, if any, as bonus, after deducting the taxes, within a month of the receipt of this award. A further demand for a bonus for the year 1946-47 was held to be premature, but it was affirmed that the employees were entitled to that also, provided the concern made profits.

4. Payment of dear food allowance.

No fresh decision was called for, after the Bhatia Committee's recommendation.

5. Retaining allowance to seasonal employees.

The parties agreed to abide by the recommendations of the Provincial Government.

6. Residential quarters, light, fuel, balties and charpai, free of cost.

The demand was not pressed, except in the case of fuel, where the quantity, which was supplied by the concern free, was asked to be raised from 25 seers to a maund per month. In view of the fact, however, that the concern was comparatively a small one, and that for the past three years it had not made any profit, the Adjudicator did not wish to put any additional burden on it.

7. 38 days' leave with pay annually.

This used to be given till the year 1944, after which it was reduced to 10 days, on the plea that the financial condition of the concern was not satisfactory. "The main question involved in the issue", said the Adjudicator, "is that of a principle: whether a privilege which the employees had been getting can or should be withdrawn without any reference to them. I am of opinion that the employer cannot do so at his own sweet will. The employees do not get additional privileges when the financial condition of the concern is prosperous; naturally there should be no reduction in their privileges on account of adverse financial condition of the concern". The demand was therefore granted.

8. The coolies working on Donga and sulphitation tanks should get one shirt and short annually, in addition to their wages.

Rejected, because of cloth shortage in the country as well as for want of evidence proving that a similar practice obtained in similar factories elsewhere.

9. Uniforms to peons, chowkidars, and sweepers.

Rejected, owing to the unsatisfactory financial condition of the factory.

10. A monthly wage system instead of daily.

Rejected. The Adjudicator thought that the daily wage system was in no way prejudicial to the interests of the employee.

- 11, 12. Annual increments and revision of the basic wage rates.

Not pressed in view of the recommendations of the Bhatia Committee.

13. Provision of a rest house for the workers, and that of a guest-house for the workers' relatives and friends.

Only the first was granted. The employer undertook to build a pucca house as soon as material was available.

14. A dispensary in charge of a qualified medical officer and a qualified compounder; also a ward for the treatment of in-door patients.

There was already a dispensary under the charge of a part-time medical officer and a part-time compounder. The Factories Act required nothing beyond provision of first-aid. The Adjudicator did not think it equitable in mere Adjudication proceedings, to require more—a full-fledged dispensary and a hospital—especially in view of the unsatisfactory financial condition of the concern.

15. A grain shop within the mill premises.

Aira was a non-rationed area, and no grain shop could be opened in the mill unless so permitted by the Government with a promise of regular supply of grain. The employer had correspondence on the subject with the Government, who had expressed their inability to supply the necessary quantities of wheat. The demand therefore was rejected.

*(Labour Bulletin Vol. VI, No. 2, Labour Department,
U.P. pp. 59-70)*

SEKSARIA BISWAN SUGAR FACTORY, LTD., SITAPUR

AND

THEIR EMPLOYEES

Adjudicator:—Mr. H. C. Joshi, Conciliation Officer, U. P.

Demands and Awards

1. The decisions of the Arbitration, dated 6th December 1946, should be enforced as from 1st April, 1946; and the decisions to be arrived at in the present Adjudication should be immediately enforced.

13. As the factory was not acting according to the Award, action should be taken against it.

From the records as well as oral evidence the Adjudicator found that the decisions of the previous award had been already substantially complied with. On demand no. 2 three days' wages were awarded and 103 employees had been already paid. The Adjudicator directed that the remaining 60 also should be paid within a month. On demand No. 19 daily paid coolies who had worked for six months continuously were awarded a bonus. The reason why it had not been paid was that their names had not been given to the Employers. The Adjudicator found these names from the list, which were 15, and directed payment of bonus within one month. On demand No. 7, it was awarded that officiating allowance should be paid for working on a higher post. There was one such person, and the Adjudicator recommended Rs. 10.

The Adjudicator thought that as the non-compliance was due to genuine difference of opinion and bonafide, no action was called for against the factory.

2. One-fourth of the bonus for the current season should be distributed before the Holi festival and the rest at the end of the crushing season.

The bonus was 25 per cent. of the net profit. But as the net profit could not be determined in the middle of the crushing season, and as the Government themselves had directed June 30 as the earliest date for paying bonus, the demand was rejected.

3. No worker should be transferred unless he committed a serious mistake at the post where he was working, and then only with the Labour Union's approval.

The Adjudicator thought that acceptance of such a demand would materially affect the discretion of the departmental heads and seriously jeopardize the efficiency of the staff. However, he clearly deprecated transfers as a form of punishment for trade union activities. Beyond this, he could not lay down any hard and fast rule about transfers. As to the transfers actually made, he found them genuine.

4. No worker should be discharged unless he was proved guilty of an offence, subject to the Union's approval.

The first part of the demand was granted as being fair and just. As to the second part the Union was asked to wait for the new Trade Union Bill which would embody the rights and responsibilities of trade unions.

5. Office time should be from 10 a.m. to 4 p.m. The clerks of the other departments should not work for more than 6 hours a day. Sunday holiday should be given to all the clerks.

The acceptance of the demand would mean only 36 hours' work per week, and the Adjudicator was not prepared to give this special concession when others were working 50 hours per

week. Further, as Sugar Mills were continuous process factories, and as, during the season, daily reports and returns had to be submitted, it was not possible to fix the hours of work as demanded, at least in Adjudication proceedings. So the Adjudicator left the matter entirely to the employer himself, subject to the condition that no clerk was required to work for more than 50 hours a week.

6. A permanent post becoming vacant should be filled from the old seasonal staff.

Granted, on condition that the seasonal staff contained a person fit for the post.

7. None should be reverted to an inferior post.

The Adjudicator could not accept the demand as it was, since he felt that reversion to an inferior post was sometimes necessary. All that he could recommend was that, before taking such a step, the man should be told the reason and be allowed to offer his explanation, and further that he should have a right of appeal to the Labour Commissioner or any other appropriate authority.

8. When the Head of the Department was removed, the senior man should get the post.

Granted, provided that the man was fit for the job.

9. No worker should be forced to go on leave.

The nature of the industry was such that no concern could give employment throughout the year; only the crushing season of three or four months provided heavy work, the rest of the year some of the men had to be played off. It was for some competent authority to fix a minimum number of permanent staff necessary for a concern; until then, it would be risky to alter the status quo. The question really deserved, said he, to be tackled on the basis of the entire industry.

10. Dearness allowance should not be deducted from the wages of an absentee along with his pay.

The demand had already been met by the Government.

11. The worker who was called before the start of the season, if detained after the crushing season, should be treated as permanent.

Rejected, as the number of employees to be retained during the off-season was variable, conditioned by the amount of work to be done then.

12. The things which were neglected by the factory authorities, though enjoined by the Factories Act, should be enforced immediately or necessary action taken against the authorities.

This was a matter for the Chief Inspector of Factories, not a Trade Dispute.

14. As the monthly wages were fixed at Rs. 22-8-0 per month or 12 annas per day, daily-wage coolies should be paid one anna extra as from 1st January 1946.

Granted.

15. Daily-wage coolies should have all the facilities of the monthly-wage coolies.

The daily-wage coolies did not come to the work regularly. Distinction had to be drawn between workers whose work was of a permanent nature and those whose work was of a casual nature. The demand therefore was rejected.

16. There should be a school in the Factory for illiterate workers as well as workers' children.

Rejected. In the absence of any law, an employer cannot be asked to bear expenses which are not taken into consideration at the time of determining the manufacturing costs.

17. Pay during medical leave duly certified by the doctor.

"The point is too wide to be decided in Adjudication proceedings which concern an individual concern. The question has to be decided on the basis of the industry as a whole. It is better that the recommendations of the Bakhle Committee should be awaited."

18. Jamadars should be given a woollen uniform every alternate year and two cotton uniforms every year. They should also be paid overtime for extra work.

The practice of giving uniforms existed in the past. The Adjudicator recommended two cotton uniforms and one woollen jersey every alternate year.

Jamadars were not to work for more than 48 hours a week.

19. Increments to old employees according to a fixed system.

No Factory in the U. P. had fixed grades; so the question had rather be decided on the basis of the entire industry, and the Adjudicator deferred consideration till the recommendations of the Bakhle Committee were out. Immediate relief to almost all the deserving employees had already been given by the Bhatia Committee.

20. Proper shading for the coolies.

Granted.

21. Sanitation of quarters and mill areas which remained very dirty.

It was a point under the Factories Act.

22. Supply of sugar at ex-factory rate.
Granted as settled between the parties.

23. No post which existed previously should be abolished. No worker should be debarred from getting any facility.

Granted, on condition that, if a post appeared superfluous under any re-organization scheme, it would be abolished with the permission of the Labour Commissioner, U. P.

24. A worker who had worked two months in a year should be entitled to full bonus.
Not pressed at the time of arguments.

25. Specified local and festival holidays, as in other factories.
Granted.

26. 10% of the pay as House allowance. Oil allowance to those who did not enjoy electric light.

The first demand had very wide implications and could not be decided in Adjudication proceedings. For the second, 8 as. per month was granted as from March 1, 1947.

27. Cases of labourers should be decided in consultation with the labour union.

This practically meant a veto of the Labour Union on the employer's decision. The Adjudicator recommended awaiting the New Trade Union Bill.

28. The factory should stop extravagant expenses.
The demand was too general.

29. Wages for the strike period, January 15 to 18, 1947.

Two notices were given, one on December 30 by the U.P. and Behar Chini Mill Mazdoor Federation, the other by Mazdoor Union, Biswan, on January 2. Neither was signed by any of the workers. The notices gave different dates for the beginning of the strike, the second notice specifically giving January 20. Moreover, neither body was formally recognized by the employers, which made the representative capacity of the party serving notice doubtful. The strike therefore was held to be not a legal one, hence no wages were granted.

30, 32. The Factory should help every worker in his troubles. The Factory should comply with every order of the Government. Too vague and general.

31. Proper shading for cartsmen and their bulls and Parao to protect them from the cold of the night.

This was no trade dispute. It was a matter for the Cane Commissioner, U. P.

