



The
Bombay Government Gazette

PUBLISHED BY AUTHORITY

THURSDAY, 24TH NOVEMBER 1949.

Separate paging is given to this Part in order that it may be filed as a separate compilation

Part I-L

Notifications, orders and awards under the Industrial Disputes Act, 1947, and the Bombay Industrial Relations Act, 1946 (other than those published in Parts I, I-A, IVA, IVB and IVC) issued by the Labour Department, Industrial Court, Industrial Tribunal, Wage Board and Registrar, Bombay Industrial Relations Act.

LABOUR DEPARTMENT.

Bombay Castle, 5th November 1949.

Order.

No. 877/48.—In exercise of the powers conferred by sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (XIV of 1947), the Government of Bombay is pleased to refer the industrial disputes between the employers of the Brick Factories at Ahmedabad mentioned in the Schedule and the workmen respectively employed under them, regarding the matters specified in the Annexure for adjudication to the Industrial Tribunal consisting of Mr. P. D. Vyas, constituted under section 7 of the said Act, under Government Notification, Political and Services Department, No. 575/46, dated the 13th January 1948.

ANNEXURE.

1. The rates of pay for moulding 1,000 bricks by Patalas should be Rs. 8-8-0.

2. The accounts of the works of Patalawala should be made every month and payment be made before fifth of the next month.
3. Weekly holidays should be observed on every Wednesday.
4. The workers compulsorily unemployed by 15 Factories should be reinstated and be compensated for the loss suffered by them.
5. The demand No. 1 should be granted with retrospective effect from 1st October 1948.

Schedule.

- (1) Messrs. Nawroji N. Vakil and Company, Ahmedabad.
- (2) Messrs. Pujabhai Nathubhai, Ahmedabad.
- (3) Messrs. Maganlal Bhagavandas, Ahmedabad.
- (4) Messrs. M. Ranchhodlal and Company, Ahmedabad.
- (5) Messrs. Nanalal Karsandas, Ahmedabad.
- (6) Messrs. Hiralal Gopaldas, Ahmedabad.
- (7) Messrs. Lallubhai Gordhandas, Ahmedabad.
- (8) Messrs. Ishwarlal Dahyabhai, Ahmedabad.
- (9) Messrs. Jethalal Gordhandas, Ahmedabad.
- (10) Messrs. Naranlal Shankerlal, Ahmedabad.
- (11) Messrs. Makandas Narsinbhai, Ahmedabad.
- (12) Messrs. Chhotalal Bhagwandas, Ahmedabad.
- (13) Messrs. Dalwadi and Company, Ahmedabad.
- (14) Messrs. Parshottamdas Khushaldas, Ahmedabad.
- (15) Messrs. Somabhai Bechardas and Company, Ahmedabad.
- (16) Messrs. Chandbhai Karimbhai, Ahmedabad.
- (17) Messrs. Chhotalal Parbhudas, Ahmedabad.
- (18) Messrs. Hiralal and Govindlal Company, Ahmedabad.
- (19) Messrs. Govindlal Maneklal and Brothers, Ahmedabad.
- (20) Messrs. Punjabhai Shivabhai, Ahmedabad.
- (21) Messrs. Parshottamdas Maganlal, Ahmedabad.
- (22) Messrs. Patel and Desai Company, Ahmedabad.
- (23) Messrs. Ranchhoddas Zaverbhai Company, Ahmedabad.
- (24) Messrs. Shankerlal Khodidas, Ahmedabad.
- (25) Messrs. Dalpatbhai Maganlal, Ahmedabad.
- (26) Messrs. Kachrabhai Pitamberdas, Ahmedabad.
- (27) Messrs. Chaturbhai and Govindbhai, Ahmedabad.
- (28) Messrs. Nanalal Gordhandas, Ahmedabad.
- (29) Messrs. Gandadal Joitaram Dalwadi, Odhav.
- (30) The Brick Manufacturing Company, Ahmedabad.
- (31) Messrs. Bababhai Nathabhai, Ahmedabad.
- (32) The Bharat Bricks and Tiles Manufacturing Company, Ahmedabad.
- (33) Messrs. Madhavlal and Hargovandas and Company, Ahmedabad.
- (34) Messrs. Keshavlal Dahyabhai Dalwadi, Ahmedabad.
- (35) Messrs. Revabhai Shivram, Ahmedabad.
- (36) Messrs. Sakarchand Lallubhai, Ahmedabad.
- (37) Messrs. Madhavlal Narandas, Ahmedabad.

- (38) Messrs. Mohanlal Atmaram, North Daskroi, Ahmedabad.
- (39) Messrs. Keshavlal and Company, Ahmedabad.
- (40) Messrs. Nanalal and Vithaldas and Company, Ahmedabad.
- (41) Messrs. Bababhai Kevaldas, Ahmedabad.
- (42) Messrs. Shantilal Maganlal, Ahmedabad.
- (43) Messrs. Patel Umedbhai and Chandubhai, Ahmedabad.
- (44) Messrs. Nathabhai Zaverbhai, Ahmedabad.
- (45) Messrs. Mansukhbhai Bhagwan, Ahmedabad.
- (46) Messrs. Shankerlal and Shivram, Ahmedabad.
- (47) Messrs. Shivram Ramchand and Company, Ahmedabad.
- (48) Messrs. Revandas Harjivandas, Ahmedabad.
- (49) Messrs. Keshavlal Kadiay and Company, Ahmedabad.
- (50) Messrs. Bhogilal Kadiya, Ahmedabad.
- (51) Messrs. Chhotalal Hiralal, Ahmedabad.
- (52) Messrs. Sadhuram Ramchand, Ahmedabad.
- (53) Messrs. Alyarkhan Nurkhan, Ahmedabad.
- (54) Messrs. Ratilal and Company, Ahmedabad.
- (55) Messrs. Vithaldas Kuberdas, Ahmedabad.

By order of the Governor of Bombay,

G. V. DAVE,

Under Secretary to Government.

Bombay Castle, 14th November 1949.

No. 331/48.—The award of the Tribunal in the industrial dispute between the Bombay Soap Factory, Bombay, and the workmen employed under it referred for adjudication under Government Order, Labour Department, No. 331/48, dated the 19th August 1949, is hereby published :—

BEFORE MR. SALIM M. MERCHANT, INDUSTRIAL TRIBUNAL,
BOMBAY.

ADJUDICATION

REFERENCE (I. T.) 90 OF 1949

BETWEEN

The Bombay Soap Factory, Bombay

AND

The Workmen employed under it.

In the matter of an Industrial Dispute re : Bonus, Reinstatement of workers, etc.

Messrs. Jamshedji Rustomji & Devidas, Solicitors, for the Bombay Soap Factory.

The General Secretary, Chemical Mazdoor Sabha, for the workmen of the Bombay Soap Factory.

AWARD.

This industrial dispute was referred to me as an Industrial Tribunal by Government Order, Labour Department, No. 331/48, dated 19th August 1949, under sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (XIV of 1947), for adjudication of the matters mentioned in Annexure "A" to the said Order which are as follows:—

1. Bonus for the year 1948-49 equivalent to 22 per cent. of the profits made by the Company, but not less than $4\frac{1}{2}$ months' basic wage, shall be paid.

2. Workers dismissed during the months of April and May 1949 must be reinstated with retrospective effect from the date of their dismissal.

3. "Rojandari" must be abolished and the above mentioned workers numbering 34 must be fixed in the scales of pay laid down in the Award of 18th March 1949. Past service shall be taken into consideration when fixing up individual workers in the said scales as it is evident that many of the workers under the said *Rojandari* could not present themselves for work, due to reasons beyond their control.

4. Workers who had put in long years of service ranging from 5 to 15 years, and who were not allowed to resume work during the period when the dispute was pending before the Industrial Tribunal must be reinstated with retrospective effect from the date that they had offered to resume.

2. After the usual notices were issued, the learned Attorneys for the Bombay Soap Factory (hereinafter called the Company) by their letter dated 30th August 1949 intimated to the Tribunal that the dispute between the Company and its workmen had been settled and that the Chemical Mazdoor Sabha (hereinafter called the Sabha), which represented the workmen, had agreed to withdraw the reference. They also enclosed therewith a letter dated 26th August 1949 addressed by them to the Secretary to the Government of Bombay, Labour Department, containing the above information. Thereafter the Tribunal also received a letter signed by the Secretary, Chemical Mazdoor Sabha, dated 20th September 1949 enclosing copies of the agreement dated 26th August 1949 entered into between Dr. Kalimuddin Tyeballi Bandukwala a partner in the firm of Bombay Soap Factory and Mr. V. K. Pai of the Chemical Mazdoor Sabha representing the workmen of the Company. The learned Attorneys for the Company have also furnished me with 5 copies of the same agreement, certified by them to be true copies. A copy of the said agreement is annexed herewith and marked "A".

3. I, therefore, make an award in terms of the said agreement dated 26th August 1949 reached between the parties, true copy of which is attached herewith and marked "A".

4. The award is directed to be submitted to Government. No order as to costs.

(Signed) K. R. WAZKAR,
Secretary.

(Signed) SALIM M. MERCHANT,
Industrial Tribunal.

Bombay, 31st October 1949.

ARTICLES OF AGREEMENT made at Bombay this 26th day of August One thousand nine hundred and forty-nine BETWEEN DR. KALI-MUDDIN TYEBALLI BANDUKWALA a partner in the firm of Messrs. Bombay Soap Factory of the One part AND MR. V. K. PAI of the Chemical Mazdoor Sabha (representing the workers of the Bombay Soap Factory) of the Other part WHEREAS certain industrial disputes arose between the management and the workers of the Bombay Soap Factory and the said disputes were forwarded for reference to the Industrial Tribunal by the Chemical Mazdoor Sabha by their letters dated 13th June 1949 and 30th June 1949 dealing with the following points :—

(1) That the workers should be paid bonus for the year 1948-49 equivalent to 22 per cent. of the profits made by the Company but less than $4\frac{1}{2}$ months basic wages.

(2) That the workers dismissed during the months of April and May 1949 must be reinstated with retrospective effect from the date of the dismissal.

(3) That the rojandari should be abolished and workers numbering 34 must be fixed in the scales of pay laid down in the Award given by Diwan Bahadur Kamerkar, dated 18th March 1949.

(4) That the workers who had put in long years of service ranging from five to fifteen years and who were not allowed to resume work during the period when the dispute was pending before the Industrial Tribunal must be reinstated with retrospective effect from the date they had offered to resume.

AND WHEREAS the said disputes and differences have been settled between the workers and the management of the Bombay Soap Factory NOW IT IS HEREBY MUTUALLY AGREED by and between the parties hereto as follows :—

(1) That the Chemical Mazdoor Sabha shall withdraw the Reference to the Industrial Tribunal forthwith on the signing of this Agreement.

(2) That the Bombay Soap Factory shall pay one and a half month's bonus to all the workers calculated according to the period of service rendered by each worker.

(3) That out of the 34 workers dismissed from service, the Bombay Soap Factory shall re-employ five workers namely, Mahomedalli Karmalli, Munshi Razak Imamali, Ludur Bipat, Nazeer and Gulba Khandu on or before 1st September 1949 as from the date of their re-employment without any claim whatsoever for retrospective recognition.

(4) That the Provident Fund Scheme which the Bombay Soap Factory has to bring into effect from 1st June 1949 may be brought into effect from 1st August 1949 and the Chemical Mazdoor Sabha shall not raise any objection whatsoever to the same.

