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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, IV-A, IV-B and IV-C) issued by the Labour Department, Industrial Court, Industrial Tribunal, Wage Board and Registrar, Bombay Industrial Relations Act.

LABOUR DEPARTMENT.

Bombay Castle, 20th December 1949.

No. 832/46.—The award of the Tribunal in the industrial dispute between the Firestone Tyre and Rubber Co. of India Ltd., Bombay, and the Workmen (Office Staff), employed under it referred for adjudication under Government Order, Labour Department, No. 832/46, dated the 9th May 1949, is hereby published:—

BEFORE Mr. P. S. BAKHLE, B.A., LL.B., INDUSTRIAL TRIBUNAL,
BOMBAY.

REFERENCE (ITB) No. 6 OF 1949.

In the matter of an Industrial Dispute.

BETWEEN

The Firestone Tyre & Rubber Co., of India Ltd., Bombay
AND

The Workmen (Office Staff) employed under it.

Re: Bonus, Gratuity, Leave, etc.

Appearances.—Mr. S. D. Vimadalal and Mr. G. N. Joshi, with
Mr. S. B. Kher of Messrs. Manilal Kher and
Ambalal, for the Company.

Mr. C. L. Dudhia, for the Workmen.

AWARD.

This dispute has been referred under section 10 (1) of the Industrial Dispute Act, 1947, to be for adjudication by Labour

Department Order No. 832/46, dated 9th May 1949. The matters in dispute are specified in Annexure "A" to the said order.

2. Usual notices to file the statement of claim and the written statement were issued to the parties. Statement of claim on behalf of the workers was filed on the 23rd May 1949, by the Bombay Automobile Employees' Union, Bombay. The written statement on behalf of the Company was filed on the 15th June 1949. The matter was set down for hearing on the 5th of July 1949, and the hearing was concluded on the 5th of October 1949. Witnesses were examined on behalf of the workers and a large volume of documentary evidence has been adduced by the parties. I have heard elaborate arguments advanced by Counsel appearing for both the parties.

3. *Demand No. 1—Bonus.*—On behalf of the workmen (office staff), a demand is made for bonus equivalent to $4\frac{1}{2}$ months' salary (37.5 per cent. of the total earnings of each employee) exclusive of dearness allowance for the year ending 31st October 1948, without any discrimination or condition whatsoever. In the statement of claim filed on behalf of the workmen the demand has been slightly modified by inserting the word "further" before the word "bonus". Thus by the statement of claim the demand is changed into a demand for bonus equivalent to $5\frac{1}{2}$ months' salary. This change is due to the fact that since the demands were formulated, the Company has paid an interim bonus equivalent to one month's basic salary. It has been pointed out by the Company that the demand must be restricted to the quantum of bonus as stated in the order of reference. I think that the objection raised on behalf of the Company must prevail and the demand must be restricted to bonus equivalent to $4\frac{1}{2}$ months' basic salary or wages inclusive of the one month's interim bonus paid by the Company.

4. The claim for bonus is based on the grounds:—

- (1) That the Company had made huge profits during the year 1947-48, and
- (2) Bonus paid in the past was meagre.

The Company started manufacturing of tyres in Bombay since January 1940. Since 1942 the Company has been paying each year to its employees bonus equal to two months' salary or wages. There was a disagreement between the parties over the payment of bonus for the year 1946-47 and that dispute formed the subject-matter of Adjudication No. 7 of 1948. In that matter no complaint had been made on behalf of the workers to the effect that the bonus paid in the past years was meagre. Moreover the quantum of bonus to be awarded depends upon the profits made by the

Company in a particular year and consequently the fact that in the past the bonus paid was inadequate would not be a fact relevant to the fixing of the amount of bonus payable for that particular year, especially when no such complaint had been made previously. As has been held by the Industrial Court in Reference (IC) No. 7 of 1949 (Millowners' Association, Bombay, and others *versus* Their employees) bonus *prima facie* appears to partake more of the nature of profit-sharing than of deferred wage. If that be so in determining the share of the workers in the profits in a particular year the fact that they had not been given the proper share in the profits in previous years would, in my opinion, be irrelevant.

