

**AWARDS**

**OF**

**THE ARBITRATION TRIBUNAL**

**OF**

**THE REPUBLIC OF THE FIJI ISLANDS**

**NOS. 26-28 OF 2006**

**NOS. 26-28 OF 2006**

**AWARDS**

of

**THE ARBITRATION TRIBUNAL**

In the Disputes Between

**FIJI PUBLIC SERVICE ASSOCIATION  
FIJI NURSING ASSOCIATION  
FIJI TEACHERS UNION**

and

**PUBLIC SERVICE COMMISSION**

FPSA, FNA and FTU: Mr R Singh with Mrs R Naruma,  
Mrs K Lutua and Mr A D Singh

PSC : Mr T Lee

**DECISION**

These three disputes are between the Fiji Public Service Association, the Fiji Nursing Association and the Fiji Teachers Union (the "Unions") and the Public Service Commission (the "Employer") concerning the 2003 Log of Claims.

A trade dispute was reported by the Fiji Public Service Association (the "Association") on 14 November 2003. The report was accepted on 21 January 2004 by the Chief Executive Officer who referred the Dispute to conciliation. As the Dispute was not settled and as the Dispute in part involved essential services, the Minister authorized the Chief Executive Officer to refer the Dispute to an Arbitration Tribunal for settlement pursuant to section 6 (2)(b) of the Trade Disputes Act Cap.97.

This Dispute was subsequently referred to the Permanent Arbitrator on 2 February 2004.

A trade dispute was reported by the Fiji Nursing Association (the "Nurses") on 13 November 2003. The report was accepted on 21 January 2004. This Dispute was also referred to conciliation which was unable to resolve the Dispute. This Dispute was also referred to an Arbitration Tribunal pursuant to section 6(2)(b) of the Trade Disputes Act Cap.97. The Dispute was referred to the Permanent Arbitrator on 2 February 2004.

A trade dispute was reported by the Fiji Teachers Union (the "Teachers") and subsequently accepted by the Chief Executive Officer who referred the Dispute to conciliation. As the Dispute was not settled and as the Minister was satisfied that the Dispute came within section 6(2)(c) of the Trade Disputes Act Cap.97, the Dispute was referred to an Arbitration Tribunal for settlement. This Dispute was then referred to the Permanent Arbitrator on 5 February 2004.

All three Disputes were referred to the Permanent Arbitrator with the following terms of reference:

***"..... for settlement over the refusal on the part of the Commission to Negotiate and conclude a COLA claim of 5% for its members and the payment of increment/SSPP in its Log of Claims lodged on 4 August 2003".***

The Disputes were listed for preliminary hearing on 18 February 2004. On that day the parties made oral submissions on a number of preliminary issues including the validity of the terms of reference and the standing of the Confederation.

The preliminary hearing was adjourned part heard to 24 February 2004 to enable the parties to obtain legal advice on the matters raised in the various submissions.

When the preliminary hearing resumed on 24 February the Unions informed the Tribunal that, as a result of legal advice received, it had been decided that an application for Judicial Review of the Reference to the Tribunal would be made in the High Court.

At the request of the parties the Tribunal fixed tentative hearing dates for the Disputes subject to any stay order which might be granted by the High Court. The Disputes were fixed for a four day hearing commencing on 21 June 2004.

When the Disputes were called for hearing on 21 June 2004, there was no appearance by or on behalf of the Employer. As a result the Tribunal directed that the hearing dates be vacated and the Disputes were listed for mention on 14 July 2004.

Although there was no appearance by the Employer on 14 July 2004, at the request of the Unions the Tribunal again fixed tentative hearing dates for the Disputes commencing on 16 September 2004.

When the Disputes were called for hearing on 16 September 2004 there was no appearance by the Employer. It would appear that the Employer had not been advised of the dates for mention on 14 July or for hearing on 16 September 2004. Furthermore, the Tribunal was informed that the initial stay order made by the High Court was still in force and as a result the hearing could not proceed on that day even if all the parties were present and in a position to commence the hearing.

Consequently the Tribunal vacated the hearing dates and relisted the Disputes for mention on 13 October 2004. On that day the Disputes were listed for mention on 19 November 2004.

Prior to 19 November 2004 the High Court delivered its Judgement in the Judicial Review proceedings. As a result the Disputes were deemed not to have been referred to the Tribunal in accordance with the provisions of the Trade Disputes Act Cap.97.

It would appear that the State successfully appealed to the Fiji Court of Appeal and as a result the Unions requested by letter dated 14 November 2005 that the Disputes be relisted for mention.

As a result the Disputes were relisted for mention on 25 November 2005. On that day the parties were directed to file preliminary submissions on or before 6 January 2006 and the Disputes were listed for mention on 27 January 2006. The

Disputes were then listed for mention on 24 March and 28 April 2006 to enable settlement negotiations to continue.

On 28 April 2006 the parties informed the Tribunal that the Disputes had been settled. In respect of each Dispute, each of the Unions filed a copy of a memorandum of agreement, the relevant terms of which the parties requested form the bases of the consent awards.

### **CONSENT AWARDS**

1. **Award No.26 of 2006**

In respect of Dispute No.4 of 2004 concerning the Association's 2003 Log of Claims, in addition to the 1% Cost of Living adjustment and 1% merit increases which have already been paid and assimilated into pay rates with effect from 1 January 2003, the Tribunal awards a further two percent (2%) across the board merit payment to be assimilated into the pay rates of all Association members from 1 January 2006 in full and final settlement of the Dispute.

2. **Award No. 27 of 2006**

In respect of Dispute No.5 of 2004 concerning the Nurses 2003 Log of Claims, the Tribunal makes the same Award in identical terms in Award No.26 of 2006.

3. Award No. 28 of 2006

In respect of Dispute No.6 of 2004 concerning the Teachers 2003 Log of Claims, the Tribunal makes the same Award in identical terms in Award No. 26 of 2006.

**DATED** at Suva this 12<sup>th</sup> day of May 2006

*W. P. Calamishini*  
ARBITRATION TRIBUNAL