IN WITNESS WHEREOF the parties hereto have hereunto set and subscribed their respective hands and seals the day and year first hereinabove written.

SIGNED SEALED AND DELIVERED by the
withinnamed DR. KALIMUDDIN } (Signed) Dr. KALIMUDDIN T. B.
TYEBALLI BANDUKWALLA in the }
presence of—

(Signed) ISMAIL M. KANGA,
Solicitor, Bombay.

SIGNED SEALED AND DELIVERED by the
withinnamed V. K. PAI in the } (Signed) V. K. PAI.
presence of—

(Signed) ISMAIL M. KANGA,
Solicitor, Bombay.

Order.

No. 331/48.—Whereas the dispute between the Bombay Soap Factory, Bombay and the workmen employed under it was referred by Government Order, Labour Department, No. 331/48, dated the 19th August 1949, for adjudication to an Industrial Tribunal ;

And whereas the Industrial Tribunal has now given its award in the said dispute ;

Now, therefore, in exercise of the powers conferred by sub-section (2) of section 15 read with sub-section (3) of section 19 of the Industrial Disputes Act, 1947 (XIV of 1947), the Government of Bombay is hereby pleased to declare that the said award shall be binding on the Bombay Soap Factory, Bombay and the workmen employed under it and to direct that the said award shall come into operation on the 24th November 1949 and shall remain in operation for a period of one year.

No. 739/48.—The award of the Tribunal in the industrial dispute between the Fazalbhoy Nathoo and Company, Bombay, and the workmen employed under it referred for adjudication under Government Order, Labour Department, No. 739/48, dated the 7th July 1949, is hereby published :—

BEFORE I. G. THAKORE, ESQUIRE, INDUSTRIAL TRIBUNAL, BOMBAY.

REFERENCE (IT) 65 OF 1949.

BETWEEN

Fazalbhoy Nathoo and Co., Bombay,

AND

The workmen employed under it.

In the matter of wages, dearness allowance, leave, bonus, gratuity, etc.

Appearances.—Mr. Jayantilal H. Dalal, Advocate for the Company.
Mr. T. A. Ishwaram, President, and Mr. B. S. Chitre,
General Secretary, Pip Mazdoor Sabha, for the
workmen.

AWARD.

The dispute in this case was referred to me as Industrial Tribunal under sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (XIV of 1947), by the Government of Bombay by their Order of the Labour Department, No. 739/48, dated 7th July 1949. The dispute relates to several demands including wages, dearness allowance, leave, bonus, gratuity, etc., all of which have been referred to as demands Nos. 1 to 9 in Annexure "A" to the said Order.

2. After the usual notices were issued, the parties on both sides filed their statements and their representatives were heard at considerable length. Evidence was also led where necessary and at the invitation of both parties I inspected the factory.

3. Messrs. Fazalbhoy Nathoo and Co. is a partnership firm carrying on the business of purchasing old steel containers (drums) and wooden barrels and reselling them in the market after cleaning, renovating and repainting them. The firm's premises are situated at two different places in Mazgaon, each with a tin shed in which the work of overhauling is effected and an open space where drums are piled high, one on top of the other. Some 30 years back Mr. Fazalbhoy Nathoo, the senior partner of the firm, started business in a small way doing odd jobs for customers with the assistance of a few employees. For some years prior to the formation of the partnership he was a dealer in second-hand drums carrying on the business in the same place as it is today. In 1944 he took three of his employees—Messrs. Abdul Gafoor Abbas, Dhondoo Ramchandra and Himatlal Narotamdas as partners. The partners together have brought in a capital of about Rs. 25,000 to Rs. 30,000, the rest of the moneys employed in the business being borrowed by the partnership. Except for the set back suffered in S. Y. year 2001, the partnership seems to have prospered. In S. Y. year 2000, the partnership realised a profit of approximately Rs. 5,000. In S. Y. year 2001, there was a huge loss of Rs. 55,000, while in the subsequent S. Y. years 2002, 2003 and 2004, the profits realised amounted to Rs. 36,000, Rs. 50,000 and Rs. 40,000 respectively. There is no doubt that there has been a fairly large return on the capital employed in the business, but it must be remembered that all the four are full time working partners and have to devote their attention to the business to the exclusion of all other work. They would, therefore, be entitled to receive a reasonable remuneration for the work they do over and above the return on the capital which they have invested in this business.

Demand No. 1 is as follows :—

(i) Present practice of including Dearness Allowance in the wages

should be done away with and following wage scale should be accepted :—

(a) *Unskilled*.—Rs. 1-8-0 to Rs. 2-4-0 by annual increments Annas 2 only.

(b) *Semi-skilled*.—Rs. 1-12-0 to Rs. 3-12-0 by annual increments of Annas 3 only.

(c) *Skilled*.—Rs. 2-4-0 to Rs. 5 by annual increments of Annas 4 only.

(d) *Highly skilled*.—Rs. 100—10—250.

(ii) The above scale should be given effect to immediately.

(iii) Point to point adjustment of old scales of pay to the new ones should be given taking aggregate service to the credit of the workers into consideration.

(iv) For classifying the various occupations under the proposed wage-scale a Joint Board should be instituted having three representatives of Management and equal number elected by the workers.

4. The Union has demanded that the present practice of paying consolidated wages should be scrapped and instead they be paid basic wages as demanded. In demand No. 2 it has also asked for the introduction of the Millowners' scale of dearness allowance. The practice of paying basic wages and dearness allowance separately is common in this City and has certain advantages. I shall, therefore, as demanded, split up the existing wages into basic wages and dearness allowance and also award them separately.

5. The Union has next demanded that there should be four different scales for the different categories of workers employed namely, unskilled, semi-skilled, skilled and highly skilled and in part (iv) of this demand has asked that a Joint Board should be instituted having 3 representatives of the Management and an equal number elected by the workers for classifying the various occupations under the proposed wage scales. At the hearing I put a tentative suggestion to find out if the Union and the Management could agree as regards classifying the various occupations. But it was not possible for them to do so. If they could not agree at the hearing the chances of such an agreement being arrived at before a Joint Board are much less. I also feel that it would not be desirable in the case of a small concern such as this to leave the question of classification entirely to the Management as the effect of my awarding proper wage scales may be entirely nullified by an improper classification or may result in fresh friction. As the total labour force employed by this concern is approximately 45, I shall myself indicate the classification of the workers. The Union has demanded that the workers should be divided into four categories as mentioned above. The Union desires that the car driver and the lorry driver who are at present employed by this concern should be classified as highly skilled and given a scale of Rs. 100—10—250. The firm has in its employ only one car driver

who is an old employee of the concern. He is in receipt of a salary of Rs. 145 per month inclusive of dearness allowance. It has also one lorry driver in its employ who has recently been recruited. He is paid Rs. 125 per month inclusive of dearness allowance. In my view their present scales of pay are quite satisfactory and compare favourably with that awarded for these categories in some of the leading companies in Bombay. As there are only two of them and as no injustice has been done to these workers, I do not propose to fix wage scales for the car driver and the lorry driver employed by this concern. Some unspecified part of this pay consist of dearness allowance, and it is desirable that the same should be separated from basic wages for the purposes of contribution to Provident Fund etc. which I propose to award. I, therefore, direct that a sum of Rs. 32 should be deducted from their present wages which should be treated as dearness allowance, the remaining being regarded as basic wages. I may also make it quite clear that they would be entitled to the dearness allowance on the scale prescribed by me hereafter and the other benefits conferred under this Award.

6. As stated above there was considerable difference of opinion between the Union and the Management at the hearing as to the categories in which most of the workers should be classified. I, therefore, visited the factory to see for myself the nature of the work performed by the different categories of workers. I do not think it is necessary for me to divide them into three categories, namely, unskilled, semi-skilled and skilled as demanded. I think it will more than meet the ends of justice if I divide them into two categories, namely skilled and unskilled. The majority of workers I found were engaged in loading and unloading wooden barrels and second-hand steel plate containers or drums from lorries, and in washing, cleaning, repainting and stacking the drums one on top of the other. This work in my view is certainly unskilled, though it involves heavy manual labour. The work of cleaning was to some extent onerous in that the workers concerned had to remain near the Bhatti or fire for a considerable time. The repainting of the drums was done in a rough and ready manner. None of these various jobs are assigned to any particular individual. Most of the workers perform these duties by turns and according to convenience. I, therefore, direct that with the exception of a few categories mentioned later in this Award all the remaining workers should be classified as unskilled.

7. There has been considerable difference as to the classification of workers from Waziristan employed in this concern. The Union has demanded that they should be classified as skilled workmen as they are doing piling and stacking work. According to the Union, only these people are capable of doing that work in view of the heavy manual labour and skill involved therein. The Management on the other hand contended that all the unskilled workers were doing the same work and denied the Union's statement that a few Waziristan people employed in this firm were doing that work exclusively. During my inspection of the factory I found that the statement made by the Union was not true. I, therefore, classify all the workmen from Waziristan (except those included in specific categories mentioned hereafter) as unskilled workers.

8. There was considerable dispute regarding the nature of work performed by Gopal Ramji Sawant. The Union alleged that Gopal was employed as a motor mechanic and driver and that he had a driver's licence. Gopal himself stated that he used to drive the lorry but he could not remember the number of the lorry. The management has stated that Gopal was attached as a Bigari or coolie to the lorry and that he may have learnt driving with a view to improve his prospects. In order to leave no room for doubt I asked the management to produce Gopal's wage cards for the last few years. In the wage-cards he has been consistently described as a bigari or coolie. There is no doubt that his daily wage of Rs. 3-8-0 is far above the average for a coolie but that the management has explained is due to the fact that Gopal was an employee of long standing. I am not convinced that he is employed to do the work of a lorry driver. I, therefore, classify him as unskilled. The fact that Gopal has learnt driving is however proof positive that Gopal is capable of rising above the grade of an ordinary coolie. I hope the management would do something about it when an opportunity offers to promote him as a driver, if he is found suitable for the post. In the meanwhile I recommend that in case his services are utilized for work other than that of a coolie he should be paid some remuneration in addition to his present salary.

9. The Union has demanded a scale of Rs. 1-8-0 to Rs. 2-4-0 rising by annual increments of Annas 2 for the unskilled workers. The consolidated wage prevailing in this concern for unskilled workers ranges between Rs. 1-4-0 to Rs. 3-8-0. The minimum wage that is now generally prescribed by Industrial Tribunals for the unskilled workers in the engineering industry is Rs. 1-2-6 rising by annual increments of one anna to Rs. 1-10-6. I may refer in particular to the dispute between *Messrs. Hasambhoy Jetha, Bombay, and the workmen employed under them* (published in the *Bombay Government Gazette*, Part I, dated 21st April 1949 at page 2088). That Company is in the same line of business and the wage scale awarded to the lowest category of workers there is Rs. 1-2-6—anna one—Rs. 1-12-6. I think the demand of the Union is pitched too high. I, however, think the fact that the workers in this concern have to perform heavy manual labour as also do some kind of rough painting etc. should entitle them to a higher scale than usually awarded. I think the increments provided also should be higher than those provided as a rule to unskilled workers. I, therefore, award the following wage-scale for the unskilled workers Rs. 1-4-0—2 Annas—Rs. 2-2-0.