5. The Company has opposed this demand in its entirety and has submitted that it has already paid for the year in question bonus equivalent to a month's salary and that any further amount to be paid as bonus should be left to its discretion. Mr. G. N. Joshi, the learned Counsel for the Company, has relied upon my observations in the award made in Adjudication No. 7 of 1948, which are as follows:—

“It is now the recognised rule that both Capital and Labour should share the product of their own effort after making provision for the payment of fair wages to labour, fair return on the capital employed in the industry and reasonable reserves for the maintenance and expansion of the undertaking.”

Mr. Joshi has further argued that in determining the amount of bonus the Tribunal should take into account the general position of the industry, the attitude of the employees to the employer, nature of efficiency and the respective part played by capital, raw material and enterprise.

6. It is not disputed on behalf of the Company that the Company has made a decent profit during the year in question. The general position of the industry therefore must be taken to be quite satisfactory. So far as the attitude of the employees to the employer is concerned, so long as such attitude has not affected the production of the Company and led to a decrease in the profits, in my opinion, the attitude of the employees would not be quite relevant in determining the quantum of bonus. As regards the nature of efficiency it would be relevant in fixing the wage structure and not in determining the amount of bonus. The Company has produced before me in a sealed cover its Balance Sheets for the years 1946-47 and 1947-48. After having carefully studied those Balance Sheets I have no hesitation in saying that the capital and enterprise have been more than amply rewarded by the dividends paid which are many times of what are considered in India a fair return on capital.

7. It is no doubt true that by the award made by me in Adjudication No. 7 of 1948 I had directed the payment of bonus equal to 1/6th of the earnings during the year 1946-47, i.e. to say an amount equal to two months' wages excluding the dearness allowance. During that year the Company had paid Independence Bonus equivalent to one month's salary or wages and it was then the contention of the Company that that Independence bonus should be treated as part of the amount of bonus that the Company was to pay for that year. In other words the Company had then offered to pay only a month's salary or wages as bonus for the year 1946-47 in addition to the Independence bonus. In that year the total amount of bonus received by the workers thus came to be equivalent to three months' basic wages or salary. The Company's profits during the year in question are larger than the profits made in the previous year and I think it would be fair and reasonable to award bonus equal to 1/3rd of the total yearly earnings exclusive of the dearness allowance and bonus or equivalent to 4 months' basic salary or wages.

8. The workers have demanded that the payment of bonus should be without any discrimination or without any condition attached to it. Mr. Joshi stated that dismissal on account of misconduct causing financial loss to the Company should disqualify an employee from receiving bonus and that the Company did not insist on attaching any other conditions to the payment of bonus. Mr. Dudhia, the learned Counsel for the Union however urged that the financial loss contemplated by the proposed condition should be restricted to cases of theft and stealing of Company's property. I do not think it necessary to circumscribe the financial loss in the way suggested on behalf of the Union. It was stated on behalf of the Company that in the case of those who have not served the Company for a full year bonus is paid pro-rata according to the period of service put in by them, and this is not disputed by the Union. It is not, therefore, necessary to give any direction in that respect.

9. Inasmuch as the Company has already paid to its workers bonus equivalent to one month's salary or wages, I direct that the Company should pay to its workers an additional bonus equivalent to three months' basic salary or wages or 1/4th of the total earning in the year exclusive of dearness allowance and bonus, subject, to the following conditions:—

(1) 1/3rd of this additional amount of bonus should be paid in the form of National Savings Certificates and the rest in cash.

(2) Workers who have been dismissed in the year 1947-48 on account of misconduct causing direct financial loss to the Company will not be entitled to receive any bonus.

