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INDIAN FACTORIES JOURNAL

A FORTNIGHTLY JOURNAL OF THE LAW RELATING TO FACTORIES, LABOUR, WORKMEN'S COMPENSATION, INDUSTRIAL DISPUTES, EMPLOYEES' INSURANCE PAYMENT OF WAGES, PROVIDENT FUNDS, LAW REGULATING WORK IN MINES, ETC.

WITH

The Acts, Ordinances, Rules and Notifications passed by the Central Government and the State Governments, and Reports of Cases and Awards.

NOTICE

This part completes Vol. XII and contains the General Index for the volume. As already intimated, there was no issue of the Journal dated 1-5-57.

Mode of citation of Reports [1957-58] 12 F.J.R.

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LAWS OF INDIA PRIVATE LTD.,
RAYANAGAR, :: :: MADRAS-17.

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grants an arbitrary award, industrial equilibrium in oil companies regarding bonus will be totally upset. There may also be serious repercussion on this industry in particular, and on other industries in general. So, in the present circumstances, the task of the Tribunal is heavier and more complex than what it seems to be at first sight. It has to proceed with more care than in other cases.

The learned counsel of the companies contends that if bonus is granted high, it may give rise to inflation. A privileged class might be created, and the consumers in the long run might also be hit. This is no doubt, true. But, it is certainly not a matter of compliment for the companies that they will make the best bargain out of it. They must give a fair deal to labour.

Having regard to all these facts and circumstances and the peculiar nature of the problem before the Tribunal, I proceed to give my award as follows:

I allow $4\frac{1}{2}$ months' basic salary as bonus for the year 1955 to the clerical staff and the operatives of all the oil companies in the Calcutta area under reference because I get in evidence that labour conceded $4\frac{1}{2}$ months' basic wage as the quantum of bonus for the year 1955 in course of negotiations, and also because I get that $4\frac{1}{2}$ months' basic wage was the maximum bonus granted in Bombay which was the highest bonus in this industry in this land; and also because I find that there have been long-term agreements in different States regarding bonus ranging between 3 and 4 months' basic wages. So any bonus higher than the above might disturb those long-term agreements. But for that reason I do not like to scale down the quantum of bonus in West Bengal below $4\frac{1}{2}$ months' basic salary. This bonus is made payable within one month of the award coming into operation, reduced by two months' basic salary which has been already given under the interim award passed by me.

Before I conclude this issue, I may point out that abiding peace in the matter of bonus regarding these oil companies may be achieved if the companies either persuade the workmen to enter into long-term agreements by means of bi-partite or tri-partite conferences, or, if in case the matter is to be adjudicated upon by the Tribunal on any satisfactory footing, the balance sheets including the profit and loss accounts be placed before it. I am at one with the learned counsel of the companies in not being a believer in granting bonus in cash at a very high figure. Labour has yet to learn to be provident. A lump sum will be heartily welcome to labour, but there is the consequent risk of its being squandered away. But if it comes in a more permanent form, *viz.*, in providing for education of children, measures against ill health and unemployment, and also other long-term benefits, the labour might be really happy and contented. But if this yearly contest on bonus is allowed to continue, as at present, industrial peace is bound to be as remote as ever. An amount which is grudgingly given and obtained through the Tribunal can hardly be taken in good grace by either party. The cost of litigation is also not a negligible factor. So, if better sense prevails on both sides on the lines indicated above, the Tribunal will feel amply rewarded.

Issue No. 2.—The Union claims either supply of uniform or clothing to all workmen, or annas two per day, or Rs. 5 per month as clothing allowance. This claim is refused by the companies on the ground that it is contrary to the agreement reached in the conciliation proceedings before the Labour Commissioner on 28th July, 1956. That settlement provided as follows:

"The parties agree that the matter of clothing for workers will continue to be based upon the present practice, which is in accordance with law, but the companies agree to discuss this matter with the Union and to make, at their discretion, any alteration that appear justified."

This agreement was stipulated to remain in force till the 1st January, 1958. So the companies contend that the settlement does not permit the Union to agitate this matter during the tenure of its operation. The Union, of course, admits the agreement. It contends that in the said agreement there was a provision that the matter was left to be discussed between the companies and the Union, and the decision was liable to be altered. As a matter of fact, the Union contends that in Bombay this clothing allowance or uniform in the alternative, was granted to all the workmen. Here in West Bengal there were several discussions in the Works Committee, and the Chairman of the Works Committee was inclined to grant annas two per day as clothing allowance. But, as no finality was reached, this matter has been included in the present dispute. But the learned counsel of the companies argues that in the aforesaid agreement the companies were agreeable to discuss this matter, but alteration, if any, was left to their discretion. The companies do not like to exercise this discretion. So the matter must be taken to be at an end. During the period of operation of the settlement the Tribunal cannot interfere with it. I think, the Companies' stand is legally sound. I find in the agreement of 1956 that alteration in the matter of clothing was open for discussion, but lay at the discretion of the companies. Besides, in the said agreement there was the provision, *viz.*, "Undertaking not to raise or pursue during the operation of this settlement, any demand (other than bonus for the year 1955 and the following years) involving financial commitments." This being the position, it is not up to the Union who was a party to the said settlement, to raise this dispute about clothing before the 1st January, 1958. The solemn agreement cannot be allowed to be departed from in this manner so lightly. Being reached in the conciliation proceeding it is binding on the parties under the Industrial Disputes Act. If such agreements are allowed to be varied or modified contrary to what is distinctly stipulated therein, then industrial peace will run riot. There will be no peace. Besides, items covered by an agreement should not be allowed to be constantly reagitated unless there is material change in the circumstances, and certainly not during the period of operation of the agreement. So I turn down the claim of the Union in this respect. If any

of these companies is granting uniform or clothing allowance, let them so grant, but I would not make any binding award in this respect.

Before I part with the record of this case, I should like to say that the issue is not happily worded. It does not possibly convey what it meant to convey. If it really intended that the Tribunal will decide which of the workmen are entitled to clothing or uniform in these oil companies, or, in lieu thereof, clothing allowance, then the present form of the issue certainly does not represent that. As the issue stands, I think it can be well answered in this manner: Whether these workmen, who have been judged by the management as entitled to clothing but for some reason that has been withheld, should get any clothing allowance. If they are entitled to clothing by the management, and if the clothing is not supplied, then the management must grant clothing allowance. The management cannot tell one thing and do another. It cannot be permitted to give by the right hand and take away by the left. About the rate of that allowance there is no scope for disputes. It should be annas two per day as in Bombay. But I must make it clear that I have turned down the claim of the Union under this issue.

[IN THE MADRAS HIGH COURT.]

KADACHIRA MOTOR SERVICE LTD., AND ANOTHER

v.

STATE OF MADRAS AND OTHERS.

Rajagopalan, J.

October 25, 1956.

INDUSTRIAL DISPUTES ACT, 1947, SECTION 10(1)—REFERENCE OF INDUSTRIAL DISPUTE TO TRIBUNAL—WHETHER ORDER OF REFERENCE CAN BE QUESTIONED—QUESTION WHETHER DISPUTE REFERRED IS 'INDUSTRIAL DISPUTE'—WHETHER TO BE DECIDED BY TRIBUNAL—ISSUE OF WRIT BY HIGH COURT DURING PENDENCY OF PROCEEDINGS BEFORE TRIBUNAL—WHETHER FEASIBLE.

Though the validity of a reference of an industrial dispute to an Industrial Tribunal by the Government under section 10(1) of the Industrial Disputes Act, 1947, cannot be challenged by an application for a writ of certiorari because the Government was only doing an administrative act in making the order of reference, the question whether the dispute referred to the Tribunal is an 'industrial dispute' as defined in the Act, has yet to be decided by the Tribunal to find out whether it has jurisdiction to adjudicate the matter referred to it. The High Court cannot be moved to issue a writ of prohibition or mandamus where the Tribunal has not yet decided that question in proceedings pending before it.

Writ Pettition No. 1285 of 1956.

H. S. Hedge for the petitioner.

Special Government Pleader for the respondent.

ORDER.

Whether there was an industrial dispute as defined by the Act to justify a reference by the Government to the Industrial Tribunal for adjudication is the question which the petitioners want to be determined at this stage. The validity of the reference under section 10(1)(c) of the Industrial Disputes Act by the Government cannot be challenged by an application for the issue of a writ of *certiorari*, because, in making the order of reference, the Government was only doing a ministerial or administrative act. It has been held in more cases than one that despite the fact that the validity of the reference itself cannot be challenged by an application for the issue of a writ of *certiorari* to quash the order of reference, the question whether a given dispute is an industrial dispute has yet to be decided. It is primarily for the Industrial Tribunal to decide that issue. If there is no industrial dispute at all as defined by the Act, the Industrial Tribunal would obviously have no further jurisdiction to adjudicate any dispute. Possibly, it may be desirable for the Industrial Tribunal to decide that issue as a preliminary issue. But at this stage neither a writ of prohibition can issue, nor a writ of *mandamus* can issue. As the proceedings are pending, the Industrial Tribunal, as I said, has jurisdiction to decide the question whether an industrial dispute existed.

The petition is dismissed.

[IN THE MADRAS HIGH COURT.]

SRI RAMACHANDRA SPINNING MILL, PANDALAPAKA

v.

STATE OF MADRAS AND ANOTHER.

Balakrishna Ayyar, J.

July 31, 1955.

LOCK-OUT—MEANING OF—SUSPENSION OF WORK ON ACCOUNT OF LOSSES—WHETHER LOCK-OUT—DURATION OF CLOSURE, HOW FAR RELEVANT—INDUSTRIAL DISPUTES ACT, 1947, SECTION 2(l).

Under the Industrial Disputes Act, 1947, the antithesis to the term "lock out" is to be found in the word "strike". In the constant tussle between employee and employer strike is the weapon of the former and lock-out is the weapon of the latter. If an employer shuts down his place of business as a means of reprisal or as an instrument of coercion or as a mode of exerting pressure on the employees, or when his act is what may be called an act of belligerency, there is a lock-out. If, on the other hand, he shuts down his work because he cannot get raw materials or fuel or power necessary to carry on his undertaking or because he is not able to sell the goods or because his credit is exhausted or because he is losing money, that would not be a lock-out. The fact that the shut-down is not permanent would not make it a lock-out, because, the duration of the disability is not very relevant.

Civil Suit No. 448 of 1949.

JUDGMENT.