(*Labour Bulletin* Vo. VI, No. 2, *Labour Dept.*, U.P. pp. 81-87)

KAMLAPAT MOTILAL SUGAR MILLS (MASODAH), FAIZABAD

AND

THEIR EMPLOYEES

Adjudicator:—Mr. M. P. Vidyarthi, Conciliation Officer, U.P.

Demands and Awards

1. Overtime wages with effect from 1st June, 1946, at the rates provided for in the Factories Act, though the Factory was actually registered on 3rd January, 1947.

From the record in the factory office, the report of the Factory Inspector, and the evidence produced before the Adjudicator, the latter came to the conclusion that the nature of work in the factory, even before its actual registration, was of such a type as would have justified its earlier registration. The demand was, therefore, granted as from 1st October 1947, in accordance with the latest amendment of the Factories Act.

2. Compensation to the employees who had been retrenched without the permission of the Arbitration Committee.

Withdrawn.

3. Fuel, free of cost.

The parties agreed to abide by the Government orders on the recommendations of the Bakhale Committee as applicable to the Sugar Factories.

4. A Hospital within the factory premises.

The employers agreed to complete the First Aid arrangement within a period of one month, and further to recommend deserving cases to the Sadar Hospital, Faizabad.

5. Leave with pay on festive holidays.

The parties agreed to abide by the recommendations of the Government on the basis of the Bakhle Committee.

6. Recognition of the K. M. Sugar Mills Union.

The Management agreed that, pending new legislation, any representation made by this or any other union would be given due consideration without prejudice to any future action by the parties.

7. A club-room within the factory premises.

The parties agreed to abide by the recommendations of the Bakhle Committee.

8. Payment, to all the employees, of the balance of the increased wages.

The Management agreed to pay all the workers inside the Sugar Factory in accordance with the Bhatia Committee Report.

9. Re-instatement of four permanent workers alleged to be dismissed 'wrongfully.'

Compensation was recommended.

10. Wages for insufficient notice period.

The notice of discharge fell short of the required period by 4 days, and for these wages were awarded to be paid within a month.

*(Government, of the United Provinces Labour Department,
No. 1961 (L)/XVIII-61 (L)/47, Dated Lucknow, 15-3-1947)*

MAHABIR SUGAR MILLS, SISWABAZAR, DIST. GORAKHPUR

AND

THEIR EMPLOYEES

Adjudicator:—Mr. P. N. Sabharwal, Conciliation officer, U. P.

Demands and Awards

1. Dismissals or discharges should not be effected unless the Management had obtained the approval of the Labour Commissioner or his conciliation officer, after due inquiry.

The standing orders gave a clear right of appeal to these Government Officers, only the employees in their ignorance were not making use of it. The Adjudicator thought this right as a sufficient guarantee for security of service.

2. No "playing off" be adopted, and, if adopted at all, full wages should be paid for such period of involuntary unemployment.

The question deserved to be decided on an All-India basis, thought the Adjudicator, and referred the Employees to the Bakhale Committee.

3 (a). Old Employees should have preference for employment when the new season opened. The opening date should be announced on the factory gate 15 days previously, and the employees who might have gone away to their villages should be informed by post. If the old hands were unable to come, members of their family should be taken on.

This was agreed to by the Employers.

(b) Fresh labour should be recruited through Employment Exchanges.

Rejected on the ground of practical difficulties involved in the system.

4. Revision of wage-rates and other allowances.

The parties agreed to abide by the recommendations of the Sugar Labour Enquiry Committee set up by the Government.

5 (a) Bonus for 1945-46.

15 days' basic pay had already been distributed, and the concern could not bear any more, having suffered heavy loss during the year. The Employees' charge of inefficiency and reckless expenditure against the Management was not proved.

(b) Retention allowance.

The parties agreed to abide by the decision of the Bakhle Committee.

6 (a) Cheap grain facilities, and (b) adequate facilities of cloth supply.

(a) The Government had agreed to start a ration shop in the factory.

(b) The employees alleged that the Management were not exercising proper discretion in allocating units to card-holders.

To remove all such grievances, the Adjudicator recommended a Committee of 5, two representing the Management, 2 the Employees, and 1 official or non-official—to be elected by the four—to act as President.

DFWAN SUGAR MILLS SAKOTI TANDA, MEERUT

AND

THEIR EMPLOYEES

Adjudicator:—Mr. V. Bhargava, I.C.S., District and Sessions Judge, Saharanpur.

Demands and Awards

1. The Agreements of 24th February, 19th March, and 20th March, 1947, and the Conciliation Officer's order, dated 5th April, 1947, should be binding on the parties.

The employers contended on various grounds that they were not binding on them. The Adjudicator examined these grounds in each case.

Agreement of 24th February.

(a) It was merely the decision of the Labour Inspector who had been deputed to arrange a settlement.

The Labour Inspector had no power to give any decision and he had not given one. The agreement itself mentioned that the terms incorporated in it were agreed to by the parties. It was actually signed by the General Manager, on behalf of the mills, and by the President and the Secretary of the Mazdoor Sabha, on behalf of the Employees.

(b) The Employees had no registered trade Union then, so it should have been signed by all the employees concerned, which it was not.

The evidence showed that a proper Mazdoor Sabha of the employees was constituted in February 1947, and that the Constitution was drawn up on 20th February—being sent on, later, to the Labour Commissioner for purposes of registration of the sabha as a Trade Union. Therefore, on 24th February, the President and the Secretary had authority to act on behalf of the employees. It was on this understanding that the Mills actually negotiated with the two officers and took their signatures on the agreement.

(c) It was a unilateral agreement—all the concessions being given by the Mills, the Employees giving nothing.

There was implied promise by the employees not to go on strike, and they had kept it.

(d) Some of the terms were inequitable and impossible of fulfilment.

The Adjudicator found that the terms at the most might be described as rather difficult to fulfil, but not impossible.

Agreement of 19th March, 1947.

Not challenged seriously, and the evidence of Captain Zaidi, Conciliation officer, fully proved that it was a clear agreement between the parties.

Agreement of 20th March, 1947.

(a) it was an order of the Conciliation officer, not a real agreement.

The evidence of the officer himself proved that it was a regular agreement. Even granting that the terms had not been really agreed upon, the decision of the officer was binding on the parties because they had given him a written authority to act as Conciliator.

(b) unilateral. Refuted as in (c) above.

(c) the same charges, and met in the same way as in (d) above.

Order of 5th April, 1947.

This was found on evidence to be not binding, and even the Employees did not press the point.

2. Bonus to contractor's workmen, as to the workmen employed by the mills direct.

Granted. It was held that, under the Bhatia Committee's recommendations, the mills could not make any such distinction.

3. (a) A date should be fixed before the end of the crushing season by the mills for starting repair work during the off season.

(b) The mills should be required to display a list of the workers to be employed for this purpose.

This had been regularly done for the past seven years. The date had been usually within a couple of days after the closing of the crushing season. Many employees looked forward to being employed on this repair work. If the date were allowed to be fixed at the sweet will of the mills, many of the employees, who might have gone home to their villages, might not come to know of it, which would give the mills an opportunity to employ new hands and dispense with the old who might have come under their displeasure owing to their Trade Union activities.

The demand was therefore granted.

4. Electrification of workers' quarters.

Granted, as per agreements dated February 24, March 19 and 20, 1947.

*(Government of the United Provinces, Labour Department,
No. 914 (L)/XVIII-455 (L)/46, Lucknow, 24-3-1947)*

UPPER DUAB SUGAR MILLS LTD., SHAMLI, DIST. MUZAFFARNAGAR,

AND

THEIR EMPLOYEES

Adjudicator:—Capt. S. T. H. Zaidi, Conciliation Officer, U.P.
Demands and Awards

Demands 1 and 2 were settled by the parties themselves.

3. Questions of transfer, paying off, retrenchment, dismissal, discharge, suspension, removal, playing off, or introducing any scheme of intensification should be decided by a Committee consisting of both the Employees' and Employers' representatives.

Some of the above-mentioned matters were covered by the standing orders adopted by the Employers but not agreed to by the Employees. The Adjudicator therefore dealt with these matters individually.

Retrenchment: before this step, some other work should be offered if available; it should begin with the juniormost; vacancies occurring, retrenched men should get the first chance of re-employment.

Transfers: it was entirely within the Employers' discretion.

Intensification scheme: the Employers were the best judges, and the employees were not educated enough technically to offer any constructive suggestions. Still as it was in the interest of the industry the Labour Commissioner's permission should be taken before introducing any such scheme.

For other matters, which did not form part of the standing orders, the workers could only be consulted through their union, but the Adjudicator did not recommend recognition of the union by the Employers pending the passing of the Trade Union Recognition Bill.

5. All the privileges regarding leave, ration, bonus, accommodation, and other allowances, that were given to the permanent workers, should also be given to temporary workers.

The wages of temporary workers were higher and included compensation for amenities. Hence the demand was rejected.

7. Quarters or rent instead.

There was no legal responsibility to provide this. Yet as a

matter of fact, 550 employees had actually been provided with quarters. Most of the others returned home to their villages near by.

8. Essential repairs of quarters.

Recommended to be carried on within 3 months of the enforcement of the award.

9. Double-room quarters to big families.

The allotment of quarters had been left to a committee of workers themselves. As regards certain quarters then occupied by Government officials, the Management were prepared to give those when vacated.

10. Improvements in the Dispensary.

Not necessary.

11. When the cost of living index went down in 1934, the basic wages had been reduced; but when it went up in 1939, the basic wages were not increased in the same proportion. So the arrears of such increase from 1939 to 1946 were demanded.

The Adjudicator regarded the demand as a novel one. In any case, the demand for wages before 1943 was time-barred. And the wages thereafter did not compare unfavourably with the wages prevalent in other Sugar Mills. That the basic wages had been reduced was denied by the Employers.

13. Supply of rubber gloves and safety shoes to each electrician separately.

8 pairs of safety shoes and 2 pairs of rubber gloves were sufficient for the 4 or 5 electricians that worked at a time. A supply to each separately was rejected.

14. 50% of the pay as retention fee to all the seasonal workers.

The industry, being controlled, was not in a position to do so. Besides, the matter was already before the Sugar Committee. The Adjudicator, therefore, did not wish to interfere.