10. *Demand No. 2—Recognition of the Union.*—Under this demand the workers have claimed recognition of the Bombay Automobile Employees' Union as representative of the Office Staff and has asked for certain facilities for it as mentioned in clauses (a) to (e). Mr. Dudhia, the learned Counsel for the Union, did not press this demand except as to the facility mentioned in clause (e). I shall, therefore, deal only with the facility mentioned in clause (e). The facility claimed is that the representatives of the Union should be allowed to see the Officers of the Company, Government Representatives etc., and the time taken by them on such occasions should not be treated as leave. The Company has opposed this demand on the ground that it was unreasonable. So long as the Union is not recognised as representatives of the Office Staff no question can arise of the representatives of the Union seeing or interviewing the Officers of the Company. If any of the employees of the Company wishes to see any Officer of the Company that would be on the premises of the Company itself and would not take a long time. In such a case an oral request to the Officer concerned would, I have no doubt, be favourably considered and I would recommend the Company to so consider it. The latter part of this demand regarding seeing Government Representatives etc., is, in my opinion, too general and vague. It does not specify the occasions for interviewing the Government representatives. Further I find from section 28-F of the Indian Trade Unions Act which deals with the rights of recognised Trade Unions that no such right is accorded to Union recognised under the provisions of the said act. The demand is therefore rejected.

11. *Demand No. 3—Service Rules.*—It is contended on behalf of the workers that there are no service rules at present and that it is essential that they should be framed immediately in consultation and with the approval of the Union. The Union also demands that a certified copy of the service rules should be supplied to the employees on the rolls of the Company. By its written statement the Company has pointed out that it has submitted in March 1949 the draft Standing Orders to the Commissioner of Labour who is the certifying Officer under the Industrial Employment (Standing Orders) Act, 1946, and that it adheres to what is provided for in those draft Standing Orders. The Standing Orders have not yet been certified by the Commissioner of Labour. Section 5 (1) of the Industrial Employment (Standing Orders) Act requires the certifying Officer to forward a copy of the draft Standing Orders to the Trade Union of the workmen with a notice requiring the objections which the workers may desire to make to the draft Standing Orders to be submitted to him. Clause (2) of the said Section requires the Certifying

Officer to give the parties an opportunity to be heard. Section 10 of the said Act deals with the question of modification of Standing Orders. Thus the legislation has already made a provision for practically everything that the workers want under this demand and it is not necessary to give any directions on this demand especially when the Company has, by submitting the Standing Orders to the Commissioner of Labour, set the matter in motion under the Industrial Employment (Standing Orders) Act. As regards the furnishing of a certified copy of the Standing Orders it is open to the Union to put forward such a demand before the Commissioner of Labour when he certifies the Standing Orders. No directions are therefore necessary on this demand.

12. *Clause (a)*.—Under this clause the workers demand certain procedure being followed before passing an order of dismissal. The Company has annexed to its written statement as Exhibit "E" the draft Standing Orders that it has submitted to the Commissioner of Labour. I find from those Standing Orders that the demand under this Clause is covered by Standing Orders Nos. 21, 22 and 23. It is not therefore necessary to give any direction on this demand.

13. *Clause (b)—Retrenchment*.—The demand is that if the Company resorts to retrenchment which is inevitable and justified, in consultations with the Union, it should be on the following basis :—

(i) Junior-most employees should be retrenched first.

(ii) In case of new recruitment, preference should be given to the retrenched employees who should be informed by post at least 8 days in advance about the vacancies that may occur and asking them to rejoin the Company if they so desire.

(iii) The retrenched employees when re-employed by the Company should be given the same salary as last drawn by such employees and their previous service in the Company should be counted as being continuous. All the benefits given to other employees should also be given to such workers.

(iv) Adequate compensation should be paid to retrenched employees.

The Company has strongly opposed any consultation with the Union in the matter of retrenchment. It was argued on behalf of the Company that the question whether retrenchment was necessary or not was one of internal management of the Company and the Union could not be allowed any such right as is claimed under this demand. In my opinion, the objection taken on behalf of the Company is justified.

14. (i) As regards this clause the Company has by its written statement submitted that it has been the standard policy of the Company to retrench the most junior employees

when skill, ability, competency and qualifications were equal and that that policy would be continued. At the time of hearing the parties agreed to a direction being given to the following effect viz. that as far as possible junior most employees should be retrenched first. I therefore direct accordingly.

