



TRINIDAD AND TOBAGO
SPECIAL TRIBUNAL NO. 1 OF 2009

IN THE INDUSTRIAL COURT

Between

ESTATE POLICE ASSOCIATION - PARTY NO. 1

And

GUARDIA SECURITY ADVISERS LIMITED - PARTY NO. 2

CORAM

His Honour Mr. V.E. Ashby	- Chairman
Her Honour Mrs. J. Rajkumar-Gualbance	- Member
His Honour Mr. L. Achong	- Member

APPEARANCES:

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

Mr. P. Cezair)
Industrial Relations Consultant) for Party No. 2

DATED: FEBRUARY 15, 2011

JUDGMENT

DELIVERED BY HIS HONOUR MR. V.E. ASHBY

This dispute concerns a breakdown of negotiations for an agreement between the parties to succeed the agreement that expired on December 31, 2005. The parties to the dispute are the Estate Police Association [*"the Association"*] and Guardia Security Advisers Limited [*"the Employer"*]

Although the duration of the agreement in dispute between the parties is from January 1, 2006 to December 31, 2008 it was on September 2, 2008 that the Minister of Labour received a report of a breakdown of negotiations.

On January 5, 2009 the Minister referred the dispute to the Special Tribunal pursuant to Section 40 of the Supplemental Police Act Chapter 15:02 and S. 61 (a) of the Industrial Relations Act Chapter 88:01 [*"the IRA"*]. In the referral all the provisions of the agreement (**some 28 articles**) were listed as unresolved. There was an explanatory note from the Minister stating that it was not possible to effect conciliation in the period initially available under the IRA and that the parties did not agree to extend that time.

By the time the matter first came on for hearing on May 12, 2010, the parties had reduced considerably the items in dispute and it remains for the Special Tribunal to determine only two provisions as follows:

ARTICLE 5 HOURS OF WORK

ARTICLE 6 OVERTIME

THE ASSOCIATION'S PROPOSALS

The expired agreement provides, in part, at Article 5 Hours of Work as follows:

Definition:

Hours of work shall be eight (8) hours and twelve (12) hours duration, based on the respective roster”.

On overtime, the expired agreement provides at Article 6 as follows:

“Overtime shall be defined as time worked in excess of either eight (8) or twelve (12) hours per shift depending upon the assignment of the officer. Any overtime hours worked shall be paid for at one and one half (1½) times the basic rate for the first four (4) or six (6) hours as the case may be.”

The Association’s proposal would remove the option in the expired agreement of assigning officers to a twelve-hour tour of duty, with the result that officers could only be rostered for eight hours at a time. The Association proposes, in addition, that overtime rates begin to apply upon completion of eight hours of work by an officer.

In support of the Association’s proposals, its representative Mr. Robertson said that their purpose was to

“reflect the eight hours worked which is in keeping with the national norms and standard of all the industries in Trinidad and Tobago.”

He relied on a Minimum Wage Order made under the Minimum Wages Act Chapter 88:04 which applies to workers in the security industry among others and provides for an eight hour work day, forty hour work week and overtime rates applicable after completion of eight hours work.

For the full effect of its application to security workers, however, this order must be read together with the savings and exceptions listed under Part II.

One of these is:

(e) ***Minimum Wages (Security Industry Employees) Order 1995.***

The effect of this exception is that even for security workers covered by the Minimum Wage Order, overtime rates begin to apply at the end of the period he/she is rostered to work. Rostering a worker for twelve hours is contemplated by S. 4 of the 1995 Order which provides as follows:

4. (1) ***Except in cases of emergency no employee shall be rostered to work for more than twelve hours in any twenty-four hour period.***
- (2) ***No employee shall be required to work for a continuous period in excess of sixteen hours in any twenty-four hour period.***

Responding to questions from the bench, Mr. Robertson acknowledged that the Minimum Wage Order applied to workers earning less than a rate of pay prescribed in the order and that the Association represented precepted constables whose rate of pay exceeded that rate, but he argued nevertheless that it was "***not consistent***" that employees in the security industry, sometimes working on the same compound, should have radically different hours of work and overtime arrangements.

THE EMPLOYER'S CASE

The Employer relied on its position as stated in its written statement of evidence and arguments that the arrangements in the expired

agreement are permitted by the law. Its representative Mr. Cezair said, in addition, that the provisions sought to be changed by the Association, had been freely agreed by the parties.

Mr. Cezair further submitted that the Special Tribunal has no jurisdiction to alter provisions in an agreement for a period which has already expired. This submission, for which authority was claimed by Mr. Cezair to exist in a Court of Appeal decision which was not identified, is not accepted by the Court. The Court is aware of a Court of Appeal judgment¹ which expressed approval of a decision of the Industrial Court² that it could not entertain an application for interpretation under S. 16 of the IRA, if the collective agreement sought to be interpreted had already expired. The Industrial Court judgment referred to with approval by the Court of Appeal also dealt with the enforceability of expired agreements. In the penultimate paragraph of the Alstons Building Enterprises judgment the Court says:

“On the invocation of the trade dispute procedure the Court will be enabled to exercise its jurisdiction to enforce the workers’ individual contracts of employment despite the expiry of the Agreement.”

While this Tribunal deplores the parties’ delay in concluding an agreement to succeed the one that expired in December 2005, we do not accept the contention that the Special Tribunal has no jurisdiction to determine a dispute over a breakdown of negotiations for the reason that the period to which the agreement applies has come and gone.

¹ CVA No. 9 of 1995 Bank Employees Union v. Republic Bank Limited delivered on April 3, 1998.

² ICA No. 11 of 1986 Oilfields Workers’ Trade Union v. Alstons Building Enterprises Limited delivered on November 26, 1987.

DECISION

The Industrial Court has made clear in judgments over the years the principles and rationale that inform its making of awards in '*interests*' disputes.³

It is clear from these judgments that in '*interests*' disputes the Industrial Court's awards are informed by the practice of the parties to collective bargaining especially as evidenced in registered collective agreements.

In this dispute the Association seeks to have altered by award of the Special Tribunal a provision freely agreed with the Employer in the expired agreement. No evidence was led to demonstrate its unworkability or fundamental changes over time that would justify the alteration sought. The Special Tribunal does not accept the Association's arguments based on the provisions of Minimum Wage Orders intended to apply to employees not able to bargain collectively or, as in the case of Constables, for whom the Supplemental Police Act Chapter 15:02 makes provision at S. 38 (1) with regard to the manner in which representations are to be made on matters concerning their terms and conditions of employment.

In response to the bench, Mr. Robertson admitted that whereas the Association is a party to some agreements which contain provisions such as it proposes in the instant dispute, it is also a party to many other agreements which contain provisions on overtime and hours

³ T.D. No. 20 of 1978 *Sproston's (Trinidad) Limited v. Transport and Industrial Workers' Trade Union* delivered on November 9, 1978.

T.D. No. 153 OF 1983 *Public Transport Services Corporation v. Transport and Industrial Workers' Trade Union* delivered on November 9, 1978.

of work similar to those in the expired agreement between the parties herein.

Accordingly, it is ordered that in the agreement between the parties for the period January 1, 2006 to December 31, 2008, the following provisions shall be retained as in the expired agreement:

ARTICLE 5 HOURS OF WORK

ARTICLE 6 OVERTIME.

**V.E. Ashby
Chairman**

**J. Rajkumar-Gualbance
Member**

**L. Achong
Member**