*(Government of the United Provinces, Labour Department
No. 2197(L)/XVIII-102 (L)/47, Lucknow, 1-4-1947)*
GANGA SUGAR CORPORATION, LTD., DEOBAND, SAHARANPUR

AND

THEIR EMPLOYEES

Adjudicator:—Capt. S. T. S. Zaidi, Conciliation Officer, U.P.

Demands and Awards

1. Recognition of the 'Mazdoor Sangha' of the Employees.

It could not be enforced in the absence of any law. The Adjudicator further recommended, in reference to the Employees' complaint, that the Employers should not form their union in direct opposition to the aims and objects of the employees' union, and that they should put up a notice, to clear the misapprehension of the workers, that they had nothing to do with any union formed by the workers.

2. Quarters or allowance in lieu thereof.

96 quarters had already been provided, and 26 employees were being given rent. The management expressed their inability to go any further to meet the demand, and, according to the Factories Act, the Management was not bound to pay rent to its employees in the absence of accommodation.

3. Fuel-wood, Sugar, and Kerosene oil.

Fuel-wood was demanded at 2 maunds to a bachelor and 4 maunds to a family man, in place of 1 and 2 respectively that the company had already been providing free of cost (while other companies were charging for it). The demand was rejected.

Sugar was demanded at $2\frac{1}{2}$ seers for bachelors and 5 seers for family men. The quota already provided, namely, 1 seer per unit per month with a substantial addition to cover the dependents of the permanent factory workers, was considered reasonable, especially in view of the fact that, under Government Rationing scheme, only half a seer could be had by those getting under Rs. 100 per month, and 1 seer by those getting more.

Kerosene oil was to be supplied as before, and the quarters were recommended to be electrified before the start of the crushing season.

4. Uniforms or allowance instead.

Peons and Chowkidars were already supplied with uniforms.

The Adjudicator drew attention to Rule 73 of the Factory Rules, 1936, and recommended uniforms as directed therein.

5. Medical facilities and a library.

Withdrawn, as they had already been provided to the extent required by the Factories Act.

6. Distribution of 1946-47 bonus without conditions attached.

The bonus had been awarded by the Sugar Factories Labour (Wages) Inquiry Committee, U.P., but with certain conditions attached that led themselves to be so abused as to deprive the workers of the bonus by discharging them on some pretext or another before the closing of the season. The Adjudicator improved the conditions so that a worker who had worked for at least 30 days continuously and did not leave of his own accord, or was not discharged for misconduct, had his bonus safe.

7. A rest-house.

The Employer agreed, the Adjudicator only recommending that it should be done before the start of the next crushing season.

8. Leave: the permanent staff to get one month's privilege and 15 days' casual, while seasonal staff to get 15 days' leave with pay over and above weekly and festival holidays.

It was awarded that a seasonal worker should get 1½ days in a month apart from festival holidays, and a permanent worker one month including sick leave after completing one year's service.

9. Two workers, transferred because of their union activities, should be reverted to their former posts.

Rejected, the allegation being found to be groundless.

(Government of the United Provinces, Labour Department.)
No. 2447 (L)/XVIII-76 (L) 47, Lucknow, 11-4-1947

THE SUGAR MILLS, BARABANKI

AND

THEIR EMPLOYEES

Adjudicator: --H. C. Joshi, Esq., Conciliation Officer, United Provinces.

Demands and Awards

1. Revision of Basic wage in proportion to the rise in the cost of living.

The Adjudicator thought that the revision that had already been made by the Bhatia Committee met the demand of the employees to a large extent, and that any further increase under the existing circumstances could not be borne by the industry.

2. Work beyond 6 hours should be paid at overtime rate.

The demand implied amendment of Sec. 34 of the Factories Act, 1934, for which no special reasons were given as regards this particular concern. The demand was therefore rejected.

3. Revision of Dear Food allowance.

There was no justification at that time for any further increase in what had already been granted by the Bhatia Committee.

4. Quarters, fuel, kerosene oil, and sugar free of cost to all.

The first three were already given to some, the last to none. The Adjudicator thought the industry would not be able to bear the additional expenses. As to housing, the question had rather be tackled on a provincial basis.

5. Bonus for the year 1945-46 and 1946-47.

The Bhatia Committee had already granted the bonus for 1946-47. For 1945-46 no bonus could be recommended as the concern had made no profits. The Bhatia Committee had definitely accepted the principle that a bonus can only be awarded when the concern makes a profit.

6. The standing orders should contain a provision whereby cases of dismissal or discharge of an employee should be heard, before formal action is taken, by a Committee consisting of equal

number of representatives of employees and employers presided over by the local M.L.A.

The Standing orders of the Indian Sugar Mills' Association, Calcutta, did contain a provision about discharges and dismissals. They had been adopted by this Mill. They had been submitted to the certifying officer of the U.P.

7. Recognition of the Sugar Mill Mazdoor Union, Barabanki.

The question was to be deferred till the passing of the new Trade Union Act.

8. Every employee to be confirmed after two months' service.

Sugar industry was a seasonal industry and as such it had three categories of employees: permanent, seasonal, and temporary. All the three worked for more than two months in a year, so the acceptance of the demand would mean that all the employees were to be permanent. This the industry could not afford.

9. Every employee to be paid a retainer in the off-season.

The question was under the consideration of the provincial Government. Till then status quo should be maintained, i.e. those employees who had been getting a retainer in the past should continue to get it.

10. A good service certificate at the termination of service. Granted.

11. One month's sick leave and 36 days' privilege leave, with pay, annually, in addition to 22 days' festival holidays with pay.

Status quo was recommended till the recommendations of the Bakhle Committee were out.

12. Compulsory Life Insurance and Provident Fund scheme.

The question should be tackled on all-India basis.

13. A whole-time qualified doctor.

In the absence of any law, this could not be forced on any concern.

14. Opening a Ration shop in the Mill area.

The employees were referred to the Town Rationing Officer, Barabanki.

15. The employers to be required not to make any changes in the staff.

The Adjudicator observed: "This demand is the outcome of a very unsatisfactory state of affairs prevailing in the Sugar Mills generally, inasmuch as all the permanent, seasonal, and temporary staff are lumped together. No attempt has so far been made

to let the employees know the nature of their employment. This gives very wide powers to the employer, which are frequently abused. Permanent employees are turned out on the ground of their being either seasonal or temporary. In the absence of any documents, it is not only difficult but well nigh impossible to detect the truth. The employees demand rightly too that they should be told the nature of their employment and change therein should not be made without cogent reasons."

His order therefore was that the employer should make a list of his permanent, seasonal, and temporary employees and send a copy of each to the Labour Commissioner, United Provinces, and to the President of the Sugar Mill Mazdoor Union, Barabanki, and that no changes should be made therein without hearing the employees concerned.

16. A share in the annual profits.

The demand had already been met by the recommendations of the Bhatia Committee.

17. A rest-house equipped with newspapers, radio-sets, indoor and outdoor games.

The Management promised to provide this as soon as building material was available.

*Government of the United Provinces, Labour Department
No. 1303 (L) ; XVIII-575 (L) ; 46, Dated, Lucknow, 18-2-1947*

LAKSHMI DEVI SUGAR MILLS, CHHITAUNI, DISTRICT DEORIA

AND

THEIR EMPLOYEES

*Adjudicator:—*Mr. Mohd. Ahsan, Conciliation Officer, U.P.

Demands and Awards

1. Reinstatement of 8 employees, dismissed, as complained by the Employees, for their Union activities.

The Adjudicator disbelieving the various charges brought against them by the Employers, ordered their reinstatement.

2. Employing workers who had worked during the previous season.

Granted in accordance with the settlement arrived at between the parties themselves.

3. Recognition of Chitauni Mill Mazdoor Sangh.

Rejected, as the Employers could not be so compelled by law.

4. Rules to ensure security of service.

The standing orders of the Indian Sugar Mills' Association were enough.

5. Donga coolies to be paid bonus, like other employees.

Not pressed, after the General Manager had explained that the coolies had not obeyed the notice put up to entitle them to the bonus.

6. Employers be required not to adopt the Standing orders framed by the Indian Sugar Mills' Association.

It was awarded that the said standing orders should not be enforced in the concern without the consent of the employees, as long as they were not certified by the certifying officer.

7. Payment for the strike period.

Rejected. Quoting the definition of strike in the Trade Disputes Act, the Adjudicator observed: "A strike is a voluntary affair on the part of the employees, for which the responsibility is entirely their own, and the employers are not to be held responsible for it. Moreover, a conciliation officer met the representative of the union and advised them not to resort to strike as the matter was being referred to Government for adjudication. This request of the conciliation officer went unheard, and in spite of the fact that the Government machinery was set moving, the workers went on strike."

(Order No. 1366 (L)/XIII-13-a (L)/45, Lucknow, U.P.)
May, 1945

WESTERN INDIA MATCH CO., LTD., CHUTTERBUDIGANJ, BAREILLY

AND

THEIR EMPLOYEES

Adjudicator:—A. Shakur Esqr., Labour Officer, U.P.

Demands and Awards

(i) Payment of arrears of bonus.

(ii) Increase in wages.

The demand being made under a misunderstanding was dropped.

By comparison with wages paid elsewhere, it was found that the basic wages paid by the company were fair. As regards dearness allowance it was awarded that the company should follow the scale of Jute Mills' Association. The cheap food grain shops should continue.

(No. 4306 (L) XVIII-130 (L)/45, Lucknow, 8-10-1946)

THE WESTERN INDIA MATCH CO., LTD., BAREILLY

AND

THEIR EMPLOYEES

Adjudicator: A. Shakur Esqr., Khan Bahadur, Labour Officer,

Demands and Awards

1. Recognition, by the Employers, of the Wimco Workers' Union and to accord to them certain privileges in respect of union activities, in return for certain undertakings on the part of the union in reference to the Employers.

The parties were trying to arrive at an agreement, and the Adjudicator wished them success.

2 Leave: (i) 15 days' privilege leave with pay; (ii) 15 days'

sick leave with pay; (iii) Further sick-leave without pay but with dearness allowance and cheap grain facilities, but without affecting the workers' title to the annual bonus.