The plaintiff is a firm of partners called Sri Ramachandra Spinning Mill, Pandalapaka. The first defendant is the State of Madras. The second defendant is one Venkata Reddi who was an employee in the plaintiff's Mill. In September, 1946, the first defendant appointed Mr. Sherfuddin, the then District Judge of East Godavari, as an adjudicator to report what rates of dearness allowances the plaintiff's mill (as well as another) should be required to pay its employees. While Mr. Sherfuddin's enquiry was in progress Government referred to Mr. Venkataramiah the wider question of the wage structure of the textile mills in the Province. Mr. Venkataramiah made an interim report recommending that the rates of pay should be on a certain basis, and on the 18th December, 1946, Government issued G.O. No. 4637 giving effect to his proposals. Mr. Sherfuddin made his report on the 23rd December, 1946, and Government accepted the recommendations contained in it and directed that this should be given effect to *vide* G.O. Ms. 39 dated 4th January, 1947. On 19th June, 1947, Mr. Venkataramiah gave his final award and in G.O. No. 3080 Development dated the 15th July, 1947, Government directed that the rates mentioned in Mr. Venkataramiah's award should be implemented. The order of Government provided that the award should be in operation for a period of one year from 1st April, 1947. The plaintiff paid wages and dearness allowance as laid down in the various orders of Government till the end of June, 1947. It is alleged in the plaint that it was then found that the Mill was working at a loss and could not any longer carry on its business. Therefore, on 11th June, 1947, the management of the plaintiff mill wrote to the Inspector of Factories notifying him that they intended to shut down from 1st July, 1947, until more favourable conditions appeared. Accordingly the mill was closed on 1st July, 1947, and remained closed till 1st April, 1948, when it was re-opened. On 10th July, 1947, Government issued a G.O. bearing No. Ms. 2991, in which it was mentioned that an industrial dispute had arisen between the workers and the management of the plaintiff's mill "on the question of closure of the mill" and referred "the said industrial dispute" for adjudication to Mr. Markandeyulu. On 11th July, 1947, Government issued a further order G.O. No. Ms. 3031 under section 10(3) of the Industrial Disputes Act (Act XIV of 1947), prohibiting the continuance of what they called the lock-out in the mill. The plaintiff applied to Government on 28th July, 1947, asking that the G.O.

be recalled, but they declined to do so. In the award which he made on 5th January, 1948, Mr. Markandeyulu took the view that the closure of the mill was not justified and recommended that Mr. Venkataramiah's final award might be given effect to. The case of the plaintiff is that there was really no industrial dispute at all because the closure of the mill "could in no sense of the term be treated as an industrial dispute within the meaning of the Act and as such G.O. No. 2991 dated 10th July, 1947, and the reference to the Industrial Tribunal thereunder was *ultra vires*, without jurisdiction and void. The plaintiff states that G.O. No. 3031 based as it was on the previous G.O. was equally *ultra vires*, without jurisdiction and void". However, the second defendant filed a suit O.S. No. 349 of 1948 on the file of the Court of the District Munsif of Ramachandrapuram against the partners of the plaintiff firm claiming a sum of Rs. 497-14-6 as wages and dearness allowance for the period between July, 1947, and March, 1948, at the rate fixed in Mr. Venkataramiah's award. The Collector of East Godavari on behalf of the Government also filed a criminal complaint against the plaintiff under section 29 of the Industrial Disputes Act. In these circumstances the plaintiff prayed for (1) a declaration that G.O. Nos. Ms. 2991 dated 10th July, 1947, and Ms. 3031 dated 11th July, 1947, issued by the first defendant are *ultra vires*, without jurisdiction and void, (2) an injunction against the second defendant restraining him from proceeding with the suit in the Court of the District Munsiff of Ramachandrapuram, and (3) an injunction against the first defendant from proceeding with the criminal complaint instituted in the Court of the Additional First Class Magistrate, Kakinada.

In the statement which the Government filed they pleaded that on 10th July, 1947, on which date G.O. No. Ms. 2991 was issued there was an industrial dispute within the meaning of sub-clause (k) of section 2 of the Industrial Disputes Act, 1947, and that in consequence they were acting well within the scope of their authority and power in referring the dispute for adjudication. Government also controverted the suggestion that the award of Mr. Markandeyulu was ineffectual and not binding on the plaintiff. It was further pleaded that the action of the plaintiff amounted to a lock-out and as the lock-out had been declared illegal the plaintiff was bound to pay wages and dearness allowance for the period between 1st July, 1947, and 31st March, 1948. Government took the final point:

"This defendant submits that this Court has no jurisdiction to go behind the order of reference and into the existence or otherwise of an industrial dispute and declare the order of reference and the award following it to be bad on that ground."

In the statement which the second defendant filed he took the following points:

(1) he did not admit that the plaintiff is a registered firm.

(2) on 10th July, 1947, there was a lock-out within the meaning of the Industrial Disputes Act, 1947. The closure of the mill by the plaintiff and the consequent refusal to continue to employ the second defendant and others amounted to a lock-out.

(3) the closure of the mill from 1st July, 1947, till 31st March, 1948, was unjustified and not warranted by the state and volume of business and the income derived therefrom.

The following are the issues in the suit:

1. Are Government Orders Nos. 2291 of 1947 and 3031 of 1947 *ultra vires*, void and not binding on the plaintiffs for all or any of the reasons mentioned in the plaint?

2. Are the plaintiffs a registered firm?

3. Is the suit not maintainable under the provisions of the Industrial Disputes (Madras Amendment) Act, 1949?

4. Has this Court no jurisdiction to try this suit?

4-A. Does the closure of the mill from 1st July, 1947, to 31st March, 1948, amount to a "lock-out" or not?

5. To what reliefs are the plaintiffs entitled?

Issue 4-A. - Section 2(l) of the Industrial Disputes Act, 1947, defines the expression "lock-out" in the following manner:

"Lock-out" means the closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him."

As the words of the definition stand, whatever be the circumstances in which he finds himself placed and whatever the strength of the agencies that forced on him the step and however impotent he may be to avoid the result, if an employer closes the place of employment or suspends work on his premises a "lock-out" would come into existence. A flood may have swept away the factory; a fire may have gutted the premises; a convulsion of nature may have sucked the whole place underground; still if the place of employment is closed or the work is suspended or the employer refuses to continue to employ his previous workers, there would be a lock-out and the employer would find himself exposed to the penalties laid down in the Act. Mr. Markandeyulu was conscious of the difficulty raised by the words used in the definition. So he made a distinction between an act of God and a deliberate act arising from the volition of the employer. I quote his words:

"Of course there may be cases where the mills have to be closed for reasons over which the management have no control and for which they cannot justly be blamed, such as an act of God. But, the implied prohibition in the award of Mr. Venkataramiah and in the G. O. is to the effect that the mills should not be closed for the period that the award is in force as the result of any deliberate act or omission on the part of the management."

I think that Mr. Markandeyulu was in error in not carrying his analysis further. For all purposes that ordinarily matter the antithesis does not lie where Mr. Markandeyulu put it; it does not lie between an act of God and an act of the human will. When we bear in mind the scope of the Act it will be realised that the antithesis to the word "lock-out" is to be found in the word "strike". In the constant tussle between employee and employer the strike is the weapon of the former and the lock-out the weapon of the latter. If a number of employees stay away from work in pursuance of an understanding they have previously come to, there would be a strike; but if they keep away because all of them happen to have been suddenly taken ill by a wave of fever or dysentery, for instance, there would be no strike. Absence from work even of a considerable number of persons would not become a strike unless there is an understanding behind it, and usually such an understanding is accompanied by a desire to put pressure on the employer. When a number of employees abstain from work the test as to whether such abstention amounts to a strike or not would be found in the intention behind such abstention. If their intention is to put pressure and if with that intention they agree together to stay away from work, then there would be a strike. The lock-out is the corresponding weapon in the armoury of the employer. If an employer shuts down his place of business as a means of reprisal or as an instrument of coercion or as a mode of exerting pressure on the employees, or, generally speaking, when his act is what may be called an act of belligerency there would be a lock-out. If, on the other hand, he shuts down his work because he cannot for instance get the raw materials or the fuel or the power necessary to carry on his undertaking or because he is unable to sell the goods he has made or because his credit is exhausted or because he is losing money, that would not be a lock-out. In order to avoid a shut-down being called a lock-out it is not necessary that the shut-down be permanent. A factory or an industry can be "sick", though not of course in the same manner as a labourer, if it is unable to pay its way. The duration of the inability, except as evidence of *bona fides*, is not very relevant. Where an employer suspends work and the question is whether that suspension is a lock-out or not, we will have to enquire, why did he shut down? Was it a *bona fide* business decision or was it a move *vis-a-vis* the labourers employed? In a number of cases the answer to this question would present no difficulty. If, for instance, it is, seen that profits were being made and profits can still be made but nevertheless the employer shuts down it would be legitimate to conclude in the absence of another acceptable explanation that the closure was a lock-out. If, on the other hand, losses have been incurred in the past and are likely to be incurred the conclusion that it was shut down as the result of a genuine *bona fide* decision and that it was not lockout would be justified. Of course, marginal cases may exist which lie on either side of the line. But, the difficulty of deciding on which side of the line a particular case falls, would not be a valid reason for refusing to recognise the existence of the line.

In the present case P.W. 1 explained why the mill was shut down from 1st July, 1947. He stated that in the year 1945-46, the firm, according to its way of reckoning, suffered a loss of Rs. 8,354-2-6. The auditor, however, considered that certain items which had been charged to revenue account should have been debited to capital account and that if this were done there would have been no loss but a profit of Rs. 1,918-11-3. But, even that figure did not provide or allow for the depreciation of the machinery and buildings. P.W. 1 has stated that the machinery was purchased for a sum of about Rs. 35,000 and that other additions were made to plant and equipment for about Rs. 85,000 making the total Rs. 1,20,000. If reasonable depreciation is allowed on this figure even the notional profit of Rs. 1,918-11-3 which the auditor discovered would cease to exist. (For more detailed figures see Exhibits P. 6 and P. 6. a). P. W. 1 also stated that for the year 1946-47, the plaintiff suffered a loss of Rs. 15,944-13-2. He went on to explain that from 1st October, 1946, to 30th June, 1947, the total amount paid in pursuance of the various awards exceeded Rs. 42,000 and that in a full year the amount would come to Rs. 56,000. The question would naturally arise why in those circumstances, the plaintiff re-opened on 1st April, 1948. P.W. 1 gave the explanation that with effect from 1st April, 1948, Government had raised the controlled price of yarn and that as they had on hand stocks of cotton which they had purchased earlier at cheaper rates the position was such that they could begin business again. Their expectations were realised and in 1948-49, the plaintiff made a small profit. But from 1st April, 1949 to 31st March, 1950, plaintiff again sustained loss. The evidence of P.W. 1 appears to me to be true, and if that evidence is accepted it will be difficult to avoid the conclusion, that when the plaintiff shut down the mill on 1st July, 1947, they were making a *bona fide* business decision and that they were not enforcing a lock-out.

Learned counsel for the second defendant strenuously argued that no loss had been incurred and that, therefore, the shut-down amounted in reality to a lock-out. He supported the view of the auditor of the firm for the year 1945-46, that certain costs of construction should have been debited to capital account and said that if that had been done there would have been no loss for that year. Now, as already explained, the notional profit was worked out without allowing anything for the depreciation of the plant and machinery and buildings and if some reasonable provision is made for this purpose there would have been no profit at all.

Learned counsel for the second defendant next said: P.W. 1 admitted that the firm can manufacture 1,200 lb. of yarn per day. They have 280 working days in a year. The controlled price is Rs. 11-2-0 per 10 lb. of yarn. On that basis the value of the yarn which the factory can produce would be about Rs. 3,73,800 per year. At that rate, there was bound to be a profit. This argument merely helps to reveal the falsity involved in averages. If a man can walk 4 miles an hour, would it be right to conclude therefrom that in a month he can walk 2,880 miles? Counsel for the second defendant advanced a third argument. P.W. 1 admitted that in 1947-48, the value of the mill was about Rs. 1,20,000. In Exhibit D. 1, a petition submitted to the Government by the plaintiff, it was stated:

"The mill is now worth nearly six lakhs of rupees." Therefore, he said it is wrong to say that the mill made no profits. It will not take long to see the fallacy of this argument. Apart from the circumstance that the allegation in Ex. D. 1 cannot be regarded as a sober statement of fact, being more in the nature of a plea in advocacy, the management could not issue a cheque against this capital gain. There may have been a genuine addition to the capital value. But that is not currency of the country which can be drawn on to pay wages. It will very often be found that when it is decided to wind up a concern the notional increase in capital value may be wiped out.