10. The scale which I have prescribed for the unskilled categories is the minimum scale for all. If, however, the management feels that by reason of special aptitude or greater physical strength some workers are able to put in considerably more labour than others, I recommend to the management to give such workers some extra increments. I have made this recommendation particularly in view of the claims made on behalf of certain Waziristan workers. It shall be entirely for the management to determine whether any worker is able to put in considerably more work than others.

11. The only persons who remain to be classified are the two carpenters, the welder, the bhatti worker and the muccadams. Though the first two categories, namely, the carpenters and the welder could certainly be described as skilled, it is difficult for me to say whether the bhatti worker could be styled as a skilled workman. He however practically gets the same wages of a skilled workman and in view of that I direct that he should be classified as skilled. As regards the Muccadams, there are two Muccadams in this concern. They are paid a higher wage today than what is paid to the unskilled workers and it is desirable that I should also award a higher scale for the Muccadams.

12. For the skilled categories the Union has demanded a wage-scale of Rs. 2-4-0 to Rs. 5 rising by annual increments of Annas 4. The consolidated wage which is prevailing in this firm for these workers ranges between Rs. 3-4-0 to Rs. 4-4-0. Deducting a sum of Rs. 1-5-0 for dearness allowance, which I propose to award separately, the basic wage for these workmen would range between Rs. 1-15-0 to Rs. 2-15-0. Looking to the nature of the work I think the minimum demanded by the Union is quite reasonable. As regards the maximum, I think the one demanded by the Union is a little too high. I think that a maximum of Rs. 4-3-0 would be fair for the skilled workmen of this concern. I know that the minimum-maximum of Rs. 2-4-0 to Rs. 4-3-0 awarded by me would hardly benefit the existing skilled workers but they shall have the benefits of regular increments in future till they reach the maximum of their grade as also the other benefits conferred by this Award. I, therefore, prescribe the following scale for the skilled workers:—

Rs. 2-4-0—As. 3—Rs. 3-3-0—E.B.—As. 4—Rs. 4-3-0.

13. As for the Muccadams, since I have fixed the maximum of unskilled workers at Rs. 2-2-0 I think they should be given a minimum of at least Rs. 2-4-0. Though the Muccadam is usually recruited from among the senior coolies, his work is certainly different from that of ordinary coolies. The existing consolidated wage for Muccadams in this concern is Rs. 3-8-0. Deducting Rs. 1-5-0 approximately for dearness allowance which I propose to award separately, the basic wages may be taken as Rs. 2-3-0. I, therefore, think I should fix the maximum at least at Rs. 2-8-0. Accordingly I award the following scale for Muccadams in this concern:—

Rs. 2-4-0—2 As.—Rs. 2-8-0.

14. In awarding these scales for the various categories I have taken into consideration the size of this concern, its capacity to pay, the nature and quality of work turned out and the degree of skill involved. The new scale of wages and dearness allowance which I have awarded will increase the burden of the concern by about Rs. 4,000 a year. This in my view is well within the capacity to pay of this concern. As I am awarding dearness allowance separately, I direct that a sum of Rs. 1-5-0 be deducted from the consolidated wages of all the workers except the car and lorry driver and the balance be treated as basic wages.

15. In part (iii) of this demand, the Union has asked that point to point adjustment of the old scales of pay to the new ones should be given taking aggregate service to the credit of the workers into consideration. In this connection the Union has urged that the service put in by the employees before the partnership was formed should also be taken into account for this purpose. In view of the nature of adjustment which I propose to direct in this case, so far as this demand is concerned, the same will make no difference. I have already stated before that in order to arrive at the basic wage Rs. 1-5-0 should be deducted from the existing salary of all the employees, the balance being treated as basic wages. I therefore award that the new wage scales should be adjusted as follows :—

For less than one year of service	...	No increment.
For service of one complete year but less than 2 years	...	One increment.
For 2 complete years of service but less than 4 years	...	Two increments.
For service of 4 years and over	...	Three increments.

The service referred to here is the service with the present partnership.

(i) Each employee of the concern concerned in this reference shall be given an increment or increments (at the appropriate annual rate) that may be due to him on the above basis, having regard to the total number of years of service with the concern. These increments shall be given in the scale prescribed by this Award.

(ii) Where the existing salary of the employee, that is salary as on 1st July 1949 before the adjustment is above the minimum of the prescribed scale, the increment or increments due to him on the above method, will be added to his existing salary and after so adding the employee shall be stepped up to the nearest increase in the prescribed scale if the amount of the salaries together with the increments as added above falls short of the amount in the graded step.

(iii) If after giving the increments an employee's salary falls short of the minimum of the scale prescribed for him, then he shall be brought up to the said minimum of the scale and he will earn his increments in that scale, as and when they fall due.

(iv) If the present salary (i.e. the salary on the date of the publication of the Award) of an employee is higher than the salary he would be entitled to under the prescribed scale, according to the directions stated above, then there would be no cut in the existing salary and he will be stepped up to the nearest increase.

(v) After the salaries are adjusted no employee will be staggered and he will continue to get future increments. In no case will an employee get, by virtue of the adjustment, a salary higher than the maximum of his prescribed scale.

(vi) If the existing salaries are higher than the maximum of the scale prescribed then there would be no cut and the employee will continue to receive the existing salary.

16. In part (ii) of this demand the Union has asked that the new scales of pay should be given effect to immediately. Asked as to what is meant by immediately, the General Secretary of the Union replied that it was from the date of the demand. I, however, feel that it would not be advisable to throw too great a burden upon this firm by granting retrospective effect from the date of demand, namely, March or April. I, therefore, award that the new wage scales should come into effect from a date very near to the date of this reference, i.e., 1st July 1949, and that the difference between what has been paid and what has now become payable under this Award should be paid to the workers within two months from the date of the publication of this Award.

17. In view of my having classified the workers, there is no need for instituting a Joint Board as demanded in part (iv) of this demand. I, therefore, pass no orders with respect to this part of the demand.

Demand No. 2 is as follows :—

Dearness Allowance.—Millowners' Association's rate of dearness allowance should be granted to all workers.

18. At present this concern pays consolidated wages to its employees, that is, basic wages plus dearness allowance. In other words it means that the concern does not pay dearness allowance separately. At the request of the Union I have split up the existing wages. I have already directed that Rs. 1-6-0 should be deducted from the present wages of all the employees, the amount of Rs. 1-5-0 deducted being treated as dearness allowance and the balance remaining as basic wages. In the case of the car and lorry driver I have directed Rs. 32 to be deducted. In my view it would not be possible for this Company to bear the additional burden that would be imposed upon it by reason of the introduction of the full textile scale of dearness allowance. It is true that in some of the larger engineering concerns, the dearness allowance paid is on the textile scale, but in a large number of the smaller engineering concerns, dearness allowance paid varies from 60 to 80 per cent. of the textile scale. Whereas basic minimum wages are fixed irrespective of a concern's capacity to pay, the capacity of a concern to pay has to be taken into consideration in fixing the scale of dearness allowance. I have carefully considered the concern's capacity to pay and I award that the concern should pay dearness allowance at 66 $\frac{2}{3}$ per cent. of the Bombay Millowners' scale of dearness allowance for textile workers. This would increase only slightly the burden upon the concern at the present cost of living index figure. I direct that this new rate of dearness allowance should come into effect from the 1st July 1949 and that the difference between what has been paid and what has now become payable under this Award should be paid to the workers within two months from the date of the publication of this Award.

Demand No. 3 is as follows :—

Leave.—One day off per week on Sunday with full pay should be given. Holidays too should be granted subject to Sunday's working.

One month's privilege leave should be granted with full pay. 15 days' sick leave with half pay and dearness allowance and 7 days casual leave with full pay should be granted. The above leave should be granted with retrospective effect from January 1945. Full compensation should be paid to the workers for the abridgement of the quantum of leave they used to enjoy in the previous year.

19. In the first place the Union has demanded one day off per week on Sunday with full pay. I do not think that the demand for Sundays with full pay is justified. The daily rates of these employees are fixed in such a manner as to secure to them the same monthly income that they would receive if they were monthly-rated employees, although they work a few days less. This secures for them the benefit of Sundays with pay. This part of the demand is, therefore, rejected. As regards one day off in a week, whether it be Sunday or any other day, the workers in this concern are bound to get one day off in a week as the new Factories Act is now applicable to this concern. The Union has next demanded that holidays should be granted subject to Sunday's working. The management has given me to understand that, that practice is already in vogue. No directions are therefore necessary on this part of the demand. I trust that the Management will consult the workers and accordingly fix the days on which the concern should observe holidays subject of course to Sunday working. With regard to leave the Union has demanded one month's privilege leave with full pay, 15 days' sick leave with half pay and dearness allowance and 7 days' casual leave with full pay. The Management has submitted that they have been granting leave according to the Factories Act and that the demand for privilege leave for one month is unjustified, unreasonable and excessive. I am fully aware that workmen employed in an industrial concern ought to be entitled to certain amount of privilege leave every year in order that they might get the required rest and recuperation but having regard to the size of this concern and the fact that it cannot afford to engage any large leave reserves, I think that the provision for privilege leave made in the Factories Act, 1948, should suffice. I, therefore, award that the workers of this concern should have for privilege leave annual leave with wages as provided in the Factories Act.

20. The new Factories Act makes no specific or separate provision for sick and casual leaves. I think the workers in this concern should get some sick leave as also casual leave over and above the privilege leave provided earlier. It is now usual to award 7 days' sick leave with full pay or 14 days sick leave with half pay and over and above that 7 days casual leave. I find that in a large number of cases the workers prefer to have 7 days sick leave with full pay; but in this case the Union has demanded 15 days' sick leave with half pay and dearness allowance. I, therefore award that the workers in this concern shall get 14 days' sick leave with half pay and dearness allowance in a year. The granting of sick leave shall be subject to the production of a medical certificate unless the leave asked for is only for one day. As for casual leave,

I think that 7 days' casual leave for the workers in this concern should be sufficient. I, therefore, direct that this concern should grant 7 days' casual leave with full pay and allowances in a year to its workmen, to be granted for emergent and unforeseen purposes subject to the proviso that not more than 3 days' casual leave may be given at one time. The Union has put forth a demand for granting retrospective effect from January 1945 and for full compensation being paid to the workers for the abridgement of the quantum of leave they used to enjoy in the previous years. The Union has justified this demand on the ground that as the old Factories Act did not apply to this concern, the workers did not get any leave at all prior to the coming into effect of the New Factories Act. It is unfortunate that the workers of this concern did not get any paid leave, but in my view it is wrong in principle to grant new benefits with retrospective effect as it would cause considerable hardship to the concern. I am of the opinion that except for very special circumstances, new benefits should as far as possible be granted prospectively only. The new Factories Act will apply to this concern from the 1st April 1949 and the workers will therefore get the benefit of privilege leave from that date onwards. For the sake of uniformity, I direct that the provisions for sick and casual leave also should be given effect from the 1st April 1949.

Demand No. 4 is as follows :—

Bonus.—A bonus equivalent to 25 per cent. of the yearly earnings of workers by way of wages and dearness allowance should be declared for the periods of 1946-47 and 1947-48. Fifty per cent. of the above bonus should be paid to all workers who have put in between 37 to 75 days during the said periods irrespective of the fact whether they are on the rolls of the Company on the date of payment or not. Full payment of wages should be given for those who have put in more than 75 days.

