

**THE REPUBLIC OF THE FIJI ISLANDS**

NO. 24 OF 2006

**AWARD OF  
THE ARBITRATION TRIBUNAL**

IN THE DISPUTE BETWEEN

**FIJI ELECTRICITY AND ALLIED WORKERS UNION**

AND

**FIJI ELECTRICITY AUTHORITY**

FEAWU: Mr F Anthony

FEA: Mr D Sharma with Ms Y Fatiaki

**DECISION**

This is a dispute between the Fiji Electricity and Allied Workers Union (the "Union") and Fiji Electricity Authority (the "Authority") over the Union's 2004 Log of Claims and other work related issues.

A trade dispute was reported on 5 September 2005 by the Union. The report was accepted by the Chief Executive Officer who referred the Dispute to conciliation. As the Dispute was not settled and as it involved an essential service, the Minister authorized the Chief Executive Officer to refer the Dispute to an Arbitration Tribunal for settlement pursuant to section 6 (2) (b) of the Trade Disputes Act Cap 97.

The Dispute was referred to the Permanent Arbitrator on 4 October 2005 with the following terms of reference:

*"...for settlement over the Authority's failure to:*

*(1) Negotiate and reach an agreement over the Union's 2004 Log of Claims consisting of 19 items (Attached as Appendix A).*

*(2) Negotiate and reach an agreement on the Union's proposed terms of reference which the union seeks be backdated to 2002 and all members employed during that period shall receive benefits so awarded.*

*(3) Negotiate and reach agreement to provide training to member tea ladies in preparation for re-deployment into other job areas.*

*(4) Breaching Clause 12(a) of the Collective Agreement, failing to mutually pursue spirit of compromise and goodwill in settling all disputes and grievances".*

This dispute (No.48 of 2005) along with Dispute No. 47 of 2005, was listed as a matter of urgency for preliminary hearing on 6 October 2005. On that day the parties were directed to file preliminary submissions by 11 October and the Dispute was listed for hearing on 12 October 2005. On that day the Tribunal was informed that items 2,3 and 4 in the terms of reference had been settled and that most of the issues in item 1 were still in dispute. The hearing was adjourned part heard to 13 October 2005. As there were on-going discussions the parties on that day requested that the Dispute be listed for mention on 18 October 2005.

The Tribunal was informed on 18 October 2005 that all but three of the 19 issues in item 1 of the terms of reference had been settled. In respect of all the matters that had been settled by agreement a signed Memorandum of Agreement dated 17 October 2005 was filed and will be the subject of a consent award in part settlement of this Dispute.

The three outstanding issues for determination by the Tribunal relate to public holidays, day workers to shift work and a \$200 bonus. In respect of these three issues the parties indicated that they did not intend to call evidence and requested leave to file written final submissions. The Tribunal fixed a schedule for the filing of submissions.

The Union filed its final submissions on 9 November 2005. The Authority filed answering submissions on 13 February 2006 and the Union filed a reply submission on 21 April 2006.

In relation to the issue of public holiday pay the Union's members are currently entitled to pay at triple time rate for working on a public holiday. This is the effect of clause 16(f) of the Collective Agreement between the Union and the Authority. The Union submitted that the claim for an increase should be allowed for two reasons. First, Union members are engaged in an essential service and when required to work on public holidays, they do not have a choice. Secondly, the Union submitted that those members of the Fiji Electricity Workers Association (FEWA) who work on public holidays are in effect paid four times the normal rate of pay. This is the effect of clause 5(b)(4) of the relevant Collective Agreement.

The Authority has submitted that the different overtime rates paid for working on the public holidays simply reflects the process of collective bargaining between itself and the two unions. The Employer also submitted that the Union's claim did not take account of the Authority's declining income.

The Tribunal accepts that the difference in wage rates between the members of the two unions reflects the different responsibilities of the members of each union and the nature of their employment. However the inconvenience of being required to work on a public without having the choice to decline is the same for members of both Unions. There is no reason why the members of one Union should be regarded as being more inconvenienced than the members of another union. As a result the Tribunal has concluded that there is no valid reason why the members of both unions should not be entitled to the same rate of overtime pay. The Union's claim on this issue is allowed.

In relation to the claim for day workers to be paid more for working shift than is set

out in the Collective Agreement, the Tribunal is satisfied that the Union has not put forward any valid reason why the current rate of compensation should be changed. The Tribunal would like to add that the submissions on this issue were not particularly helpful as neither party adduced any material in support of the conflicting assertions of fact.

