LABOUR DEPARTMENT.

Bombay Castle, 5th December 1949.

No. 2041/46.—The award (Part I) of the Tribunal in the industrial dispute between the Bombay Gas Company Limited, Bombay, and the Workmen employed under it referred for adjudication under Government Order, Labour Department, No. 2041/46, dated the 15th June 1949, is hereby published :—

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

REF: (IT) 54 of 1949.

BETWEEN

The Bombay Gas Company Limited

AND

The Workmen employed under it.

In the matter of retrenchment, reinstatement, etc.

Appearances: Counsel Mr. S. D. Vimadalal instructed by (Mr. D. T. Lawrie of Messrs. Crawford Bayley and Co., Solicitors for the Company.

Mr. N. V. Phadke, Advocate, instructed by Mr. B. Bhatt, General Secretary, Engineering Workers' Union (Red Flag), Bombay, for the Workmen.

AWARD—PART I.

The dispute in this case was referred to me as Industrial Tribunal under sub-section (2) 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. 2041/46, dated 15th June 1949. The dispute relates to about 28 demands and covers, a variety of subjects, all of which have been stated as demands Nos. 1 to 28 in Annexure "A" to the said Order.

2. It appears that the various disputes mentioned in the Annexure to the said order as Demands Nos. 2 to 28 inclusive were raised by the Union with the Company in the month of February 1949. Subsequently the Union delivered to the Company a strike notice dated 3rd May 1949 with reference to the matters now included as demands Nos. 2 to 28 in Annexure "A". Conciliation proceedings followed in the Course of which a meetings was held before the Conciliator on the 7th May 1949.

3. In the meantime, the Company had in April 1949 installed in the coke yard of the gas works a portable conveyor, which is a mechanical device by which the coke and katchra that comes

into the yard from the adjoining retort house and furnaces, is loaded into vehicles for dispatch. The work of loading coke and katchra had previously been performed by hand and the introduction of this mechanical loading device rendered redundant a number of coolies who had previously been engaged in hand loading operations. The Company, accordingly, on 6th May 1949 gave 68 employees—27 women and 41 men coolies employed in the coke yard, who had most recently joined the Company's service,—14 days' notice of termination of their services expiring on the 19th May 1949.

4. At the meeting before the Conciliator on the 7th May 1949, the Union refused to withdraw the strike notice unless the Company postponed the retrenchment of the 68 employees until this matter had been the subject of conciliation proceedings. It was subsequently agreed that this question of retrenchment should be referred to adjudication : in the result the Company and the Union signed a joint application on the 11th May 1949 requesting that the question of the retrenchment of 68 workers be referred to adjudication. Conciliation proceedings in respect of the other demands also having failed, the Company and the Union on 25th May 1949 signed another joint application requesting that demands Nos. 2 to 28 of Annexure "A" to the said order be referred to adjudication.

5. The Company it appears had anticipated that the two applications would be referred to me for adjudication separately, particularly as there was a long list of demands made by the Union and as the adjudication proceedings were of necessity likely to take some time. The Labour Department of the Government of Bombay, however, referred all the matters mentioned in the said two applications including the question of retrenchment to me for adjudication by a single reference.

6. In these circumstances the Company applied to this Tribunal to dispose of question No. 1 at a preliminary hearing and to issue an interim award with reference to the retrenchment of 68 employees concerned. The Company also pointed out that the wage-bill of these 68 employees amounted approximately to Rs. 6,000 per month and that the Company, which was not in very affluent circumstances, should not be put to this unnecessary expense until such time as the other demands made by the Union were adjudicated upon. I thereupon ordered that notice of this application should be given to the Union to ascertain if it had any objection. The Union, of course, objected to any priority being given to this particular demand and in any event insisted that demands Nos. 1, 22 and 23 should be heard together as they were interconnected. As demand No. 1 was of an urgent nature and was also interconnected with demands Nos. 22 and 23, I directed that these 3 demands should be heard first. I further directed the Company and the Union to file

separate statements of claim and written statements in respect of these three demands for the expeditious disposal thereof. These 3 demands have now been heard and I am making this Award (Part I) in respect of them as it appears to me that there is a good deal of urgency involved. No doubt there has been some delay in disposing of these three demands. This was due in the first place to the Company being under a misapprehension as to the exact nature of the evidence that would be required in respect of demand No. 1, secondly, the failure of the Union to put in relevant exhibits and to furnish certain information till at a late stage, and lastly, the General Manager Mr. Wright, Counsel for the Company Mr. Vimadalal, and Counsel Mr. Phadke for the Union, each in their turn, being indisposed at different times.

7. Coming to the demands, I shall for the sake of convenience deal with demand No. 23 first. That demand is as follows :—

(23) Thirteen yard coolies whose services have been unjustifiably terminated in the months of February and March should be reinstated with compensation for the loss suffered by them.

8. Although the wording of this demand is far from happy, the import of it is, no doubt, clear. The circumstances giving rise to this demand are as follows : The residual matter removed from the furnaces of the Company's retort house, consists of clinkers, ash and a small quantity of unconsumed coke, known as "pan coke". Until July 1948, the pan coke was picked out from the katchra by hand and this pan coke was sold separately from the remainder of the katchra. To pick the pan coke from the katchra some 28 women coolies and one female muccadam were employed. According to the Company this was the only work done by these women labourers, though the Union has alleged that this consisted of only a part of the normal work performed by these women.