The demand was rejected, being considered by the Adjudicator as of an unusual nature, when, as observed by him, even the Central Legislature, in granting only 10 days' leave under the amended Factories Act, had implied that no further concession in matters of leave was to be made.

3. (a) The 29 festival holidays that were being given should be with pay, not without pay as hitherto; (b) No pay was demanded for Sundays, but no work either by treating it as a substitute working day for some other holiday.

(a) was rejected under the principle followed in (2) above.

As to (b), the employees not being prepared to give up their legal right of using a Sunday as a working day, the Adjudicator recommended that in that case double wages should be paid.

4. A larger stock of medicines in the dispensary.

The Adjudicator found that, though legally not bound to provide anything beyond First-Aid appliances, the employers were maintaining a dispensary with a stock of 169 medicines, and further that they had already started building a new dispensary. The demand, therefore, was rejected.

5. Installation of more fans in the working sheds, where, during the hot weather, especially at mid-day, the temperature was very high.

The Adjudicator, on personal inspection, found that the existing ventilation was up to the standard required by law, yet recommended improvements, including a few more fans.

6. More residential quarters free of rent.

The Employers, though under no legal obligation to do so, had already provided 81 quarters and contemplated providing more when conditions improved.

7. The grain and cloth facilities provided for the employees living in the town should be extended by the employers to the employees living in the rural areas.

The whole matter being entirely under the control of the Government's Rationing Department, it was agreed between the parties that the employees should make a representation to the Rationing Department and that both the Management and the Employers' Association of Northern India, Cawnpore, should give their support.

8. Admission to work should not be prevented for lateness up

to one hour, the worker of course losing his wages for the period he was late.

The demand, if granted, would lead to unpunctuality and consequent reduction in the worker's earnings as well as in the company's production. It was therefore rejected, the 5 minutes' grace allowed by the company being held as sufficient.

9. Compensation to workers for forced un-employment due to the machinery not being in working order.

Though the standing orders were clearly against the demand, the Management made a generous offer, and the award was accordingly made, to the effect that a daily wage of $8\frac{1}{2}$ annas per day of $8\frac{1}{2}$ hours, including other allowances, would be given to those piece-rate workers who usually earned that much, if they had been called to the Factory and were kept waiting for repair of their machines, and if they, on account of shortage of goods or other reasons beyond the workers' control, could not earn on piece-rate more than $8\frac{1}{2}$ annas, provided that the Management's right was untouched to ask such workers on piece-rate to perform other suitable work during the waiting time.

10. (a) bonus equal to 90 days' basic wages every year, as of right.

The right was denied by the Employers in the absence of any contract.

(b) (demand made during the discussion of the demand (a)) the 10% cut in the wages made during a 5-6 years' period of loss, should be refunded by the company, as promised.

The promise was denied by the Employers bringing in records in support. Moreover, the demand was barred on the ground of limitation prescribed by the Payment of Wages Act.

11, 12. The Employees should be given receipts for deductions made from their wages for contribution to the Provident Fund. The Employers should be required to issue wage slips.

The Employers agreed to introduce a wage slip satisfying both the demands.

13. 25% annual increment in the basic wages.

The Adjudicator held such a general demand as of an extremely unusual nature. The demand, if granted, would increase the cost of production year by year and proportionately diminish the company's capacity to compete with other concerns. The matter was of an All-India nature, observed the Adjudicator, and hence incapable of being handled in reference to a particular concern.

14. A production bonus used to be granted beyond 220 cases. The weekly man-hours then were about 62,640. When the weekly working hours were reduced to 54,648, a second shift of workers

was introduced and simultaneously the bonus limit was raised to 230 cases, the man-hours being only about 63,504. The workers demanded a restoration of the former limit.

Granted, so long as the man-hours did not exceed 65,000 per week.

15. 20% of the basic wages as night allowance.

The Employers offered, and the Employees accepted, $\frac{1}{2}$ anna per hour after 6 p.m.

16. If a worker, employed on piece-rate, was transferred to another job on a lower piece-rate, he should be continued to be paid at the former rate until he had acquired sufficient proficiency in the new job, so as to be able to maintain his former earnings.

The Employers contended that such a transfer was in the nature of a favour, when in fact the man, being found surplus in his department, deserved to be retrenched. However, the parties settled the matter between themselves.

17. The increment of -/3/- per day granted on June 24, 1946, after a strike, under an agreement executed between the parties, should be added to the Basic wages, and then the Basic wages should be doubled.

The Adjudicator upheld the Employers' interpretation that the increment of -/3/- was not meant to be in the Basic wages but in the Dearness allowance. Further, according to the award dated May 12, 1945, which was even then in force, the Basic wage was not to be changed. Hence the doubling of the wages was out of the question.

18. The workers, alleging that they were being paid for $5\frac{1}{2}$ days only, claimed wages for 6 days a week.

There was some misunderstanding on the part of the employees as to the method of calculation. The Employers cleared the misunderstanding to the satisfaction of the employees.

(Government of the United Provinces Industries (A) Department)
No. 1454 (L)/XVIII-130 (L), 45, Dated, Lucknow, 20-2-1947

WESTERN INDIA MATCH CO., CHUTTERBUCKGANJ, BAREILLY

AND

THEIR EMPLOYEES

*Adjudicator:—*Lt. P. Tewari, Conciliation Officer, U.P.

Demands and Awards

1. Workers of the Levelling and Continuous Departments, who when they had presented themselves for work, from 25th to 28th September, were not given work but were asked to go home. should be paid daily wages for those days.

(Award on demands 2 to 6 was not yet published).

7. Wage-slips to be retained by the workers.
Management agreed.

8. Wage-slips should contain certain additional particulars.
Granted.

9, 10. Workers should be paid, as directed by the Factories Amendment Act, 1945, at average daily rate of their wages, not at 8½ annas per day, during their privileged 10 days' holiday. Dear Food Allowance should be correctly calculated according to the Factories Amendment Act, 1945.

Both granted.

11. Temporary labourers should be made permanent after 3 months' satisfactory work.

The Adjudicator recommended 4 months.

12. Mutual exchange of work should be allowed in the same as well as in different departments

The employers' representative called this demand unique in the history of adjudication proceedings, and, pointed out that it would not only cause chaos and confusion, but subvert discipline also.

The Adjudicator agreed and rejected the demand.

13. Bonus should be calculated on average total earnings, including allowances, and should consist of 60 days' earnings in a year.

The Adjudicator expressed himself as opposed to calculating the bonus on allowance also, for bonus itself, he said, was one of such allowances, which were to be calculated on the basic wage. As the Employers' contention that bonus could not be claimed as of right but was only an ex-gratia payment, he observed: "Merely asserting that it is an ex-gratia payment is not sufficient but what is sufficient is a proof. In this case, the fact is that the employers have consistently been paying war bonus to their employees and they presume to have made it part of their contract regarding the conditions of service and pay. In other words, it becomes an implicit contract between the employers and the employees, which is based on the past years' conditions, which are still prevalent. I am therefore of the opinion that bonus in this concern is not an ex-gratia payment."

The award therefore was that the monthly paid staff be paid bonus at the rate of $1/6$ of the whole year's wages (excluding allowances), as already declared by the Management, but that for piece-raters it should be $1/5$, so that the two types of workers might be at par position in the availability of bonus benefit.

14. Supply of jerseys once in two years in the month of September.

The Adjudicator recommended October.

15. Payment of average daily wage during un-employment due to shortage of material or breakdown of machinery.

The issue had already been decided in a previous award and was enforced by the Provincial Government. The Management's offer embodied in that award was sufficiently generous.

(No. 4292 (L)/XVIII-399 (L)/46, Lucknow, 10-10-1946)

MESSRS. INDIAN BOBBIN CO., LTD., AND INDIAN TURPENTINE
AND ROSIN CO. LTD.

AND

THEIR EMPLOYEES

Adjudicator: Mr. Abdus Shakun, Labour Officer, U.P.

Demands and Awards

1. Recognition of Employees' Union.

Rejected.

2. Revision in wages of employees both by time and piece rates.

It was awarded that the basic minimum should be raised from as. 6/9 to as. 7/- per day, dearness allowance and cheap grain concession remaining as before. No change was suggested in other basic rates.

3. Wages for overtime work should be calculated on the basic wage plus dearness allowance.

Rejected. It was held that the wording 'ordinary rate of pay' in the Factories Act (Sec. 47) meant basic rate without allowance.

4. Standing orders for termination of service.

As these were already there, the demand was rejected.

5. Employers should be restrained from retrenching any hands.

Rejected, as the standing orders contained adequate provisions to deal with arbitrary retrenchment.

6. 21 festival holidays with pay and no work on Sundays in lieu of any festival holiday.

Rejected. The question of allowing festival holidays with pay was held to be one of an all-India nature and it was unfair to impose holidays on one concern only.

7. 14 days' sick leave with allowances and pay.

Rejected for same reasons as in (vi) above.

8. Standing orders to govern stoppages of work.

The existing standing orders formed part of the contract of employment and these did not provide for any payment. It was held that the question of compensation for stoppage of work required legislation and no individual employer be compelled to compensate.

9. Provident Fund.

Rejected, as this too was held to be an all-India question requiring legislation embracing the entire country.

10. Standing orders for confirming employees.

These were already in force.

11. Annual increment in wages.

Rejected. This was again an all-India question.

12. There should be no lowering in the earnings of employees transferred from one job to another.

No instance having been brought to the notice of the Adjudicator, the matter did not call for any decision.

13. Revision in the existing system of supplying rations.

Rejected, as these matters were governed by the rationing rules.

14. Supply of fuel and light to employees in the Company's quarters.

Rejected. Some of the employees were supplied fuel on payment and light free; but this was done under the terms of the contract.

15. Quarters for employees.

Rejected.

16. Medical attention and treatment to employees staying in Company's quarters.

The medical facilities provided by the management were found adequate.

(No. 4483 (L) XVIII, Lucknow, 17-10-1946)

INDIAN WOOD PRODUCTS CO., LTD., IZATNAGAR, BAREILLY

AND

THEIR EMPLOYEES

Adjudicator.—A. Shakoar, Esqr., Khan Bahadur, Labour Officer,
U.P.