The third claim by the Union concerns the payment of a \$200 bonus to the hourly paid workers who are represented by the Electrical Trades Union (ETU).

This payment was first made in 2003. It is referred to in a document which was marked as "U13" in the Union's Preliminary submissions.

In clause (h) of that agreement, the \$200 bonus is paid in December every year in recognition of the "no strike and no lockout" clause that was inserted into the ETU Collective Agreement.

The Union submitted that the members of the ETU receiving the bonus payment do similar work to members of the Union. It also submitted that other terms and conditions granted to ETU members have been subsequently granted to Union members. The Authority has refused to extend the bonus payment to the Union's members.

The Union also submitted that clause 12(b)(v) of the Collective Agreement between the Union and the Authority reflects the Union's responsible attitude in relation to strike action.

Although the Tribunal did make some comments about the right to strike in Award No. 52 of 2004, it would seem that it is appropriate to again visit the matter.

It should be noted that section 33 of the Constitution, amongst other things, gives to workers the right to form and join trade unions and the right to organise and bargain collectively. In employment relations law these rights are often referred to as the right to freedom of association and collective bargaining.

These rights are the subject matter of two Conventions of the International Labour Organization. Convention No.87 is the Freedom of Association and Protection of the Right to Organize Convention and Convention No.98 is the Right to Organize and Collective Bargaining Convention. Convention No.87 was ratified by Fiji in 2002 and Convention No.98 was ratified in 1974.

Whether or not the provisions of section 33 of the Constitution are sufficient to amount to incorporation of the two conventions into the domestic law of Fiji, the Tribunal accepts that the provisions of the two Conventions can provide assistance in determining the scope of the rights guaranteed under the Constitution.

Although the right to strike is not specifically referred to in the Constitution nor is it recognized in Conventions No. 87 and 98, the ILO's supervisory bodies have provided some guidelines on the subject. As a result it is now accepted that the right to strike is one of the essential means available to workers and their organisations for the promotion and protection of their economic and social interests". (Committee of

Experts - General Survey 1983 paras 200 and 205).

Consequently the Tribunal accepts that the right to strike is a right extended to workers under section 33 of the Constitution. The same section sets out certain circumstances which may enable a law to place limitations on the right to strike. Those limitations are set out in the Trade Disputes Act Cap 97.

The ETU members are engaged in the provision of electricity services. Under the legislations this industry is classified as an essential service and this is an accepted classification under ILO standards. As a result their right to strike is somewhat restricted under the legislation and generally speaking the restrictions are consistent with ILO standards. The Tribunal therefore is reluctant to be seen to be endorsing an agreement which surrenders a group of workers already restricted right to strike, especially when that right is surrendered for a mere \$200 per annum.

As a result the Tribunal has taken the view that the \$200 bonus should also be paid to the Union's members whose Collective Agreement contains a clause which demonstrates a commitment to a reasonable approach to the exercise of the right to strike.

If the Tribunal were to deny the Union's claim, an indirect consequence would be that the Tribunal would be seen to be lending its support to an agreement which the Authority was able, for whatever reason, to convince a relatively small Union that it should sign up to.

The Tribunal considers that such an agreement is discriminatory in respect of other workers employed by the Authority and as such represents a serious obstacle to the right of trade unionists to organise their activities.

#### **AWARD**

1. In respect of Union claim 11 relating to public holidays, the Union's claim is allowed.
2. In respect of Union claim 12 relating to day workers performing shift work, the Union's claim is rejected.
3. In respect of Union claim 20 relating to the payment of \$200 bonus, the Union's claim is allowed and is backdated to 2003.

#### **CONSENT AWARD**

The Tribunal's Award in respect of all other issues set out in the terms of reference is in the terms of the signed Memorandum of Agreement dated 17 October 2005 a copy of which is attached hereto.

DATED at Suva this 9<sup>th</sup> day of May 2006.