21. The Union has demanded that bonus equivalent to 25 per cent. of the yearly earnings of workers should be paid for the years 1946-47 and 1947-48. It appears that for both these years, the Company has paid bonus equivalent to $2\frac{1}{4}$ days' wages for each calendar month worked by the worker. A worker, therefore, who had worked for the whole year would have received under this scheme about 27 days' wages as bonus. The 27 days' wages paid as bonus would include both basic wages and dearness allowance as this firm has been paying consolidated wages. Approximately this would work out to about 2 months' basic wages.

22. I shall first deal with the demand for bonus for the year 1946-47. As stated above the Company has already paid bonus for this year and the workers accepted the same. I do not think it advisable that workers should be encouraged to make demands in respect of service of past years. If the workers were dissatisfied at the time when the bonus was paid, they should have stirred themselves up at that time. I do not mean to

suggest that in no event such demands should be conceded. I am fully aware that in several awards such demands have in fact been conceded, but that should only be in my view for special reasons. While in the case of large and prosperous concerns with unlimited resources, the granting of such demands may not work a great hardship, in the case of smaller concerns with limited resources, the effect of granting such demands may be highly detrimental. In view of the delay in making the demand and the fact that the workers have already received a substantial amount of bonus, I reject the demand for additional bonus for the year 1946-47.

23. As regards the demand for bonus for the year 1947-48, what I have stated with regard to the year 1946-47 does not hold good. There is no doubt that the profits of this firm are fairly large looking to the capital employed in the business and even taking into consideration that all the 4 partners are full-time workers who should be sufficiently compensated for their labour. The wages paid to the workers have been not only below the living wage standard but even below the minimum that is now prescribed. It would not be beyond the capacity of this firm to pay some small bonus over and above that which it has already paid for the year 1947-48. I, therefore, award that the workers should be granted over and above what has already been paid to them an additional bonus equivalent to 1/24th of their annual earnings for the year 1947-48. The annual earnings for this purpose shall mean the total emoluments paid to the workers, namely, basic wages plus dearness allowance.

24. It is not necessary, however, for me to deal with the rest of this demand in detail as I intend to grant the additional bonus subject to the usual conditions. I, therefore, direct that the concern do pay to the employees who are covered by this adjudication additional bonus equivalent to 1/24th of their annual earnings for the year 1947-48. The grant of bonus shall be subject to the following conditions:—

(1) Employees who have worked for only 32 working days or less in the year 1947-48 shall not be paid any bonus.

(2) Employees who have worked for less than 75 working days but more than 32 working days during the said period shall be granted a bonus to the extent of 50 per cent. of the above scale.

(3) Any employee who has been dismissed for misconduct shall not be entitled to any bonus even if he has worked for more than 32 days.

(4) Bonus shall be calculated on earnings (inclusive of basic wages and dearness allowance but exclusive of bonus paid) during the period equivalent to the whole of S. Y. 2004.

(5) Bonus as above stated shall be paid to the employees in one lump sum within two months of the publication of this award.

(6) Persons who are eligible for bonus but who are not in the service of the Company on the date of payment shall be paid by 31st January 1950. In such cases claims in writing shall be submitted to the manager of the concern.

Demand No. 5 is as follows :—

Gratuity.—Gratuity at the rate of one month's wages for every completed year of service should be granted to all workers who have put in a minimum of 5 years of service.

25. In demand No. 8 the Union has also asked for the introduction of a provident fund scheme. It is now usual in this Province for Industrial Tribunals to award two retiring benefits in the case of companies which could be described as fairly large and only one retiring benefit in the case of small concerns. In my view it is not desirable that two retiring benefits should be granted in the case of this concern looking to its financial resources and its size. As I propose to concede the Union's demand in respect of provident fund, I reject the Union's demand for gratuity.

Demand No. 6 is as follows :—

Uniforms.—Every worker should be given two uniforms per year and the Company should bear washing charges per week.

26. In my view uniforms should be supplied to workers by the employer in case the workers' clothes are likely to be soiled by reason of the nature of their work. The workers in such cases should not be expected to soil their own clothes or to bear the washing charges for the same. The working conditions in this factory leave much to be desired. Some of the jobs are such that the workers are likely to soil their clothes and it is essential that they be issued uniforms. In this concern however every unskilled worker does a variety of jobs and it is difficult for me to make any distinction in this respect between one worker and another. I, therefore, direct that all the workers in this concern should be given two uniforms per year and that the concern should bear the washing charges per week. I further direct that the uniforms should be issued to each worker within three months from the date of the publication of this Award.

Demand No. 7 is as follows :—

Permanency.—Those who have put in more than six months' service should be confirmed in the service of the Company.

27. The demand is that the workers should be confirmed at the end of 6 months' service. It is very necessary that there should be some rule according to which workers would become permanent after serving a particular number of months. This is particularly necessary as I propose to introduce a provident fund scheme, the benefit of which may only be given to permanent employees. I agree with the demand of the Union that workers should be made permanent after 6 months' service and direct accordingly. I also agree with the management that the workers should subject themselves to certain amount of discipline if they want some benefit. If the management feels that the workers are not returning from leave in time and are constantly absenting themselves without leave for long periods, they may introduce leave and other rules

if they so desire. It is also open to the concern to frame Standing Orders in respect of these matters on the lines of the Model Standing Orders framed by the Government of Bombay. I, therefore, award that those who have put in 6 months' service should be confirmed in the service of this concern.

Demand No. 8 is as follows :—

Provident Fund.—A Provident Fund should be immediately started by the Company. The contribution of the workers as well as the Management should be $8\frac{1}{2}$ per cent. of the basic wages of the workers. Hundred per cent. of the Company's contribution should be available to the workers after a period of five years' service reckoned from the date of the appointment of the workers concerned and 50 per cent. after three years. The rules of Provident Fund should only be adopted after getting the approval of the Union.

28. The Union has demanded that a provident fund scheme should immediately be started by this concern. The concern on the other hand has stated that it being a small concern, it should not be burdened with the liability of a provident fund. This firm has made fairly reasonable profits for the past few years and there is no reason why a provident fund scheme should not be introduced for its workers. I therefore direct the firm to devise a provident fund scheme for the benefit of its employees and to constitute a trust for that purpose. I further direct that in framing the provident fund scheme the following principles should be observed : (1) All employees who are confirmed should automatically become members of the provident fund scheme. (2) The subscription of each member shall be one anna in the rupee of his basic salary. (3) The Company's contribution shall be equal to the workers' contribution. I also direct that in framing the rules of the provident fund scheme, the management should consult the union in a purely advisory capacity. I further recommend that in framing the rules the Model Provident Fund Rules framed by the Government of Bombay may be taken as a guide. I do not think it is necessary for me to give any directions beyond those and the rest of the demand is rejected.

Demand No. 9 is as follows :—

Standing Orders.—Standing Orders should be drawn up in accordance with the Industrial Employment Standing Orders Act.

29. The Industrial Employment Standing Orders Act has advisedly been made applicable by the Legislature to concerns employing 100 persons or more. In my view it is not necessary to have all those elaborate standing orders in this concern which employs a small number of workers. I, therefore reject this demand. As a protection against indiscriminate dismissals, I, however, direct that no operative shall be dismissed unless he is informed in writing of the reasons for his dismissal and is given an opportunity to explain the circumstances alleged against him. This rule, in my view, is absolutely essential to protect the workers

employed in small concerns where there are no Standing Orders in this respect.

INDRAJIT G. THAKORE,
Industrial Tribunal.

K. R. WAZKAR,
Secretary.

Bombay, 31st October 1949.

Order.

No. 739/48.—Whereas the dispute between the Fazalbhoy Nathoo and Company, Bombay, and the workmen employed under it was referred by Government Order, Labour Department, No. 739/48, dated the 7th July 1949, for adjudication to an Industrial Tribunal;

And whereas the Industrial Tribunal has now given its award in the said dispute;

Now, therefore, in exercise of the powers conferred by sub-section (2) of section 15 read with sub-section (3) of section 19 of the Industrial Disputes Act, 1947 (XIV of 1947), the Government of Bombay is hereby pleased to declare that the said award shall be binding on the Fazalbhoy Nathoo and Company, Bombay, and the workmen employed under it and to direct that the said award shall come into operation on the 24th November 1949 and shall remain in operation for a period of one year.

By order of the Governor of Bombay,

C. K. MARU,
Deputy Secretary to Government.

Bombay Castle, 16th November 1949.

No. 706/48.—The award of the Tribunal in the industrial dispute between the Amalgamated Chemicals and Dye Stuffs Company Ltd., Bombay and the workmen employed under it referred for adjudication under Government Order, Labour Department, No. 706/48, dated the 25th July 1949, is hereby published :—

BEFORE MR. I. G. THAKORE, INDUSTRIAL TRIBUNAL, BOMBAY.

REF. (IT) No. 70 of 1949.

BETWEEN

The Amalgamated Chemical & Dye Stuffs Co. Ltd., Bombay

AND

The workmen employed under it.

In the matter of wages, dearness allowance, leave, medical aid etc.

Appearances.—Mr. H. J. Marr, Solicitor, Crawford Bayley & Co., for the Company.

Mr. C. L. Dudhia, Counsel, instructed by Manohar Bandiwedekar, Joint Secretary, Rastriya Chemical Kamgar Sangh for the workmen.

Award.

The dispute in this case was referred to me as Industrial Tribunal under sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (XIV of 1947) by the Government of Bombay by their Order of the Labour Department No. 706/48 dated the 25th July 1949. The dispute relates to several demands including wages, dearness allowance, leave, medical aid, standing orders, uniforms, etc., all of which have been mentioned in Annexure "A" to the said Order.

2. After the usual notices were issued, the parties on both sides filed their statements and their legal representatives were heard at considerable length and at the invitation of both parties I also inspected the factory.

3. The Amalgamated Chemical and Dye Stuffs Co. Ltd., Bombay deals, as its name suggests, in chemicals and dye-stuffs. The Company does not manufacture any dyes in Bombay but imports dyes for colouring textiles, silk and woollen goods, from foreign countries particularly Switzerland. The dyes imported are it seems, in a concentrated form and are compounded in the mixing section of this Company from their constituent parts and standardized to meet Indian requirements. The Company has denied the allegation that it is either a subsidiary of Messrs. Geigy or that it is in any way connected with Ciba India Limited. It was started only recently in 1946 and employs in all about 64 persons, about two-thirds of whom are working in the dyes department and one-third in the D. D. T. Department. As the Company does not manufacture the dyes in Bombay, the labour charges incurred by the Company in Bombay forms only a fraction of the cost per unit. The Company has not produced before me its balance sheets. In fairness to the Company, however, I must say that in a general way it has not denied its capacity to pay fair wages. The Company has submitted that its business was started only recently, that as a result of the devaluation of the British pound and the Indian rupee in terms of the Swiss Franc it may not be able to compete with imports from soft currency areas. That its chances of securing an import licence are none too bright, and that even though it might with difficulty secure an import licence, on account of currency restrictions, its quota was likely to be considerably produced. Hence it has submitted that though in the past years it had made some profits, its future was fraught with difficulties.