9. The practice of picking out the pan coke from the katchra was for some reason discontinued in July 1948 since which date the whole of the katchra removed from the furnaces has been sold as katchra in bulk. The consequence of this was that the Company gave notice to the 28 women coolies and the female muccadam in question on 9th September 1948 (Exhibit 1 to the Company's written statement). On the 13th of the same month, the workers downed tools in sympathy with these women workers who had been given notice. Thereupon an agreement was arrived at between the Company and the Union as a result of which the Company was persuaded to withdraw the notices on the 28 women workers concerned and the Union agreed to the Company's retrenching instead of these women coolies, most of whom had put in a number of years of service,

28 junior-most male-coolies, all of whom were temporary employees of the Company. It was also arranged that the Union should suggest the names of the 28 workers who were to be retrenched. The Union asked the Company to prepare two lists of the junior-most coolies, one giving the names of the junior-most coolies employed in the coke yard and the other the junior-most coolies in the whole works. On the 18th October 1948 the Company sent to the Union two lists as desired. The Company also sent a reminder on the 28th October 1948. The Union, however, it appears, delayed suggesting names of those persons who were to be retrenched. Thereupon the Company sent a second reminder to the Union on 10th November 1948 in which the Company made its intention quite clear that if the 28 names of the workers to be retrenched were not received from the Union within 8 days from the date of the receipt of the said remainder, it would select the names of 28 junior-most workers and issue notices to them. On 11th November 1948 the Company received a letter from the Union purporting to be a reply to the Company's letter of the 28th October 1948 which stated that the names would be sent as soon as possible. On the 20th November 1948, the Union sent to the Company a list of only 14 workers (instead of the agreed number of 28), stating *inter alia* that as two workers had left the service in October, the reduction, according to the list, should be confined to 14 workers only. In the same letter the Union further stated that it had been reported to it that there had been fresh recruitment of coolies recently on the water gas plant and in case the information was correct the Company should retrench these newly employed workers and their places should be filled in by workers from the yard, but in case the said information was not correct, the Union promised to submit a further list to the Company. This list of 14 workers submitted by the Union, it appears, contained the names of workers employed in departments other than the coke yard. The Company, therefore, retrenched 9 out of the list of 14 workers who were without work in the yard. Thereafter the Company in their letter of the 9th December 1948 informed the Union that the Union had failed to observe any definite principle while selecting the names of the 14 persons mentioned in the list. As regards the engagement of coolies for work on the water gas plant, the letter stated that they had been engaged for extra work on the said plant and had been paid off immediately the work was over. The letter went on to state that the Company was agreeable to the retrenchment of 26 persons instead of 28 as two coolies mentioned in the Union's letter had resigned. After having informed the Union of its intention to retrench yard coolies, the Company further retrenched 13 workers all of whom were temporary in March 1949—9 having already been retrenched in December 1948. The Union in its letter of 8th March 1949 *inter alia* raised an

objection to the Company's action in retrenching 13 workers. It pointed out that the number of persons who had left the Company's service in the meanwhile should be taken into account in calculating the number of persons to be retrenched. The Union further pointed out that during the period from December 1948 till the date of the writing of the letter some 10 yard coolies had left service either voluntarily or on some other ground and enclosed the names of such persons. The Union, therefore, claimed that as 10 vacancies had already occurred the question of retrenchment would be ruled out to a great degree and at the most only 3 workers should be retrenched. The Union therefore called upon the Company to retain 10 out of these 13 workmen who had been retrenched in their order of seniority and to cancel the notices given to them. By their letter of the 22nd March 1949 the Company claimed that casual resignations of workers need not be taken into account for purposes of retrenchment. There has been some further correspondence between the Union and the Company in this respect as also further discussions which are not strictly material.

10. I have deliberately set out at length the whole history of this dispute. There can be no grievance against the Company's retrenchment of 28 juniormost men as the Union had agreed to the retrenchment of such a number, instead of 28 senior women to whom notices were given. I am not concerned with the question whether a notice is required or not as that is not a matter covered by this reference. Actually, retrenchment has affected 9 plus 13, equal to 22 persons and not 28 as agreed to originally or 26 persons as agreed to subsequently. The only question that remains to be determined therefore is whether the Company was justified in altogether ignoring the casual vacancies which had occured between the date of the agreement and the time when actual retrenchment was effected. There is no doubt that the agreement with the Company was unequivocal and authorised the Company to effect retrenchment of 28 persons. That agreement has not been qualified in any manner, and if the Union so desired they should have given some indication of their intention that casual vacancies during the interval should count for purposes of retrenchment. Besides, these casual vacancies had occurred as a result of considerable delay caused by the Union in submitting the list of persons to be retrenched. While morally the Union was perfectly justified on insisting that the number of vacancies due to voluntary resignations should be set off against the number to be retrenched, legally the Company was right as the agreement contained no such provision. As the Company had acted strictly within its rights under the agreement with the Union in retrenching these 13 persons, I regret I cannot concede to the Union's demand for reinstatement. In addition,

it must be remembered that this is a demand for reinstatement. While this Tribunal certainly has the power to order reinstatement in appropriate case, it has been repeatedly emphasised that that power should be very sparingly exercised. I, therefore, reject this demand.

Demand No. 1 is as follows :—

Whether the 68 workmen referred to in the notices dated 6th May 1949 put up by the Company should be retrenched, and if so, on what terms and conditions ?

11. As stated above in paragraph 3, the Company in April 1949 installed in the coke yard of its gas works a portable conveyor, which is a mechanical device by which the coke and katchra that comes into the yard from the adjoining retort house and furnaces, is loaded into vehicles for dispatch. Prior to its installation, however, the work of loading coke and katchra from the yard was performed by hand and the introduction of this machine rendered redundant a number of coolies. Accordingly on 6th May 1949 the Company served notices on 41 men and 27 women coolies. The notices given to the men are slightly different from those given to the women. The notices to the men read:—

RE : GENERAL RETRENCHMENT.

6th May 1949.

"With the introduction of the portable conveyor for filling Carts and Lorries with Katchra and Coke, the work in the Yard has become to some extent mechanised. Consequently a certain number of Yard Coolies have become superfluous. It is, therefore, proposed to retrench the following workers employed on that job by giving a 14 days' general notice with effect from 6th May 1949 expiring on 19th May 1949.

JOINT GENERAL MANAGER."

The notices given to the women are as follows :—

6th May 1949.

"With the introduction of the portable conveyor for filling Carts and Lorries with Katchra and Coke, there is no suitable work upon which you can be employed. It is therefore proposed to terminate your services by giving you a 14 days' notice with effect from 6th May 1949, expiring on 19th May 1949

(Signed) S. E. WRIGHT,
Joint General Manager."