**ARBITRATION TRIBUNAL**

**Attachment to Award No. 24**

**MEMORANDUM OF AGREEMENT**

BETWEEN

**FIJI ELECTRICITY AND ALLIED WORKERS UNION  
UNION**

AND

**FIJI ELECTRICITY AUTHORITY  
EMPLOYER**

**WHEREAS** a trade dispute were reported on 05th September 2005 to the Chief Executive Officer, Ministry of Labour, Industrial Relations and Productivity under Section 3 of the Trade Disputes Act, Cap 97 to be existing between the Fiji Electricity & Allied Workers Union (hereinafter referred to as the "**Union**") of the one part and the Fiji Electricity Authority (hereinafter referred to as the "**Employer**") of the other part over the Authority's failure to:-

1. Negotiate and reach an agreement over the union's 2004 Log of Claims consisting of 19 items (folios 3 to 5).
2. Comply with Tribunal Award No.52 of 2004 on members job evaluation exercise.
3. Negotiate and reach an agreement on the union's proposed terms of reference which the union seeks be backdated to 2002 and all members employed during that period shall received benefits so awarded.
4. Negotiate and reach agreement to provide training to member tea ladies in preparation for re-deployment into of her job areas.
5. Breaching Clause 12(a) of the collective agreement, failing to mutually pursue spirit of compromise and good will in settling all disputes and grievances.

The Ministry of Labour accepted Grounds 1, 3, 4 and 5 as Trade Disputes and rejected Ground 2.

**AND WHEREAS** the Trade Disputes were listed in the Tribunal on 6th October 2005 when the Tribunal heard both parties and fixed the Trade Disputes for hearing on 12<sup>th</sup> October 2005.

**AND WHEREAS** on 12<sup>th</sup> October 2005 the Parties informed the Tribunal that they had settled Grounds 3, 4 and 5 of the Trade Dispute as follows:

**Dispute No. 3**

That the Authority agrees that the benefits agreed to and reached pursuant to the Arbitration Award No. 52 of 2004 will be backdated to 2002 as set out in that Award. Negotiations on the Terms of Reference of the Job Evaluation will commence without delay.

#### **Dispute No. 4**

That the parties have agreed that the four tea ladies will be trained and redeployed within the Authority in other areas. This was also the subject of agreement in Trade Dispute No. 43 of 2005.

#### **Dispute No. 5**

The Union has agreed to withdraw this dispute.

**AND WHEREAS** the Parties then informed the Tribunal they would undertake further discussions in order to come to settlement on other pending issues pertaining to their respective Log of Claims.

**AND WHEREAS** the Union and the Employer have had various meetings from 12<sup>th</sup> October 2005 at 4.00pm in order to resolve issues pertaining to their respective Log of Claims.

**AND WHEREAS** the parties now wish to record that the following issues have been settled and agreed upon:

#### **IT IS HEREBY AGREED THAT**

##### **1. COLA of 4%**

The Authority would grant all members of the Union 4% cost of living adjustment effective 01 August 2004. Wage rates shall be adjusted accordingly.

##### **2. Allowances**

The Authority will grant all members of the Union 4% increase in subsistence, meal, standby, transfer, underground, liveline, tamper operator, chainsaw operator, forklift operator, crane operator and grader operator allowances effective 01 August 2004.

##### **3. Management Rights**

That the Union agrees to the inclusion of a new clause in the Collective Agreement defining Management Rights as follows: -

It is acknowledged that the rights, powers, authority and regular customary functions of Management are vested in the Authority. These functions include the right to: -

- a) To Plan, direct and control operations including, the methods,

standards and manner of working in any department or section provided that no action taken shall be inconsistent with the terms of the Collective Agreement;

- b) To control and regulate the use of all equipment and other property of the Authority;
- c) To select supervisory personnel;
- d) To hire new employees, to promote, transfer or retire employees;
- e) To discipline and dismiss employees consistent with the rules of natural justice and the disciplinary procedure of the Collective Agreement;

#### **4. Clause 6(f)**

That Clause 6(f) of the Collective Agreement will be amended to now read:

"Where a member is unable to attend work at the normal time or attend work on a particular day or days, he/she shall take all steps to advise his/her superior or supervisor explaining the intended absence three hours before the starting time provided that where it is obvious that the member may be prevented from reporting to his/her normal place of employment because of adverse weather conditions or emergencies or exceptional circumstances, that make attendance on time or for the day impossible, he/she may receive a normal days pay for that day at the Authority's discretion".

#### **5. Clause 13c(ii)**

That the "**Note**" clause falling under Clause 13c(ii) of the Collective Agreement, relating to Day Workers, will be amended to now read:

"This clause does not apply to a member who is required to start work **three hours** before his normal starting time. In such cases, the member will be paid at the rate of double time up to his normal starting time and will then continue his normal working period at normal rates".

