TRINIDAD AND TOBAGO
ST NO. 10 OF 2005

IN THE INDUSTRIAL COURT

Between

ESTATE POLICE ASSOCIATION - PARTY NO. 1

And

NATIONAL MAINTENANCE TRAINING - PARTY NO. 2 AND SECURITY COMPANY LIMITED

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Her Honour Ms. E.J. Donaldson-Honeywell - Chairman
Her Honour Mrs. J. Rajkumar-Gualbance - Member
Her Honour Mrs. V. Harrigin - Member

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APPEARANCES:

Mr. C. Weatherhead
Attorney-at-Law) **for Party No. 1**

No appearance) **for Party No. 2**

DATED: 9TH JANUARY, 2007

ORAL JUDGMENT

Delivered by Her Honour Ms. E.J. Donaldson-Honeywell

The Special Tribunal ["the Tribunal"] in this Dispute proceeded ex parte in accordance with Section 11 (a) of the Industrial Relations Act Chapter 88:01, **["IRA"]** there being no appearance for The National Maintenance Training and Security Company Limited **["the Employer"** or **"MTS"]**.

The Employer was duly summoned to attend this hearing by Order dated October 19, 2006 which was served on the Employer on November 15, 2006. The said Order indicated that the hearing was a peremptory fixture.

The said Employer despite being granted extensions of time to do so also failed to file a written statement of Evidence and Arguments.

The Dispute as reported by the Estate Police Association **["the Association"]** concerns the non-payment of salary to Estate/Corporal Curtis Robertson on occasions when he attended to the Association's Business in his capacity as Executive First Vice President. The Association's case was that over the period January-July 2005 Mr. Robertson was not paid his usual salary of $2,200.00 per fortnight. Instead he received no payment in January 2005 and his take home pay varied from $24 to $200 for the next five (5) months.

We have made a decision based on the oral evidence of Mr. Robertson, as well as, closing addresses by Mr. Weatherhead. In view of the serious nature of the subject matter of this dispute and in view of the evidence, our ruling is in favour of the Association. We would want to indicate just a few of the reasons for this oral judgment.

Firstly, we were guided by the references cited by Mr. Weatherhead, including the Collective Agreement, **["the Agreement"]** for 2001-2004 as well as the rules under the Supplemental Police Act Chapter 15:02 **["SPA"]**which make clear the intent that facilities should be afforded to officers of this Association employed by the employer to ensure that they can attend to the Association's business. The said provisions are as follows:-

ARTICLE 21 - LEAVE OF ABSENCE ON THE ASSOCIATION'S BUSINESS:

"21 (a) Where a Security Officer being an Official or a delegated representative of the Association, desires leave of absence to engage in any business pertaining exclusively to the affairs of the Association, a written application, seven (7) days in advance shall be submitted to the Company. Subject to the exigencies of the Company's operations, such leave of absence shall not be unreasonably withheld.

(b) Where such leave is granted, payment shall be made for each day of absence."

SUPPLEMENTAL POLICE RULES

"18 (1) Except where, in special circumstances a constable of the Estate Police is required for duty for which no substitute is available, permission shall be given by employers for attendance at all regular meetings of Branch Boards and of the Central Committee duly held and a constable of the Estate Police in attendance at any such meeting shall, as regards wages be deemed to be engaged on his employer's business; and no employer shall make any deduction from such wages or impose upon or exact from any estate constable any penalty by reason of his absence while attending any such meeting."

The rules, use the word, 'meetings'. Of course that may have been based on the concept of the Association's role at that time. The Agreement is much clearer as it specifies "any business" pertaining to the affairs of the Association.

We note, also that this type of provision is fundamental to the principles governing industrial relations internationally. Trinidad and Tobago is a signatory to the International Labour Organisation's (ILO), Right to Organize and Collective Bargaining, Convention of 1949, which provides at Article 1 (2) that protection should apply in respect of acts prejudicing a worker by reason of participation in Union activities, with the consent of the Employer, within working hours.

So the Collective Agreement and SPA provisions are in keeping with what Trinidad and Tobago had agreed to as a member of the I.L.O. We also note, that in the IRA, it is made clear that to go against that type of principle could be, in fact, an offence.

Section 42 (1) (d) of the IRA provides:-

> "(1) An employer shall not dismiss a worker, or adversely affect his employment, or alter his position to his prejudice, by reason only of the circumstances that the worker-
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> (a) is an officer, delegate or member of a trade union;
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> (b) is entitled to the benefit of an order or award under this Act;
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> (c) has appeared as a witness or has given any evidence in a proceeding under this Act; or
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> (d) has absented himself from work without leave after he has made an application for leave for the purpose of carrying out his duties as an officer or delegate of a trade union and the leave has been unreasonably refused or withheld."