4. Mr. Marr on behalf of the Company took two preliminary objections: (1) That there was no dispute as such existing between the Company and the workmen employed under it, as stated in the Order

of Reference but there was a dispute only as between the Company and certain of the workers who were members of the Rastriya Chemical Kamgar Sangh. That the reference was bad in law in so far as it related to workers who were not members of the Sangh. That therefore, this award should be confined to members of the Sangh only. (2) That a dispute could only be said to have arisen, if previous to that there had been a demand on the Company and a refusal thereof. That no such demand in terms was actually made by the Sangh on the Company in respect to certain demands, particularly in respect of demand No. 7. Therefore no dispute existed between the Company and the workers in respect of these demands which could be validly referred by Government for adjudication and to that extent the reference was bad in law. Mr. Marr has, however, considerably shortened my task by stating before the end of the hearing that he did not desire to press these two preliminary objections taken at the outset in this adjudication.

5. The reference in this case is in respect of all the workmen employed in the Amalgamated Chemicals and Dye Stuffs Co. Ltd., Bombay. The Union it appears represents only the workmen employed in the Dye Stuffs Department and not those employed in the D. D. T. Department. At the hearing the Union did not make a claim to represent all the workers. In fact it stated that it did not represent the workers in the D. D. T. Department. No workman belonging to that department appeared before me at the hearing, although notices as usual were displayed. Although the D. D. T. Department is situated in one and the same premises, it is a separate and distinct department by itself. The Company denies that there is any dispute between them and the workers in the D. D. T. Department. It is also not fair to the workers in that department to make an award binding on them, without hearing their point of view on several of the demands. I am confining this award therefore to Dyes Department. This Award therefore will not apply to workers in the D. D. T. Department but will only apply to Dye Stuff Department.

Demand No. 1 is as follows :—

Wages.—Minimum basic wage should be Rs. 40 per month with grade and scales for each category of workers.

6. The Union has demanded that the minimum basic wage should be Rs. 40 per month. In justification of their demand the Union has submitted that this is a chemical factory where the workers come into contact with heavy chemicals and dye-stuffs, that they are required to work with acids and basic colours which are dirty to work with and that in Ciba India Ltd., a sister concern, the basic minimum wage is Rs. 40 per month. It appears that prior to the conciliation proceedings some of the workers in this Company were paid as low as Rs. 25 per month. After the conciliation proceedings however the wages were revised. The minimum basic wage now paid by the Company is Rs. 30 per month, the wage scales being Rs. 30—1—50. The Company has submitted

that as compared with what is being paid in other sister concerns, the wages paid by it to its workmen, after the conciliation proceedings, are quite fair and reasonable. The allegation that workers come into contact with heavy chemicals is denied by the Company and it has submitted that none of the constituent dyes compounded by it can actually be classified as "heavy chemicals". It has further emphasised that where the word "acids" is used in connection with the Company's products, this does not mean acids in the general sense of the word, but merely refers to the commonly known acid dye-stuffs group. The Company has admitted that some of these dye-stuffs dirty the hands of the workers but it has denied that they are in any sense injurious to the health of its workers.

7. In several awards Rs. 30 has been fixed as the minimum basic wage and that is also the minimum paid by this Company. This minimum has now been recognised to be the irreducible minimum which every industry should pay and if an industry cannot afford to pay it, that industry being a drag on the country's economy should go out of existence. This minimum of Rs. 30, however, has been adversely criticised by the U. P. Labour Enquiry Committee in its report and is lower than the minimum recommended by the Rau Court of Inquiry. It is now generally recognised that the ideal is to reach a living wage which is very different from the minimum wage. It is also recognised that this ideal is not a far off distant ideal but an ideal which must be constantly kept in view and positive steps taken for its attainment within a reasonable period of time. The opinion of the Government of Bombay as reproduced in the Report of the Committee on Fair Wages on this subject reads as follows:—

"Nothing short of a living wage can be a fair wage if under competitive conditions an industry can be shown to be capable of paying a full living wage. The minimum wage standards set up, the irreducible level, the lowest limit or the floor below which no worker shall be paid A fair wage is settled above the minimum wage and goes through the process of approximating towards a living wage."

In AJ-IT 60 of 1948 in the dispute between Allen Berry & Co. Ltd., Bombay and the workmen (workers) employed under it (*The Bombay Government Gazette* Extraordinary, Part I, dated 28th April 1949, at page 2353vv-32), the learned Adjudicator Mr. K. C. Sen observed:—

"As to the minimum wage, in most of the awards concerning Engineering firms Rs. 30 has been taken as the proper figure, no doubt on the same line of reasoning as has been applied to the textile industry in Bombay. It seems to me, however, that Courts and Tribunals dealing with this question should now make an effort to reach the standard of living wage, if possible, in stages spread over a certain number of years. An attempt in this direction has already been made in the award given in respect of the Ford Motor Company of India Limited (*Bombay Government Gazette* Extraordinary, dated 11th

January 1949, page 99). There the minimum daily wage is fixed as Rs. 1-6-0, which comes to Rs. 35-12-0 per month of 26 working days. I am of opinion that this figure should be taken as the minimum daily wage applicable to the workers in this Company also."

8. As observed by me in an earlier award in the dispute between the Burmah Shell Oil Storage and Distributing Company of India Limited, Bombay and the workmen employed under it [Ref. (IT) 19 of 1949], I am in entire agreement with the view expressed by the learned Adjudicator in that reference. This Company has not in a general way denied its capacity to pay. The total wage-bill of this Company also forms only a fraction of the total cost of dyes per unit, as it is not a manufacturing concern but is more or less a distributing concern. I have therefore no hesitation in fixing the minimum for the unskilled workers in this Company at Rs. 35 per month. I, accordingly, award the following scale for the unskilled workers:—

Rs. 35—Rs. $1\frac{1}{2}$ —Rs. 53.

9. The other part of the demand relates to grades and scales. Originally Mr. Dudhia at the hearing asked for separate grades and scales for the different categories of workers employed in this Company. Ultimately, however, he confined his demand to only two categories of workers, namely, (1) those who have to attend at the stations and booking offices and (2) mixers. Mr. Dudhia justified his demand for a separate grade for the coolies who have to attend for the purposes of booking on the ground that they had to be literate in that they were required to fill in forms, etc. He further stated that these workers were required to attend earlier than others and to stand in queues for long hours. The management on the other hand has emphatically denied that these coolies are literate or that the nature of the work they do requires that they should be literate, and has submitted that they have a clerk in their employ who fills in all the forms. The allegation that these workers have to attend at unusual hours is also denied by the Company and it has submitted that these workers are sufficiently compensated for the inconvenience, if any, caused by what they receive in the shape of tiffin charges.

10. I made on the spot some enquiries during my visit to the factory and I am satisfied that these workers are not literate or that they have to do work which requires that they should be literate, such as, filling up forms, etc. Except on very rare occasions, also they are not required to attend the factory premises at unusual hours. In my view, therefore, no case has been made out for a separate grade for them. It must be remembered that the minimum that I have fixed in this case for unskilled workers is higher than what has been generally awarded by Industrial Tribunals and that the maximum that I have awarded for these categories is equal to the minimum that is generally awarded by Industrial Tribunals for skilled workmen. In view of that, I do not think I would be justified in granting a separate grade for this category.

11. The other category of workers for whom Mr. Dudhia has demanded a separate grade are the mixers. Ultimately Mr. Dudhia confined his demand to an additional allowance of Rs. 5 per month which is specifically mentioned in Demand No. 7 (i). In support Mr. Dudhia has submitted that the workers in the mixing department have to remain the whole time in surroundings which are detrimental to their health and which sometimes affects their skin and irritates the eyes. He has argued that the work in this particular department being onerous should be compensated for by some extra payment. The Company has denied the allegation that the dyes affect the skin or irritate the eyes and has relied upon the report of the Medical Inspector of Factories and upon the report of the Company's Medical Officer. The Report of Mr. R. Lobo Mendoca, Medical Inspector of Factories, dated 24th June 1949 has been put in Exhibit 3 (c), the relevant portion of which is as follows :—

“Examined the factory on the Dye Side as well as the D.D.T. side.

Examined the Mixers, both old workers and new workers, also questioned them.

No worker had any skin trouble. Some dyes like the violet ones had a temporary irritating effect on hands which passed off after washing.

Washing facilities are good.

No dust was seen on the Dye Section.

Milk is being supplied in the Mixing Section. It is advised that it be supplied in the morning when the workers begin work.”

12. The Company's Medical Officer who visits regularly twice a week the godown of Messrs. Amalgamated Chemicals and Dyestuffs Co. Ltd., at Tardeo and examines the workers there also states in his report : “To the best of my knowledge and belief the working conditions there are not injurious to the health of the workers.” The Company has also produced a letter, being Exhibit 2 (c), from Messrs. J. R. Geigy, who are suppliers of dye-stuffs to the Company, to the effect that “no bad effects on the workers' health are to be feared as a result of mixing and reducing the dye-stuffs.”

13. I have personally examined the working conditions in this factory. At any rate when I visited the mixing department I noticed that it was free from dust and that unusually good facilities for washing, etc., existed and am inclined to the view that the work may not be permanently injurious to health. There is, however, no doubt, that the workers in this Company have all along looked upon the work in the mixing department as particularly distasteful. The Company also supplies a quarter-seer of milk every morning to the workers in the mixing department as recommended by the Medical Inspector of Factories. The transfer of a person to this department is regarded with disfavour and there is actually now a demand, being demand No. 7 (iii), to the effect that departmental transfers may be effected

but not so as to harass the workers who are members of the Union. Even if, therefore, the work in this department is not positively injurious to the health of the workers, in my view, a small additional compensation should be paid to the workers to make the work more attractive. This in my opinion is not only in the interest of the workers but also of the Company. I, therefore, direct that the workers in the mixing department should be paid an additional allowance of Rs. 2-8-0 per month. I, however, do not propose to grant a separate grade for the workers in the mixing department. I am given to understand that the workers are interchangeable from department to department. This allowance therefore should be paid to such of the workers as are engaged in the mixing department at a particular time.

14. Besides the two categories mentioned above, the Union did not ask for grades and scales for any other categories. It is, therefore, not necessary for me to fix any other grades and scales.

15. Two questions remain, namely, (1) the date from which the new grades should come into effect and (2) the question of adjustment. The Union has demanded that the new wage-scales should come into effect from the date of the demand, that is, some time in January 1949. The Company has submitted that as the Union has not asked for any retrospective effect being given to these wage-scales, this Court has no jurisdiction to give the wage-scales retrospective effect earlier than the date of reference in any event.

16. The Company has already revised their wage scales from 1st June 1949 after the conciliation proceedings. In view of that I do not propose to introduce the wage-scales, except from a date very near to the date of the reference. In view of that it is also not necessary for me to determine the question whether, if I was so minded, I could have given it further retrospective effect or not. The date of the reference is the 25th July 1949. For ease in calculation, I award, that the new wage-scales should come into effect from 1st August 1949.

17. As regards adjustment, the Company was formed in 1946. The latest wage-scales have been revised also from 1st June 1949. Except in the case of a few temporary workers, the wages prevailing were not very unreasonable. In view of that I do not propose to give point to point adjustment. The following adjustment which I propose will be fair both to the workers and the Company: (1) All persons who are getting less than Rs. 35 should immediately be brought up to Rs. 35. They should get their annual increments hereafter as and when they become due. (2) Those who are already getting Rs. 35 or more should be given one increment as from 1st August 1949. The increment due to him being added to his existing salary, i.e., salary on 1st August 1949 before granting the increment and after so adding the employee shall be stepped up to the nearest increase in the prescribed scale if the amount of the salary together with the increment so added falls short of the amount in the graded step. (3) After the salary is adjusted, no employee

will be staggered and he will continue to get future increments. In no case will an employee get, by virtue of this adjustment, a salary higher than the maximum of his prescribed scale. (4) If the present salary (i.e., the salary on the date of the publication of the Award) of an employee is higher than the salary he would be entitled to under the prescribed scale, according to the directions stated above, then there would be no cut in the existing salary and he will be stepped up to the nearest increase. (5) If the existing salary is higher than the maximum of the scale prescribed then there would be no cut and the employee will continue to receive the existing salary. (6) As regards the allowance of Rs. 2-8-0, I have already directed that it should be given to persons working in the mixing department. The same should also be given from 1st August 1949. (7) I further direct that the difference between what has been paid and what has now become payable under this award should be paid to the workers within two months from the date of the publication of this award.