12. In its first written statement submitted to this Tribunal on 8th July 1949 for determining the question of retrenchment, the Company has stated in paragraph 3: "The work of loading coke and katchra had previously been performed by hand and the introduction of this mechnical loading device rendered redundant a number of coolies who had previously been engaged in loading by hand. These included 27 women who had previously been employed solely in carrying baskets of katchra to the waiting vehicles and emptying the baskets into the vehicles and also 41 men previously required in connection with the hand loading process." Further on at paragraph 6 the Company goes on to state: "The retrenchment of the 68 employees is in no way connected with any other dispute and no question of victimisation or discrimination can arise in connection with the question of retrenchment. The retrenchment is a necessary result of the introduction of the mechanical loading device which has rendered the services of 68 employees superfluous, and the bona fides of the Company in the matter is unquestioned." In its written statement filed for the determination of demands Nos. 1, 22 and 23, the Company has in paragraph 15 stated: "As regards the proposed retrenchment of 68 workers, on account of the introduction of the mechanical loading device mentioned in the Company's statement of claim with reference to demand No. 1, the position is that the Company, on a review of the work to be carried out in the coke yard and of the labour force there available, has bona fide come to the conclusion that 68 workers have become redundant. The Union has not suggested that there has been (and in fact there has not been) any victimisation. The Union's estimate as to the labour saving capacity of the portable conveyor is a ridiculous underestimate." Further on in paragraph 18 of the same written statement the Company has submitted that "no valid objection can be taken to rationalisation, with a view to increasing industrial efficiency, even though this may displace human labour. To oppose rationalisation would in effect be opposition to the progress of the country towards industrialisation, which the Company submits will be an anti-social act in view of the present drive for production." It is obvious both from the notices and the written statements filed by the Company that the reason as set out therein for the retrenchment of 68 workers is that these employees had become superfluous to requirements as a result of the introduction of the portable conveyor.

13. At the hearing, however, Mr. Vimadalal realising the difficulty of convincing this Tribunal that the new portable conveyor could make 68 persons redundant, changed the ground of retrenchment. He submitted that on the introduction of the portable conveyor the Company reviewed their

labour requirements in the coke-yard and came to the conclusion that in all 68 persons were redundant. He submitted that the retrenchment was due only partially to the introduction of this mechanical loading device and that some of the workers in the yard were superfluous to requirements even before its introduction. The Union has with a certain amount of justification taken strong objection to the shifting of grounds of retrenchment. Mr. Vimadalal, however, argued that that was what the Company had all along meant and that the same meaning could be read in the notices given to the workers. In my view there is no doubt that the Company has tried to make out an entirely new case at the hearing. However, I am only concerned with the terms in which the demand is referred to me by the Government and not with any reasons given by the Company in the notices or even stated in the written statements although those circumstances may be relevant on the question of bona fides of the Company. The terms in which the demand is referred to me are sufficiently wide so as to include any grounds for retrenchment. I, therefore, allowed Mr. Vimadalal to make out a case for retrenchment on both the grounds.

14. Mr. Phadke, at least for the purposes of this adjudication proceedings, did not dispute the right of the employer to retrench workers as a result of rationalised processes. He submitted in the first place that though the Bombay Industrial Relations Act was not applicable to this industry the wholesome principles laid down in that Act should apply in dealing with this demand and that the onus should be thrown on the Company to justify the necessity of retrenching such a large number of workers. His other arguments may be summarised as follows: (1) that the total amount of work approximately in the yard has remained constant for the last two or three years, (2) that this Tribunal was entitled to presume therefrom that the total number of men required should ordinarily be the same, (3) that this Tribunal in the absence of evidence to the contrary was entitled to presume that the number of persons employed in the previous years was the requisite number—it being against the interest of the employer to employ a larger number than what is absolutely essential, (4) that no case, therefore, had been made for the reduction or the retrenchment of any workers, except to the extent necessitated by the portable conveyor, (5) that in respect of the reduction of work resulting from the introduction of the portable conveyor, the mechanical device had made only a couple of men redundant, and (6) that during the last six months or a year the total complement of workers had been reduced by a much larger number and as such no case had been made out for the reduction on either grounds. Mr. Phadke, therefore, submitted that the Company must conclusively establish before the demand for retrenchment was granted that the work-load on

the workers would not be unduly increased, and that the Tribunal was entitled to presume that it would ordinarily be increased if the demand for retrenchment is granted.

15. Mr. Vimadalal, on the other hand, has submitted that though many of the rights of employers were of late trenched upon, some residue of rights still remained to the employers. One of such rights was the right to determine the number of persons that the employer required for the purposes of his business and to employ fresh numbers or to discharge existing workmen provided the motive was not improper. He, therefore, submitted that this Tribunal was entitled to scrutinise the demand of the Company for retrenchment only to the extent of verifying that there was (*a*) no victimisation, (*b*) no unfair labour practice, and (*c*) no ulterior motive or malpractice under the guise of rationalisation. In support he cited a large number of passages from several awards and in particular referred to the dispute between the *Indian Standard Metal Co. Ltd., Bombay* vs. *Workmen (Daily-rated staff) employed under it*, [1949 I C.R. (Bom.) page 477.] Mr. Vimadalal also submitted that no analogy should be drawn from the Bombay Industrial Relations Act which did not apply to this industry. The Bombay Legislature had deliberately not made that Statute applicable to the Gas Company because the conditions prevailing in this industry are entirely different. From the absence of the provision of an elaborate machinery for supervision in the industrial Disputes Act, unlike the elaborate machinery provided in the Bombay Industrial Relations Act, he submitted that it could be safely inferred that the Legislature intended that there should be no such strict supervision in the case of industries governed by the Industrial Disputes Act. Mr. Vimadalal further submitted that the onus of proof was not on the Company in this matter and that if as a result of retrenchment the work-load on the remaining workers was unduly increased, the workers could then come before this Tribunal under a specific reference in respect thereof; that until the workers were in a position to establish positively by actual experience that the work-load and the strain had unduly increased, it was not possible or necessary for the Company to show that as a result of the proposed reduction the work-load on the workers would not unduly increase.