It is in the context of the above outlined law and guiding principles that we looked at the letter that has been exhibited to the Union's Evidence and Arguments. In that

letter dated July 19th, 2004, [Exhibit CR 2.] the Company indicated a change in policy regarding requests for time-off on Association Leave. This was being proposed after ten (10) years of a practice that had developed. Based on the unchallenged evidence of Mr. Robertson, which we accept as truthful, the procedure that would be followed was that an application would be submitted to the Company for leave to attend to the Association's business. Thereafter the Estate Constable would proceed on Association Leave without awaiting formal notification of approval.

Mr. Robertson admitted that sometimes the leave request would be submitted less than seven (7) days before the date of the Association's business although the governing provisions provide for seven (7) days and fourteen (14) days notice respectively. He admitted that sometimes it would be two (2) days, or even less, based on the urgency of some of the business that he had to attend to as Vice President. We accept his evidence that it was the practice that these applications would be submitted and officers would proceed on the Association's business. There was no practice whereby formal approval in writing would be given.

The letter dated July 19th, 2004 indicated a new approach, whereby requests for Association leave only "involving MTS in the first instance" would be considered. This, was a variation, completely different from what is provided for in the Collective Agreement which extends to "any business". In this regard, Mr. Robertson indicated that, in fact, his role as an Executive Member of the Association extends not only to MTS business, but over the years, he has represented the Association in relation to its wider membership.

In terms of the Special Tribunal's own experience, we take judicial notice that Mr. Robertson also attends at the Industrial Court, as he indicated in his evidence, on the Association's business. We cannot turn a blind eye to the fact that it is in very legitimate circumstances that he attends.

We know of the circumstances whereby the Association is not always represented and it falls to Mr. Robertson on a number of occasions. He is the only person available in the Court on many occasions representing the Association. It is unfortunate that representatives from MTS are not present today because they may not be aware of how crucial the role of Mr. Robertson has been to the Association. The Employer may be of the view that his applications for Association Leave are too frequent, not realizing that they may be for legitimate business.

Be that as it may, the Employer has not been here to put forward that position. Any substantiation as to why the Employer felt that there was too much frequency in terms of the requests for time off could only have been put forward by the Employer in written and/or oral Evidence and Arguments. The Employer's letter dated July 19, 2004 setting out the new policy did not provide any information on Mr. Robertson's leave record based on which an objective view of the reasonableness of withholding future leave approvals could have been assessed.

We also accept the statement from Counsel for the Association that there are no other disputes before this Court concerning any other Estate Constables at MTS, affected by this change in Association Leave procedure. There is no indication that the change affects or has been applied to other officers. It appears to be only in

relation to Mr. Robertson who has been attending to the Association's business, that this procedure has been applied.

Mr. Robertson's evidence that he was one of approximately one hundred and twenty (120) Officers employed at the rank of Estate Corporal with the Employer was unchallenged. He also testified credibly as to the availability of other such officers as substitutes when he was required to attend to the Association's business. In addition we accept his evidence as truthful when he stated that on completion of the Association's business he would, in fulfillment of his duties as Supervisor, return to work to attend to necessary "checks" provided the timing of the business allowed for this. His estimate as to the total amount of lost salary as $20,000.00 is also accepted.

In coming to our decision, we took into account Mr. Robertson's evidence that although the provision in the Collective Agreement is for seven (7) days' notice to be given of his attendance for Association's business, it was the practice of the Employer over the years that, based on the urgency of some of the Association's business, applications would be submitted giving less than the seven (7) day's notice and officers would still be paid their full salary, despite their attendance to the Association's business.

In these circumstances, the Court's decision is that we will grant the order as requested by the Association for compensation for lost of salary. This award of compensation is strictly for the salary lost based on the estimate that Mr. Robertson has given as to that amount of $20,000.00.

On the question of exemplary damages claimed by the Association, we are not of the view that it is appropriate in this case to award exemplary damages. Although Section 10 (4) of the IRA authorizes the Court to award exemplary damages, it provides for such an award in dismissal disputes only.

With regard to the Association's app ication for costs; taking into consideration:

1. the Employer's failure to attend and/or to submit written evidence and arguments;

2. the action complained of undermines fundamental principles of good industrial relations practices endorsed by the International Labour Organization, reflected in the IRA as well as the provisions of the SPA and, the Collective Agreement agreed to by the Parties; and

3. the Employer was aware that the Association had retained Counsel as this was indicated on the Order that was served.

we are of the view that costs fit for Counsel should be awarded in this dispute.

The decision of the Court therefore is that compensation in the amount of $20,000 plus costs for Counsel in the amount of $7,000.00 be paid by Party No. 2 to Estate Corporal Curtis Robertson on or before February 9th, 2007.

E.J. Donaldson-Honeywell
Chairman

J. Rajkumar-Gualbance
Member

V. Harrigin
Member