15. (ii) By this clause the Union demands that in case of new recruitment preference should be given to the retrenched employee who should be informed by post at least 8 days in advance about the vacancies that may occur and asked to rejoin the Company if they so desire. In the course of his argument Mr. Joshi stated that the Company would as far as possible act in that manner provided the employee leaves his address with the Company. He, however, submitted no directions should be given as it was a contingent liability. I am not satisfied about the reasonableness of this objection. I, therefore, direct that in case of new recruitment preference should be given to the retrenched employees provided, however:—(a) The employee leaves his address with the Company and communicates to the Company from time to time any change in the address so left. (b) If the employee does not report himself in answer to the communication referred to above he would lose his right to receive any further communication in this connection.

16. (iii) By this clause the Union the retrenched employees when re-employed to be treated as in continuous employment and entitled to the same salary as was drawn by him prior to his retrenchment. This, in my opinion, is unreasonable. The Union further desires that all the benefits given to the other employees should be given to such workers. If the benefits contemplated by this the demand are the benefits enjoyed by the workers generally after his re-employment the retrenched employee would automatically become entitled to such benefits. The demand does not moreover specify the benefits intended to be covered by this part of the demand. Under these circumstances the demand must be rejected.

17. (iv) Under this clause the Union desires that adequate compensation should be paid to retrenched employees. So far as payment of compensation to retrenched workers is concerned Mr. Kamerkar has in his award in *Ford Motor Co., of India, Ltd., versus Workmen employed under it (1948; I. C. R. "Bom." 811)* mentioned the different factors which have to be taken into consideration in determining the amount of compensation payable to an employees on retrenchment. The question of compensation will have to be considered whenever an occasion arises and no general rules can therefore be laid down in respect of compensation to workers on retrenchment. This demand can therefore be rejected.

18. *Clause (c)—Promotions and appointments.*—The Union demands that vacancies caused by transfer, promotion or by resignation by an employee and newly created positions should be filled in by the immediate junior employee who has shown aptitude to fill the senior or the newly created position. The Union further demands that the policy of the Company should be to recruit new hands for junior positions only. In the statement of claim the Union has complained that the Company has all along been recruiting new men in superior positions on generous salaries from outside even though more suitable and qualified persons already in service should have been promoted to such posts. The Company by its written statement has opposed this demand and contended that it is the sole judge of who is most competent and qualified to fill up the posts either superior or inferior. It has, however, stated that it has been the standard policy of the Company to promote persons already in service. A somewhat similar demand had been made by the workmen in the dispute between *Allen Berry & Co. Ltd., Bombay, and workmen employed under it (1949, I. C. R., Bom., page 882)* and in the dispute between the *British Insulated Calender's Cables, Ltd., Bombay versus the workmen employed under it (1949, I. C. R., Bom., page 909)*. In both those disputes the demand was rejected. As remarked by Mr. Kamerkar in the latter case, in all administrations the Company must have the discretion as employers to give advance increments to a new employee in an appropriate case. Mr. G. N. Joshi, in the course of his arguments, stated that in accordance with the standard practice of the Company would, as far as possible, promote persons already in service. I can only express a hope that even in making appointments to newly created posts the Company would give due consideration to those already in service. I do not think I would be justified in giving any specific directions on this point as in my view it is more a matter of internal management of the Company.

19. *Clause (d)—Officiating Allowance.*—The Union demands that employees who are required to officiate for senior employees during the latter's absence on annual leave or for other reasons should receive an officiating allowance equal to the difference between their salaries. The Company has opposed this demand on the ground that it is a question of internal management as to whether any officiating allowance should or should not be paid. Mr. Joshi further argued that by being required to officiate in a higher post, the employee gets more experience and that was sufficient a compensation for him. This argument had also been advanced on behalf of the *Millowners' Association, Bombay, in the dispute between that Association and the employees in occupation "H" in the cotton textile mills at*