Demands and Awards

(1 to 6) Workers' Union :

1. To recognise the Union, which was registered under the Trade Union Act, and to provide one room for its office.

2. To allow its office-bearers to collect subscription within the factory premises.

3. To allow its members to do union work in rest time within the factory compound.

4. To give one copy of every notice posted on the Notice Board to the Secretary of the Union.

5. Not to allow any labourer to work within the factory who was not a member of the Union or was expelled from membership of the Union.

6. To allow the Union to take legal action against any worker of the factory who created bad feeling between Hindu and Muslim workers or who spread wrong reports against the good name of the Union or its office-bearers.

The Employers were not prepared to concede any of these demands, and there was no law to force them to do so, declared the Adjudicator.

(7 to 11) Leave and Holidays.

7. 15 days' privilege leave even to workers of less than 10 years' service.

The Factories Act, recently amended, allowed only 10 days to anyone who had completed one year's service, and the management were particularly generous towards workers with more than 10 years' service. The Adjudicator saw no reason why he should compel the management to show the same generosity to other workers also.

8, 9. Any registered medical practitioner, not necessarily the Company's doctor, should be allowed to grant a certificate of sick leave whether in the first instance or additionally.

Rejected.

10. All gazetted holidays to Hindus and Muslims simultaneously.

The Company's plea was that the factory, being a continuous process factory, cannot be entirely closed. Hence it was arranged that when one community had a holiday the other was to work. Moreover the work was paid at double the ordinary rate.

The Adjudicator considered this as a generous arrangement and did not like to change it.

11. No work on any of the Sundays.

In carrying on the work as required by the peculiar nature of the factory, as noted in 10, the Management were acting strictly under Rule 103 of the U.P. Factories Rules, and the Adjudicator did not want to interfere.

12. Adequate and good stock of medicines in the Hospital.

The Company was already doing more than was legally neces-

sary, in maintaining a well-equipped dispensary. They should not be compelled to go further.

13. Provision of fans in the factory.

The employees complained of the ventilation conditions in the Boiler room, Evaporating Department, Drying Department, and the Engine-room.

The management stated that they had recently made whatever improvements in ventilation were suggested by the addition Factory Inspector, who was also the District Medical Officer of Health.

14. Free and more quarters to the workers.

Though legally not bound to provide quarters the management had already provided for 14% of the workers, and, before constructing more, were awaiting the Government Housing Scheme that was then under consideration.

The Adjudicator, satisfied with the Employer's attitude, rejected the demand.

15. Provision of light in quarters, and improvement in water facilities.

The management expressed their inability to supply light, and the Adjudicator did not find it possible to compel them. Improvement in water supply was ordered to be made as early as possible.

16. Ration foodgrain and cloth to members of the worker's family.

The Employers stated, uncontradicted by the employees, that foodgrains were being supplied according to the rationing regulations. As to cloth, the Employers were not supplied with it by Government.

The Adjudicator advised the employees to place these matters before the Rationing Authorities.

17. Cheap grain and other advantages should not be withdrawn, as had been done recently.

The charge was denied by the Employers.

18. Local authorities to be moved to open a separate control cloth shop in the centre of the city for the benefit of the factory workers.

The employees were directed to Rationing Authorities.

19. A worker who came one hour late to be allowed to take work, with one hour's wages deducted.

In view of the existing practice, the demand was withdrawn.

(20, 22) Bonus:

20. Full 3 months' pay—without deducting holidays—as Bonus.

22. Bonus to all the employees.

The Employers' plea was that bonus was an ex-gratia payment, in absolute discretion of the Company, and that there was no contract, expressed or implied, whereby the employees could demand a bonus as of right, and that therefore a bonus could not be made the basis of a trade dispute.

The employees' reply was that as the company had made extra profits, the employees had a right to demand a bonus.

This was no reply, thought the Adjudicator, to the legal objection put forward by the Employers, and he rejected the demands.

21. one rupee per worker to be given to the Workers' Union, for annual games and refreshments.

Rejected as not being a 'trade dispute.'

23. Advantages of a Provident Fund to be extended to all the workers above one year's service, and a separate receipt to be given for the money deducted every month.

The Employers not being under a legal obligation to establish a Provident Fund, the matter could not be made the basis of a trade dispute.

(24 & 25) Wages.

24. (a) Wages should be paid on daily basis not on hourly basis.

(b) Saturday should be a half day, but the workers should be paid for 6 days in a week.

(c) Wages to be -/14/- per day.

The hourly basis had been there from the start, and the Employers were within legal right to retain it. The wages of 13 pies per hour for 48 hours a week, or -/8/8 per day of 8 hours, was considered by the Adjudicator as quite fair.

25. Annual increment of one anna per day in wages.

Rejected. The Adjudicator observed: "A demand for annual increments to be effected in the wages of industrial labour is of an extremely unusual nature. Its acceptance would mean a growing increase in the cost of production and would result in diminishing this concern's ability to compete with other manufacturers in the market. A demand of this nature can only be handled properly by a Wage Fixation Board on an all-India basis, or it might be brought up before the Labour Enquiry Committee, which Government proposes to set up very shortly. As it is, this demand cannot be enforced in proceedings confined to an isolated undertaking."

26. Life Insurance: Every worker after one year's service be

allowed to have his life insured, and half of his premium be paid by the factory.

Rejected as 'a very unusual demand outside the scope of a trade dispute'.

27. A night-allowance of 20%.

In the absence of a contract, the Adjudicator could not compel the Employers to accept the demand.

(28 & 29) Amenities.

28. Tea to be given to every worker every day, as was done in Wimco Factory.

29. Umbrella and Woollen sweaters to be given every third year, as they were given in Wimco Factory.

Amenities of this nature could not be demanded as of right, declared the Adjudicator, they were to be left to the goodwill of the employers.

30. Dearness Allowance should be given according to general index number, as was done in Wimco Factory, which, according to adjudication award of May 1945 came to -/15/- per day for July 1946 on wages up to Rs. 18/- p.m.

The Adjudicator directed dearness allowance to be paid at the Jute Mills' scale of the Employers' Association of Northern India, Cawnpore, linked to the general cost of living index figures prepared by the Government Labour Office, less 15%. Under this, the bulk of the employees would be immediately getting Rs. 23/11 - where formerly they got Rs. 18/7/-.

31. A labour club and a rest house for workers.

The matter was directed to be referred to the Factory Inspectorate for examination and necessary action.

32. Re-instatement of old hands in new vacancies.

The old hands were to be reinstated under the order of the Labour Commissioner if they returned by a certain date, viz., 28th July 1945. After that they had no such right. But the Employees alleged that the former manager had given a promise to employ them even after that date. This was denied by the Employers; neither could the Employees bring any evidence in support.

The demand was, therefore, rejected.

(Order No. 1765 (L)/XVIII-379 (L)/43, Lucknow, 27-6-1945)

THE CAWNPORE TANNERY LTD., CAWNPORE

AND

THEIR EMPLOYEES

Adjudicator:—A Shakur Esq., Labour Officer, U.P.

Demands and Awards

(i) Increased dearness allowance, according to the previous agreement between the parties.

In the previous dispute between the parties it was agreed that if the soaking in the Bark department of the tannery amounted to 22,000 skins or more expressed in terms of cow-hides, in any month from 1st January 1944, the company would pay for that month dearness allowance as sanctioned by the Employers' Association of Northern India for Textile and leather factories. Otherwise, they would continue to pay the scale of Jute Mills Association which was somewhat lower.

It was alleged by the workers that the soakings had been more than 22,000 per month. This was however not proved. On the other hand, all inspection reports as well as checking by Controller of Leather and Tanning industry indicated that the soaking figures were neither high as alleged, nor near the figure of 22,000 fixed previously.

It was therefore decided that, in future, the figures of soakings submitted by the factory to the Controller, should be treated as final and dearness allowance be paid from March 1945, either on the basis of Jute Mills Associations' scale or Textile and Leather Factories' scale, according as the figures of soakings expressed in terms of cowhides were less or more than 22,000 per month.

(*Labour Bulletin*, vol. VI, No. 2, United Provinces, p. 47)

SIX TANNERIES OF KANPUR

AND

THEIR EMPLOYEES

Adjudicator:—Mr. H. C. Joshi, Conciliation Officer, U.P.

Demands and Awards

(Demands Nos. 1 and 2 were withdrawn from the present Adjudication).

3. A higher dear food allowance scale than the present one which was prescribed for Jute Mills and was linked with the cost of living index number of industrial workers at Kanpur.

Rejected, the Adjudicator feeling doubtful of the industry's capacity to bear the increased cost, in view of the uncertainty of the market for its goods, now that Government, owing to the end of the war, had stopped purchasing, as they used to do, the entire production.

4. The cut that had been made in the wages of some of the employees in the past, should be compensated for.

Rejected, as the allegation that there had been a cut was not borne out by the employers' records.

5. Revision in the rate of basic wages.

The revision was demanded on the ground that there had been a considerable rise in the cost of living. The Adjudicator pointed out that the rise being met by a dearness allowance, there was no occasion to touch the basic wages, which, moreover, was too technical and complicated a question to be tackled in Adjudication proceedings, which were more or less of a summary character. At the same time he would not leave the ridiculously low wages of 4 or 5 annas unrevised, and therefore awarded that no employee should get less than 6 annas per day.

6. Revision of the leave system: more leave with pay.

Rejected.

7. The Management should be required to provide benefits in respect of old age, sickness, and unemployment.

Rejected. The Adjudicator thought the demand reasonable.

but said that the concerns were not able to shoulder the additional cost.

8. The Management should be required to recognize the Kanpur Tannery and Leather Workers' Union.

Granted. The Adjudicator pointed out that the Union was a registered body and was de facto representative of the leather workers at Kanpur, and that if, as such, it was given recognition by the employers and taken into their confidence, most of the day-to-day quarrels which were results of ignorance and suspicion, would be avoided.

9. Compensation for the period of "playing off".

Rejected, the Adjudicator pointing out that "playing off" was resorted to by an employer for reasons beyond his control, and therefore he did not deserve to be put to any punishment for it; that, while sympathizing with the employees for their hardships during the "playing off", he would advise them to put up with it as a necessary evil in the industry.