16. I do not agree with Mr. Vimadalal that in a reference of this kind I would only be justified in seeing whether the retrenchment was not for any of the purposes mentioned by him. I have closely read the various awards cited by him. In practically all those cases it was not denied by the Unions that there was a reduction in the total amount of work, and therefore the observations made by the learned Adjudicators therein must be read in the light of this concession. The question that is referred to me is whether the 68 persons should be

retrenched. I can certainly, in the absence of any positive proof produced by the Company, normally assume that the number of persons employed by it was the required number and that in the absence of either a reduction in the total quantity of work or the introduction of any new rationalised process take it for granted that the same number of persons would be required in future. I have no doubt in my mind that before I can answer this question in the affirmative the onus is upon the Company to make out a positive case for the retrenchment of these 68 people. It would equally be absurd for me as suggested to permit 68 persons to be thrown out of employment and permit a corresponding increased burden to fall on the rest and then to wait for the workers to establish, at the end of some months perhaps, that the strain as a result of increased work-load on them was excessive. Mr. Vimadalal was, therefore, called upon to make out a case for retrenchment. Since this was a technical job I requested both the Union and the Company to agree to nominate by consent some person or persons to conduct an enquiry on the spot and submit a report as to the number of persons required for the various jobs in the coke-yard. It was, however, not possible for the parties to agree to the nomination of any such expert. I have, therefore, proceeded to determine this matter on such information that was supplied to me at the hearing, supported by certain personal observations on the spot. This enquiry has dragged on for several days and a large number of exhibits have been tendered, and arguments and counter-arguments advanced. I shall, however, deal only with such of the facts and arguments which I consider to be material.

17. The Company has submitted that in all 212 persons are required for the various jobs in the coke-yard. The Company has further submitted that it has arrived at this figure after conducting some sort of informal inquiry as to the requirements in the yard. At the commencement the Company put in several exhibits which it has revised from time to time. The Union likewise put in a number of exhibits at the beginning which it later revised in the light of the Company's exhibits. For the sake of convenience I shall split up the requirements of the yard into three parts and deal with each one of them separately. In part I, I shall deal with persons actually required to perform the various jobs in the yard, in part II the number of sundries required to work outside that yard and in part III relievers required in the yard. With regard to part I, namely persons actually required for the various jobs in the yard, the Company first submitted Exhibit 3(c) and placed the total requirements of the yard at 94. It has also submitted Exhibit 4(c) to give an idea of the total work-load on each category of workers on the basis of the requirements mentioned in Exhibit 3(c). Further the Company submitted

Exhibit 16 (c) to show how the men mentioned in Exhibit 3(c) as breeze fillers and carriers would be employed and the work-load on them. Subsequently the company revised its estimate with regard to its requirements under Part I and reduced its original figure from 94 to 90 [*see* Exhibit 18 (c) page 8].

18. As against the Company's final estimate of 90 persons required for the main work in the yard, the Union claims that 101 persons would normally be required. The requirements for the various jobs in the yard as estimated by the Company and the Union respectively are as follows :—

Jobs.	No. of persons required according to the Company in Exhibit 15 (c).	No. of persons required according to the Union in Exhibit U (*a*) page 1.	Difference.
1	2	3	4
Hand cart men ...	16	16	.....
Bag Fillers ...	14	14	.....
Weighers ...	4	4	.....
Bag Sewers ...	4	4	.....
Bag Shakers ...	4	4	.....
Bag Repairers ...	2	2	.....
Lorry loaders with coke bags ...	6	9	3
Watermen ...	2	2	.....
Tarwalla ...	1	1	.....
Bag Fillers for dealers and contractors.	8	8	.....
Breeze fillers and carriers ...	21	24	3
Machine Feeders ...	5	5	.....
Muccadams ...	3	4	1
Clearing Ramps ...	.....	4	4
Total ...	90	101	11

19. It will be seen from the above table that the only difference that exists is in respect of lorry loaders with coke bags, breeze carriers, muccadams and persons clearing ramps. In respect of lorry loaders with coke in bags the details of the work-load as estimated by the Company in Exhibit 4(c) is as follows :— Six men load 980 bags per day, that is 165 bags per

man per day or 20 bags per man per hour. At the hearing, however, the Company submitted that the extent of this work-load would be less than the estimate of 20 bags per man-hour as many people brought their own men to load lorries. As against the Company's figure of 6 men required for this work, the Union has submitted that at least 9 workmen would be necessary. In my view it is too much to expect a person to load 20 bags per hour for the whole day—one bag for every 3 minutes. No doubt, this could be done for some time but it is doubtful whether the tempo of work at this rate could be maintained for the whole day. Even making amends for the statement of the Company that some persons brought their own men to load lorries, I feel that the estimate of the Company of the men required in this connection is rather low. Further the Company has not denied that the number of tons of coke handled by lorry loaders vary. At times this quantity is much larger than the figure upon which the Company's estimate is based. I, therefore, accept the Union's estimate of 9 as perfectly reasonable.

20. The next point of difference relates to breeze fillers and carriers. As against the Union's estimated claim of 24, the Company's revised estimate is 21. Even the original estimate of the Company as set out in Exhibits 3(c) and 4(c) was 24 breeze carriers. The Company also put in Exhibit 16(c) showing the distribution of work in handling breeze. As worked out therein, the Company's calculations come to 24 breeze fillers and carriers. The Company has not given any satisfactory reason for reducing the number from 24 to 21. It is possible that the revised estimate has been taken from the actuals in the allotment book kept unofficially by some supervisor in the yard. I, therefore, accept the Union's estimate in this respect also.

21. As regards muccadams, the Company's original estimate as set forth in Exhibit 3(c) was 4 and I see no reason why this figure should be further reduced to 3. There are hundreds of unskilled workers in this department and the work has to be properly allotted and supervised. The workers have also to be diverted to different jobs and even to departments from time to time where they are most needed. In my view, therefore, 4 muccadams are absolutely essential for effective supervision and proper working of this department. I, therefore, accept the Union's demand in this respect as the more correct.

