

**AWARD**

**OF**

**THE ARBITRATION TRIBUNAL**

**OF**

**THE REPUBLIC OF THE FIJI ISLANDS**

**NO. 35 OF 2006**

**NO. 35 OF 2006**

**INTERPRETATION OF  
AN AWARD**

In the Dispute Between

**TELECOMMUNICATIONS EMPLOYEES ASSOCIATION**

and

**FIJI INTERNATIONAL TELECOMMUNICATIONS LIMITED**

TEA : Mr A Naco  
FINTEL: Mr S Samuta

**DECISION**

In Award No.19 of 2006 dated 21 April 2006, the Tribunal settled a dispute between the Telecommunications Employees Association (the "Union") and Fiji International Telecommunications Limited (the Employer) concerning the implementation of the revised salary structure adjustment.

By letter dated 26 April 2006 the Employer requested the Tribunal to clarify the date on which the Award was to take effect.

The parties appeared before the Tribunal on 3 May 2006. The parties indicated to the Tribunal that they wished to make oral submissions on the issue and as a result the matter was adjourned part heard to 30 May 2006. On that day both parties made oral submissions and handed up to the Tribunal a brief outline of their submissions.

The Employer submitted that the Award should be backdated to 2004 as up until that time the Union had not objected to the method used by the Employer for implementing the adjustment.

The Union submitted that at no time since 1992 had a copy of the relevant report prepared by Hays Consultant been provided to the Union despite a request on each occasion. The Union then submitted that as a result it had no choice but to accept the method of implementation adopted by the Employer for the first three adjustments. It was only after the Employer proposed to implement the 2004 recommendations in the same manner that the Union decided to report a trade dispute.

The Union submitted that since it had been deprived of the relevant information in the report on each occasion since 1992 and as a result had been more or less compelled to agree to the Employer's proposal, the Award should be backdated to 1992.

In reply the employer submitted that it was always possible for the Union to have purchased a copy of the Report direct from Hays in New Zealand. The

Employer submitted that it had indicated this to the Union as an option. The Employer stated that as it had commissioned and paid for the preparation of the report it was at the Employer's discretion to release or not to release a copy of the Report to the Union. The Employer submitted that the negotiations between it and the Union had always been conducted in a cordial manner.

The Tribunal's jurisdiction is determined by its terms of reference. Although not expressly stated, it is apparent to the Tribunal that the reference relates to a dispute concerning the proposed implementation of the recommendations in the 2004 Report. It does not extend to the recommendations contained in the three earlier reports.

Although section 24 of the Trade Disputes Act does permit an award to have retrospective effect, the Tribunal cannot purport to make an award with retrospective effect to a date which would go beyond its terms of reference and hence its jurisdiction.

As a result the retrospective effect of the Award cannot be backdated beyond the date on which the recommendations in the 2004 Report were to take effect.

Whilst this may settle the issue as to the date on which the Award is to take effect, the Tribunal considers it appropriate to comment briefly on some aspects of the parties' submissions.

The Tribunal considers that the Industrial Relations Code of Practice dated June 1973 issued by the Labour Advisory Board is of some interest in this Dispute. On the responsibilities of management clause 4 (1) states:

- "4. where trade unions are recognized for negotiating purposes management should:**  
**(1) maintain jointly with trade unions effective arrangements for negotiation, consultation and communication, and for settling grievances and disputes".**

In relation to the disclosure of information, clauses 86 and 87 of the Code provide:

**"86 Collective bargaining can be conducted responsibly only if managements and unions have adequate information on the matters being negotiated"**

**87 Management should aim to meet all reasonable requests from trade unions for information which is relevant to the negotiations in hand....."**

Similarly, concerning the responsibilities of the Union, clause 10 of the Code confirms that the trade unions share with management the responsibility for good industrial relations.

Clause 11 (ii) of the Code states:

- " Trade Unions should therefore:**  
**(i) .....**  
**(ii) maintain, jointly with individual managements effective arrangements for negotiation, consultation, and communication and for settling grievances and disputes".**

The Tribunal is of the opinion that the Employer has conducted negotiations on the implementation of the adjustments in a manner which is inconsistent with its responsibilities under the Code and inconsistent with the objective of effective collective bargaining.

However, the Tribunal is also satisfied that the Union has failed in its responsibilities by not pursuing all reasonable options to obtain the relevant information in order to effectively participate in the collective bargaining process.

It may well be unreasonable to expect the Union to pay NZ \$2000 for a copy of the entire consultant's report for each of the three rounds of negotiations prior to 2004. However, the Tribunal is of the view that the Union failed on three occasions to pursue its quest for relevant information by other means, such as the reporting of a trade dispute.

One such failure may have been in the interests of maintaining smooth industrial relations, but three such occasions could reasonably be regarded as acquiescence.

The Tribunal considers that neither natural justice nor legitimate expectation have any application to the present question before the Tribunal. The Rules of natural justice are essentially concerned with questions of bias and fair hearing. Legitimate expectation is a principle applied in proceedings involving the review of decisions by persons charged with, amongst other things, an administrative power affecting the status, rights or liabilities of individuals. The implementation of recommendations in a commissioned report by one party which is not to the satisfaction of the other party does not come within the type of proceedings to which either the Rules of natural justice or the principle of legitimate expectation applies.

As a result the Tribunal has concluded that the Award is to be backdated to the date on which the Employer implemented the recommendations in the 2004 Consultants Report.

**DATED** at Suva this 8<sup>th</sup> day of June 2006

*W. Pulanichini*

**ARBITRATION TRIBUNAL**