(Order No. 2557 (L), XVIII-276 (L), 45, Lucknow, 13-9-1945)

GANGA OIL MILL AND EIGHT OTHER OIL MILLS AT CAWNPORE

AND

THEIR EMPLOYEES

Adjudicator:—A. Shakur, Esq., Labour Officer, U.P.

Demand and Award

Increase in basic wages.

After considering the statements and records submitted, it was held that the wages prevailing in the various oil mills were on the whole fair and adequate. However, wages for unskilled coolies and Raza women were ordered to be raised to Rs. 11/- and Rs. 9/6/- per month respectively.

(No. 3585 (L)/XVIII-325 (L)/46, Lucknow, 4-9-1946)

TALLOW PRODUCTS AND MANUFACTURING CO., CAWNPORE

AND

THEIR EMPLOYEES

Adjudicator:—B. B. Singh, Labour Commissioner, U.P.

Demands and Awards

(i) Reinstatement of certain workers and grant of dearfood allowance to one of them.

The management was willing to re-employ the workers, as demanded, when the Smithy Department reopened. One of the retrenched workers was engaged on daily wages which included allowance and hence no dearfood allowance was paid to him. It was held that he too should be given allowance.

(ii) Bonus or gratuity for 1945-46.

The management were directed to declare a bonus and to pay the same. The rate of bonus was not decided as the accounts were under audit.

(iii) Payment of increments sanctioned but withheld.

The management had agreed to increase basic rates of wages but they did so only in the case of monthly employees. The Adjudicator held that, in accordance with the notice put up by the employers, even the daily raters were entitled to increase in wages.

(iv) Revision in the rate of dearness allowance.

A flat rate of As. 12 was being paid as dearfood allowance. The workers demanded that the allowance should be linked up with the cost of living index number. The management was agreeable to this; but the Adjudicator, considering all the aspects, held that the flat rate was the best for this concern and he directed that it should be annually revised in April.

(v) Dearness allowance for holidays.

The award in this issue was as under:

"The workers' contention is that dear-food allowance is meant to neutralise the high cost of living, and should have no connection with the number of working days. There are, however, no precedents for the payment of dear-food allowance for holidays. This is presumably due to the fact that dear-food allowance was originally fixed as a percentage of basic wages. I do not think that it will be fair to disturb this established practice in an individual adjudication proceeding. The issue is, therefore, decided in the negative."

(vi) Liberalisation of the system of granting leave for urgent needs.

The demand, being vague and without any specific direction for liberalisation, was left undecided.

(vii) Provident fund and Co-operative society.

It was held that the concern, employing as it did about 35 men, was not in a position to institute a Provident fund. As for a Co-operative Society, it should be started by the workers themselves.

(viii) Recognition of the Mill Committee.

The Adjudicator suggested that the management should meet representatives from each department to hear and settle their complaints.

(ix) Recreation leave.

The provisions of Factories (Amendment) Act providing for 10 days' leave with pay was held as sufficient.

(No. 2414 (L)/XVIII-74 (L)/46, Lucknow. 4-7-1946)

CAWNPORE CHEMICAL WORKS, LTD., CAWNPORE

AND

THEIR EMPLOYEES

Adjudicator:—B. B. Singh, I.C.S., Labour Commissioner, U.P.

Issue and Award

Whether it was justified to terminate the employment of the female employees.

As a result of a previous award, total emoluments of female labour had increased considerably. The employers therefore started to discharge female labour as they found it uneconomical. The notice that was served, however, gave the ground as 'retrenchment'. In the absence of any suggestion that other workers from the same department were also affected by the 'retrenchment' it was held that this was an effort to circumvent the award, and that the discharge was not properly conceived. It was therefore awarded that the workers should be retained.

(No. 1022 (L)/XVIII-74 (L)/46, Lucknow, 27-3-1946)

CAWNPORE CHEMICAL WORKS LTD., CAWNPORE

AND

THEIR EMPLOYEES

Adjudicator:—K. R. Malcom, Labour Commissioner, U.P.

Demands and Awards

(i) Reinstatement of two former employees.

In one case, the dismissal was held proper; while, in the other, benefit of doubt was given to the employee and it was awarded that he should be re-instated. No pay was to be given for the interim period.

(ii) Increase in dearness allowance.

It was awarded that the employers should follow the Jute Mills' scale, but no employee should get less than what he was getting then.

(iii) Compensation to those employees whose wages were 'wrongfully' deducted.

According to the prevailing system, an employee retained the same rate of dearness allowance regardless of any increase in his basic wages. "If any Company announces that it will pay its employees according to certain rates, and does in fact so pay them, then it cannot be said that any deductions have been made. The system may not have been a good one, but it was in fact the system in force, and there is no reason to hold that any deductions were made." No compensation was therefore awarded.

(iv) Increase in milk allowance.

Workers in the Crome Furnace Department were paid an allowance of As. 2/- per day, in order to stimulate production. This was incorrectly referred to as milk allowance. In view of the increase in dearness allowance sanctioned in (ii) above, no further increase in this allowance was awarded.

(v) Same wage to male and female employees.

The work allotted to female employees was different, and no process work was entrusted to them. The Adjudicator split up the existing consolidated wage of As. 12/- per day as As. 6/6 basic wage and As. 5/6 as dear food allowance, the latter to change according to a sliding scale. The grain concession was to continue as before.

(Order No. 388 (I)/XVIII, Lucknow, 6-2-1946)

OWNERS OF PRINTING PRESSES AT BAREILLY

AND

THEIR EMPLOYEES

Adjudicator:—Mr. Abdus Shakoor, Labour Officer, U.P.

Demands and Awards

(i) 3 days' Victory Holidays with pay.

The employers offered one day's Victory Holiday with pay. This offer was accepted by the employees in the presence of the Adjudicator.

(ii) Overtime pay.

The employers' offer of overtime at $1\frac{1}{4}$ times the normal rate, for work in excess of 8 hours a day, was considered as reasonable by the Adjudicator.

(iii) Privilege leave.

The number of workers normally employed in the presses was between 3 and 9, and workers were allowed all Sundays and important festivals, the latter separately for Hindus and Muhammadans. Considering the small number of employees in each press it was contended that grant of further holidays with pay was impossible.

The Adjudicator, however, thought that some concession was necessary and awarded privilege leave of seven consecutive days inclusive of Sunday, provided application was made at least 10 days previously. No accumulation was allowed, nor pay as compensation, if leave was foregone.

(iv) Holiday on Sunday.

This was already granted to monthly employees. No change was awarded for piece-rate employees, who were not paid either for Sunday or other holidays.

(v) Sick leave with pay.

Rejected.

(vi) 25% increase in wages; introduction of uniform wage rates in all presses and standardisation and grading of wage scales.

It was found that, by 1945, the minimum wage-rate of Compositors had increased by 47% and the maximum rate by 40%; likewise, the minimum wage-rates for printers had increased by 100% and the maximum by 19%. All the concerns involved in these proceedings were small concerns and were not doing well. No increase in wages was therefore awarded.

The demand^{*} for introduction of uniform wage rates was dropped.

Considering the small number of employees in these presses, the difference in the types of presses in use, and the system on which they were worked, it was held that standardisation and grading of wage-rates was not possible.

(vii) One month's notice before discharge.

It was argued by the employers that it was impossible to enforce the fulfilment of notice condition by the employees and that there was also a great risk of an employee committing mischief or sabotage during the notice period. The Adjudicator was impressed by these difficulties and awarded that the existing system should continue.

(viii) Recognition of Union.
Rejected.

(No. 3110 (L) XVIII-246 (L)/46, Lucknow, 11-8-1946)

THE STAR PAPER MILLS

AND

THEIR EMPLOYEES

Adjudicator:—Mr. Abdus Shakur, Labour Officer, U.P.

Demands and Awards

1. No employee's basic wage should be less than Rs. 35/- per month, and no employee should be paid on daily rates.

The Adjudicator observed: "The basic wages paid by a particular concern are, in a large measure, determined by the general conditions of the industry . . . comprising, among others, the ratio between supply and demand, the amount of competitions . . . the efficiency of the manufacturing plant and machinery, the cost of production, and the dividend expected on the capital . . . , besides local conditions which influence the working, the supply and quality of raw-materials, and the availability and efficiency of . . . labour Standardization of occupational terms must precede an attempt to lay down suitable wage rates . . . This task can only be suitably handled by a Wage Fixation Board, working on a wide regional basis . . . The Government of India have already taken action to introduce what is known as the Minimum Wage Fixation Bill, before the Central Legislature. Influenced by these reasons, I have come to the conclusion that in these proceedings I should

not interfere with basic wages, unless, in any particular case, they are found to be palpably inadequate."

Comparing the minimum rates for unskilled labour given in certain North India Paper Mills, the Adjudicator raised the rate in this mill from -/6/- to -/7/- per day. He made no other alteration.

2. A Provident Fund Scheme.

The employers objected that they were under no statutory obligation to start a Provident Fund. The Employees replied that Adjudication proceedings were precisely meant to provide for such matters as were not governed by some specific law.

The Adjudicator thought it unfair to impose a Provident scheme on employers, when such a scheme was not in force in many other concerns engaged in the same industry. He left it to the good sense of the employers.

3. Framing of Leave Rules allowing a minimum of 15 days' casual leave, one month's privilege leave, and 15 days' medical leave, all with pay, every year.

The Management had made leave Rules for monthly paid workers but not for daily paid workers. The latter were given 10 days' paid leave under the amended Factories Act, and the Adjudicator did not wish to compel the Management to give in excess of what was required under the law.

4. All gazetted holidays and Sundays to be granted as holidays. Rejected on the same principle as in 3.

5. Compensation for involuntary un-employment.

The Adjudicator observed, "This is a matter which affects the entire country and needs a rule or law of universal application. I regret that in the absence of such a rule or law, it is not possible for me to recommend that this concern should be required to compensate its employees for in-voluntary unemployment, which was beyond its control".

6. Supply of cheap grain to employees.

The Adjudicator made an order requiring the employers to sell food-stuffs at rates prescribed by the Employers' Association of Northern India, Cawnpore.

7. Allowance enabling purchase of extra articles of food, the present ration being insufficient.

The demand, in effect, amounted to one for increased dearness allowance, which was governed by a previous Adjudication order. As long as that order was alive, the present Adjudicator could not consider the present demand.