Learned counsel for the second defendant put a series of questions to P.W. 1 suggesting how, what is now said to be a loss could be turned into profit. I do not propose analysing these suggestions because I have no doubt whatsoever that if any businessman adopted these suggestions and made payments on that basis it would not be long before he found himself in the bankruptcy court. Some of the other questions put to the witness seemed to reflect on his business acumen, but that is a matter with which I am not concerned. The Court cannot decide whether a business is managed prudently or imprudently. All it can decide when a question of this kind comes before it, is, whether the shut down was an honest business decision or whether it was a lock-out as it is defined in the Act. After an examination of all the considerations placed before me, I have no doubt, whatsoever, that it was not a lock-out.

Issue 1: When it was reported to Government that there was a dispute between the plaintiff and the workers they employed, Government were no doubt within their rights in directing an enquiry and no one can seriously quarrel about that. An examination of G.O. No. 3031 however shows that Government proceeded on the assumption that the act of the plaintiff was a lock-out. It has now been found that it was not so. The order of Government, therefore, being based on a misconception of facts and on an assumption which it has been found to be non-existent, is null and void and of no effect whatsoever.

Issue 2: The order registering the firm has been filed as Ex. P. 10 and this issue is, therefore, found in the affirmative.

Issue 3: I am unable to see how the Madras Act, XII of 1949, which amends the Industrial Disputes Act, 1947, bars the suit.

Issue 4: I do not find anything in the provisions of either Central Act, XIV of 1947 or Madras Act, XII of 1949, that deprives this Court of its jurisdiction to try this suit. The only provision in the Central Act, XIV of 1947, that has any bearing on this question is sub-section (4) of section 15. That applies only to awards made by Tribunals and does not apply to a reference of this kind.

In view of my conclusion that there has been no lock-out it follows that the plaintiff has committed no offence by keeping his place of business shut from 1st July, 1947, to 31st March, 1948, and that the second defendant is entitled to recover nothing by way of wages or dearness allowance during that period. There will be a declaration to that effect. I see no reason for departing from the normal rule regarding costs and direct that the defendants should pay the costs of the plaintiff; time for first defendant to pay costs—three months.

[IN THE THIRD INDUSTRIAL TRIBUNAL, WEST BENGAL.]

HOOGHLY DOCKING & ENGINEERING CO., LTD.

v.

THEIR WORKMEN.

Shri J. N. Maitra.

June 14, 1957.

BONUS—AWARD OF—PRINCIPLES—CONCERNS UNDER SAME MANAGEMENT HAVING SAME CONDITIONS OF SERVICE—CLAIM FOR SAME BONUS—WHETHER JUSTIFIED—CLAIM AS CONDITION OF SERVICE—PROOF OF—DISTINCTION IN PAYMENT OF BONUS BETWEEN CLERICAL AND MANUAL WORKERS—WHETHER PROPER.

STRIKE—STRIKE WITHOUT EXHAUSTING OTHER MEANS OF REDRESS—WHETHER JUSTIFIED—WAGES FOR PERIOD OF STRIKE.

Though uniformity is maintained in the wages and dearness allowance in two or more concerns managed by the same managing agents, the question of bonus stands on a different footing. Bonus cannot, in the nature of things, have relation to what prevails in other concerns, because, it is dependant entirely on the affairs of the particular concern and of none else. Therefore, the workmen in one concern cannot claim the same bonus as is paid in another concern under the same management, on the ground that the conditions of service in both are identical.

Bonus can be claimed as a condition of service, only when it has been paid for a sufficiently long period and even when the concern had suffered losses. The fact that a concern paid bonus from the year 1951, is not sufficient to establish a condition of service. Where there is no such condition of service bonus can be claimed out of profits only when there is sufficient profits available after meeting all prior and necessary charges.

There is no justification for making a distinction in the quantum of bonus between clerks and subordinate staff on the one hand and manual workers on the other. As the profits are the result of the joint efforts of all the employees, it is only proper that bonus should be paid without any such distinction.

A strike which is resorted to without exhausting all means of redress, would be unjustified and the workmen would not be entitled to any wages for the period of the strike.

S. K. Mullick (Jr.) for the management.

D. L. Sen Gupta and *S. K. Ganguly*, for the workmen.

AWARD.

1. By Order No. 1810Dis./10L-17/56, dated the 2nd May, 1956, the Government of West Bengal, in the Labour Department, referred under section 10 of the Industrial Disputes Act, 1947, the industrial dispute between the Hooghly Docking and Engineering Co., Ltd., 6 Howrah Road, P.O. Salkia, Howrah, and their workers represented by Hooghly Docking and Engineering Workers' Union, 77 Upen Mitra Lane, Salkia, Howrah, and Hooghly Dock Employees' Union, 125 M. N. Bhattacharji Road, Santragachi, Howrah, regarding the matters specified in the schedule, to the Third Industrial Tribunal constituted under section 7 of the Industrial Disputes Act, 1947, by notification No. 592Dis./D/12L-5/52, dated the 23rd February 1953, for adjudication.

2. After usual summons the parties put in appearance and filed their written statements. The pleadings were completed on 10th August 1956. The parties were thereafter directed to file lists of documents. Then there was an application under Order XI, rule 18(2), C.P.C., by the Employees' Union seeking permission to inspect certain documents. Then after adjournments the hearing of the dispute was concluded and award was reserved.

3. The matters of dispute as stated in the schedule to the order of reference are as follows:

(i) Additional bonus for 1954, payable in 1955.

(ii) Pay for the strike period from 10th October, 1955, to 12th October 1955.

For proper appreciation of the case, it is necessary to state certain facts leading to the reference which are as follows:

Hooghly Docking and Engineering Co., Ltd. (hereafter called the Company), is an engineering concern having workshop at 6 Howrah Road, Salkia. The Company which had been previously mainly a ship repairing concern has also been doing new construction work. It employs about 1,400 workmen, of whom 160 are monthly rated clerks and sub-staffs and about 1,240 hourly rated manual workers.

Hooghly Docking and Engineering Workers' Union (hereafter called Workers' Union) represents hourly rated manual workers, while Dock Employees' Union (hereafter called Employees' Union) represents the monthly rated clerks and sub-staffs.

Howrah Iron Works owned by Burn & Co., Ltd., is another engineering concern situated at 8 Nityadhan Mukherji Road, Howrah, at a distance of one mile from the workshop of the Hooghly Docking and Engineering Co., Ltd. Howrah Iron Works employs about 7,000 workmen, of them Burns Employees' Union, represents the monthly paid clerks, the sub-staffs and daily rated sarkars and checkers, while Burns Mazdoor Union and Burns Labour Union represent the daily rated manual workers.

Hooghly Docking and Engineering Co., Ltd., as also Burn & Co., Ltd., owning Howrah Iron Works are under the same managing agents Messrs. Martin Burn Ltd.

Regarding clerks and sub-staffs represented by employees' Union.

In the matter of pay, dearness allowance and bonus the clerical and sub-staff of these two concerns were admittedly treated on equal footing. In 1946, Martin Burn Ltd. as managing agents of these concerns introduced same scale of pay and dearness allowance according to Bengal Chamber of Commerce Scale for the clerical and sub-staff of these two concerns. They were also being paid same quantum of bonus on the eve of Durga Puja on terms as below:

FOR CLERICAL STAFF

Service below 1 year	... Rs. 20 minimum.
Service 1 year up to 4 years	... ½ month's basic pay.
5 years' service	... 5/8 month's basic pay.
6 years' service	... 6/8 month's basic pay.
7 years' service	... 7/8 month's basic pay.
8 years' service and over	... 1 month's basic pay.

Subject to a maximum of Rs. 300 only.

FOR SUBORDINATE STAFF

Less than 1 year's service	... Rs. 10
1 year's service and over	... Rs. 10 plus Rs. 1-8 for each completed year of service, subject to a maximum of one month's basic pay.

On 24th July, 1953, Shri M. C. Banerji gave award as to bonus on a reference relating to the clerical and subordinate staff of Howrah Iron Works of Burn & Co., Ltd. He directed in replacement of the complicated scheme of bonus as aforesaid that bonus should be paid including what had been paid by the Company at one month's basic pay. The management of Hooghly Docking and Engineering Co., Ltd., extended the benefit of said award to its clerical and subordinate staff and made adjustments accordingly (*vide* P.W. 1). Clerical staff and sub-staff of the Company (Hooghly Docking and Engineering Co., Ltd.) were thus paid bonus at par with the clerical and sub-staff of Howrah Iron Works up to Durga Puja of 1954.

On the eve of Durga Puja in 1955, the clerks and the sub-staff of Hooghly Docking and Engineering Co., Ltd., were paid bonus equivalent to 1½ months' wages while and sub-staffs of Howrah Iron Works were clerks paid bonus equivalent to 2 months' wages. Thus, for the first time, distinction was made in the quantum of bonus between the clerks and sub-staffs of the Company on one hand and clerks and sub-staff of Howrah Iron Works on the other.

Earlier the Employees' Union which represents the clerks and sub-staff had demanded bonus equivalent to 3 months' basic pay for 1954, to be paid on the eve of Durga Puja in 1955, by their letter, dated 22nd September 1955, (Ex. A). The Company, however, declared bonus equivalent to $1\frac{1}{2}$ months' basic pay by their Circular No. 16/55, dated 30th September, 1955, (Ex. B). On such declaration of bonus the Employees' Union immediately protested and insisted for additional bonus to make up 3 months' basic pay as previously demanded (*vide* their letter, dated 3rd October, 1955, Ex. 1).

The clerks and sub-staffs of Howrah Iron Works represented by Employees' Union on the other hand had demanded 2 months' bonus to be paid on the eve of Durga Puja of 1955. They resorted to one day's token strike to enforce the said demand. Then, on 7th October, 1955, through the intervention of the Conciliation Officer there was a settlement between the management of Howrah Iron Works and the Employees' Union representing the clerical and sub-staff of the said concern whereunder the management agreed to pay 2 months' basic pay as bonus to the clerical and sub-staff for the year 1953/54 (Ex. 2).

On 9th October, 1955, the Employees' Union representing clerical and sub-staff of the Company (Hooghly Docking and Engineering Co., Ltd.) wrote to the Company intimating about the said settlement and saying that as the management of Howrah Iron Works agreed to pay 2 months' basic pay as bonus to their clerical and sub-staff, the Company should also fall in line as in the past and pay bonus equivalent to 2 months' basic pay to its clerical and sub-staff as in the past the staffs of the two concerns had been equally treated and as no discrimination had been made between them (Ex. 1). The Employees' Union requested decision of their demand by 12 noon that day.

There was no response to the said demand and on the contrary a notice was hung up in the early hours on 10th October, 1955, informing the clerical and menial staff that there would be no change in the quantum of bonus announced and that the offer of $1\frac{1}{2}$ months' bonus already made should be regarded as final. The clerks and sub-staff were also informed by the notice that payment would be made to the clerical staff on 11th October, 1955, and menial staff on 12th October, 1955, (*vide* Ex. B1).

On such rejection of their demand the clerical and sub-staff of the Company resorted to stay-in-strike from 2 p.m. on 10th October, 1955. They continued such strike from 2 p.m. to 4 p.m. on 10th October, 1955, as also throughout working hours on 11th and 12th October, 1955.

Regarding manual workers represented by Workers' Union.

Regarding the manual workers of the Company no bonus was paid to them prior to 1949. They were paid bonus out of profit for the first time

in 1948, and then in 1949. In 1950 there was loss and consequently no bonus was paid to them. From 1951 to 1954 they were paid bonus on the eve of Durga Puja on the rates as below :

BONUS

Workmen.