22. The only other difference that remains is with regard to the persons required for clearing ramps. The Company has submitted that no persons would be required permanently to do this job, while the Union has given its estimate as 4. To ascertain the exact nature of the work I put several questions both to the Company and the Union and I am satisfied that it is not necessary to have any staff wholly engaged on the work of clearing ramps.

Some workers would however occasionally be required to clear the ramps when there is accumulation, but the total man-hours put in would be equivalent to the work of one man engaged wholly on this job. I, therefore, reject the Union's estimate and hold that one person would be required for this work. According to the above calculations the total number of persons required to perform the various jobs in the coke-yard come to 98.

23. This question can also be approached from another point of view. The total quantity of work handled in the yard is not always constant. Sometimes the gas plant has 3 shifts working and sometimes two. When 3 shifts are working 12 persons are required to work on the gas plant which would mean that 4 more persons are required to be sent there from the coke-yard. When, however, 2 shifts work, these 4 men would be available for work in the coke-yard, but as against that the total quantity of coke required to be handled in the yard would also be greater as some part of the coke is consumed by the gas plant. The Company's estimate of 90 men, is based on the supposition that about 50 tons are required to be handled every day in the yard. That would be so when 3 shifts are working, but when 2 shifts work the amount of coke to be handled in the yard would be much larger and therefore a slightly larger number of persons would be required. Four persons would of course be available in the coke-yard when 2 shifts work, but this complement of 4 would not by themselves be sufficient and some more persons may be necessary. From this point of view also the estimate of 98 persons to which I have arrived as the requirements of the various jobs in the coke-yard appears to be justified.

24. I shall next deal with the number of persons required under Part II as sundries. According to Exhibit No. 3(c) at first put in by the Company, 87 persons in all would be required as sundries. This estimate has subsequently been revised by the Company to 61 in Exhibit 18(c), statement 5, page 8. As against this estimate the Union has submitted an estimate of 80. The requirements for various sundry jobs in the yard as estimated by the Company and the Union respectively are as follows :—

Jobs.	No. of persons required according to the Company in Exhibit 18 (c) statement 5, page 8.	No. of persons required according to the Union in Exhibit U (u) page 2.	Difference.
1	2	3	4
Work Superintendent's Office...	...	2	2
Time Office	1	1	...
Weigh Bridge	...	1	1
Plan Office	1	1	...
Meter House ...	1	1	...

Jobs.	No. of persons required according to the Company in Ex. 18 (c) statement 5, page 8.	No. of persons required according to the Union in Ex. U(u) page 2.	Difference.
1	2	3	4
Officers' Bungalows ...	4	4	...
Boiler and Engine House ...	10	10	...
Syphon	...	1	1
Store	1	1	...
Tar Department ...	7	7	...
R. H. Sweeping ...	4	4	...
R. H. Subways	...	2	2
Coal Sampler	...	2	2
Purification	8	11	3
Yard Sweeping	4	4	...
Water Gas Plant ...	6	12	6
Coke Supply	14	14	...
Elevator Machine ...	...	2	2
Total ...	61	80	19

25. The Union has further submitted that for the temporary work in the Tar Construction Department a complement of 7 more persons would be required till that work is completed. The Company has on the other hand submitted that that work is near completion. I shall deal with this question separately.

26. As regards the Weigh Bridge, the Union has stated that one man would be required there, while the Company has denied that any person is required for this work. It appears that one yard coolie who had been working there for a considerable time was temporarily suspended pending a trial in a case in which he was implicated by a private hand-cartman. The Company instead of replacing him by another yard coolie, put a new office boy there. The coolie who was implicated has now been discharged and re-employed by the Company in the yard but he has not been allotted his former work as a weighbridge-man. The Union therefore has contended that the office boy engaged after his suspension should be discharged from service and this job which really belongs to the yard should be restored to it. It is indeed difficult for me to understand why the Company should have employed a new

office boy when there were persons in the yard capable of doing this work. The work of the weigh-bridge has always been looked upon as that of a coke-yard coolie. The transfer of a coolie from this work to the coke-yard for other duties there, would necessarily result in the retrenchment of one person from the coke-yard. I do not think the Company is justified in retrenching one yard coolie and employing a new office boy on the weigh-bridge. I have, therefore, calculated one man for the job on the weigh-bridge.

27. The Company's estimate of persons required for the purification department is 8, as against the Union's estimate of 11. This department was separated from the yard only last year. It has its own partial complement of workers but that complement is not sufficient to meet the labour requirements of that department. At present there are 4 purification plants. Each plant has to be opened up from time to time and the time taken to clean and refill is fairly long. At times, it is urged, up to 40 men are required to do this work. The Company's estimate of 8 is certainly an under-estimate. While I do not wish to rely entirely on the actuals as given in the unofficial allotment book, I find that the monthly average for August 1949 of persons taken from the coke-yard for work in the purification department as given in this book comes to about 15. In my view therefore at least 10 would be the proper figure to take.

28. For the work of the Water Gas Plant the Company's estimate is 6, while the Union's estimate is exactly double that figure. According to the Company there are 3 men other than yard coolies, employed on the water gas plant. Four coolies are required for each shift. According to the Company, normally 2 shifts work, while at times only one or three shifts operate. It has, therefore, submitted that the estimate should be based on the average requirements of the plant and that 6 persons would suffice.

29. There is no dispute that 4 coolies are required per shift. If therefore 3 shifts are working the labour requirements of the water gas plant would come to 12. The Union has not admitted that there are three workers, other than yard coolies, on the water gas plant as claimed by the Company but in this respect I shall accept the statement of the Company as correct and take it that over and above these 3, 9 more men would be required from the yard when all the 3 shifts operate. When the 3 shifts are not working the amount of coke to be handled in the coke-yard would be larger and more men would be required for work there. In my view therefore at least 9 men would be a reasonable estimate and not 6 for this work as suggested by the Company.