Demand No. 2 is as follows :—

Dearness Allowance.—Dearness allowance should be paid on the Bombay Millowners' scale to those who are not paid the same.

18. The Union has submitted that dearness allowance paid to certain workers is on the Bombay Millowners' Scale, while others—mostly temporary workers—are paid 12 annas per day and temporary women even a little less. The Union has therefore submitted that there should not be any distinction in this respect between temporary workers and permanent workers or between men and women workers. The Company has submitted that though originally a distinction was made between temporary workers and permanent workers in respect of dearness allowance paid, all the temporary workers in the Company's service are given the Bombay Millowners' Scale of dearness allowance from 1st June 1949, and that this demand is therefore superfluous. As the Company has already conceded the demand and put it into effect, no directions on this demand are necessary.

Demand No. 3 is as follows :—

Leave.—Fifteen days' sick leave, 10 days' casual leave and 20 days' leave with pay should be granted to the workers in a year.

19. The Union has demanded 20 days' privilege leave, 15 days' sick leave and 10 days' casual leave with full pay and dearness allowance. The Union has submitted that this being a chemical factory the workers labour under conditions which are anything but healthy and that the workers should, therefore, be awarded leave on a more liberal scale than that usually awarded by Industrial Tribunals. The Union has further submitted that Ciba Dyes Ltd., a sister concern has been granting such leave and that this Tribunal should have no hesitation in placing the workers of this Company on the same level in matters of leave as that of Ciba Dyes Ltd. The Company has denied the allegation that the

workers are engaged in conditions which are in any way unhealthy or cause physical strain detrimental to the health of the workers. In this connection the Company has relied upon the reports of the Medical Inspector of Factories as well as the Company's Medical Officer referred to earlier in this award. The Company has submitted that it gives leave with pay in accordance with the provisions of the Factories Act and that though there is no provision in that Act for sick and casual leaves, it decides each case on its merits and grants leave according to its discretion. The Company has further submitted that it allows accumulation of leave for a considerable period, that the existing allowance of leave is quite sufficient and that there is no need for a special allowance of casual leave and sick leave, since the introduction of sick and casual leave would render it necessary for the Company to apply the leave rules strictly and thus might result in disadvantage rather than advantage to the workers. Comparison with Ciba Dyes Ltd. in this case is not possible as Ciba is a much larger concern. I am also not convinced that working conditions in this Company are unhealthy. Where disputes as regards privilege leave have been referred to Industrial Tribunals, 15 days have usually been awarded. The new Factories Act also provides for more or less the same period. In the case of some of the larger concerns, however, Industrial Tribunals have awarded privilege leave even upto 30 days, while in some cases, the provisions made voluntarily by the managements as regards leave are more liberal. But in view of the fact that the number of persons employed in this Company is relatively small, and that it may be difficult for the Company to maintain an adequate leave reserve, I feel that I would not be justified in awarding more than 15 days' privilege with pay and dearness allowance. I, therefore, award that the workers in this Company should be entitled to 15 days' privilege leave with pay and dearness allowance.

20. It is also desirable that some provision should be made for sick leave and in most cases sick leave is usually granted over and above privilege leave. As stated above I am not convinced that the working conditions in this factory would warrant a more liberal provision for sick leave. I, therefore, award that 7 days' sick leave with pay and dearness allowance should be granted to the workers in this Company. The sick leave should only be allowed on the production of a medical certificate unless the leave asked for is only for a day in which case the rule for the production of a medical certificate may be dispensed with.

21. As regards casual leave I think 7 days' casual leave would be more than sufficient. I, therefore, award 7 days' casual leave with pay and dearness allowance to the workers in this Company. The employee must however note that casual leave cannot be claimed as a matter of right and is intended to cover cases of emergency or unforeseen purposes and is to be availed of consistently with the exigencies of the Company's business.

22. As the primary purpose of granting privilege leave is that the worker should get the necessary time for rest and recuperation, it is absolutely essential that privilege leave awarded should not be subject

to the usual condition that privilege leave to the credit of an employee should be exhausted first before applying for sick leave. As the provisions for sick and casual leaves herein made are over and above the privilege leave awarded by me, I direct that a worker need not exhaust his privilege leave before he could avail himself of sick or casual leave.

Demand No. 4 is as follows :—

Medical Aid.—Free medical aid should be given to the workers.

23. The Union had demanded that free medical aid should be given to the workers. It appears that the Company at present employs a qualified medical officer who visits the factory at least twice a week and carries out the medical inspection of the workmen periodically. He also prescribes medicines on the spot and on days on which the medical officer does not visit the factory, the workers are required, if necessary, to go to his dispensary which is located at Colaba. At the hearing, however, the Company realising the difficulties of its workmen, agreed to increase the attendance of the doctor from 2 to 3 days in a week. It must be borne in mind that the medical officer only prescribes the medicines, while actually the medicines are not supplied. The worker has, if he cares to, to buy the medicines prescribed from the chemist. It is therefore doubtful whether this could be considered as a concession. What the worker really needs is not the diagnosis of the disease and the prescriptions but the free medicine. The more affluent concerns in Bombay have readily given free medical aid to its employees—not merely free consultation but also free medicines. There is no reason why this Company should not extend the same facilities to its workmen. I, therefore, direct that the medical officer should not merely prescribe the medicines when he comes on his rounds, twice or thrice a week, but should supply the medicines. The Company may either maintain a small dispensary for this purpose or if that is not possible, pay the actual cost for the medicines purchased by the workers. This recommendation is essential in view of the fact that the present medical officer's dispensary is situated at Colaba and it would be very inconvenient for the workers to go to his dispensary for getting medicine.

Demand No. 5 is as follows :—

Standing Orders.—Standing Orders should be framed and till they are framed any worker who has worked for six months should be treated as permanent.

24. This demand can be divided into two parts (1) that standing orders should be framed and (2) that pending the framing of standing orders any worker who has worked for six months should be treated as permanent. In support of the 1st part of the demand the Union has alleged that such standing orders are necessary as the workers are dismissed and discharged without any reason being given to them or an opportunity to explain the circumstances of any alleged misbehaviour. The Company has strongly denied the allegations and has submitted that the Union should be put to strict proof of these allegations.

The Company has also submitted that presently standing orders are being framed and that they might have been introduced by now had not the present adjudication proceedings intervened. This Company employs approximately 60 persons. The Industrial Employment Standing Orders Act, 1946, does not therefore apply to this Company. In my view the Legislature has advisedly excluded small concerns from the purview of the said Act as elaborate standing orders are not necessary in the case of small concerns and may even at times lead to serious inconveniences. The other part of this demand relates to permanency. I think that the workers should be made permanent after completion of 6 months' service particularly as such benefits as provident fund, etc., are made applicable to permanent workers only. Although the Company in its written statement had raised an objection to making workers permanent at the end of 6 months' service, at the hearing, however, Mr. Marr on behalf of the Company withdrew the objection and stated that the Company had no objection to make workers permanent at the end of 6 months' service. Although I have stated above that no elaborate standing orders are necessary in the case of small concerns, I think that one or two rules are very essential to adequately protect the workers. I, therefore, direct the Company to introduce the following two rules:— (1) No operative shall be dismissed unless he is informed in writing of the reasons for his dismissal and is given an opportunity to explain the circumstances alleged against him. (2) All workers should be made permanent at the end of 6 months' service. This is without prejudice to the right of the Company to frame other standing orders as it proposes to do.

Demand No. 6 is as follows:—

Uniforms.—Uniforms which are generally given by December every year and which have not been issued so far should be given immediately.

25. The Union has demanded that uniforms which are generally given by December of every year and which have not been given should be given immediately. The Company has submitted that it has been supplying uniforms of its own accord to male workers and sarees to female workers since April 1948 but that this year these clothes could not be obtained owing to a hold up of supplies. These have now been obtained and sarees have actually been issued to female staff on 20th August 1949 and the uniforms are at this date in process of being stitched and will in all probability be issued to male workers in a short time. The demand is not for uniforms to be supplied by the Company every year or generally for all time. The demand is confined to uniforms being supplied for this year only. The demand is so far as it relates to this year has already been conceded by this Company and no directions, therefore, are necessary on this demand.

Demand No. 7 is as follows:—

General.—(i) The workers in the mixing department should be paid Rs. 5 per month as additional wages.

(ii) Bhimabai Keru and Durgabai Sonu who have worked for one year and a half and two years respectively, should be made permanent.

(iii) Departmental transfers may be effected but not so as to harass the workers who are members of the Union.

26. In part (i) of this demand the workers have demanded that those workers who are employed in the mixing department should be paid Rs. 5 per month as additional wages. I have already dealt with this part of the demand while dealing with wages. This demand is therefore already disposed of.

27. As regards 7 (ii), since the demand was presented, the two women workers, whose names are given in the demand itself, have been classified as permanent workers under the normal routine of the Company. No directions on this part of the demand also seem necessary.

28. As regards demand 7 (iii) that departmental transfers may be effected but not so as to harass the workers who are members of the Union, the Union does not dispute the right of the management to effect departmental transfers. All that the Union asks is that these departmental transfers should not be effected so as to harass the workers who are members of the Union. The Union has further alleged that workers are transferred to the mixing department only because they are members of the Union. The Company has submitted that workers are not engaged by this Company to carry out any particular process but to perform any work in the Company's godown and that, therefore, the Company must be at liberty to employ each worker in the manner in which it is considered by the management he can be most usefully employed. On this question, however, there is no dispute between the Company and the Union. The Company has strongly resented the suggestion of the Union that workers are transferred to the mixing department merely on account of the fact that they are members of the Union. The Company submits that while it does not transfer members to the mixing department because they are members of the Union, it also does not undertake not to transfer members of the Union to the mixing department because that would amount to victimisation of non-members. The Union has not led any evidence to show that departmental transfers were effected to harass members of the Union. In the absence of that I regret I cannot give any directions on this part of the demand. However, I have given some additional remuneration to the workers in the mixing department, and this will partially remove the workers' dislike to serve in that particular department.

INDRAJIT G. THAKORE,
Industrial Tribunal.

K. R. WAZKAR,
Secretary.

Bombay, 31st October 1949.

Court, in the industrial dispute between the B. E. S. T. Undertaking, Bombay and the B. E. S. T. Workers' Union, Bombay, regarding in the matter of working hours, payment of night shift workers, etc. :—

In the Industrial Court, Bombay.

SUBMISSION No. (I.C.) 87 of 1949.

ARBITRATION

BETWEEN

The B. E. S. & T. Undertaking, Bombay Municipality,
Electric House, Bombay First Party.

AND

The B. E. S. T. Workers' Union, 42, Kennedy Bridge,
Bombay Second Party

Submission under Section 66 of the Bombay Industrial Relations Act, No. XI of 1946.