For the year—

1951	...	...	...	4 weeks' basic pay.
1952	...	...	...	1 month's basic pay.
1953	...	...	...	1 month's basic pay.
1954	...	...	...	6 weeks' basic pay.

The Workers' Union on behalf of the daily-rated manual workers of the Company demanded bonus equivalent to 2 months' basic pay and D.A. for the year 1954 to be paid on the eve of the Durga Puja in 1955, by their letter, dated 30th August, 1956, (annexure A to their written statement). The Company by its letter, dated 1st September, 1955, informed the Assistant Labour Commissioner that the matter of bonus for the said year was under consideration and soon as the final accounts of the said year were published, they would declare the bonus. The Company also informed that the Union which made the demand was not recognised by it (annexure B to the written statement of the Workers' Union). The Workers' Union again wrote to the Labour Commissioner on 20th September, 1955, reiterating the demand and complaining about the delay in the decision about the matter by the Company (annexure C to the written statement of the Workers' Union). It appears that when the Company, instead of discussing the matter with the Workers' Union which it did not recognise, wanted to have the matter discussed in the Works Committee on 26th September, 1955, the two members of the Works Committee protested about such discussion in the Works Committee and wanted the matter to be thrashed out directly between the management and the Workers' Union by their letter, dated 8th September, 1955, (annexure D to the written statement of the Workers' Union). The Workers' Union requested an early conciliation on the matter and as nothing was done, a demonstration of the workers of the Company was taken to the office of the Assistant Labour Commissioner, after which a conciliation meeting was fixed on 30th September, 1955. On 30th September, 1955, the Company as usual refused to negotiate with the Union.

In the meanwhile on 29th September, 1955, the Company announced among others that the permanent workers of the Company having an attendance of 100 days or more during the year ended 31st August, 1955, would get 6 weeks' bonus (equivalent to basic wages for 288 hours) and those who had less than 100 days' attendance would get one quarter of the said bonus (annexure E to the written statement of the Workers' Union). The workers forthwith made it known to the Company that the said bonus was unacceptable to them.

As the demand of bonus relating of the manual workers was not acceded to by the Company, the manual workers also struck work on 12th October, 1955. The Workers' Union also informed on that day the Assistant Labour Commissioner about such cessation of work from 12th October, 1955, and the circumstances in which it was done with request for intervention (annexure F to the written statement of the Workers' Union).

Following strike by the clerical and sub-staff from 10th October, 1955, and by the manual workers from 12th October, 1955, there was settlement on 12th October, 1955, through the intervention of the Conciliation Officer between the Management of the Company and the clerical and menial staff and the manual workers. As none of Employees Union and Workers' Union was recognised by the Company, two workers on behalf of the clerical and menial staff and two other workers on behalf of the manual workers signed the agreement (annexure G to the written statement of the Workers' Union and Ex. 3). The terms were as follows:

"(i) It is jointly agreed that all the employees including the staff and the workers will accept the bonus as per notices of the Company, dated 29th September, 1955 (No. 15/55) and 30th September, 1955 (16/55), on protest and the dispute over 'Additional Bonus for 1954, payable in 1955' will be referred to a Tribunal for adjudication.

(ii) ....

(iii) The dispute over pay for the period of stoppage of work by the staff and the workers from 10th October, 1955, to 12th October, 1955, will also be referred to the Tribunal for adjudication, but it is understood that the pay for this period will at present be deducted from the wages of the employees concerned.

(iv) No disciplinary action will be taken by management against any of the employees for the stoppage of work.

(v) Normal work will be resumed on 13th October, 1955."

In pursuance of the agreement the disputes for additional bonus for 1954, payable in 1955, as also wages for the strike period were referred to this Tribunal for adjudication on 2nd May, 1956.

Issue No. 1.—Against the aforesaid background the Employees' Union and Workers' Union in their respective written statements of claim filed before this Tribunal, claimed respectively 15 days' wages for monthly-rated clerical and sub-staff and two weeks' wages including D. A. as also D. A. for past 6 weeks (for which only basic wages had been paid) for hourly-rated manual workers, as additional bonus for the year 1954 payable in 1955 to make up two months' wages (which Employees Union claimed exclusive of D. A. and which Workers' Union claimed as inclusive of D. A.) both as an implied condition of service and out of profit according to Full Bench Formula. During hearing the Employees' Union, however, abandoned the claim for bonus out of profit and restricted it wholly as an implied condition of service.

The case of Employees' Union in this respect shortly is as follows:

As the two concerns—Hooghly Docking and Engineering Co., Ltd. and Howrah Iron Works of Burn & Co. are situated in the same locality and have been under the same management, the uniformity has been observed in the matter of pay, D. A. and bonus regarding the clerical and sub-staff of the two concerns. The conditions of service and terms of employment of the clerks and sub-staff of the Company (Hooghly Docking and Engineering Co., Ltd.) have been linked with those of clerks and sub-staff of the Howrah Iron Works of Burn & Co., Ltd. Thus, if the clerks and sub-staff of the latter concern obtained any benefit in the matter of pay, D. A. and bonus either by negotiations or as a result of award, such benefits used to be automatically extended by the Company to their clerks and sub-staff without their asking. The clerks and sub-staff of the Company have thus been paid bonus up to Durga Puja of 1954, at par with the clerks and sub-staff of Burn & Co. without reference to profit of the Company. It has thus become an implied condition of service of the clerks and sub-staff of the Company to be paid bonus at par with the clerks and sub staffs of Howrah Iron Works of Burn & Co. As Burn & Co. paid their clerks and sub-staffs of Howrah Iron Works 2 months' wages as bonus, on the eve of Durga Puja in 1955, the Company had no justification to discriminate and refuse same quantum of bonus to their clerks and sub-staffs at the time of the Puja in 1955, as being an implied condition of service. As the clerks and sub-staffs of Burn & Co. were paid 2 months' wages as bonus in 1955, the clerks and sub-staffs of the Company are eligible to get additional 15 days' wages to make up 2 months' wages as had already been paid to clerks and sub-staffs of Howrah Iron Works.

The case of the Workers' Union, on the other hand, is shortly as follows:

Bonus has hitherto been a condition of service of the workmen. Besides, the financial position of the Company during 1954, was very satisfactory. The Company has been extending its production and has made capital expenditure to the tune of Rs. 2,63,833-10 in the year 1954. Along with an improvement in the volume of repair work from last year's account, the volume of new constructions undertaken has shot up tremendously resulting in an advance in the value of the work-in-progress from Rs. 34,18,438 in December, 1951, to Rs. 99,36,409 on 31st December, 1954. The value of orders in hand on 31st December, 1954, for new crafts alone amounted to nearly Rs. 1 crore. Out of a gross profit of Rs. 4,07,263-10-8, only Rs. 2,27,417-0-9 have been declared as net profits. Although, the amount of dividend actually distributed out of profit came to Rs. 1,56,250, charges on account of managing agency commission and allowances amounted to Rs. 1,03,696-4-3 (*i.e.*, about 2/3rds of the former). The financial position of the Company as aforesaid called for a payment of additional bonus to the workers. The Company has been extending its business out of its profits and reserves but has refused to pay a fair share to the workmen in the form of bonus. Then there has been an unfair discrimination in the payment of bonus to workmen and the clerical staff, which is unwarranted.

The Company resisted the claims.

Regarding claim of Employees' Union the Company denied that it was an implied condition of service of its clerical and sub-staff to be paid bonus at the same rate as that of clerks and sub-staff of Burn & Co., Ltd., and pleaded that uniformity, if any, in the matter of pay and D.A., has occurred from its (Company's) endeavour to fix and maintain the scales of pay and D.A. of its workers on an industry-*cum*-region basis as far as possible and as in that endeavour the Company treated the conditions of service granted by or laid down in the awards of Burn & Co., Ltd., as one of its guides. Regarding bonus, the Company alleged that it had all along in the past paid bonus to the aforesaid staff at the rate of one month's basic salary which had nothing to do with the rate that Burn & Co., Ltd., might have followed in granting bonus to the same category of their workers. The allegation that the payment of bonus to these workers was to be made at the same rate as that of Burn & Co., Ltd., as an implied condition of service is not true. Had there been such service condition the Union would not have laid claim initially for 3 months' basic pay as bonus and reduced it to two months' subsequently.

Regarding claim of Workers' Union, the Company denied that the bonus has been a condition of service of the manual workers. It was said that these workers never received any bonus up to 1948. Since 1948 bonus was paid to them only when the Company made profit and in the opinion of the directors the profits justified such payment. In the year 1950, the Company suffered loss and consequently no bonus was paid to the workers. The Company further denied that its financial position justified payment of additional bonus. It also denied that there has been any unfair discrimination in the matter of payment of bonus between these workers on one hand and clerks and sub-staff on the other. It was said that for the past four years these workmen and clerical and sub-staff were paid bonus at the same rates.

In support of their case, the Employees' Union examined its secretary P.W. 1, Shri Bibhuti Bhusan Nandy, an employee of Howrah Iron Works of Burn & Co., and an employee of this company P.W. 2, Shri Sukesh Chandra Banerji, besides proving documents Exs. 1 to 6. The Company, on the other hand, has examined the accountant in the Head Office of Martin & Burn in charge of Hooghly Docking and Engineering Co., Ltd., D.W. 1, Shri L. H. Das besides proving documents Exs. A to E1. The Workers' Union has not adduced evidence separately.

The evidence reveals that the clerks and sub-staffs of the Company have been getting same scale of pay and D.A. as those for the clerks and sub-staffs of Howrah Iron Works of the Burn & Co. It also appears that the benefits granted in the matter of pay and D.A. under the award of Shri G. Palit, dated 12th June, 1950, and published in the *Calcutta Gazette, Extraordinary*, dated 12th July, 1950, relating to the clerks and sub-staffs of Howrah Iron Works had been extended to the clerks and sub-staffs of the

Company. Likewise it is not disputed that the clerks and sub-staffs of the Company were given same quantum of bonus as those for clerks and sub-staffs of Howrah Iron Works of Burn & Co., Ltd., and this was so done up to Durga Puja of 1954. The evidence discloses that the benefit of bonus at the uniform rate of one month's wages to all the clerks and sub-staffs of Howrah Iron works of Burn & Co. as given under the award of Shri M. C. Banerji, dated 25th June, 1953, and published in the *Calcutta Gazette*, dated 24th July, 1953, was extended to the clerks and sub-staff of the Company without their asking and payments were made to them and accounts were adjusted accordingly. There is also no dispute that these payments of bonus to the clerks and sub-staffs of this Company were so far made without reference to the profit of the Company. In the year 1950, there was loss and D.W. 1 admitted that the clerks and sub-staff received bonus despite the said loss.

From the above facts, it has been contended by the learned advocate on behalf of the Employees' Union that an implied condition of service in favour of clerks and sub-staff of the Company to be paid bonus at the same rate at which the clerks and sub-staffs of Howrah Iron Works of Burn & Co., Ltd., get, irrespective of the question of profit or loss in the trading results of the Company, came into being. The Company, on the other hand, contended from the fact that the Employees' Union initially made demand for bonus of 3 months' wages and persisted in the same on 3rd October, 1955, and subsequently, reduced the same to two months' only after an agreement had been reached with the management of Howrah Iron Works, would show that the employees concerned did not themselves treat it as a service condition and even if there had been practice in the past to pay bonus at the same rate, this would not give rise to any implied condition of service which could be enforced. On giving careful consideration to the matter I am unable to uphold the contention of the Employees' Union. It appears that in their first letter it claimed bonus out of profit, and not as a condition of service linked with Burn & Co., Ltd. It further appears that it made demand for 3 months' wages as bonus independently and persisted in such demand till 3rd October, 1955, and that even when it demanded same quantum of bonus as was paid to clerical staff and sub-staff of Howrah Iron Works it did not claim it as a condition of service. Then regarding uniformity in the matter of pay and D.A., between the clerks and sub-staffs of the two concerns, no special significance can be attached, as according to the Company it fixed and maintained scales of pay and D.A. of its workers on an industry-*cum*-region basis and having regard to the awards of Burn & Co., Ltd. This was in the nature of things not anything unnatural, and would by themselves imply nothing. Wages must be such as those in similar concerns. The employees should also get same D.A., as are in vogue in similar concerns, unless, the employer has not the capacity to pay. It is, therefore, no wonder that uniformity was maintained in the matter of pay and D.A., in these concerns for clerks and sub-staff.