30. As regards the Retort House Subways, the Union has submitted that 2 persons would be required, while the Company has submitted that no person is required as the work of cleaning the subways is done once or twice a week. It appears that till recently this was a daily job which has now been converted into a bi-weekly one, the work being completed by employing a larger complement of workers. The Company has also submitted that when and how the Retort House Subways should be cleaned should be left entirely to it and that it is none of the Union's business to dictate as to how this job should be done. I do not dispute the Company's right to determine whether and how often the R. H. Subways should be cleaned but that does not mean that the Retort House Subways will not have to be cleaned at all. It also cannot be denied that if every day two men are required to clean it a larger number of workers would be required if the work is done twice a week, or only once a week and dirt is allowed to be accumulated there till then. I could, therefore, conveniently treat this work as at least a one-man's job, while leaving it entirely to the Company to determine the manner and method by which the Retort House Subways should be cleaned.

31. The Union has next submitted that two persons should be provided for being sent to the coal department. There is no doubt that several persons from the coke-yard are sent to the coal department and *vice versa*. The Company has submitted that these cancel each other. The Union has however submitted that the balance is always against the coke-yard and that two persons should be provided for being sent to the coal department. While I do not propose to rely entirely on the actuals given in the allottment book—produced under peculiar circumstances into which I need not go—which according to the Company is not an official book, I find that the balance of the monthly averages for July and August has been against the coke-yard. In the month of July, in respect of which figures are produced from the allottment book, ten more persons were sent on an average to the coal department from the coke-yard and in the month of August only two more persons were sent. I, therefore, think that the Union's estimate of two is reasonable and must be accepted.

32. There are several other jobs in respect of which there is some dispute. The Union has submitted that two coke-yard coolies are employed in the Work Superintendent's Office. The Company has explained that one person has been stationed temporarily at the Work Superintendent's Office for a few days as he has received a foot-injury and is not able to do any other work while the other person was sent temporarily as the person permanently employed in the Work Superintendent's Office

was on leave. As regards the syphon, the Company has submitted that it is not a whole day's job but that one person is required to work on the syphon for a few hours during the day. The Union has however contended that it is a full time job for one coolie. The Union has further submitted that two persons are required for the elevator machine, that till recently 11 workmen were working on this machine 2 of whom were coke-yard coolies and that it was only on or about the 20th July 1949 that these yard coolies were withdrawn. The Company has, however, submitted that this is a coal department job and should be excluded in calculating the requirements of the coke-yard. Taking all these minor jobs into consideration I think I would be justified in providing 2 more persons to attend to these sundry jobs. The total complement required under Part II as sundries for work outside the yard therefore comes to 72.

33. As regards Part III, namely, persons required as relievers the Company has submitted that in all 42 relievers are required, as explained below :—

(*a*) Relievers in the coke-yard for weekly offs of workers.

(*b*) Relievers for the Retort House Workers (36 on 3 days in a week).

(c) Relievers for Boiler and Engine House Workers (6 daily).

According to the Company, as regards (*a*) and (*b*), the position is that 36 workers from the coke-yard act as reliefs for the Retort House Workers on 3 days a week—Sundays, Mondays and Tuesdays—the relieving workers themselves have then a day off on Wednesdays and so are available for general duties in the coke-yard on Thursdays, Fridays and Saturdays. On Sundays, there is little work to be done in the coke-yard as no coke or katchra is loaded and there are no coke deliveries. At present almost 50 per cent. of the coke-yard workers have their weekly-off on Sundays. The percentage having their weekly-offs on Sundays can be further increased by the Company and the 36 men who act as relievers to the Retort House Workers on Sundays, Mondays and Tuesdays, can relieve 108 workers in all : 36 workers on Thursdays, 36 on Fridays and 36 on Saturdays. The Company has also put in Exhibit 18 (c), statement 6, page 9, which shows the number of workers from the coke-yard "off" on each day of the week as per July Muster. The Company has also suggested that they could so adjust the weekly day-offs in future after retrenchment is effected that there will be no further need for a separate allocation of any relievers other than 36 relievers jointly for the Retort House and coke-yard. There is no dispute between the Union and the Company as regards the relievers required for the engine house and boilers. The Union has contended that 38 and not 36 relievers are required for the Retort House and has put in

Exhibit Y (*u*) for the purpose. I am inclined to accept the view of the Union that 38 persons would be required as relievers for the Retort House. There is no dispute however that all these 38 persons could also relieve workers in the coke-yard by a proper adjustment of the working-days and days-off.

34. The Union however desires that 5 more persons should be calculated for jobs unspecified. I do not think I would be justified in making any such provision as this matter has been investigated in great detail. There is also a reasonable probability that the number of persons as stated above may not always be actually required and they could occasionally attend to such unexpected odd jobs. I, therefore, reject the Union's claim for 5 odd jobs.

35. The total requirements of the yard that I have thus arrived at are:

(1) for jobs in the yard	98
(2) for Sundries outside the yard	72
(3) as relievers for the Retort House and coke-yard ...	38
(4) as relievers for the Engine House and boilers ...	6
Total ...	214

36. I shall now have to consider the leave reserve required. There is practically no dispute between the Union and the Company as regards the proportion of leave reserves. Ten per cent. for leave reserves is suggested both by the Union and the Company. Since according to the Company the total complement required comes to 193, the Company has asked for a leave reserve of 19, whereas the Union's estimate is 230 and therefore the leave reserve asked for by them is 23. The Union has, however, further submitted that yard labour is a pool from which *badlis* are drawn by many other departments in the event of casual absence or leave in those departments. Those departments have, according to the Union, no provision for leave reserve. A provision will, therefore, have to be made in the coke-yard for supplying leave reserves for those departments as well. According to the Union the departments that rely upon the coke-yard for the supply of leave reserves are the transport (coke-supply coolies of this section), brick layers, neptha plant, engine and boiler house, work fitters department, stores, etc. According to the Union, taking a conservative estimate, the complement of unskilled personnel in these departments would come to approximately 61 or more. Accordingly, the Union has submitted that 6 more workmen should be provided for in the yard to act as leave reserve for these 60 odd people working outside this department.