8. Provision of hygienic quarters or house-rent instead.

475 out of 800 employees had been provided with quarters, but the latter were overcrowded and unhygienic, besides being in insanitary surroundings. The rest of the employees lived in their own houses in villages.

The employers took their stand on the fact that there was no legal obligation on them to provide quarters, yet they were doing their best.

The Adjudicator, however, hoped that the employers would grant the demand.

9. Recognition to the Star Paper Mills Workers' Union.

Rejected, since the law did not compel an employer to recognize such a Union.

(No. 4585 (L)/XVIII-246 (L)/46, Lucknow, 19-10-1946)

THE STAR PAPER MILLS

AND

THEIR EMPLOYEES

Adjudicator:—A. Shakur Esqr., Khan Bahadur, Labour Officer, U.P.

Issues and Awards

(i) Compensation for short payment of dearness allowance.

According to a previous Government order of January 1943, the employers paid dear food allowance based on the general cost of living index figure. The order provided a scale for figure up to 240 only, but the employers paid a proportionately higher scale when the figure rose above 240. Subsequently, in June 1943, a subsidiary cost of living index figure was prepared by the Government Labour Officer based on the subsidised supply of food-grains made by some members of the Employers' Association of Northern India. The Star Paper Mills followed this index for payment of dearness allowance from June 1943, but did not regularly supply food-grains at subsidised rates. The employees therefore claimed the difference from June 1943 to June 1946, which came to 1329 points in three years and one month. The Employers contended that they were not required to pay a higher scale beyond the index figure 240, and excess payment made by them amounted to 1521 points. This should therefore be set-off

against the employees' claim. In any case, the employers argued, the payment in the past should be limited to six months as provided for in the Payment of Wages Act. On the other hand, the employees quoted the 3 years' limit in the civil court.

Giving full consideration to all the facts, the Adjudicator held that ends of equity would be fully met if the employers were to pay the difference for one year, i.e. from August 1945 to July 1946, and made his award accordingly. This would cost the employers about Rs. 71,000/-.

(ii) Revision of rules regarding security of employment.

The existing standing orders were deemed sufficient for the present.

Order No. 4507 (L)/XVIII-428 (L)/46-Lucknow, 14-10-1946

MUNICIPAL BOARD, MUSSOORIE

AND

THEIR EMPLOYEES

Adjudicator:—B. B. Singh, I.C.S., Labour Commissioner, U.P.

Demands and Awards

(i) Interim relief pending Pay Commission's report.

Granted, with effect from July 1946, as compensatory allowance, on the lines generally suggested by the District Magistrate who was negotiating in this dispute.

(ii) Extension of uniform, leave, provident fund, bonus and other privileges to conservancy staff.

Existing arrangements were found generally adequate. It was directed that a service book should be maintained for permanent sweepers and that they should be entitled to the same privilege as others.

(iii) How far the temporary staff of sweepers should be treated as permanent.

All temporary staff working on permanent posts or posts of a permanent nature, for over two years, should be made permanent within four months.

(iv) House-rent allowance to inferior staff.

The increase offered by the Board, viz., from Rs. 3/- to Rs. 5/- from 1st July 1946, was confirmed.

(v) Limitation of hours of work.

Offer made by the Board to pay overtime to the technical staff, for work in excess of 54 hours a week, was approved. Reduction to 48 hours and extension of the privilege to non-technical staff were declined. An increase in the staff of linesmen and toll collectors was recommended.

Labour Bulletin, Vol. VI, No. 2, United Provinces, p. 43

WATERWORKS, UNITED PROVINCES

AND

THEIR EMPLOYEES

Adjudicator.—Mr. H. C. Joshi, Conciliation Officer, U.P.

Demands and Awards

1. All the waterworks of the province should be permanently taken over by the Government and all the services be provincialised.

Nothing could be done until the Municipal Act was amended.

3. Free quarters with free supply of water and electricity to all employees, and in so far as it was not done, a house-allowance of 50% for salary up to Rs. 50 p.m., of 35% for salary between Rs. 50 and Rs. 100, and 25% for above Rs. 100.

The Adjudicator recommended quarters with water for only those employees whose attendance was compulsory during day or night, and, in lieu of it, 10% of the salary. Light was to be arranged for by the employees themselves.

5. (a) Provident fund deduction to be not less than 12½% of the pay, the employers contributing an equal amount.

The Adjudicator regarded the expression 'not less than' as pointing to no definite quantity. As to the rate, again, nothing could be done till the Municipal Act was amended.

(b) Annual bonus of one month's pay.

Nothing could be done till the amendment of the Act.

6. Suitable seasonal distinctive waterworks uniforms and badges for all the employees.

Granted, only for those who had to move out for long periods.

7. Probationary period should be fixed, and orders expressing confirmation or unfitness to be passed before expiry of the same.

Granted.

8. Work beyond 8 hours on any working day to be paid at double rate.

Employees governed by the Factories Act to be treated as to time and payment in accordance with that Act. The other employees were refused any fixation of hours.

9. Cheap ration shops, or allowance till then.

Rejected, recommending dearness allowance instead, at Government rates.

10. Free medical treatment to all employees and their families.

Granted only to those employees who were in a corresponding position to those employees of Government who were getting similar concession.

11. (a) Those engaged on shift duties to get overtime allowance or leave in lieu of holidays, as provided under the Factories Act.

(b) All employees to get privilege, medical and casual leave as per U.P. Government Fundamental Rules. Government order debarring employees appointed after 1936 to accumulate more than ninety days' leave should be repealed.

The Adjudicator awarded that the employees governed by the Factories Act would be entitled to the privileges under that Act, while the others would be governed by the existing Rules till the latter were amended by Government.

12. A tonga allowance at a flat rate of Rs. 35 p.m. for out-door supervising staff, in place of rates varying with the nature of duties.

Status quo was recommended till the question was examined by an Inquiry Committee.

Order No. 4508 (L)/XVIII-436 (L)/46, Lucknow, 14-10-1946

TOBACCO MANUFACTURERS LTD., SAHARANPUR

AND

THEIR EMPLOYEES

Adjudicator:—B. B. Singh, I.C.S., Labour Commissioner, U.P.

Demands and Awards

(i) Wages at double the normal wage-rate in place of the former one and a quarter rate, for work done during certain hours.

The company formerly worked in three shifts and though working hours were 48 only in early and common shift and 44½ only in late shift, it paid 1½ rate for 3 to 7 hours as an ex gratia privilege.

After the Factories Amendment Act of 1946, the company evolved a more uniform system so as to give 48 hours' work per shift, retaining the privilege rate as before. The contention of the workers was that the company paid 1½ rate equivalent to overtime rate, before the amendment came in force, and therefore, in view of the increase in overtime from 1½ times to twice of the normal rate, Company's rate should also increase. In their written statement, the company stated that the additional rate was sanctioned for certain specific purposes. The Adjudicator therefore, held: "This additional rate cannot be regarded as an ex-gratia privilege conferred by the management and it must be regarded as earned wage by the labourers, which they are entitled to as a matter of right under the implied terms of their contract or conditions of work; for, the enjoyment of this additional rate by the labourers since 1941, represents a usage so general and well understood in fact, with reference to the business, place and class of persons, that the parties are presumed to have made their contract with tacit reference to it and to have intended to be governed by it in the same way and to the same extent as other like persons in like cases (Pollock on contracts, 11th edition, page 206). In the circumstances it will be fair to assume that this additional rate is part of earned wages, to which a worker is entitled by right, and that it is not an exgratia payment, as contended by the management.

"The next question is: at what rate this additional wage should be paid. I am inclined to hold that the fixing of the additional wage at 1½ times was intended to bring it in line with the overtime rate. This being the intention and the implication of the long-time usage under which the additional rate has been drawn, I hold

that the additional rate should now be fixed at twice the normal rate on the analogy of the increase in the overtime rate."

The company was held to be at liberty to give up taking work for hours for which it pays the additional rate or change its entire wage basis.

(ii) Extra wages for extra hours.

The management agreed to make adjustments so that the present total earnings were equal to those previously enjoyed. In view of the double rate sanctioned above no further extra wage was due.

Labour Bulletin Vol. VI, Labour Department, U.P. pp. 70-76

TOBACCO MANUFACTURERS (INDIA), LTD., SAHARANPUR

AND

THEIR EMPLOYEES

Adjudicator:—Lt. P. Tiwari, Conciliation Officer, U.P.

Demands and Awards

1. Increase in the total quantity of rations.

Withdrawn.

2. Rations being insufficient, and the work being of a particularly obnoxious kind, there should be a supply of eggs, milk, potatoes, etc.

The rationing scheme did not contemplate a supply of additional or even substitute articles of diet. The employees could not prove how the work was of a particularly exhausting type. The Workmen's Compensation Act did not class it as obnoxious. The demand, therefore was rejected.

3. Irrespective of the cost of living index figures, the scale of dear food allowance should in no case be allowed to drop below Rs. 32-5-0 per month.

This would cut across the whole scheme of dear food allowance, which was based on a sliding scale, and was therefore rejected.

4, 5. Pending increase in the total quantity of rations, substituted articles should be supplied. For short supply, compensation should be given.

Compensation of Rs. 16-10-0 per worker was awarded for the period June 1944 to March 1946, workers who had not served the full period getting it *pro rata*.

6. 25% increase in Basic wages and dear food allowance, as the cost of living at Saharanpur was higher than at Kanpur.

The comparison was not to be made with Kanpur, but with other concerns in Saharanpur itself. From the latter it appeared that the wages in this concern were considerably higher. The parties, however, settled upon a consolidated pay, and the award was given accordingly.

7. Recognition of the Cigarette Workers' Union, Saharanpur.

The Management agreed to consider the question, if the Union applied giving their terms and conditions.

8. The basic wages and dearness allowance should be consolidated.

Not pressed.

No. 4509 (L)/XVIII-419 (L)/46, Lucknow, 18-10-1946

J. K. IRON AND STEEL CO., LTD., CAWNPORE

AND

THEIR EMPLOYEES

Adjudicator:—B. B. Singh, I.C.S., Labour Commissioner, U.P.

Demand and Award

(i) Additional bonus for 1945-46.