In the matter of working hours, Payment of night shift workers, etc.

Present.—Mr. M. C. Shah, Member.

Appearances.—Counsel Mr. R. J. Kolah instructed by Mr. H. J. Marr of Messrs. Crawford Bayley & Co., Solicitors, and Mr. P. R. Shivdasani, Deputy General Manager, and Mr. B. W. Peel, Transportation Engineer, for the B. E. S. T. Undertaking.

Counsel Mr. N. V. Phadke, Advocate, with Mr. M. V. Paranjape, Advocate, and Mr. Abid Ali, Hony. Member of the B. E. S. T. Workers' Union, for the workmen.

AWARD.

This is a submission under Section 66 of the Bombay Industrial Relations Act for arbitration of the dispute between the B. E. S. T. Undertaking and the B. E. S. T. Workers' Union in respect of the following demands made on behalf of the night shift workers of the tram car repairing and servicing sheds of the B. E. S. T. Undertaking.

Demands.

1. *Alternate Day and Night Duty for Workers.*—The Car Shed Workers who are required to work every day during the night shift should be provided with alternate day and night duties for specified period of a fortnight or a month as the health of the workers is seriously affected by continuous and uninterrupted night work.

2. *Working Hours.*—The working hours for the night should not be more than $6\frac{1}{2}$ hours with a spread-over of 9 hours per shift. The night shift should commence at 10-30 p.m. and close at 7-30 a.m. with an interval of $2\frac{1}{2}$ hours from 2-00 a.m. to 4-30 a.m.

3. *Payment to night shift workers.*—The Night Shift workers should be paid at the rate of one and half times normal basic wages, retrospectively from the date of the submission of the demands.

4. *Leave Privilege.*—The Night Shift workers of the Car Shed Department should be granted the following leave privileges with retrospective effect from the date of submission of the demand :—

(a) Privilege leave with full pay and dearness allowance for one month per year with a right to accumulate the same for 3 months in a period of 3 years.

(b) Sick Leave with full pay and dearness allowance for one month in a year.

(c) Casual Leave with full pay and dearness allowance for 12 days in a year.

(d) Long Leave with full pay and dearness allowance up to 3 months once in three years.

2. The B. E. S. T. Workers' Union, hereinafter called the Union, had by a notice under section 42 (2) of the Bombay Industrial Relations Act made seven demands on the B. E. S. T. Undertaking, but in the course of the conciliation proceedings the Union withdrew the original demands Nos. 3, 6 and 7, and as the parties could not reach an agreement on the remaining demands, they have made the present submission. The Union has filed a statement of claim to which the B. E. S. T. Undertaking has filed a reply.

3. This dispute relates to the Night Shift workers of the three car sheds of the B. E. S. T. Undertaking situated at (1) Kingsway, Dadar, (2) Tardeo and (3) Colaba. The work in these sheds is carried on at present in three overlapping shifts, viz., the day shift from 8 a.m. to 5 p.m., the evening shift from 1-30 p.m. to 10-30 p.m., each of the two shifts having a rest interval of one hour, and the night shift from 10 p.m. to 7-30 a.m. with a rest interval of two hours between 2 a.m. and 4 a.m. Out of the total workers employed in the said car sheds, which is roughly about 300, 196 workers are employed on the night shift. Admittedly, they are workmen permanently on the night shift and are engaged in maintenance work on the tram cars and buses run by the Undertaking. The Union's grievance is that work on the permanent night shift is highly deleterious to the health and well-being of the night shift workers, that as a result of working on this shift, sometimes for years together, the workers have sustained incalculable injury to their health and that they are denied the advantages of normal family life and the Union has, therefore, urged that the permanent night shift should be replaced by a rotationary system whereby the night shift workers may change over to the day and evening shifts. The Undertaking has opposed this demand on the ground that the work carried on in the

night shift in the car sheds is essentially of such a nature that it is absolutely necessary to engage permanent night shift workers and that a rotation of these workers to the day and evening shifts is not possible having regard to the peculiar character of the duties they have to perform. The tram cars, it is pointed out, are required to be kept in service during the day, and they cannot be brought to the Sheds during the day for a sufficiently long time to enable the necessary maintenance work to be carried out. That work involves daily inspection of the essential parts of the machinery of each tram car and the making of minor adjustments and the execution of running repairs that might be found necessary on such inspection. The cars are also swept and washed at night on their return to the sheds and all this work, necessarily, has to be carried out at night. The same is true, as far as is applicable, in the case of the buses which are run by the Undertaking. The vehicles, both tram cars and buses, are thus on the roads for most part of the day and it is only during the night when they return to the sheds that they can be attended to for the above purposes and evidently the Undertaking has to maintain the bulk of the staff for night shift. It is obvious that there could not be, and are not, corresponding jobs for all the night shift workers during the day or the evening shifts, the number of skilled workers that could be employed during these shifts being necessarily limited, and a rotation of all the night shift workers to the other shifts is not a practicable proposition, at any rate in the present circumstances. As it is, the Undertaking has already provided for a rotation in respect of 23 workers, viz., Polemen, Shunters and Assistant Shunters and these men are already working with a change-over between the three shifts. The Undertaking was also agreeable to arrange for a rotation in the case of 47 more men by making certain adjustments. With regard to the remaining men, the Undertaking was unable to arrange for a rotation since, in the circumstances which obtain at present, it was not possible physically to do so. There was a good deal of discussion on this point at the hearing and Mr. Kolah, on behalf of the Undertaking, invited the Union to suggest any feasible plan acceptable to all the workers of the car sheds by which the remaining persons could be rotated. In fact, the Undertaking made it plain that it had no objection, of its own, to permit a rotation of the night shift workers to the other shifts if it was otherwise possible to do so. Ultimately Mr. Phadke, for the Union, did not press this demand saying that the Union would like to explore further possibilities of an adequate rotation system in consultation with the management of the B. E. S. T. Undertaking (Ex. 9). No award is, therefore, necessary on this demand.

Demand No. 2.

4. This demand is for a reduction in the working hours of the night shift workers to $6\frac{1}{2}$ hours with a spread over of 9 hours. The present working hours for the night shift are 10 p.m. to 7-30 a.m. (a spread over

of 9½ hours) with a rest interval of two hours between 2 a.m. and 4 a.m. and in place thereof the Union wants the hours to be from 10-30 p.m. to 7-30 a.m. with a rest interval of 2½ hours from 2 a.m. to 4-30 a.m. Similar contentions as were urged in respect of the first demand and several others have been urged for the Union in support of this demand. It is argued that night shift work is, by its very nature, unnatural and injurious to the nervous system and health of the workmen, and this being a permanent night shift, it is bound to have a deleterious effect on the general physical condition and vitality of the workers, and it is urged that the working hours should, therefore, be reduced to the minimum possible. Mr. Phadke has referred to certain observations of Dr. Vernon in his book "Industrial Fatigue and Efficiency", 1921 Edition, page 90, where the learned author has observed, "The basic objection to night work depends on the fact that it is unphysiological. Man is a diurnal animal, and not a nocturnal one. It is found that during each 24 hours his body temperature shows a regular rhythm. It rises to a maximum at about 6 p.m. and falls gradually to a minimum at about 5 a.m. which is one to two degrees Fahrenheit below the maximum. This variation is dependent on his bodily habits, for if he completely reverses them, his temperature cycle is reversed too..... The average industrial worker finds it impossible to effect a genuine reversal of habits when he is on night shift. The other members of his household are almost always day workers and his sleep is disturbed by them. Besides being broken and irregular it often is quite insufficient in duration." Mr. Phadke has also cited "Fatigue and Efficiency" by Josephine Goldmark where the learned authoress has made similar observations (1919 Edition, pages 265-267). The question of night shift work has been the subject of a detailed discussion by the Textile Labour Enquiry Committee appointed by the Government of Bombay and with reference to the subject of the efficiency and the health of the night shift workers, and after examining the question in its various perspectives, the Committee has taken the view that night shift work had a harmful effect on the health of the worker. The Committee observed at page 167 of the Report, "But there is little doubt that the living conditions of the workers contribute to making night shift work more onerous than day work. Living as the workers do, with very few exceptions, in one room tenements, they are not able to have sound, continuous and refreshing sleep during the day as easily as at night owing to the street noises and the sounds inseparable from the carrying on of household routine." It also referred to Dr. Frederic S. Lee's book "The Human Machine and Industrial Efficiency" and cited the well known passage that man was a diurnal, not a nocturnal, animal and any attempts to change his innate habits in this respect were bound to interfere with his physiological processes. The learned Doctor has taken much the same view as Dr. Vernon and has observed: "There is a general consensus of opinion that night work is more deleterious to health than is day work; and this opinion is supported by incontestable evidence; but in the present state of our knowledge, it is hardly possible, nor indeed for our present purpose, is it necessary, to differentiate between deleterious effects,

per se, resulting from such conditions as the attempted imposition of an unphysiological rhythm and the lack of beneficial sunshine, and deleterious effects resulting from the fact that under our social conditions the day's recuperation of the night worker is rarely equal to the night's recuperation of the day worker. Night work entails a diminution of sleep. The day's light, the day's sounds, the irresistible lure of an active world, and, with a married woman, domestic duties, in a home, where children must be cared for, meals must be prepared, and clothing must be washed—all these prevent sleep.' This last stated circumstance will not apply here since all the workers in this case are men, but that does not alter the situation in any appreciable degree, having regard to the conditions of living which generally obtain here. Mr. Phadke has urged that the workers in this case being permanent night shift workers with no chance of changing over to the day or evening shift, it was all the more necessary that the strain imposed on them by such continuous night shift working should be reduced and that this was possible to some degree by a reduction in the working hours by one hour.

5. Mr. Kolah has denied that night shift work has at all been deleterious to the health of these men and he has relied on the certificate of Dr. Modi, the Chief Medical Officer of the B. E. S. T. Undertaking, to the effect that he had the medical records relating to the past three years of the car shed workers of the three sheds carefully scrutinized and that, in his opinion, there was no indication whatsoever to show that the health of the employees working permanently on night shifts was adversely affected by the nature of their duties (Exhibit 7). It was argued that this was positive evidence to show that the night shift work had not affected the health of these workers and that it should be accepted as evidence in preference to the theoretical conclusions of the authors of the books on the subject, and the Reports of the Committee. Dr. Modi was available for cross-examination but Mr. Phadke could not avail himself of the opportunity to cross-examine him on account of reasons of his own; and the fact remains that Dr. Modi has not been cross-examined. Even so I am unable to accept Dr. Modi's certificate as conclusive on the subject. It appears that the medical records which he has got scrutinized relate to such of the workmen as approached the Medical Officer of the Company complaining of ailments or for treatment and not of all the workers; and they further relate only to the past three years which is not a sufficiently long period. Moreover all the workers might not be going to the Undertaking's doctor, either on account of inconvenience or other reasons, and it is possible that in several cases they might be having treatment of private doctors or native physicians. The Certificate (Exhibit 7) is worded in broad terms and it does not appear that the records, which were scrutinized, were maintained with an eye to finding out the injurious effect on the night workers' health. I am unable, therefore, to accept Mr. Kolah's plea that the certificate is conclusive on the subject of the effect of night shift work on the worker's health; and I am of the view

that continuous night work will have an injurious effect on the worker's health, considering that the living conditions and surroundings of these men are not different from those of the textile workers in the city of Bombay in whose case the Textile Labour Inquiry Committee did find that it was so.

