

AWARD

OF

THE ARBITRATION TRIBUNAL

OF

THE REPUBLIC OF THE FIJI ISLANDS

NO.3 OF 2006

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In the Dispute Between

FIJI ELECTRICITY WORKERS ASSOCIATION

and

FIJI ELECTRICITY AUTHORITY

FEWA: Mr D Urai
FEA: Mr D Sharma with Ms Y Fatiaki

DECISION

This is a dispute between the Fiji Electricity Workers Association (the "**Association**") and the Fiji Electricity Authority (the "**Authority**") concerning various issues relating to terms and conditions of employment.

A trade dispute was reported by the Union on 5 September 2005. The report was accepted on 14 September 2005 by the Chief Executive who referred the Dispute to conciliation. As the Dispute was not resolved and involved an essential service the Minister authorized the Chief Executive Officer to refer the Dispute to an Arbitration Tribunal for settlement pursuant to section 6 (2) (b) of the Trade Disputes Act Ap.97.

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

".... For settlement over the refusal on the part of the Authority to:

- (1) Pay members of the Association an extra one percent similar to the payment made to the Electrical Trade Union members dated 31/12/04;***
- (2) Negotiate and conclude the 2004/2005 COLA payment;***
- (3) Sign the undated collective agreement issued by the Authority on 24 September 2003 for verification and finalisation;***
- (4) Breach of the Recognition Clause including negating on the understanding between the Association and the CEO that all advertisement will indicate the choice of accepting the vacant position under individual contracts or collective agreement".***

The Dispute was listed for a preliminary hearing on 6 October 2005. On that day the parties were directed to file preliminary submissions by the close of business on 11 October and the Dispute was listed for hearing on 12 October 2005.

The hearing of the dispute commenced on 12 October in Suva and continued on 13 October 2005. The Association called four witnesses to give evidence. The Authority did not lead any evidence.

At the conclusion of the evidence the parties sought and were granted leave to file written final submissions. The Association filed its final submissions on 25 October 2005. The Authority filed answering submissions on 10 November and the Association filed a reply submission on 21 November 2005.

During the hearing the parties informed the Tribunal that issues (3) and (4) in the terms of reference were to be withdrawn by consent and the proceedings in respect thereof discontinued.

The first issue is a claim by the Association for an extra 1% increase in the COLA payment for 2003-2004 period.

The Tribunal accepts the evidence of the witnesses which demonstrated that similar work was being performed by two employees who each belonged to a different union and who essentially worked under the same terms and conditions.

However the Tribunal also accepts that both the Association and the Electrical Trades Union (ETU) have each concluded agreements with the Authority in relation to a number of matters, including COLA, for the 2003-2004 period.

This fact distinguishes the Dispute from the Dispute which was settled by Award No.52 of 2004 where the Fiji Electrical and Allied Workers Union were attempting to reach agreement with the Authority on their claims. Here there are already

signed agreements. The Tribunal does not consider it appropriate to interfere with the collective bargaining process by amending an agreement between the parties. It was not alleged that the Authority had deceived or made any misrepresentation to the Association in respect of material facts.

The second issue concerns a claim by the Association for COLA for the 2004-2005 period. In this case there has been no agreement reached by the parties. The Association is claiming 4%. The Authority offered 3% during negotiations.

The Tribunal has previously stated that the purpose of a COLA payment is to ensure that the existing wage maintains its purchasing power in the face of inflation as measured by the consumer price index. As a result the Tribunal considers that all workers are equally exposed to the effects of inflation and that generally speaking the amount of any COLA increase should be across the board. There are of course immediate issues of fairness and equity when a COLA payment is expressed in percentage terms as it is obvious that not all workers will be equally compensated for the eroding effect of inflation on their wages.

Be that as it may, the parties continue to seek percentage increases. As the Authority has agreed to a 4% COLA increase for members of the FEAWU, the tribunal has concluded that it is only fair that the same increase be awarded to the Association's members.

The issue of concessions made by other unions and increases in other allowances is a matter for the parties to resolve by the process of collective bargaining.

The Tribunal will not generally interfere with a recently concluded agreement made by the parties on any particular issue. However, it will nevertheless continue to attempt to ensure that employees in any given workplace so far as is practicable enjoy the same basic terms and conditions where separate agreements have not determined otherwise.

AWARD

1. The claim for a further increase of 1% COLA payment for 2003-2004 is rejected.
2. The Association is to be awarded a 4% COLA payment for 2004-2005 period.

CONSENT AWARD

3. Items 3 and 4 in the terms of reference are withdrawn and the proceedings discontinued.

DATED at Suva this 30th day of January 2006


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ARBITRATION TRIBUNAL