



**TRINIDAD AND TOBAGO**  
**ST NO. 12 OF 2007**

**IN THE INDUSTRIAL COURT**

Between

**ESTATE POLICE ASSOCIATION - PARTY NO. 1**

And

**TRINIDAD AND TOBAGO - PARTY NO. 2**  
**ELECTRICITY COMMISSION**

**CORAM**

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

**APPEARANCES:**

Mr. C. Robertson )  
1st Vice President ) for Party No. 1

Ms. R. Babwah )  
Attorney-at-Law ) for Party No. 2

**DATED JULY 7, 2009**

**ORAL JUDGMENT**

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

This dispute concerns the claim by the Estate Police Association [*"the Association"*] that the Trinidad and Tobago Electricity Commission [*"the Commission"* or *"the Employer"*] wrongly failed to pay disturbance allowances to three Estate Police Officers with effect from April 26, 2004. On that date the Commission transferred Estate Corporal Calvin Taylor, Estate Constable Saied Mohammed and Estate Constable Kemchand Adiram [*"the Constables"*] from the Central Warehouse Duty Station, California to the Distribution Central Duty Station, Couva.

The Association contends that based on Clause 18 (a) (iv) of the Agreement between the parties, Disturbance Allowances were due to the Constables.

Clause 18 (a) (iv) reads as follows:-

**"CLAUSE 18 - DISTURBANCE ALLOWANCE**

**(a) Permanent Transfer**

*An Estate Policeman/Policewoman who is compulsorily transferred from one duty station to another necessitating change of residence shall be entitled to a Disturbance Allowance of:-*

- (i) A payment of \$1,235.96 if the Commission does not provide any housing accommodation.*
- (ii) A payment of \$840.46 if the Commission provides housing accommodations at his/her new duty station.*
- (iii) Subject to prior approval of the General Manager should the Estate Policeman/Policewoman be necessarily obliged to spend more than the amount listed in (i) above, he/she shall on application be granted an additional payment*

*provided the total payment does not exceed \$1,977.54.*

- (iv) Where it is not necessary for an Estate Policeman/Policewoman to change his/her residence, he/she shall receive a monthly subsistence allowance of \$512.92 for a period not exceeding three (3) months."*

### **The Evidence**

The three Constables testified on behalf of the Association. A fourth Association witness Corporal Rogers also testified. The Commission called two witnesses Human Resource Manager Ms. H. All and Estate Inspector, Kemraj Ramoutar. Evidence was also taken at a visit by the Tribunal to the relevant sites, namely, Central Warehouse Duty Station, California and the Distribution Central Duty Station, Couva.

### **Decision**

The Tribunal has been able to arrive at consensus in terms of the decision in this dispute, so we will give the judgment orally at this stage.

Clearly, based on the submissions and the evidence on both sides interpretation of the agreement was one of the critical issues in this case. The Tribunal heard the evidence led by both parties concerning this interpretation. Ms. All the Human Resource Manager of the Commission explained the Commission's interpretation of Clause 18. The Tribunal accepts that it is correct as she has said, that the question of disturbance is very important under that clause; there must be some element of disturbance for the allowance to be paid.

On the evidence, although the Association's witnesses attempted to establish that there was disturbance and inconvenience, it was not fully established. The Association argued that one point of inconvenience and disturbance was the bad work conditions, for example a lack of toilet facilities. On full examination of the evidence and questioning of the witnesses it was established that, in fact, the bad conditions were at the place where the Constables moved from and better conditions were at the new location.

The Tribunal also looked at the question of increased transport costs occasioned by the transfers and accepts as was brought out in the evidence, that these costs were, in fact, negligible. On the site visit to the location it was revealed that with the transfer from the Central Warehouse to the Central Distribution Area, the same taxi route to and from work would be taken by the Constables. The Constables could have been taken to the junction of Lisas Boulevard and the Southern Main Road. Based on the evidence recorded at the site visit, the distance from the junction to the Central Distribution Area was approximately a quarter mile.

The transport costs if Constables decided to take an additional taxi from the junction, the quarter mile to the office, would have been \$3.00 from the Lisas Boulevard Junction. It was established, however, by one of the Constables that this was only done in the event of rain. At the site visit Judicial Notice was taken that it would have been possible, very easily, to walk from the junction to the office. That distance of a quarter mile was not at all daunting and the road was very flat and smooth. There were no obstacles on the straight route to the Distribution Office.

The point of increased distance from one duty station to another was also referred to by the Association in looking at the question of entitlement to disturbance allowance. It was argued as a major factor, to establish entitlement to disturbance allowance but the

evidence of at least the first two witnesses of the Association with regard to this distance was discredited when the Tribunal visited the site. These witnesses had said that the distance from the Warehouse to the Central Office was five to six miles. The first witness Mr. Saied Mohammed claimed that this distance had been measured using a vehicle speedometer.