But the question of bonus stands on a different footing and different considerations arise in respect of the same. Bonus, in the nature of things, cannot be linked or have relation to what prevails in other concerns. This is dependent entirely on the affairs of the Company concerned and of none else. Bonus is payable either out of profit or as a term of employment exclusively with reference to the affairs of the Company concerned. In *Muir Mills' case* reported in [1955] 1 F.J.R. 343, the Supreme Court held that "claim for bonus can be made by the employee only if as a result of joint contribution of capital and labour the industrial concern has earned profits. If in any particular year the working of the industrial concern has resulted in loss, there is no basis nor justification for a demand for bonus. Bonus is not a deferred wage." Viewed as such, it is obvious that the questions of bonus cannot be linked with any other concern. Bonus as a term of employment or condition of service cannot either be linked with other concern. Viewed as a condition of service or term of employment bonus is practically wages because the employer shall have to give this despite losses. In the *Maha Luxmi Cotton Mills, Ltd., case* reported in [1952] 4 F.J.R. 248, the Labour Appellate Tribunal held that "this right is not based on the general principle that labour and capital should share the surplus left after meeting necessary and prior charges, but it rests on agreement between the employer and the workers. That agreement may be either express or implied and where not express past practice may lead to an inference of implied agreement. But for implying an agreement the practice must be in vogue for a sufficiently long period to exclude the hypothesis that payment had been made out of bounty." This too obviously can have reference only to the affairs of the Company concerned. The fact that in the past the clerks and sub-staff of the Company received same quantum of bonus as those of the clerks and sub-staff of Howrah Iron Works of Burn & Co., Ltd., cannot be availed of to raise an inference of its being a condition of service. To raise such an inference the payment must have been made for a long period and continuously despite losses of the Company concerned and not of others. Therefore, even if there was practice of paying the same quantum of bonus, as for clerks and sub-staff of Howrah Iron Works, this cannot give rise to an inference of an implied condition of service in favour of the clerks and sub-staff of the Company. Linking of bonus to other concerns would result in anomalies, as the conditions in the two concerns may not necessarily be identical. If it were to be a service condition, bonus has to be paid continuously despite losses. If it is linked with another concern such payment may not always be maintained. In the present case it appears from different awards relating to clerical staff and sub-staff of Howrah Iron Works of Burn & Co., that bonus is not a condition of service of those employees but is payable to them only out of profit (*vide* the awards of Shri G. Palit, dated 12th June, 1950, and published on 12th July, 1950, of Shri M. C. Banerji, dated 26th June, 1953, and published on 24th July, 1953, and dated 15th September, 1953, and published on 8th October, 1953, and of

this Tribunal, dated 15th April, 1957, and published in the *Calcutta Gazette* on 9th May, 1957). So, if bonus is to be linked with the said concern as claimed, the result will be that the clerks and sub-staff of this Company may not get bonus in the years of loss of Howrah Iron Works. It is, therefore, obvious that bonus as a service condition cannot be linked with other concerns. There cannot be a service condition which does not ensure payment of bonus continuously and despite loss. Claim of Employee's Union must, therefore, fail.

Regarding claim of Worker's Union, the evidence shows that manual workers did not receive bonus before 1948. For 1948 and for 1949 the bonus which they received was out of profit as a result of the awards respectively by Shri P. K. Sarkar and Shri S. C. Chakravarti. Shri S. C. Chakravarti by his award, dated 29th July, 1950, found that bonus was not a service condition of the manual workers and that it was payable only out of profit. The evidence discloses, and it is not disputed, that in the year 1950, there was loss and the manual workers did not consequently get bonus for that year. The fact of payment of bonus to them from 1951, onwards cannot be accepted in view of the principles laid down in the *Maha Luxmi Cotton Mills, Ltd., case* to be sufficient for raising an inference of its being a service condition, the period of payments being too short and those being all years of profit. The fact of uniformity of pay and D.A. regarding manual workers of the two concerns—Hooghly Docking and Engineering Co., Ltd. and Howrah Iron Works, these being parties to the award of Major Engineering Tribunal in 1948, likewise it could be of no avail in this respect. It has already been noted that bonus to ripen into service condition cannot be linked with other concern. So claim for bonus as a service condition for the manual workers must also fail.

Regarding claim out of profit, it is not disputed in view of the Full Bench Formula approved by the Supreme Court in the *Muir Mills' case* that the claim for bonus by the employees can be sustained if there be available surplus after meeting prior or necessary charges. These charges are; provisions for depreciation, provision for rehabilitation, return at 6 per cent. on the paid up capital and return on the working capital at a lesser rate than the return on the paid up capital, besides deduction on account of the income-tax. It has further been found in various decisions that out of the surplus profits obtained, the needs of the employees, the claims of the shareholders and requirement of the industry should be considered in ascertaining what portion should be distributed as bonus. The balance sheet and profit and loss account for the year 1954, out of which bonus is claimed is Ex. E1. It reveals profit of Rs. 1,76,646-6-5 after charging all expenses including depreciation and writing off Rs. 4,500-1 as bad debts. A provision for return at 6 per cent. on the paid up capital of Rs. 12,50,000 would require Rs. 75,000 and provision for return even at 2 per cent. on the reserve of Rs. 21,75,000 would come to Rs. 43,500 making a total of Rs. 1,18,500. After deduction of the amount from the profit, the balance would be roughly

Rs. 58,146. From this provision has to be made for taxation as also for rehabilitation. It will thus be seen that there would be no surplus sufficient to grant additional bonus, after meeting all prior charges. The learned representative of the Workers' Union having regard to this did not also seriously maintain that there would be available surplus to justify additional bonus. The picture of the financial position as delineated in the written statement of the Workers' Union, though it substantially corresponds to those in the report of the directors enclosed in the balance sheet of 1954, would, however, be no relevant consideration in the matter- none of the items coming within the scope of the Full Bench Formula. The rate of dividend declared would be of no use. It has been held in the *Muir Mills' case* that linking of bonus with dividend would create difficulties. It has also been found therein that the workmen have no right or interest in the reserves and the undistributed profits of the previous years. Regarding commission of the managing agents about which grievance has also been made, it has been held that this could not be arbitrarily reduced (*vide* [1952] 4 F.J.R. 133). So, claim for additional bonus out of profit cannot also be sustained.

Regarding charge of discrimination, it appears that bonus at the uniform rate of 1½ months' basic wages without attaching any conditions was voluntarily paid by the Compony to the clerical and sub-staff, while 6 weeks' basic wages (equivalent to wages for 36 days or 288 hours) were paid to the manual workers having an attendance of 100 days or more and one-quarter of the aforesaid bonus to others having attendance of less than 100 days (*vide* Ex. B and annexure E to the written statement of the Workers' Union). The aforesaid bonus was paid by the Company both to the clerical and sub-staff and the manual workers having regard to the profits of the year 1954 (*vide* Company's notices Exs. B1, B2 and B3). In the circumstances, the Workers' Union complained, and I think rightly, that there should not have been such discrimination amongst its own employees and that all categories of workmen should have been paid bonus equally and on same conditions. As the clerical staff and subordinate staff were paid 1½ months' basic wages, the Workers' Union claimed that manual workers should be paid additional bonus to make up the said 1½ months' basic wages and without any condition being attached. The claim on this account, it appears, is reasonable and fair. Such invidious distinction, if allowed to continue, it appears, will have serious repercussions on the harmonious relations between the management and the labour and may affect industrial peace. The Company had no justification to make payments at different rates to the workmen. As the profits out of which bonus was paid were the result of joint efforts of the employees, it is meet and proper that when bonus is voluntarily paid, it should be distributed equally, and no discrimination is made amongst the workmen. The fact that the clerical staff and sub-staff are monthly-rated workers while the manual workers are daily-rated would be no ground for unequal payment of bonus to the

workmen. Likewise the fact that in the past the monthly-rated clerical and sub-staff were differently paid from the daily-rated manual workers would afford no justification to continue unequal payment. When bonus is paid not as a condition of service but paid voluntarily having regard to the profits as was done by the Company, the Company cannot make payment at different rates and conditions but it has to pay equally and on same conditions to all workmen. To do otherwise, would lead to dissatisfaction among the workers and to industrial disputes. I, therefore, find no justification to refuse same quantum of 1½ months' basic wages as bonus to the manual workers represented by Workers' Union. The Company is accordingly, directed to pay additional bonus to the manual workers to make up deficiency of 1½ months' basic wages. The payment is to be made within a month from the date of publication of the award. The issue is decided accordingly.

Regarding clerical staff and sub-staff

Issue No. 2.—These workmen resorted to strike from 2 p.m., on 10th October, 1955, and continued it up to 4 p.m., on that date and throughout working hours on 11th October, 1955, and 12th October, 1955, in support of their demand for grant of 15 days' wages as additional bonus in the circumstances already stated at the outset. It has been contended on behalf of these workmen that they had no alternative than to resort to strike and that the strike was justified. The Company, on the other hand, contended that the strike was hasty and unjustified. No doubt right to strike is a fundamental right of the workmen. But then this should not be resorted to without exhausting all means of redress. In the present case when the Company declared bonus of 1½ months' basic wages there was no justification to precipitate a strike on a demand of additional bonus of 15 days without a waiting for the results of the conciliation. The company in its notice, date 10th October, 1955, clearly indicated how it was not possible for it to accede to the demand for additional bonus (Ex. B1). If the workmen were not satisfied they should have moved the Conciliation Officer and awaited the results instead of starting strike from 2 p.m. on that dated. Merely because the employees of the Burn & Co. struck work and obtained the agreement on 7th October, 1955, it would be no precedent to follow. It, therefore, appears that the strike by the clerical staff and sub-staff was unjustified. These employees cannot, therefore, get pay for the strike period.

Regarding manual workers

It appears that they resorted to strike on 12th October, 1955, at a time when appeal by them against the award of this Tribunal was pending before the Labour Appellate Tribunal. The appeal, it appears, was filed some time in 1953, and was disposed of on 29th June, 1956, (*vide* Exs. D and D1). Section 24 of the Industrial Disputes (Appellate Tribunal) Act, 1950, prohibited strike during the pendency of an appeal. Under section 25 of the said Act a strike commenced or continued in contravention of the provisions of section 24 was illegal. The workers also, knew that it was an illegal strike. As the strike was illegal, it is obvious, that they cannot get pay for the strike period.

[IN THE FIRST LABOUR COURT, WEST BENGAL.]

LUXMI JUTE MILLS, LTD., CALCUTTA

v.

THEIR WORKMEN.

Shri N. C. Chatterjee.

June 17, 1957.

CLOSURE—DISPUTE REGARDING—WHETHER 'INDUSTRIAL DISPUTE'—PROPER FORUM FOR ADJUDICATION—LABOUR COURT OR INDUSTRIAL TRIBUNAL—INDUSTRIAL DISPUTES ACT, 1947, SECTIONS 2(k), 10(1).