Bombay (Bombay Government Gazette *Extraordinary, Part I, page 4772, dated 28th October 1948*). Mr. M. C. Shah, Member, the Industrial Court, had in that case rejected that contention saying that if a man was considered fit enough to act in higher post for a certain length of time it was but proper to pay a certain additional remuneration for doing the duties of that post. In my opinion, it is just and reasonable to grant acting or officiating allowance to an employee officiating in another post if it involved the assumption of duties or responsibilities of greater importance or of a different character from those attached to his original post. The difficulty, however, in the present case is that there are no scales or grades relating to salaries payable to the employees of this Company. Mere higher salary would not be any indication of more responsible or important character of the work. It would not, therefore, be possible in the present case to say what exactly would be a higher post. In the present case reliance will have to be placed on the designations of the post in which an employee is called upon to officiate. If an ordinary clerk is required to act or officiate as a clerk-in-charge, it could be said that he was acting in a higher post. Moreover regard must also be had to the period during which an employee is required to officiate in such a post. In my opinion no officiating allowance should be paid to an employee unless he is required to officiate in such higher posts for a period of 15 days or more and that when he so acts he should be paid an officiating allowance calculated at the rate of 50 per cent. of the difference between his own salary and the salary of the person for whom he acts. I, therefore, direct accordingly.

20. *Clause (e)—Notice of termination.*—The Union demands that notice of 30 days on either side should be given before the termination of the service and that the cause of such termination should be shown in such notice. As I have already stated above, the Company has framed Standing Orders and submitted them to the Commissioner of Labour for certification. Standing Order 21 from those draft Standing Orders states that the employment of a permanent clerk may be terminated by one month's notice or on payment of one month's wages (including all allowances) in lieu of notice. Clause 2 of that Standing Order also provides for the communication of the reason for his discharge unless it be such as is likely directly or indirectly to lay any person open to civil or criminal proceedings at the instance of the clerk. The demand under consideration is thus covered by the said Standing Order and if the employees desire any change in the said draft they can suggest the same when an opportunity is given to them as required by the provisions of the Industrial Establishments

(Standing Orders) Act, 1946. It is not necessary to give any directions on this part of the demand.

21. *Clause (f)—Certificate of Service.*—The Union demands that whenever the service of an employee is terminated a detailed certificate of his service denoting his ability, conduct, nature of work, department, designation, period of service etc., should be given to him. Standing Order No. 27 from the draft Standing Orders states that every clerk other than a temporary clerk who leaves service or retires or is dismissed or discharged shall without avoidable delay be given a service certificate if he asks for one. By its written statement the Company has expressed its willingness to give such certificates provided it was conceded that neither the Union nor any other person had any right to dictate what kind of certificate was to be given by the Company. In my opinion, as far as possible, the certificate should contain information on the points mentioned in the demand. No such details are given in the draft Standing Order which I have referred to above. It would be open to the Union and the employees to raise this question about details to be given in the Service Certificate when the Standing Orders are discussed before the Commissioner of Labour. I do not think it necessary to give any directions on this point.

22. *Clause (g)—Working hours.*—The demand is that the working hours should be from 10 a.m. to 5 p.m. on week days with an hour's interval for lunch and from 10 a.m. to 1 p.m. on Saturdays. The existing hours in the Office are from 9-45 a.m. to 5-30 p.m. on week days with 45 minutes' interval for lunch and from 9-45 a.m. to 1 p.m. on Saturdays with no lunch interval. The Company has opposed this demand on the ground that prior to 9th June 1947 the hours of work were from 9 a.m. to 5-15 p.m. on week days with 45 minutes' interval for lunch and from 9 a.m. to 1 p.m. on Saturdays and that since that date the present working hours were introduced. It is stated on behalf of the Company that it provides Air Conditioned Offices with modern conveniences and that consequently there is no necessity to reduce the hours of work, especially when the present hours are within the hours of work prescribed by law. Reliance has been placed by the Union on the fact that the timings suggested by it are being observed in Standard Vacuum, Burmah Shell, Mackinnon Mackenzie and other establishments. The present working hours are shorter than those recognised under section 14 of the Bombay Shops and Establishments Act, 1948. I do not think I would be justified in interfering with the hours of work when they are well within the hours permissible by law. I may, however, recommend to the Company that it would be advisable to alter the starting time from 9-45 a.m. to 10 a.m. on all days without in any way affecting the length of the

present rest interval and I hope the Company will sympathetically consider this recommendation of mine.