6. The material question, however, is whether there should be a reduction in the hours of work of the night shift workers in this case, which are $7\frac{1}{2}$ hours with a spread over of $9\frac{1}{2}$ hours and a rest interval of 2 hours between 2 a.m. and 4 a.m. The day and evening shift workers were originally working $8\frac{1}{2}$ hours, exclusive of one hour's rest interval, but in consequence of the reduction of the hours of work introduced by the Factories Act, 1948, they now work 8 hours with a spread over of 9 hours. Referring to this Mr. Phadke has argued that whereas the day and the evening shift workers have been benefitted by a reduction of half an hour's work, the night shift hours of work have remained the same and he has urged that they should have a corresponding benefit. In reply, Mr. Kolah's contention is that the Legislature has not thought it fit to treat the night shift workers differently from the day shift workers in the matter of hours of work and that the Court should accept the provisions of the Factories Act and not move, in advance of the Legislature. In my opinion, this particular aspect of the question does not really fall for consideration in this case and I need not go into it. Mr. Phadke then pointed out that the Undertaking has itself recognized the need for reduced working hours in the case of the night shift workers and had prescribed $7\frac{1}{2}$ hours for the latter as against $8\frac{1}{2}$ hours for the former. The hours of work for the day shift have been now reduced to 8 hours in accordance with the Factories Act; even so the night shift hours at present are less than those of the day and evening shift and the Undertaking need not necessarily maintain the original difference between the hours of work of the day and night shifts. Mr. Phadke next cited the instance of the Posts and Telegraphs Department where the night shift workman is required to work 6 hours and is paid overtime for two hours. It appears in the Bombay Docks also the hours of work for the night shift is 6 hours. That might be so, but in my opinion these are not comparable jobs and cannot be taken as instances in point. On his part, Mr. Kolah has pointed to the Textile Worker in Bombay who works the same hours, viz., $7\frac{1}{2}$ hours, even in the night shift, and to the railway workmen in whose case too no distinction is observed in the hours of day duty and night duty. Now, as compared with the work done by the workers in the B. E. S. T. car sheds, the work of an average textile worker is certainly more intricate and taxing and yet the hours of work in the day and night shift have remained the same. Considering the intensive nature of the work in the textile mills, I do not think the hours of work in the night shift, which here are already less than those of the day shift, should be reduced still further. As for the demand for shorter hours of work for the Railwayman, the learned Adjudicator, Mr. Justice Rajadhyaksha, has dealt with this subject in paragraph 334 of his report (Volume 1) of Adjudication of the Trade Dispute between

the Government Railway Administrations and their workmen. He holds that the introduction of shorter hours of work would often entail correspondingly longer hours in the day shifts and that the trend of evidence showed that it would not be acceptable to the generality of the staff; and further he was of the opinion that the amount of work at night was, as a rule, less than during day and that a change on the lines suggested by the Federation would often lead to a change of shifts at an awkward hour. But although he rejected the demand for shorter hours of work, he still held against continual night duty and recommended that wherever possible the men employed in night duty should be made to alternate with those working in the day shift and that where adequate relief by this method was not possible the men affected should be transferred after completion of one or two years' service to some other station, where they will not be subject to continual night shift. But in the circumstances which obtain here and having regard to the present position, it is not possible to rotate the night shift workers to the day or the evening shifts. And in considering this question of the number of hours' work for the night shift workers it is vital to remember the peculiar nature of the occupation here, viz. that the work required to be done on the cars and buses has to be completed during the night in order that the vehicles are in a fit condition to take to the roads the next morning, and this work cannot wait till the next day. In fact, it is not a continuous process which can be left over for being completed the next day. In view of this peculiar nature of the occupation and also in view of the fact that the night shift hours are already less by half an hour than those of the day shift, I do not think the demand for a further reduction of the night shift hours is at all justifiable. In taking this view I am conscious of the fact that the workers in question are continually on the night shift in this case but that cannot be helped and, in my opinion, the appropriate way to alleviate the hardship and inconvenience resulting from continual night shift work is, as I will hereafter show while considering the next demand, to compensate them for the same by payment of a night shift allowance. For these reasons the demand for a reduction in the hours of work is rejected.

DEMAND No. 3.

7. The Union's next demand is for a 50 per cent. increase in the basic wages of the night shift workers in the car sheds and this claim is based on the ground that in view of the extra strain of work at unnatural hours, the ill effects thereof on the workers' general health and the other disadvantages which such work entail the night shift worker should be compensated; and it is urged that it was inequitable to pay wage to the night worker at the same rate as to the day shift worker. The Undertaking has opposed the demand on the ground that permanent night work is a normal feature of many transport and industrial undertakings such as the railways, and that no additional remuneration was paid by the railways or other undertakings to workers engaged on permanent night work. It is true that Mr. Justice Rajadhyaksha has not recommended

the grant of a higher rate of pay for night duty, since, in his opinion, as night work was inherent in the nature of railway duties in many places the pay should be held to cover such liability. At the same time he has recommended that the men employed in night duty should be made to alternate with those in the day shift to the extent feasible, and where that was not possible he should be transferred to other stations where he may not be subject to continual night duty. He did not recommend a similar relief in certain cases because there was no corresponding staff employed during the day time; but that was inevitable. The position here is that the workers remain permanently on night duty and, as at present, they are to continue to remain on night duty, and this factor sufficiently distinguishes the case of the present workers from their counterparts in other undertakings. Therefore, the case of the permanent night workers should be treated on a footing different from that of the night workers who rotate and change over to day shifts periodically, and in view of this special feature of their employment they should receive additional remuneration, in the shape of a night shift allowance. It would not be appropriate to grant a permanent increase in their basic wages as, I am afraid, that will disturb the wage structure *vis-a-vis* the workers in the day and evening shifts. As for allowance to night workers, it might be stated that Messrs. Lever Bros. (India) Ltd. are giving an allowance to its night shift workers and following that precedent Mr. Kamerkar, now President of the Industrial Court, has awarded night shift allowance in the case of the Tata Oil Mills Co. Ltd. v. The Workmen employed under it (1948 I. C. R., Bombay, page 264).

8. One of the grounds for an increase in the wages urged by Mr. Phadke was that the nightshift worker was required to incur additional expenditure in respect of meals, tea, etc., when doing night work. The night shift however commences at present at 10 p.m. and normally a worker takes his night meal before 10 p.m. so that he is not required to spend for his meal outside. As for expenditure on tea, there is no material before me to show that the night shift worker is required to spend more than his counterpart in the day shift. There is, therefore, little substance in this contention urged on behalf of the Union.

9. Mr. Kolah for the Undertaking has urged that the night shift worker is here already working three hours less in a week than the day shift worker and, on that calculation, he works 12 to 13 hours less in a month, which amounts to two days' wages, i.e. he gets about $7\frac{3}{4}$ per cent. more wages than the day shift worker. That is not, however, in the shape of money, and it cannot be reckoned in considering the question of wages. Another contention urged for the Undertaking was that the night shift worker is given one weekly off with pay and allowances every week which means that he gets four to five weekly offs with pay and allowances in a month as against two paid weekly offs for the day shift worker and that in this manner the night shift worker receives about $7\frac{3}{4}$ per cent. more in wages. Now he does get this advantage in money, but at the same time it is necessary to remember that the weekly offs are circumscribed by certain conditions and as the statement (Exhibit 8)

shows the worker loses one or more or all if he remains absent on leave for a certain number of days as stated in Exhibit 8, with the result that he might have to forego going taking, even when leave might be necessary, in order not to lose the advantage of the paid weekly offs. Therefore, he cannot always expect to receive the full advantage of this benefit. It was pointed out by Mr. Kolah that absenteeism in the night shift was less than that in the day shift, and although it does appear from the Statement, Exhibit 5, that on the whole that is so to some extent, there is no data for ascertaining the reasons for the same and the mere figures can scarcely give a correct idea of the reasons behind the absenteeism in the day and night shifts. Therefore, in considering the plea for an increase in the wage it will not be proper to take entirely into account this benefit in the shape of the two additional paid weekly offs to the night shift worker. On an anxious consideration of the evidence and the circumstances and bearing in mind the fact of the said two extra paid weekly offs, I consider that a night shift allowance of 5 per cent. of the basic wages earned by the night shift workers of the three car sheds of the B. E. S. T. Undertaking will be appropriate and accordingly I direct that the same should be paid to them. However, this allowance will not be admissible for the paid weekly off days for the reason that he is not working at night on those days. However, if he works or is called for work on a weekly off, then the said allowance will be admissible.

9. As regards the date from which this should come into effect, the Union has asked that it should be from the date of the submission of the demand. In its written statement the Undertaking has not demurred to this part of the demand, and at the hearing too no particular arguments were addressed to me. The demand for making it effective from the date of the submission cannot be considered to be unreasonable; at the same time for the sake of convenience, I would adopt the 1st March 1949 as the date from which this allowance to the night shift workers of the three car sheds of the B. E. S. T. Undertaking should become payable, and I direct accordingly. The arrears of the allowance due to the workers should be paid to them within two months from the date of publication of this award in the official Gazette.

DEMAND No. 4

10. This demand relates to leave of various kinds but it has not been pressed at the hearing, and no award need be given on it.

(Signed) K. R. WAZKAR,
Registrar.

Bombay, 27th October 1949.

(Signed) M. C. SHAH,
Member.

D. G. KALE,
Registrar,

Bombay Industrial Relations Act.

Bombay, dated 18th November 1949.

Late Notifications.

LABOUR DEPARTMENT.

Bombay Castle, 10th November 1949.

No. 861/46.—The supplementary award of the Tribunal in the industrial dispute between Messrs. Globe Theatres Limited, Bombay, and the workmen employed under it in the Regal and Capitol Cinemas, Bombay, referred for adjudication under Government Orders, Political and Services Department, No. 861/46, dated the 23rd December 1947 and 23rd February 1948, is hereby published:—

BEFORE MR. M. C. SHAH, INDUSTRIAL TRIBUNAL, BOMBAY.

APPLICATION (IT) No. 17 OF 1949.

(In AJ-IT 37 of 1947 and 15 of 1948).

BETWEEN

The Globe Theatres Limited, Bombay

AND

The workmen employed under it.

In the matter of clarification of the Award.

Mr. R. A. Gagrat, Solicitor of Messrs. Gagrat & Co., Solicitors for the Globe Theatres Ltd.

Counsel Mr. D. H. Buch instructed by Mr. R. C. Dalal, General Secretary, Theatre Employees' Union, Bombay, for the workmen.

SUPPLEMENTARY AWARD.

This is an application for clarification of a point, arising out of my award dated 27th September 1948 between the parties (published in the *Bombay Government Gazette* Extraordinary, Part I, dated 15th October 1948, page 4600), regarding the interpretation of which the parties are at variance. The point relates to the date from which the dearness allowance awarded by me in paragraph 13 of the said award is to be paid. The workmen contended that the said date was 1st January 1948, while the Company contended that it was 27th September 1948, namely the date of the award.

2. There was a certain discussion at the hearing of this dispute, in the course of which the clarification on a similar point made by me in my Award between the Metro Theatres Bombay Ltd. and its workmen was pointed out to the parties, and ultimately Mr. Gagrat for the Company agreed that the scale of dearness allowance awarded in paragraph 13