A dispute regarding the closure of a concern is one relating to the non-employment of its workmen and falls within the definition of 'industrial dispute' in section 2(k) of the Industrial Disputes Act, 1947. Such a dispute falls in the Third Schedule to the Act and can only be referred to an Industrial Tribunal unless the number of persons likely to be affected by the dispute is not more than one hundred, and the appropriate Government refers it to a Labour Court.

S. Sen for the management

D. L. Sen Gupta for the workmen.

AWARD.

The Government of West Bengal in the Department of Labour by Order No. 1197-I.R./IR/7L-11/57, dated 16th April, 1957, referred under sections 7 and 10 of the Industrial Disputes Act, 1947 (XIV of 1947), the industrial dispute between Messrs. Luxmi Jute Mills, Ltd., 134 Beliaghata Road, Calcutta (Managing Agents: Messrs. More Brothers, 5 Clive Row, Calcutta), and their workmen, represented by Jute Workers' Federation, 35B Wellington Street, Calcutta, regarding matters specified in the Second Schedule of the Act to this Court for adjudication. The matter referred is:

What relief/compensation the discharged employees are entitled to, due to the closure of the mill?

The learned advocate for the Company has raised a preliminary objection that the present reference is incompetent on the ground that the retrenchment due to closure of business is not an industrial dispute and that this Court has no jurisdiction to adjudicate the reference as the subject-matter of dispute falls under item No. 10 of the Third Schedule to the Industrial Disputes Act.

The Union opposes the ground.

Now the points for determination are—

(1) Whether retrenchment of workmen due to closure of a business is an industrial dispute?

(2) Has this Court got jurisdiction to adjudicate this dispute?

Point No. 1.—In support of this contention reliance is placed upon the ruling reported in [1957] 11 F.J.R. 317 (*The Barsi Light Railway Co., Ltd.* v. *K. N. Joglekar and others*), wherein it has been held that retrenchment connotes in its ordinary acceptation that the business itself is being *continued* but that a portion of the staff or labour force is discharged as surplusage. The termination of services of all workmen as a result of the closure of the business cannot, therefore, be described as retrenchment. In that case their Lordships of the Supreme Court disallowed compensation under section 25F to the appellants as they were held not retrenched within the meaning of that expression as defined in section 2(oo) of the Act. Nowhere therein it was held that retrenchment due to closure of a business is not an industrial dispute. Disallowance of compensation to retrenched workmen due to closure of a business necessitated the passing of an Ordinance which has since been enacted as an Act limiting compensation to 3 months' average pay, etc.

"'Industrial 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 employment or with the conditions of labour, of any person."

In this case all workmen are said to have been thrown out of employment due to closure of business. This is a dispute connected with the *non-employment* of the workmen in the mill, as such it is an industrial dispute, no matter whether the mill is closed partially or fully. And furthermore, provision has been made by the Legislature for adjudication of such disputes by Tribunals (*vide* item No. 10 of the Third Schedule to the Act). Very often questions may arise as to whether closure of an establishment resulting in mass unemployment is a *bona fide* or *mala fide* one and these being industrial disputes should be gone into by Tribunals. It is, therefore, held that the present dispute is an industrial dispute.

Point No. 2.—The Labour Court is empowered by section 7 of the Act to try disputes specified in the Second Schedule to the Act. No dispute arising out of *a closure* of an establishment is specified under second schedule. Third item of the Second Schedule relates to discharge or dismissal of workmen including re-instatement of or grant of relief to, workmen *wrongfully dismissed.* This dispute does not fall under this item. In this connection it is necessary to refer to the proviso to section 10(d) of the Act which lays down as follows:

"Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c)."

In paragraph 1A of the Company's written statement workmen said to have been thrown off by the closure of the mill figure as about 1,200. This figure is not challenged by any counter-statement. Thus as the dispute relating to the closure of the mill specified in the Third Schedule has affected about 1,200 workmen, the reference cannot legally lie with a Labour Court. This ousts the jurisdiction of the Labour Court. This is a dispute triable by an Industrial Tribunal.

[IN THE FOURTH INDUSTRIAL TRIBUNAL, WEST BENGAL.]

PECO ENGINEERING & MANUFACTURING WORKS

v.

THEIR WORKMEN.

Shri M. N. Gan.

June 25, 1957.

MISCONDUCT—DISORDERLY BEHAVIOUR DURING STRIKE—ABUSE OF SUPERVISORY STAFF—WHETHER SERIOUS MISCONDUCT—DISMISSAL—WHETHER JUSTIFIED.

STRIKE—STRIKE NOT PROVOKED BY MANAGEMENT—STRIKE WITHOUT ATTEMPT AT CONCILIATION—WHETHER JUSTIFIED—WAGES FOR PERIOD OF STRIKE—STRIKERS REPORTING FOR WORK—EMPLOYER REFUSING EMPLOYMENT WITHOUT BOND OF GOOD BEHAVIOUR—NO JUSTIFICATION FOR DEMANDING BOND—WORKMEN, REFUSING TO SIGN BOND—LIABILITY OF MANAGEMENT TO COMPENSATE LOSS OF WAGES.

Though workmen may be entitled to go on a peaceful strike, they are not entitled to participate in acts of violence of any sort or resort to disorderly conduct. Where workmen indulge in violence and disorderly conduct by abusing the supervisory staff, the misconduct cannot be condoned, and the management would be justified in dismissing such workmen.

Where a strike is not provoked by any high-handed action on the part of the management and the workers choose to remain out of work without having recourse to conciliation, they are themselves to blame for the loss in wages and the management cannot be held liable for the same.

Where, however, the workers on strike offered themselves for employment but the management refused them employment unless they signed a bond of good behaviour and there was no justification for insisting on the bond of good behaviour, the loss of wages suffered by the workers on account of their refusing to sign the bond of good behaviour and not being permitted to work should be made good by the management.

P. R. Mukherjee for the management.

Sunil Dhar for the workmen.

AWARD.

The issues referred to the Tribunal are:

(1) Whether the refusal of employment to the nine workmen mentioned below was justified? What reliefs are they entitled to?—

(i) Shri Tulsi Charan Bose, (ii) Shri Gostha Behari Dutt, (iii) Shri Prafulla Kumar Bhar, (iv) Shri Narayan Ch. Roy, (v) Shri Ganesh Ch. Das, (vi) Shri Santosh Sarma, (vii) Shri Rabindra Nath Basak, (viii) Shri Kartik Ch. Singh, (ix) Shri Sanat Chatterji.

(2) Whether the workmen are entitled to any compensation for the period they remained out of work?

(3) Whether the workmen are entitled to any bonus for 1956? If so at what rate?

Both parties filed written statements and adduced evidence, oral and documentary, in the respective cases.

Issue No. 1.—It relates to the refusal of employment to the nine work- mentioned in the order of reference. All these nine workmen were charge-sheeted by the Company and after proper enquiry on receipt of their explanation to the charge-sheet, they were dismissed from service on 18th December, 1956. The Union's case is that these employees were victimised for their Union activities and the alleged charges were false and fabricated and they were prepared in order to get rid of these men. The defence of the Company, before this Tribunal, is a denial of the above allegations. It contends that the charges, of which due explanations were received from the workmen, had been proved beyond doubt, before an enquiry in which the workmen had full opportunity to defend themselves. This Tribunal, therefore, should not interfere with the decision of the management who alone is responsible for maintaining internal discipline in its labour force. The workmen examined themselves before this Tribunal, and denied the charges levelled against them. The Company, on the other hand, examined the proprietor, his son, and the manager as well as another employee, at present in service, to prove that the charges were true, and proper enquiry was held after obtaining explanations from the workmen concerned. The enquiry proceedings in marked as Ex. A and the replies to the charge-sheets, etc., of the workmen are marked as Ex. B to B(8). The photos, Exs. G and G(9), corroborate the evidence of the proprietor, his son, who is an engineer, and the manager. The evidence shows that the charges relate to incidents which had happened before the strike, and also those taken place after the strike had commenced. It shows that the incidents occurring after the strike are confined to (i) obstructing the supervisory staff of the Company, including the proprietor, from entering into and leaving the factory premises, and (ii) abusing in filthy language the proprietor and his son, and also the manager of the factory. The photographs taken by Shri Basak, the engineer, show that these workmen were actually obstructing the proprietor's car by surrounding it in front of the factory gate. It further shows that the workmen were squatting and lying down in front of the gate actually obstructing the ingress of the supervisory staff into the factory. A number of G.D. entries at the police-station [Exs. 1 to 1(3)] support this story. Therefore, it is impossible to hold that there is no evidence in support of the finding made by the management after enquiry into the charges against these workmen. Neither is it possible to say that it was not the possible view on the evidence before the management. The learned advocate for the Company invites a reference to a decision of the Labour Appellate Tribunal in the *case of Buckingham Carnatic Ltd.*, reported in [1952] 3 F.J.R. 265 and contends that this Tribunal should not interfere with the management's decision in this matter, and should refrain from substituting its own judgment for the judgment of the management. I have considered the evidence of both sides on this point, and have considered it in the light of observations made by the learned Labour Appellate Tribunal in the said case. I am satisfied that there was no want of *bona fides* on the part of the management in this matter, and that there was no violation of the principles of natural justice. In fact, the relationship between the parties up to the strike was very cordial, and so the question of the victimisation or unfair labour practice does not arise. Neither has it been proved before this Tribunal. Therefore, I would not be justified in entering into detailed scrutiny of the evidence on the charges, and to see for myself whether the charges were proved. The strikers are, no doubt, entitled to peaceful picketing during the strike, but they are not entitled to participate in acts of violence of any sort, or resort to disorderly conduct with a view to putting the management to harassment and loss in the business. There is positive evidence on the side of the management to show that these nine workmen did, in fact, deliberately cause obstruction to the supervisory staff in the performance of their lawful duties during this strike. They also indulged in violence and disorderly conduct by abusing the supervisory staff. That cannot be condoned. All these workmen had been rightly charged with gross misconduct. The management, with their knowledge and experience of the problems which confront them in the day-to-day work of the concern ordinarily ought to have the right to decide what appropriate punishment should be meted out to the workmen. The Tribunal can interfere with its decision only when it is shown that the punishment is so unjust that a remedy is called for in the interest of justice. No such case has been made out on behalf of the workmen. Accordingly, the Tribunal is of opinion that the refusal of employment to the nine workmen concerned was justified, and they are not entitled to any relief in this case. This issue is accordingly answered.

Issue No. 2.—The workmen went on strike with effect from 13th September, 1956, and rejoined their duties on 22nd October, 1956. They remained out of work during this period. They now claim suitable compensation from the Company for this period of un-employment. The Union's case is that the workmen were provoked by a highly arbitrary action of the management to resort to this strike and suffered losses in wages as a result

of the stoppage of work. The management wrongfully kept them out of work from 22nd September, 1956, when they called off the strike, and reported themselves for duty. The management is, therefore, liable in law and equity to compensate them for all losses which they sustained during the entire period of un-employment. The contention of the Company is that this strike was wholly unjustified, so much so, that it resulted in a pecuniary loss to the Company to the extent of Rs. 48,000. So, the workmen are not entitled to any wages during the strike period and/or any compensation for this stoppage of work.