23. *Clause (h)—Overtime.*—Under this head the Union demands that ordinarily employees should not be made to work before and/or after office hours or on holidays and that there should be no compulsion whatsoever in this regard. It further demands that if an employee is called to work overtime or on Sundays or holidays and he agreed to do the same, double salary should be paid for such overtime, holidays or Sundays calculated on the basis of the daily salary including dearness allowance. If an employee is called to do work overtime for less than half-a-day on holidays or Sundays he should receive the minimum of one working day's salary including dearness allowance if the amount payable for the time worked is less than the above minimum. The Union demands that so far as this demand is concerned retrospective effect should be given to the award from 6th April 1947. The complaint of the Union is that at present the Company makes its employees work overtime but it does not pay any overtime allowance and that no overtime allowance is paid to employees working on Sundays and other holidays. The Company has opposed this demand and has contended that it is unreasonable to seek a direction to the Company that the employees should be made to work overtime only with their consent. The Company further states that to compensate for overtime the Company gives compensatory leave corresponding with the number of hours worked overtime. The extent to which overtime work is being taken is seriously challenged by the Company. I agree with the contention of the Company that it would be unreasonable to ask the Company to take overtime from the employees only with the consent of the employee. It is rarely that an employee would of himself be prepared to work overtime and further if as a result of an employee's willingness to work overtime on all occasions required by the Company, the Company were to show a more sympathetic attitude towards the employee, the Company would be charged of making discrimination. I do not therefore think it desirable to leave to the option of the employee the question whether on a particular day he should work overtime or not. As regards working on holidays and Sundays it is no doubt true that the Company is giving to the employee compensatory leave corresponding with the number of hours overtime put in. Such compensatory leave, as was pointed out by me in my award in the dispute between *the Bombay Gas Company Ltd.*, versus *the Workmen employed under it* (1948, I. C. R. Bom., 781), does not afford the worker an adequate compensation. The same view had been expressed by Mr. Kamberkar in his award in the dispute between *the Ford Motor Co.*, of

India Ltd., and the Workers employed under it (Bombay Government Gazette, Part I, 1948, page 2332). If an employee has a day off on a Sunday or a holiday he can spend the day in the Company of his friends and relations and the relaxation which he would get in that case would not be possible for him to get on the alternate day off that the Company may give. I would, therefore, direct that in the case of overtime work on ordinary days beyond normal hours of work but within the hours of work allowed by the law (under the Factories Act or the Bombay Shops and Establishments Act), overtime should be paid at the normal rate. If the overtime work on normal days goes beyond the hours prescribed by those two Acts, then the overtime should be paid at the rate prescribed under the provisions of those Acts. As regards overtime work on Sundays and holidays, I direct that in addition to the compensatory leave the Company should pay to the employee half his normal salary for the period worked overtime.

24. I do not think that it would be reasonable to give retrospective operation to these directions from 6th April 1947. In respect of the overtime put in by the workers so far the present rules of the Company would, therefore, be applicable.

25. *Demand No. 4—Leave.*—This demand is divided into four clauses viz. :—

- (a) Privilege leave,
- (b) Sick leave,,
- (c) Casual leave, and
- (d) Holidays.