37. There is no doubt in my mind that the coolies in the coke-yard have been looked upon as a sort of a pool from which workmen are drawn upon as reserve for various other departments. There is also no doubt in my mind that whenever any shortage is experienced in any other department a resort is had to the yard. There are also some unspecified jobs for which workers will have to be found and in respect of which I have rejected the Union's demand. A provision for a few more persons over and above what has been calculated on a ten per cent. basis will therefore have to be made. According to my calculations the total complement required comes to 214 and 10 per cent. leave reserve on that figure would be 21 or 22, but in view of what I have stated before I would be justified in providing a few more people, namely 25. This would bring up the total requirements of the yard to 239.

38. I have made enquiries on the 28th October 1949 as regards the total number of persons employed in the coke-yard on that date. The Company has informed me that on that date 265 persons were actually employed including 26 women coolies. There is thus a redundancy of 26 workers. I am therefore satisfied that the Company has made out a case for the retrenchment of 26 workers and I, therefore, authorise the Company to retrench to the extent of 26.

39. I have not considered in this award how many persons have become redundant merely by reason of the introduction of the portable conveyor. A large number of exhibits have been put in and a good deal of discussion took place as regards the number of persons who had become redundant as a result of the introduction of this mechanical loading device. I do not think it is necessary for me to go into this question as my award is based on the actual work left after the introduction of this machine.

40. I have gone into considerable details of the various jobs in the yard and the number of men required for each job in order to assess the correct number of persons required in the yard and I have come to certain conclusions. The estimates, however, made by me are only approximate : made for the sole purpose of determining the immediate issue before me—the number of persons who should be allowed to be retrenched and for no other purpose. It is not my intention nor should I be understood to lay down either the permanent role or complement of workers for the yard or that for the various jobs specified, the exact number of persons estimated by me should in fact be employed. I have not been called upon to do so by the terms of reference.

41. The next question will be who should then be retrenched. Ordinarily the principle is that the juniormost should be retrenched first. In this case, however, the Company has given notice to all the 27 women in its employ, the ground of notice being that with the introduction of the portable conveyor for

filling carts and lorries with katchra and coke, there is no suitable work on which they could be employed. Almost all these women are very old employees of the Company, one has put in 42 years of service, another 29 and a third 28 years of service. Nine have completed more than 20 years of service, 13 more than 10 years of service and the remaining have each put in at least 6 years of service. The Company has contended that even if there is no necessity for general retrenchment, this Tribunal should give permission for retrenching all the women employees as the work now remaining in the yard is not suitable for women coolies. I have given anxious consideration to this matter as I know that a large number of the women are old employees of this Company and as far as possible I should like to withhold my permission to retrench them in priority to persons who are much junior to them in service. At one time according to the Company these women were suitably employed in picking up pan coke from katchra. That practice was discontinued in July 1948, since when the katchra is sold in bulk without picking the pan coke. Thereupon the Company gave notice to these female workers. Subsequently, however, in consideration of their long services and the Union's plea on their behalf, the Company withdrew the notices and decided by mutual agreement to retrench 28 juniormost male coolies instead. Since that time it is alleged the female coolies have had no suitable work for them. They were for some months employed in filling carts and lorries with katchra and coke by means of small baskets. This kind of filling work was a laborious process. With the introduction of the mechanical loading device the filling operations are being done by male coolies with big shovels which are too heavy for the female coolies to wield. I have, therefore, to determine whether there is any work left in view of what is stated above by the Company for women coolies and if so, for how many of them. The question of retrenching women coolies stands entirely on a different footing. I agree with the Company that a case may be made out for their retrenchment, even if a case for general retrenchment may not have been made out.

42. The Union on the other hand has submitted that there is enough work for women coolies in the yard. It has claimed that at no time were women exclusively employed on the job of picking pan coke from katchra and that in addition to this work they have been doing the work of breeze carriers and several other odd jobs. I have seen for myself the nature of the work done by women in the yard. I have also discussed at length both with the management and the Union the type of work which could suitably be assigned to these women. I agree with the Company that most of the work in the yard is by its very nature not suited for the employment of women. However, I feel that 4 women could usefully be employed for stitching bags, which work has now been entrusted to men.

Another job which could safely be entrusted to women is that of breeze carriers and 4 women could conveniently be employed for that work. Other odd jobs such as sweeping, etc., could suitably give occupation to some more women. But all said, I do not think there is work for more than about 12 women.

43. On 28th October 1949 there were 26 women employed. As only 12 women can be usefully employed by the Company, I authorise the Company to retrench all the remaining 14 women. The retrenchment of women should be effected as follows:—

(i) An option be given to such of the women workers as desire to retire to leave first. Those who exercise this option should be treated as retrenched for the purpose of this Award and paid compensation as directed by me.

(ii) The remaining number should be retrenched according to the principle of junior-most first, i.e., last come first go.

44. Of the 26 persons to be retrenched 14 will be women. The remaining 12 will therefore be men. There is at present the Tar Construction work in progress and 7 men are employed on that work according to the Union, though the Company has disputed this figure. In the total requirements of the yard, I have not calculated the requirements for this temporary work. The Union has admitted that this work is purely temporary. The Company has submitted that the work is near completion. In respect therefore of the remaining 12, I direct as follows : (1) Eight junior-most men be retrenched immediately and (2) the remaining junior-most 4 be retrenched when the Tar Construction work is completed. If, however, in the interval—between the passing of this Award and the actual completion of the Tar Construction work—there is any reduction in the number of persons employed in the yard either by reason of death, voluntary resignation, dismissal, etc., the number of persons to be retrenched should be reduced by that figure.