The period of un-employment in dispute can be divided into two as follows:

(i) from 13th September, 1956, to 21st September, 19[illegible]

(ii) from 22nd September, 1956 to 21st October, [illegible]

P.W. 9, Shri Ganesh Das, the vice-[illegible]
sheet on 12th September, 1956. This [illegible]
who demanded the withdrawal of the said order. [illegible]
strike on and from 13th September, 1956, when the management refused to
withdraw the said order of suspension. Then both the Union and the
management reported to the Labour Commissioner about this strike. It
appears that the Assistant Labour Commissioner, acting as the Conciliation
Officer in the dispute, asked for a joint conference on 22nd September, 1956,
and advised the workers to resume their duties immediately in the interest
of industrial peace. The manager in his letter, dated the 14th September,
1956 (Ex. 3), addressed to the Joint Secretary of the Union asked the strikers to stop all the illegal activities and to call off the strike immediately. This was followed by a notice [Ex. E(4)], dated 15th September, 1956, in which the manager directed the workmen to join their duties by 18th September, 1956, failing which they should be treated as having abandoned their services without notice. The workmen were further directed to join their duties by signing a bond of good behaviour in terms of the specimen mentioned in the said notice. The workmen reacted at this and sent a joint representation to the manager on 19th September, 1956, (Ex. 5 in which they re-iterated their demand for withdrawal of the aforesaid suspension order and for permission to resume duties with full pay for the period of the strike). In the meantime the workmen, acting on the advice of the Conciliation Officer, reported to duty at the factory gate on the morning of 22nd September, 1956. The Company refused them permission to join their duties without signing the bond of good behaviour as demanded in the notice. The workmen declined to execute such a bond, and so they had to go back. It is in the evidence of P.W. 1, Shri Tulsi Bose, that on that day they went to the factory gate at 8-45 a.m., but, they were not allowed to enter into the factory gate. They reported this fact to the Manicktolla police-station. They brought the police on the same day and the Police Officer contacted the proprietor over the phone and asked for permission to allow the workers to join their duties. The proprietor did not deny this in his

deposition before this Tribunal. The Union did not give any strike notice to the management, and the strike was also not called off with notice in writing to the management. It is further in evidence that from that day onward, the workmen reported to the factory gate every day till they were taken in on 22nd October, 1956. The Union's case is that this strike was called off the moment the workmen reported for duty at the factory gate at 8-45 a.m. on 22nd September, 1956. The Company's case, on the other hand, is that the strike continued, and it was not called off, for a strike can only be called off in writing by the Union representing the workmen in the dispute. I am unable to accept this contention as correct. There can never be better evidence of intention of the workmen to call off the strike than their joint action in reporting themselves for duty at proper time and at proper place. The management, for reasons not known, wanted a written information to this effect from the Union, as also demanded a bond of good behaviour from all the strikers as a condition precedent to re-joining their duties. The question now is whether the workmen are entitled to any compensation for the period of strike, *viz.*, 13th September, 1956 to 21st September, 1956. During this period the workmen remained out of work of their own choice. If in consequence they had suffered any loss in wages, during this period of un-employment, they themselves were clearly responsible for it. They cannot have both ways. The management cannot be held liable for this loss. This strike cannot be said to be in any way provoked by any high-handed action of the management, for Shri Ganesh Das was suspended, only when he was said to have insulted the manager, by insulting remarks and refusing to sign the receipt of charge-sheet. No other demand of the workmen was formally placed before the management when this incident took place. Both the manager and Shri Das have deposed on this point. The workmen in a body held a demonstration and meeting, and decided to go on strike unless the management withdrew the order of suspension on Shri Das. The Union's decision to this effect was not communicated to the manager before the strike was launched. The workmen did not wait to negotiate for settlement of the dispute with the management, and took this precipitate step to coerce it to come to terms. The management is certainly within its right to enforce discipline among its labour force, and can legitimately issue charge-sheet to a workman, when necessary. It is said on behalf of the workmen that the manager was compelling Shri D.of one of the so-called seven leaders of the Union, to sign a blank paper wh as he came to know that a demand for Puja bonus was placed before t.is management. The Company's witnesses, including the manager, denie their knowledge either of the formation of the Union, or of the demand th this Puja bonus. In fact, this demand letter was received on 14th Septemb ey 1956, and not before that. There is nothing in writing to show that the management had previous notice of the formation of this Union, and of this demand for payment of Puja bonus. In these circumstances, it cannot be presumed that the management was out to victimise Shri Das for his

alleged Union activities for compelling him to sign on a blank paper.

The question now is, whether this strike was justified. It was not illegal, for, it was not launched in violation of the provisions of sections 22, & 23, of the Industrial Disputes Act. It appears, however, that this strike was resorted to without any attempt to settle the dispute amicably, or through the machinery set up under the Industrial Disputes Act, for its conciliation. The workmen acted hastily, and their action does not appear to be justified on the facts and in the circumstances of the case. That being so, I am inclined to hold that this strike was unjustified.

The workmen having decided to abstain from work, in their own interest, cannot in fairness or reason ask the management to pay them any wages for the period of strike. Ordinarily, there can be no pay for no work, unless, of course, there is contract to the contrary. The workmen cannot take any advantage out of their own wrong, and cannot reasonably demand compensation for any loss in wages they suffered. In my view, they are not entitled to any wages or compensation during this period of strike.

Now the question is, whether they are entitled to any compensation for the period commencing from 22nd September, 1956 to 21st October, 1956, during which time they were kept out of work. The Union demands full compensation for this period contending that the Company had without reasonable grounds kept them out of work in the face of their unconditional offer for service.

The Company denies its liability on facts and in law, and also denies that the Union called off the strike by a notice to the Company and the workmen reporting to it before 22nd October, 1956. Shri P. R. Mukherjee's contention is that the strike was not terminated to the knowledge of the management and, accordingly, the Company was under no obligation to pay any compensation for loss in wages during this period of non-employment. He formulated the following points with reference to section 318 of *Ludwig Teller's Labour Disputes and Collective Bargaining*, Vol. II, page 849:

(i) The strikers were liable to be dismissed for the strike was not the result of any unfair labour practice committed by the employer;

(ii) The employer is within his right to refuse them work; his subse- ·uent act of courtesy to take them back in service would not justify the ·tion of the strikers;

(iii) The employer did not allow them to join for justifiable reasons. best, it was a lock-out for which no compensation was recoverable in law.

The following facts have been established in this case on evidence and admission of the parties, *viz*:

(1) The workmen remained out of work till 21st October, 1956;

(2) The factory remained idle during this time;

(3) No new hands were taken in by the employer to carry on the work in the factory;

(4) The workmen reported to duty at the factory gate on the 22nd September, 1956, and on the 8th October, 1956, pursuant to notice issued

deposition before this Tribunal. The Union did not give any strike notice
to the management, and the strike was also not called off with notice in
writing to the management. It is further in evidence that from that day
onward, the workmen reported to the factory gate every day till they were
taken in on 22nd October, 1956. The Union's case is that this strike was
called off the moment the workmen reported for duty at the factory gate at
8-45 a.m. on 22nd September, 1956. The Company's case, on the other
hand, is that the strike continued, and it was not called off, for a strike can
only be called off in writing by the Union representing the workmen in the
dispute. I am unable to accept this contention as correct. There can never be
better evidence of intention of the workmen to call off the strike than their
joint action in reporting themselves for duty at proper time and at proper
place. The management, for reasons not known, wanted a written infor-
mation to this effect from the Union, as also demanded a bond of good
behaviour from all the strikers as a condition precedent to re-joining their
duties. The question now is whether the workmen are entitled to any
compensation for the period of strike, *viz.*, 13th September, 1956 to 21st
September, 1956. During this period the workmen remained out of work
of their own choice. If in consequence they had suffered any loss in wages,
during this period of un-employment, they themselves were clearly responsible
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took place. Both the manager and Shri Das have deposed on this point.
The workmen in a body held a demonstration and meeting, and decided
to go on strike unless the management withdrew the order of suspension
on Shri Das. The Union's decision to this effect was not communicated
to the manager before the strike was launched. The workmen did not
wait to negotiate for settlement of the dispute with the management, and
took this precipitate step to coerce it to come to terms. The management
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can legitimately issue charge-sheet to a workman, when necessary. It
said on behalf of the workmen that the manager was compelling Shri D of
one of the so-called seven leaders of the Union, to sign a blank paper whas
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alleged Union activities for compelling him to sign on a blank paper.

The question now is, whether this strike was justified. It was not illegal, for, it was not launched in violation of the provisions of sections 22, & 23, of the Industrial Disputes Act. It appears, however, that this strike was resorted to without any attempt to settle the dispute amicably, or through the machinery set up under the Industrial Disputes Act, for its conciliation. The workmen acted hastily, and their action does not appear to be justified on the facts and in the circumstances of the case. That being so, I am inclined to hold that this strike was unjustified.

The workmen having decided to abstain from work, in their own interest, cannot in fairness or reason ask the management to pay them any wages for the period of strike. Ordinarily, there can be no pay for no work, unless, of course, there is contract to the contrary. The workmen cannot take any advantage out of their own wrong, and cannot reasonably demand compensation for any loss in wages they suffered. In my view, they are not entitled to any wages or compensation during this period of strike.

Now the question is, whether they are entitled to any compensation for the period commencing from 22nd September, 1956 to 21st October, 1956, during which time they were kept out of work. The Union demands full compensation for this period contending that the Company had without reasonable grounds kept them out of work in the face of their unconditional offer for service.

The Company denies its liability on facts and in law, and also denies that the Union called off the strike by a notice to the Company and the workmen reporting to it before 22nd October, 1956. Shri P. R. Mukherjee's contention is that the strike was not terminated to the knowledge of the management and, accordingly, the Company was under no obligation to pay any compensation for loss in wages during this period of non-employment. He formulated the following points with reference to section 318 of *Ludwig Teller's Labour Disputes and Collective Bargaining*, Vol. II, page 849:

(i) The strikers were liable to be dismissed for the strike was not the result of any unfair labour practice committed by the employer;

(ii) The employer is within his right to refuse them work; his subsequent act of courtesy to take them back in service would not justify the action of the strikers;

(iii) The employer did not allow them to join for justifiable reasons. At best, it was a lock-out for which no compensation was recoverable in law.

The following facts have been established in this case on evidence and on admission of the parties, *viz*:

(1) The workmen remained out of work till 21st October, 1956;

(2) The factory remained idle during this time;

(3) No new hands were taken in by the employer to carry on the work in the factory;

(4) The workmen reported to duty at the factory gate on the 22nd September, 1956, and on the 8th October, 1956, pursuant to notice issued

Now, what is the effect of refusal to accept an offer of performance of work made by the employees in this dispute? Section 38 of the Indian Contract Act lays down the following:

"Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract.

Every such offer must, however, fulfil the following conditions:

(i) it must be unconditional;

(ii) it must be made at a proper time and place, etc."

It has been contended, on behalf of the Company, that the strike was not called off by a notice in writing, nor was it duly communicated. As already stated above, the strike was not launched with notice to the management, but the management was informed that its action in suspending Shri Das was arbitrary and that the order should be withdrawn. It was not told that the workmen would go on strike in case of non-compliance with the request. Accordingly, there is no point in demanding from the Union a notice in writing calling off the strike. The offer of performance of work was unconditional and made at the proper time and place. The proprietor had full knowledge of it. He refused the workers' entry into the factory only when they did not agree to execute a bond of good behaviour. No other ground was taken till at a late stage during the period of non-employment refusing the employees to return to work. In my opinion, this action of the management in refusing permission to the workmen to resume their duties on and from 22nd September, 1956, was in the circumstances unjustified. The workers remained out of work on and from 22nd September, 1956, primarily due to this un helpful and un realistic attitude of the management. They suffered loss in wages during this entire period. They claimed compensation for the same, and, in my opinion, are rightly entitled to it. This may be considered to be a case of temporary lock-out by the management, without any justification whatsoever, and the workers, excepting Shri Das who joined duties on 22nd October, 1956, are entitled to a compensation equal to 50 per cent. of the total basic wages and dearness allowance. The company suffered loss in production and, in alleged cancellation of contracts. Considering the facts and circumstances of the case, and the respective losses of both parties, I think, this amount of compensation is adequate. The Company should pay it for the entire period commencing from 22nd September, 1956, to 21st October, 1956, except for such weekly holidays as may intervene during this time. This payment shall be made within a month from the date of the publication of the award. I answer this issue accordingly.