26. (a) *Privilege leave.*—The Union demands one month's privilege leave with full pay and dearness allowance for every 11 months of service, reckoned from the date of joining. Such leave according to the Union should be allowed to be accumulated. Ordinarily an employee should not avail of more than the maximum of two months' leave at a time and under exceptional circumstances three months. The Union further demands that all outstanding leave to the credit of an employee should be allowed to him by the time of his retirement, resignation or discharge. The Union further demands that an adequate leave reserve should be maintained by the Company so as to enable at least 12 per cent. of the staff to avail leave at one time. The present practice of the Company is to allow two weeks paid leave for service upto three years, three weeks paid leave for service from three to five years and four weeks paid leave for service of five years and over. Under the existing rules privilege leave could be accumulated up to maximum of six weeks. It is contended by the Union that the provisions for leave under the existing rules is inadequate and should be liberalised. The Union contends that no

leave reserve is maintained by the Company and that this causes great inconvenience to the employees in availing themselves of leave due to them. The Company contends that the existing provision relating to leave is adequate. It further submits that its present staff is adequate and no additional leave reserve is necessary as 14 per cent. of the staff was added for leave reserve between December 1946 and February 1947. In his award in the *Ford Motor Co. of India's dispute* (1948 I.C.R. Bom. 419), Mr. D. G. Kamerkar had pointed out that continuous absence from duty for long periods in an industrial concern has to be discouraged as it seriously affects production and economy. The question of leave has, therefore, to be more seriously considered. The Company is already allowing one month's leave per year for employees with service of five years or more. For employees with service for lesser number of years shorter leave is being allowed at present. Differentiation in the period of leave based on the length of service has been made in the award relating to the dispute between the *Remington Rand Inc., Bombay, and the workmen employed under it* (Bombay Government Gazette Extraordinary, dated 18th December 1947, page 4723). I myself in my award in the dispute between the *Bombay Gas Co. Ltd., Bombay, and the workmen employed under it* [1948 I. C. R. (Bom.) 781] have made a similar differentiation. I do not, however, see any reason to make a differentiation between employees having service below three years and those above three years but below five years. I would therefore direct that for those employees who have service up to five years the Company should grant privilege leave every year for three weeks and for those having service of 5 years or more 4 weeks per year. The employees should be allowed to accumulate leave to the extent available for two years i.e. 6 weeks and 8 weeks respectively. As regards demand for an indefinite accumulation of leave, in my opinion, the demand is unreasonable. The annual leave is intended to enable a person to recoup the vitality and efficiency lost during the period of 12 months' service and consequently it is desirable that an employee should avail himself of this leave every year rather than allow vitality and efficiency suffer further by not enjoying the leave every year. If the employee enjoys his leave accordingly, the question of outstanding leave at the time of retirement would not arise. If, however, at the time of his retirement or resignation there is any leave to the credit of an employee and if the leave had been asked for and refused by the Company, the Company should pay to the employee salary (inclusive of dearness allowance) for the period of leave due to him at the time of his retirement or resignation. If an employee is discharged by the Company the Company should pay to him salary due for the privilege leave due to him.

27. (b) *Sick leave*.—The Union demands as follows :—

“ A minimum of twenty-one days' sick leave with full pay and dearness allowance in a year reckoned from the date of joining which can be accumulated should be allowed. In case of prolonged sickness, an employee should be paid half pay leave for the period. A certificate of sickness and fitness from any registered Medical Practitioner should be accepted by the company. No medical certificate should be demanded by the company for less than five days' sick leave. Sick leave should be allowed to be taken in conjunction with privilege leave.”

