

**AWARD**

**OF**

**THE ARBITRATION TRIBUNAL**

**OF**

**THE REPUBLIC OF THE FIJI ISLANDS**

**NO. 23 OF 2006**

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In the Dispute Between

**FIJI PUBLIC SERVICE ASSOCIATION**

and

**LAND TRANSPORT AUTHORITY**

FPSA : Mr N G Singh  
LTA : Mr V Vosarogo with Ms S Waqainabete

**DECISION**

This is a dispute between the Fiji Public Service Association (the "Association") and the Land Transport Authority (the "Authority") concerning the Association's 2004 Log of Claims.

A trade dispute was reported on 10 September 2004 by the Association. The report was accepted on 20 October 2004 by the Chief Executive Officer who referred the Dispute to conciliation. As the Dispute was not settled and as a result of an agreement between the parties, the Minister authorized the Chief Executive Officer to refer the Dispute to an Arbitration Tribunal for settlement pursuant to section 6 (1) of the Trade Disputes Act Cap 97.

The Dispute was referred to the Permanent Arbitrator on 22 March 2005 with the following terms of reference:

***"..... for settlement over the refusal of the Land Transport Authority (LTA) to negotiate the Union's 2004 Log of Claims and the addendum to the claim dated 29 July 2004.***

The Dispute was listed for a preliminary hearing on 29 April 2005. On that day the parties indicated that they were having discussions and requested that the Dispute be listed for mention on 27 May 2005.

On that day the parties were directed to file preliminary submissions within 21 days and the Dispute was listed for further mention on 24 June 2005. On that day the parties were granted an additional 21 days for filing preliminary submissions and the Dispute was fixed for hearing on 29 August 2005.

The Association had filed its preliminary submissions on 16 June and the Authority eventually did so on 24 August 2005.

Due to unforeseen circumstances it became necessary to vacate the hearing date and the Dispute was listed for further mention on 30 September 2005. The Dispute was then listed for hearing on 12 October 2005. At the request of the

parties that hearing date was vacated by consent. The Dispute was listed for mention on 28 October 2005. The Dispute was listed for hearing on 23 November 2005.

The hearing of the Dispute commenced on 23 November in Suva and continued on 24 November 2005. At the hearing the Association called one witness and the Authority called two witnesses to give evidence. At the conclusion of the evidence the parties sought and were granted leave to file final written submissions.

The Association filed its final submissions on 26 January 2006. The Authority filed answering submissions on 4 April 2006 and the Association filed a reply submission on 20 April 2006.

The Dispute proceeded on the basis that the only matter remaining from the 2004 Log of Claims to be determined by the Tribunal was the outstanding issue of the refusal by the Authority to pay to all FPSA members an additional three percent (3%) FNPF employer contribution.

The starting point in this Dispute is the Collective Agreement dated 17 December 2001 which sets out the terms and conditions of employment for salaried employees. Article G of the Agreement states:

***"The Authority shall not give more or better terms than those provided for in this Agreement to non-Union members covered by the scope of this Agreement".***

In general terms the effect of this clause is that any non-union employee otherwise covered by the Agreement who enters into an individual contract with

the Authority shall not enjoy more or better terms than those set out in the Collective Agreement.

The Authority commenced some time ago a move towards employment pursuant to individual contracts in respect of non-union employees. The basis of the individual contract is the Partnership Agreement which sets out the common terms and conditions of employment of individual contracts. Clause 7 of the Partnership Agreement provides:

***"7. FNPF- The employer will pay an additional 1% to Bands 1-4 and 2% to Bands 5-7".***

It would appear that Bands 1-4 refer to staff levels and Bands 5-7 refer to management levels.

It was not disputed that these additional FNPF payment were not paid to the Association's members under the Collective Agreement.

As a result the Association made an initial claim for a 2% across the board increase in Employer FNPF contributions for its members. It would appear that this was subsequently amended to 3% as a result of information passed to the Association by some of its members to the effect that employees on individual contracts under the Partnership agreement were receiving 3% additional FNPF contributions.

The Association relied, in support of this claim, on negotiations between the parties. The Association alleged that this claim was not denied by the Authority's representatives and also placed reliance on the documents which resulted in the matter coming before the Tribunal.

However, the Association did not call any evidence to support its contention that individual contract employees were receiving an additional 3% FNPF contribution. The evidence given by the Association was mostly hearsay.

The direct evidence given on behalf of the Authority by Ms Nabou and Ms Naiveli was clear and certain on this point. The evidence was that neither management nor the Board had at any stage authorized the payment of FNPF employer contributions above those set out in the Partnership Agreement.

The Tribunal accepts the Authority's evidence and the material exhibited in support of that evidence. As a result the Tribunal accepts that those employees on individual contracts of which the Partnership Agreement is a component continue to be paid the additional FNPF contributions set out in clause 7 of that agreement.

The issue is then whether these additional FNPF contributions amount to more or better terms than those in the Collective Agreement. There was evidence from both parties as to which terms and conditions were included in one agreement and which were not contained in the other agreement.

The Tribunal does not consider such an exercise to be particularly helpful. Clause G does not prevent the Authority from entering into individual contracts with non-union employees. However the clause requires the Authority to ensure that the terms granted to the Association's members under the Collective Agreement are not inferior to those enjoyed by employees who are not members of the Association and who have entered into individual contracts by way of the Partnership Agreement. The Tribunal has concluded that the right to equality is as to each of the terms provided for under the Collective Agreement.

The issue which is relevant to this Dispute is the level of employer contributions to the FNPF. It would appear that under the Collective Agreement the obligation of the Employer is to make the statutory contribution of 8% in respect of each member of the Association. This is the effect of the Collective Agreement not expressly referring to the issue of FNPF contributions. The relevant provision of the Partnership agreement provides for additional contributions by the Employer over and above those prescribed by law. As a result the Tribunal has concluded that Article G has been breached by the Employer.

The Tribunal does not intend to engage in an exercise to evaluate other terms and conditions. The Tribunal is satisfied that as a result of clause 7 in the Partnership Agreement the Employer has breached Article G. As a result the Association's members are entitled to the same benefits as those employees whose terms and conditions are set out in clause 7 of the Partnership Agreement.

The Tribunal has concluded that those Association member who fall within Bands 1-4 are entitled to an additional 1% employer FNPF contribution. If there are any Association members within Bands 5-7 then they are entitled to an additional 2% employer FNPF contribution.

This entitlement is backdated to 10 September 2004 being the date on which the Association served its 2004 Log of Claims on the Authority.

**AWARD**

The Association members who fall within Bands 1-4 are entitled to a 1% additional Employer FNPf contribution. Those members (if any) on Bands 5-7 are entitled to a 2% additional Employer FNPf contribution.

The entitlements are backdated to 10 September 2004.

**DATED** at Suva this *3<sup>rd</sup>* day of May 2006

*W. Puleviki*

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**ARBITRATION TRIBUNAL**