#### **6. Updating Clause**

That a new **Updating clause** will be inserted in the Collective Agreement to now read:-

- i) There will be an updating of the Collective Agreement dated 16 August 1994 and all other supplementary agreements, awards etc being relied upon by the respective parties;
- ii) The updating exercise is to be completed by 31 March 2006;

- iii) The updated Collective Agreement will be made available via soft copy to its members through the Authority's server;
- iv) Members can request their Team Leader for a hard copy and the Team Leader will provide this within a reasonable time;
- v) Members/employees who were formerly classed as "unestablished" will now be classed/termed as '**permanent employees**'.

**7. Clause 8**

That **Clause 8** of the Collective Agreement relating to General Welfare

- i) The parties agree that the Authority will issue camping items as Store Items ('items');
- ii) These items will be issued to the Team Leader prior to camping and the Team Leader will be accountable for the items after the camping;
- iii) The parties agree to exchange correspondence in relation to the standard list of items;
- iv) The standard list of items may change as and when they arise by mutual agreement.

**8. Clause 14(b)(iv)**

That Clause 14(b)(iv) of the Collective Agreement in relation to 'time attending courses, workshops etc, will now be amended to read as:-

Time Spent by a Shift Worker attending courses of instruction immediately before or after the normal shift shall count as overtime on a normal overtime pay (i.e. first 3 hours at time and a half and the rest at double time) OR alternatively the Authority may grant time off without pay immediately before or after the shift, whichever is applicable to enable the worker to attend training;

The Team Leader shall have the discretion to determine whether the member be paid overtime or given time off.

**9. Add a new clause as 9 (c)**

That a new clause be added to Clause 9 'Stand By Duty' to read:

No worker shall be required or allowed to perform continuous work in excess of 16 hours.



The employee must notify his or her Supervisor at least two hours prior to the completion of the 16 hours when the 16 hours will be completed if work that is being carried out will extend beyond the 16 (sixteen) hours so that the Supervisor will arrange for replacement.

#### **10. Performance Management System**

That a new Performance Management System ('PMS') clause will be inserted in the Collective Agreement to read:-

Both the Authority and Union mutually agree that PMS will be implemented into the organization for further development and enhancement of the organisation subject to:

- i) That the Authority will in conjunction with the Union seek to regularize trainings and meetings to address any concerns that the Union may have in the adaptation and implementation of the PMS after job evaluations. The Authority will be responsible for the overall implementation of PMS within the organization.
- ii) In agreeing to PMS, either party shall not interpret PMS to replace COLA unless by mutual agreement.
- iii) The Authority intends on fully implementing PMS by 31 December 2006.

#### **11. Add to Clause 5 Union Recognition as (e) (ii)**

If a meeting with the Authority is attended by Union officials or Union officials attend cases on behalf of the Union, the Authority shall bear the transport and wage costs and the Union bear the costs for accommodation and meals.

#### **12. Add to Clause 15 as 15 (e) (iii) Temporary Employees**

The Authority shall not employ temporary employees except in cases where permanent employees are not available to perform work. Where it is unavoidable, these temporary workers will only be for a very specific task and time. In case of student attachees, these workers shall not replace permanent workers and shall be employed for only the period training is required.

#### **13. Matters to be Referred to Arbitration**

The parties are agreed that the following issues are to be referred to the Arbitrator for resolution:

Issue 1 Union Claim 11 (**Public Holiday**)

Issue 2 Union Claim 12 (**Day Workers to Shift Work**)

Issue 3 Union Claim 20 (**Bonus \$200**)

**14.** The parties are agreed that all other issues of their respective Logs of Claims are either settled or withdrawn except for the Union's claim No.14 (Medical Benefit) which shall be negotiated together with the Union's 2005 Log of Claims.

In witness whereof the Parties hereunto set their hands the day **17<sup>th</sup> October** and year **2005** first hereinbefore written and signed.

For and on behalf of  
Fiji Electricity Authority  
Mr Rokoseru Nabalarua  
CHIEF EXECUTIVE OFFICER

Witness

For and on behalf of  
Fiji Electricity & Allied Workers Union  
Mr John A Paul  
GENERAL SECRETARY

Witness