45. The next question is on what terms and conditions these 26 persons should be retrenched. The Company has submitted in the first instance that the joint application that was made to Government by the parties to this dispute for reference to adjudication in respect of demand No. 1, was an application for reference in respect of "retrenchment of 68 employees"; that the Government of Bombay, therefore, had under section 10 (2) of the Industrial Disputes Act power only to refer the question of retrenchment of 68 employees; that the said Government had no power to refer to this Tribunal the further question in demand No. 1, namely, "and if so on what

terms and conditions" ; that the demand to that extent was beyond the competence of the Government to refer and as a corollary thereof this Tribunal had also no power to determine that part of the demand. The Company has, accordingly, submitted that this Tribunal has no jurisdiction to impose any terms and conditions in respect of retrenchment. It is not necessary for me to determine whether the reference of demand No. 1 as made to me by the Government of Bombay is valid or not as in my view, even if the question of "retrenchment of 68 employees" had been referred to me without the addition of the words "and if so, on what terms and conditions" it would still have been perfectly within my power to grant such permission to retrench subject to certain terms and conditions as that would be a matter ancillary to the main dispute referred to me. In my view if I have the power to give permission to retrench or not to retrench, I have also the power to lay down terms and conditions on which such retrenchment should be effected.

46. The Union has in its written statement demanded that if permission is to be given to retrench, it should be on the following terms and conditions :—

(i) Retrenchment should be effected in seniority order only.

(ii) Benefits that would accrue to the workmen under the award in the present dispute on workmen's demands, should be extended to the retrenched workers.

(iii) Workers to be retrenched should be paid, in addition to what they would ordinarily be entitled, compensation on the following basis:—

(a) To those who have put in more than 6 months but less than one year's service—45 days' wages with dearness allowance.

(b) To those who have completed one year's service but have put in less than 3 years' service—2 months' wages with dearness allowance.

(c) To those with 3 or more years' service—one month's wages with dearness allowance for every year of service subject to a maximum of 6 months' wages with dearness allowance.

47. The Union has submitted that the right to compensation of such a nature has already been recognised in various adjudications, and that such a right is a recognised privilege of workmen in other countries also. It has also submitted that the benefits of gratuity and provident fund which a workmen may get according to the rules of the Company are ordinary

benefits which should not be taken into account in awarding this compensation and that the payment of such ordinarily due benefits does not absolve the Company of its obligations towards workmen who are going to be displaced for reasons personal to the Company. The Company on the other hand has submitted without prejudice to its contention as to jurisdiction that the retrenched employees will receive in the ordinary course, in accordance with their respective entitlements, such retiring benefits by way of provident fund, gratuity, etc., as are provided in the Company's provident fund and gratuity rules and that these should be considered as sufficient. It has also produced Exhibit 13(c) to indicate what sums some of the persons to whom notices are given will receive in the event of retrenchment. The Company has further pointed out that these workers were given notice on 6th May 1949, that instead of the usual 14 days' notice they would be getting about 5 to 6 months' notice as a result of the reference of this question to adjudication ; that it has to employ these workers and pay them their full wages for nearly 5 to 6 months when in fact they were redundant, and that therefore the wages received by the workers during this period should be treated as sufficient compensation. The Company has therefore urged that no further burden should be imposed on the Company as regards compensation and that in any event the amount of wages received by the workers after the expiry of 14 days' notice should be allowed to be deducted from the compensation, if any, awarded.

48. It has now been well settled by a series of awards of Bombay and other Tribunals that in the absence of any social security scheme such as unemployment insurance, it is quite fair and reasonable that workers who are retrenched for reasons personal to the Company should be compensated for their involuntary unemployment and other suffering consequent on their retrenchment by the Company and varying amounts by way of relief have been awarded in appropriate cases with due regard to the benefit derived by the employer from the employees' services in the past, the condition of the industry or undertaking, the reasons for which the employer had to retrench, the period for which the resultant unemployment had lasted and the resources of the employee at the time of his discharge and other factors. At this stage, in the present case it is not possible for me to know what the actual period of the resultant unemployment would be but I can take notice of the prevailing conditions in the labour market, particularly amongst the class of workers who are being retrenched. It is true that the Company had to engage these people for a fairly long period even after the notice period had expired. Ordinarily the same should weigh with me in awarding the amount of compensation. But in this case the Company has

itself considerably shifted its grounds of retrenchment at the hearing from the grounds as alleged in the notices and even in the written statements. Besides, during the whole of the said period, the Company has employed some fresh temporary workmen. This according to the Company was due to a certain amount of mismanagement and bad distribution of the labour force available. Whatever may be the cause, the Company cannot therefore legitimately make a grievance of having to employ these persons for the intervening period and certainly does not deserve any special consideration or sympathy as urged. The retrenched men will receive practically no amount by way of gratuity or provident fund. A few women will receive some amounts, but then they have put in long years of service. I have however considered that in fixing the maximum. In fixing the scale I have also considered that notices were actually issued to these workers and they had for several months a premonition that their services will be discontinued.

49. Looking to all the circumstances present in this case and the scales adopted by other Tribunals I direct that these persons be retrenched subject to the following terms and conditions :—

(i) Persons other than temporary workmen shall be given a fresh notice of 14 days after the publication of this Award and shall be paid compensation on the following scale:—

(a) Those who have completed a year's service but less than 3 years' service—wages for 26 days with dearness allowance.

(b) Those who have completed 3 years of service or more—26 days' wages with dearness allowance for each year of service, subject to a maximum of 104 days' wages with dearness allowance.

(ii) Wages and dearness allowance shall be at the rate payable to the employees at the date of retrenchment.

(iii) The compensation awarded hereinabove shall be paid over and above wages, if any paid to the employees in lieu of notice.

(iv) The Company to pay such compensation within two weeks from the date of actual retrenchment.

50. I further direct that any benefits that would accrue to the workmen under the award in this dispute should be extended to the retrenched workers.

Demand No. 22 is as follows:—

Posts falling vacant should be filled in without delay. After a maximum period of there months' acting, workmen should be confirmed on the posts on which they are working.

51. As regards this demand, it is not necessary for me to deal with it at this stage. I shall deal with it, while dealing with the rest of demands.

INDRAJIT G. THAKORE,
Industrial Tribunal.

K. R. WAZKAR,
Secretary.

Bombay, 22nd November 1949.

By order of the Governor of Bombay,

G. V. DAVE,
Under Secretary to Government.

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