Issue No. 3.—The workmen, through their Union, demanded by letter, dated 10th September, 1956, a Puja bonus at the rate of two months' wages from the manager of the Company. The demand was not conceded and was followed by a strike from 13th September, 1956. The same demand was

pressed for adjudication in this case. The contention of the Company is twofold, *viz.*, (i) it never paid any bonus either customary or on profit basis except in 1955, when it was paid more as an incentive for work than on profits; and (ii) it was a year of loss and, as such, the workmen were ill-advised to put in this demand.

The learned advocate for the Union did not seriously press this claim, and left the matter entirely in the hands of the Tribunal.

The approximate cost of this demand is Rs. 6,460 and odd only. The question is whether the workers are entitled to it. It appears from the evidence of Shri B. Basak that the Company has been suffering losses since 1948 except in one or two years when there were some profits. In 1954, there was a profit of Rs. 2,000, and in 1955, the year in review, the net profit as shown in the balance sheet (Ex. D) was Rs. 5,221 and the total of the loss up till now was Rs. 20,000. This is a proprietory concern and the proprietor Shri C. L. Basak devotes his whole time in this business. He does not take any remuneration from this business for paucity of funds But he says that he is entitled to get a remuneration of not less than Rs. 300 per month, *i.e.*, Rs. 3,600 a year from it. The following deductions are to be made from the trading profits, in order to find out, whether there is available surplus profit for payment of this bonus:

(i) Income-tax;

(ii) A fair return on capital actually utilised at 6 per cent. and

(iii) A fair remuneration to the proprietor who devotes his whole time to the business.

Rehabilitation charges should also be deducted, where necessary.

The deductions work out as follows:

Income-tax Rs. 1,795; return on capital Rs. 840; remuneration to the proprietor Rs. 3,600.

These three items amount to Rs. 5,235. Accordingly, deductions on account of these charges leave no surplus for payment of any bonus to the workers. In fact, the Company did not pay any bonus to its staff except in 1955. In any view of the matter, the workmen are not entitled to any bonus for 1956. This issue is accordingly answered.

by the Company which the Proprietor in his letter, dated 9th October, 1956, admitted to the Assistant Labour Commissioner; and

(5) The Company demanded in the notice issued by it that the workers should execute a bond of good behaviour in the form mentioned therein as a condition precedent to their rejoining duties. Exhibits 3(a) and 3(b) are the same as Ex. E(4). Exhibit E(6) is the notice of the Company, dated 2nd October, 1956.

Both parties examined witnesses on the above points, and it is clear beyond doubt that the workmen acting on the advice of the Conciliation Officer, reported to duty at the factory gate in the early morning of the 22nd September, 1956. They were refused entry into the factory and the police was informed about the matter. The Police Officer contacted the authorities over the phone, when he was told that the workers could only join on signing a bond of good behaviour, a copy of which was available at the factory gate. The workmen, however, did not like the idea of signing a bond, and so they could not join. During the strike period, the Conciliation Officer was trying to resolve the strike by settling it amicably. The management, disregarding his advice insisted on the execution of a bond till the 9th of October, after which they yielded on this point, on the eve of the reopening of the factory. Now, the question is, whether on these facts, and circumstances, the workmen are entitled to get suitable compensation for the loss sustained by them *during the period* of non-employment between 22nd September, 1956, and 21st October, 1956. On more than one occasion the workers made it clear to the knowledge of the proprietor that they had withdrawn the strike, and were willing to rejoin their duties. The proprietor, however, insisted on the exection of a bond, in form Ex. 3(d), before allowing any worker to return to work. This bond of good behaviour appears to be altogether a new condition of service. The question is, whether on the termination of a strike, in the foregoing circumstances, the employer is entitled to impose a new condition for allowing the strikers to return to work. Shri P. R. Mukherjee's contention throughout is, that the whole body of workers was liable to dismissal, and the employer was under no obligation to re-instate them in service after the termination of the strike. The employer was within his right to refuse them work, and lock them out, since the strike was not launched in consequence of any unfair labour practice on his part. I have very carefully considered the arguments advanced by the learned lawyer for the Company, and also the reference to paragraph 318, at page 849, of *Ludwig Teller's Labour Disputes and Collective Bargaining*, Vol. II. The reference to section 318, appears to be beside the point. The issue discussed there was, whether under certain conditions, an employer is under an obligation to re-instate the striking employees, when he had already taken in new hands for carrying on the work of the factory. In the dispute before us, the admitted fact is that the employer kept the factory idle during the whole period of the alleged strike, and did not employ a single new hand in place of a striker. So the point

discussed in paragraph 318, is of no help in adjudicating the present issue in this dispute. The legal position has been very clearly stated in a Full Bench decision of the Labour Appellate Tribunal, in the *case of Ram Krishna Iron Foundry*, reported in [1954] 6 F.J.R. 508. The said decision was, followed in the *Spencer & Co.'s case*, reported in [1956] I L.L.J., p. 714. It is clear from the above that the workmen cannot be dismissed for joining a strike which is not illegal, but which is simply unjustified, and that the strike does not, by itself, put an end to the relationship of employer and employee, nor can an employer discharge a workman for his mere participation in a strike, which is not illegal, as in this case. The employer, in this particular case, did not dismiss any workman on account of his participation in the strike. On the other hand, he permitted them all to join, except Shri Ganesh Das, on 22nd October, 1956. My conclusion on a consideration of the facts and circumstances before me is that the Company did refuse work to the workmen on and from 22nd September, 1956. The next point is whether it had any reasonable ground to do so. It was only after the 9th October, prior to which the machinery had remained idle for over two weeks, that the Company asked for a mistry to attend in advance of other workers, in order to *bake* the machinery, which was necessary for proper functioning, after a period of idleness, in moist weather. This condition was not placed before the workers when they first reported to duty on 22nd September, 1956. The contract of service between the employer and employees remained good during the period of the strike. So the employer has no right to inject any new condition, prejudicial to the workers, in the original contract of service. A bond of good behaviour has got a peculiar history behind it. This is usually demanded under certain provisions of the Criminal Procedure Code by Magistrates from persons of bad character and habitual criminals, with a view to prevent commission of crimes. It is always associated with the idea of punishment of habitual criminals and men of dangerous character. Its execution leaves an indelible stigma on the character of its executant. Further, such a bond is never known to be a part of a worker's normal contract of service in any industrial undertaking in this country. Therefore, when a bond of good behaviour was demanded and its execution was insisted upon, disregarding the advice of the Conciliation Officer in this matter, the workers resented and backed out. Good conduct is, no doubt, essential in every sphere of work and a factory is no exception. But then, a bond of good behaviour demanded, for the first time, after the strike, as a condition of rejoining duties was not only looked upon with suspicion but with an unknown fear. As already stated, the employer had no reasonable grounds, much less any right, to impose such an objectionable condition of service to the workers. The Company had failed in its endeavour to show any semblance of justification for refusing employment to the strikers when they unconditionally offered their services to it. I am, therefore, unable to accept the contention urged by Shri P. R. Mukherjee in this case.

Now, what is the effect of refusal to accept an offer of performance of work made by the employees in this dispute? Section 38 of the Indian Contract Act lays down the following:

"Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract.

Every such offer must, however, fulfil the following conditions:

(i) it must be unconditional;

(ii) it must be made at a proper time and place, etc."

It has been contended, on behalf of the Company, that the strike was not called off by a notice in writing, nor was it duly communicated. As already stated above, the strike was not launched with notice to the management, but the management was informed that its action in suspending Shri Das was arbitrary and that the order should be withdrawn. It was not told that the workmen would go on strike in case of non-compliance with the request. Accordingly, there is no point in demanding from the Union a notice in writing calling off the strike. The offer of performance of work was unconditional and made at the proper time and place. The proprietor had full knowledge of it. He refused the workers' entry into the factory only when they did not agree to execute a bond of good behaviour. No other ground was taken till at a late stage during the period of non-employment refusing the employees to return to work. In my opinion, this action of the management in refusing permission to the workmen to resume their duties on and from 22nd September, 1956, was in the circumstances unjustified. The workers remained out of work on and from 22nd September, 1956, primarily due to this un helpful and un realistic attitude of the management. They suffered loss in wages during this entire period. They claimed compensation for the same, and, in my opinion, are rightly entitled to it. This may be considered to be a case of temporary lock-out by the management, without any justification whatsoever, and the workers, excepting Shri Das who joined duties on 22nd October, 1956, are entitled to a compensation equal to 50 per cent. of the total basic wages and dearness allowance. The company suffered loss in production and, in alleged cancellation of contracts. Considering the facts and circumstances of the case, and the respective losses of both parties, I think, this amount of compensation is adequate. The Company should pay it for the entire period commencing from 22nd September, 1956, to 21st October, 1956, except for such weekly holidays as may intervene during this time. This payment shall be made within a month from the date of the publication of the award. I answer this issue accordingly.

Issue No. 3.—The workmen, through their Union, demanded by letter, dated 10th September, 1956, a Puja bonus at the rate of two months' wages from the manager of the Company. The demand was not conceded and was followed by a strike from 13th September, 1956. The same demand was

pressed for adjudication in this case. The contention of the Company is twofold, *viz.*, (i) it never paid any bonus either customary or on profit basis except in 1955, when it was paid more as an incentive for work than on profits; and (ii) it was a year of loss and, as such, the workmen were ill-advised to put in this demand.

The learned advocate for the Union did not seriously press this claim, and left the matter entirely in the hands of the Tribunal.

The approximate cost of this demand is Rs. 6,460 and odd only. The question is whether the workers are entitled to it. It appears from the evidence of Shri B. Basak that the Company has been suffering losses since 1948 except in one or two years when there were some profits. In 1954, there was a profit of Rs. 2,000, and in 1955, the year in review, the net profit as shown in the balance sheet (Ex. D) was Rs. 5,221 and the total of the loss up till now was Rs. 20,000. This is a proprietory concern and the proprietor Shri C. L. Basak devotes his whole time in this business. He does not take any remuneration from this business for paucity of funds But he says that he is entitled to get a remuneration of not less than Rs. 300 per month, *i e.*, Rs. 3,600 a year from it. The following deductions are to be made from the trading profits, in order to find out, whether there is available surplus profit for payment of this bonus:

(i) Income-tax;

(ii) A fair return on capital actually utilised at 6 per cent. and

(iii) A fair remuneration to the proprietor who devotes his whole time to the business.

Rehabilitation charges should also be deducted, where necessary.

The deductions work out as follows:

Income-tax Rs. 1,795; return on capital Rs. 840; remuneration to the proprietor Rs. 3,600.

These three items amount to Rs. 5,235. Accordingly, deductions on account of these charges leave no surplus for payment of any bonus to the workers. In fact, the Company did not pay any bonus to its staff except in 1955. In any view of the matter, the workmen are not entitled to any bonus for 1956. This issue is accordingly answered.

GENERAL INDEX

END OF VOLUME XII

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