The concern declared bonus of As. 3/- a rupee for 1945-46. The workers asked for more on the ground that (i) the management had promised in the previous year to increase the rate, (ii) other concerns from J. K. group paid a higher bonus, (iii) the concern had wasted money on experiments which reduced their profits, (iv) payments were made to persons who never actually worked in the mills, but played games on behalf of the concern, and (v) increased pay was unnecessarily given to higher staff.

The adjudicator saw nothing wrong in expenses mentioned in (iii) and (v) above. Discussing the question of bonus, the Adjudicator observed: "The employer's case is that bonus is an ex

gratia payment and at the entire discretion of the employer and is not connected with the terms of employment with its employees, either express or implied. The first part of this statement is in the nature of begging the question. The fact that bonus is not connected with the terms of employment, explicit or implied, will have to be proved in each case and not taken for granted. Without any such proof, bonus cannot be regarded either as a matter of gratuity, or that the quantum thereof and the terms and conditions governing the payment are at the entire discretion of the employer. The nature of bonus is entirely dependent upon the fact whether there is any explicit or implied contract with the employees for the payment of bonus. This makes it a question of fact before it becomes a question of law. And facts must be proved by external, or internal evidence in each case. There can be no general dictum that bonus is paid *ipso facto*, either as an *ex gratia* payment, or as part of earned wages. The mere assertion by the employer that it is an *ex gratia* payment is not sufficient. He must prove that this is so. The facts of this case are that the employer has been consistently paying bonus to his employees since 1941, and this practice has been so well understood by the employees with reference to their employment that they may safely be presumed to have made their contract regarding conditions of service and pay with reference to it. I am not, therefore, prepared to hold that bonus is an *ex gratia* payment in this concern. On the other hand, it very much looks like part of an implicit contract between the employer and the employees, based on several past years' usage and conditions which still prevail.

"The other point taken by the management is that the question of bonus cannot form part of a trade dispute, as defined in section 2 (j) of the Trade Disputes Act of 1929 and cannot be adjudicated upon under rule 81-A of the Defence of India Rules. Apart from the reasons given in the preceding para that where bonus is proved to be in the nature of a contract, it can form part of a trade dispute, the employer's argument overlooks the fact that Defence of India Rules over-ride the provisions of all other Acts and there can, therefore, be no bar to the question of bonus being taken up in adjudication proceedings under D. I. R."

Considering the fact that profits for 1945-46 were higher than for 1944-45, a bonus of As. 3/6 per rupee of basic wages was awarded.

Order No. 4728 (L)/XVIII-496 (L)/46, Lucknow, 23-10-1946

SHRI MAHABIR ROLLING MILLS, CAWNPORE

AND

THEIR EMPLOYEES

Adjudicator:—Lt. P. Tewari, Conciliation Officer, U.P.

Demands and Awards

(i) Increase in dearness allowance.

Awarded that the mills should pay dearness allowance at the rates fixed by the Re-rolling Mills Association.

(ii) Increase in basic wage.

It was found that the basic wages were not inadequate.

(iii) Bonus for 1945.

The award on this issue was as follows:—

“The question of granting bonus to the employees of any concern has been a bone of contention in previous adjudication proceedings and this has been sufficiently dealt with. Various awards on this issue have clarified the position that the bonus was not a matter of right but was an ex-gratia payment and could therefore never be the subject matter of a trade dispute unless there was any contract—expressed or implied. However, as this company has not paid any bonus in the past and as there is no contract, expressed or implied in the terms of employment, the demand for the bonus is rejected.”

Order No. 4784 (L)/XVIII-416 (L)/46, Lucknow, 6-11-1946

PEEPUL IRON AND STEEL CO. LTD., CAWNPORE

AND

THEIR EMPLOYEES

Adjudicator:—M. Ashan Esqr., Conciliation Officer, U.P.

Demands and Awards

(i) Bonus.

It was held that the financial position did not warrant payment of a bonus. It was observed: "The bonus has been the subject of issue in case No. 95 of 1945 in the High Court of Judicature of Bombay in the case of Indian Hume Pipe Co. Ltd. In my opinion, the conclusion to which the High Court came was that a claim for bonus can only be sustained if it related to the terms of employment—expressed or implied. It may be stated that this company never paid bonus or gratuity since it was established and as such there can be no question that there was at any time a contract or term of employment—expressed or implied, with its employees which can, in any way be construed to give the employees the right to demand a gratuity or bonus."

(ii) Bonus to retrenched worker.

Rejected.

(iii) Increase in dearness allowance.

Allowance paid by the company was adequate, but there was no provision for variations in the cost of living. Hence a suitable scale was recommended.

Order No. 5431 (L)/XVIII-444 (L)/46, Lucknow, 23-11-1946

DYER MEAKINGS BREWERIES LTD.

AND

THEIR EMPLOYEES

Adjudicator:—Capt. S. T. H. Zaidi, Conciliation Officer, U.P.

Demands and Awards

(i) Recognition of Union.

There being no legal obligation on employers to recognise unions, this demand was not granted. The employers agreed to meet the elected representative from each department for discussion of grievances.

(ii) Setting up of a Labour Welfare Committee.

The question of welfare should be tackled through the elected representatives.

(iii) Retrenchment should be stopped.

The following principles were laid down for the guidance of the management.

(i) Provided worker is agreeable, alternative job should be given before retrenchment.

(ii) Retrenchment should begin with juniormost.

(iii) Preference to be given to retrenched hands for re-employment.

(iv) The elected representatives should be consulted before retrenchment or re-employment.

(v) Increase in leave and revision in leave rules.

The existing privileges with pay and dearness allowance, viz., (a) 10 days' leave (b) 5 days' sick leave and (c) 16 festival holidays and all Sundays—were held as adequate.

The applications for leave should be accepted even if written in Hindi or Urdu.

(vi) No work to be given, other than the one assigned.

No skilled worker should be asked to do work which was not assigned to him, as it would kill his efficiency. No private work should be taken from employees by their officers.

(vii) Annual increment rules.

Existing arrangement were deemed enough.

(viii) Increase in the total earnings.

Increase in dearness allowance was sanctioned. On the question of bonus, it was observed as follows:—“Bonus has been a subject of an issue in Bombay High Court in the case of Indian

Hume Pipe Co. Ltd. The High Court concluded that a claim for bonus can be entertained, if it is proved that it forms a part of the terms of employment. The Employees' representatives have accepted that they have been paying bonus by amalgamating it into D.F.A. They have also paid bonus for one year and afterwards it was amalgamated in D.F.A. It is, therefore, inferred that the concern has been paying bonus in one shape or the other". Half a month's salary was awarded as bonus.

(ix) Reinstatement of 'wrongfully' discharged men.

It was held that there was no wrongful discharge.

Government of the United Provinces, Labour Department
No. 1785 (L)/XVIII-585 (L)/46, Lucknow, 26-3-1947

CAWNPORE OMNIBUS SERVICE, LTD., CAWNPORE

AND

THEIR EMPLOYEES

Adjudicator:—Lt. P. Tewari, Conciliation Officer, U.P.

Demands and Awards

1. Framing of Standing orders dealing with all the usual service conditions.

Time was given to the Employers to frame standing orders. The Employers framed them, but it was found that certain points were omitted. These were supplied by the Adjudicator to be incorporated in the standing orders.

Salaries: to be paid between 3rd and 7th of the succeeding month.

Confirmation: after 6 months.

Notice of Discharge: one month for permanent hands, and 14 days for daily-wage hands.

Overtime: $1\frac{1}{2}$ times the pay, if done on working days, and $2\frac{1}{2}$ times the pay if done on off days.

Rest: one holiday in a week, and four off days in a month.

Time-scale of salaries: Time-keeper 55—3—70; Conductors 65—5—80; Drivers 75—5—105; Assistant Inspectors 85—5—95; Inspectors 105—5—120; Chief Inspectors 120—10—170. In addition Rs. 5 to the Traffic Department, as washing charges.

Promotion: on the basis of seniority, efficiency, and satisfactory tenure of service.

Fines imposed by law-courts on conductors and Drivers: to be paid by themselves, not by the Company. Attendance at the Court to be taken as being on duty.

Settlement of Conductors' accounts: not to be postponed to the last week of the month.

Bonus: rejected as premature, as the company had hardly worked for 6 months.

2. Certain 6 workmen 'wrongfully' discharged should be reinstated. 4 of these were considered by the Adjudicator. Out of these 3 were held to be wrongfully discharged; compensation was given to 2 and 1 was recommended to be re-instated.

3. Fines: those beyond what were permissible under the Payment of Wages Act, should be refunded to the employees.

4. Cheap food grains: granted.

5. Dearness Allowance: to be paid according to the schedule prepared by the Adjudicator.

6. Victimization for union activities: the 4 persons so victimised were to be re-instated. The fifth had already resigned.

(Order No. 712 (L)/XVIII-379 (L)/43, Lucknow, March 1946)

CAWNPORE TANNERY LTD., CAWNPORE

AND

THEIR EMPLOYEES

Adjudicator:—Mr. Abdus Shakur, Labour Officer, U.P.

Demands and Awards

(i) Withdrawing of the notice of retrenchment given to 140 hands.

The retrenchment was due to cessation of Government work and the provisions of the standing order, which formed the contract of employment, were fully complied with. The management had also offered to re-employ retrenched hands if and when possible. In view of this, the demand was rejected.

(ii) Compensation for involuntary unemployment.

Not a single instance of involuntary unemployment was produced, much less one for which management could be held responsible. The demand, therefore, was rejected.

(iii) Bonus for 1944-45.

The management had offered As. -/2/- per Rupee of basic wage as bonus. After examining the profits, the Adjudicator awarded As. -/3/- per Rupee. Conditions for bonus were to be in accord-

ance with the provisions of standing orders. The management agreed to pay bonus to 140 retrenched hands waiving the condition of their being in employment.

(iv) Deductions from wages on account of supply of the tingles.

The case having been referred to the Authority under Payment of Wages Act, no orders were passed.

(v) Compensation to employees by reason of the scale of dearness allowance in the past being inadequate.

Rejected, as it was found that the dearness allowance was paid according to the orders of the Government.

(vi) Revision in the scale of dearness allowance.

The Company's position having been the same as it was when the scale of dearness allowance was fixed previously, it was held that no further change was called for.

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