On the site visit the distance was measured scientifically, not only by the Court's orderly, who was in control of the Court's vehicle, but also by the Employer. Unfortunately, the Association's speedometer was not in working order to measure the distance. It was accepted, however, that the distance was, in fact, 1.7 miles between the two particular duty stations.

Additionally, the Association's evidence had been that the distance from the junction of Lisas Boulevard to the Central Distribution Office was three quarters of a mile. On measurement, it was established that it was a quarter mile, the same walking distance as previously mentioned.

The Tribunal holds that the distance between the two duty stations did not present any disturbance within the meaning of Clause 18. The Commission did not act in breach of the Agreement by not paying disturbance allowances in the circumstances of this case. An explanation was given by letter dated July 27, 2004 which, while not fully setting out these circumstances, properly indicated that there was no entitlement to disturbance allowances.

It is noted by the Tribunal that Clause 18 of the Agreement lacked details in some respects. Particulars of what transfer distances and/or conditions could be deemed to cause disturbance were notably absent. This allowed for the exercise of discretion on the part of the Employer. The Employer had to implement the clause, had to comply with it and therefore had to exercise discretion to fill

in those details that were not there. And this discretion was, in fact, exercised. There was evidence of many instances when this discretion was exercised by the Commission and no evidence that it was challenged by the Association prior to this particular dispute.

There was, for example, evidence of transfers from the Port of Spain Head Office to the Northern Distribution Office with no payments of disturbance allowance save for one instance of a payment to Corporal Rogers. He indicated in his evidence that he knew of other Officers who were transferred likewise but they were not paid. There was evidence from the Employer that, in fact, this payment was an error. There was no evidence that the question of non-payment of disturbance allowance to all of these other Officers in similar instances was being challenged.

In the circumstances, the Tribunal accepts the evidence that there was a practice in terms of the exercise of the Employer's discretion in properly complying with Clause 18 of the Agreement by looking at exactly what can be included within the meaning of disturbance.

The Tribunal finds that there is no evidence that the discretion was unfairly exercised in this case. We recommend, however, that the parties in future negotiations consider identifying distances or any other specifics of disturbance instead of merely referring in their Agreement to transfers between duty stations. Relevant terms such as duty stations ought to be defined and the meaning of disturbance specified.

The Association referred to the Court's decision in ESD 50 of 1999 between OWTU & T&TEC delivered on April 11, 2001. The Collective Agreement interpreted therein included a Disturbance Allowance Clause with more of the type of detail required for easier implementation. An extract of the said Clause reads as follows:-

**"CLAUSE 28 - DISTURBANCE ALLOWANCE**

**(a) Permanent Transfer**

- (1) A worker who is transferred from one Depot/Operating Centre or Area to another shall be paid a disturbance allowance of \$1,060.**
- (2) In addition the worker will be eligible for payments totalling a maximum of \$1,378 for expenses incurred as a result of the transfer. This payment can be claimed within the period of three (3) months immediately following the transfer and on the presentation of written statements supporting claims for expenses. In the case of transfers to or from Tobago, a maximum of \$1,696 can be claimed under this heading.**
- (3) The Commission's traditional practices will continue in relation to the provision of housing on permanent transfers.**

**(b) Temporary Transfer**

**Where a worker is temporarily transferred from one Depot/Operating Centre or Area to another for more than one day, he shall be entitled to the following:**

- (i) If the Commission provides accommodation but no meals, \$47.70 for each day of such temporary transfer to a maximum of \$1,049.40 per calendar month.**
- (ii) If the Commission does not provide accommodation or meals, \$90.10 for each day of such temporary transfer to a maximum of \$1,982.20 per calendar month.**
- (iii) If a worker is on temporary transfer to or from Tobago, the Commission will provide accommodation and meals. In addition, if the worker is required to**

overnight, he shall be paid an allowance of \$53 per night.

- (iv) *If the temporary transfer be to Penal, the Commission will provide accommodation; the allowance at (i) above shall also apply.*
- (c) *If the worker be necessarily obliged to spend more than the amounts listed above, he shall on application be granted additional payment subject to the prior approval of the Commission.*
- (d) *A worker shall not benefit from the provisions of this Clause if he is transferred:*
  - (i) *At his own request.*
  - (ii) *Between the Commission's Head Office and Wrightson Road complex. However in the event that a worker on temporary transfer between Head Office, Wrightson Road complex and Trinidad and Tobago Electricity Commission Warehouse, Sea Lots, incurs additional transportation costs, the Commission will pay the worker for each day of such transfer an amount equal to a return fare by route taxi between these points."*

The Tribunal refrains from applying the interpretation in the judgment cited. Although that decision concerned disturbance allowance and involved the same Employer, it related to a differently worded clause in a separate agreement with a totally different entity, another Union.



In the circumstances, having taken into consideration all of the evidence as well as submissions and the interpretation of the particular clause, the decision is that this dispute is dismissed.

**E.J. Donaldson-Honeywell  
Chairman**

**J. Rajkumar-Gualbance  
Member**

**V. Harrigin  
Member.**