The Company is at present allowing 6 days' sick leave with no accumulation. The Company has opposed the demand and contended that the existing provision is ample and adequate. Sick leave is ordinarily granted on half pay and half allowances though of late the employees and Trade Unions have been found to prefer half the normal period of sick leave being allowed on full pay and full allowances. In the case of *Ford Motor Co. of India Ltd., Bombay* [1948, I. C. R. (Bom.) 419], and *General Motors India Ltd., Bombay, 1949 I.C.R. (Bom.) 42*], the Tribunals have allowed only fifteen days' sick leave per year with an accumulation up to 60 days as a provision for protracted illness. I do not see any reason why differentiation should be made in the case of this Company. I, therefore, direct that the Company should allow to its employees sick leave of fifteen days in a year with full pay and allowances and that sick leave should be allowed to be accumulated up to a period of sixty days, but not more than six months of such leave can be allowed on the whole for the entire period of service. I further direct the Company to grant sick leave in continuation of privilege leave in appropriate cases, but subject to the condition that all privilege leave to the credit of the employee is exhausted first. As regards the production of medical certificate it is to be borne in mind that sick leave can only be granted on satisfying the employer Company by production of a medical certificate for such leave. Standing Order No. 11 from the draft Standing Orders by clause (2) provides that the Manager may require a clerk applying for sick leave to produce a medical certificate in support of his application from a Registered Medical Practitioner, Registered “Vaid” or a Registered “Hakim” and where practicable may require the applicant to be examined by the Medical Officer appointed for the purpose. In my opinion, the provision contained in the Standing Order goes much beyond what the demand asks for. As regards the non-production of a medical certificate for sick leave for a period less than five days, I think the demand is unreasonable. For illness of a shorter period it is open to the employee to avail himself of casual leave and for sickness not exceeding one day no medical certificate need be produced.

28. (c) *Casual leave*.—The Union demands as under:—

“15 days’ casual leave with full pay and dearness allowance in a year should be allowed to each employee, who should be allowed to avail of a maximum of 6 consecutive working days at a time.

The Company is at present allowing six days’ casual leave in a year. Casual leave can only be granted for emergent and unforeseen purposes and I think that seven days’ casual leave in a year is quite reasonable. I, therefore, direct that subject to the exigencies of work, the Company should on being satisfied of the real necessity of such leave grant casual leave up to seven days in a year on full pay and allowances but in no case such leave could exceed three consecutive days at a time. Casual leave can be affixed or suffixed to Sundays and holidays only with the previous permission of the Company.

29. (d) *Holidays*.—The Union demands as under:—

“All employees should be given all Bank and Government gazetted holidays during the year with full pay and dearness allowance.”

The Company has opposed this demand and submitted that the present practice of allowing certain public holidays is quite satisfactory. The Company has produced before me lists of holidays granted in the year 1948 and 1949. It is no doubt true that some of the recognised Gazetted holidays are not allowed by the Company to its employees. But the Company is allowing other holidays instead as for example Rama Navami. Having compared the lists for the two years I do not think any change in the holidays is necessary.

30. *Demand No. 5—Salary*.—The Union demands as under:—

“All employees including clerk-in-charge and comptist-in-charge should be given regular annual increments of a minimum of 15% on the basic pay for those getting below Rs. 200 basic pay per month and a minimum of 10% for those getting above, effective 1st April 1949. All employees who were not awarded their annual increments as of 1st April 1948 should be awarded their increments on this basis with retrospective effect from that date.

The following should be the starting salaries for new employees:—

	Rs.
(a) Clerks and Compounders ...	125
(b) Typists and Comptists ...	125
(c) Stenographers, Draughtsmen and Storekeepers.	175
(d) Office sepoy	75
(e) Office boys	55

Comptists and typists should be given a machine allowance of Rs. 25 per month. Employees under (d) and (e) should be given a house rent allowance of 20 per cent. of their salaries. Out-door sepoy and boys should be given an extra out-door allowance of Rs. 10 per month.

Salaries on these scales should be introduced from the date of joining and arrears of adjustment on this basis should be made with retrospective effect from 6th April 1947.

All employees of whatever category should have the right to expect and receive increment awards higher than the percentages mentioned above for more than average and outstanding services rendered by them."

The complaint of the Union is that there are no scales or grades fixed by the Company for its employees and that nepotism and favouritism were rampant. The Union, therefore, demands that all employees should be given regular annual increments of a minimum of 15 per cent. on basic pay below Rs. 200 and a minimum of 10 per cent. on basic pay of Rs. 200 and over. The Company has by its written statement contended that it has been paying very adequate salaries to its employees as compared with any other concerns in Bombay. The Company further contended that the question of increment was one for the Company to decide having regard to the efficiency, regularity in attendance and other factors relating to the work of its employees. The Company also opposes the scales of increments proposed in the statement and/or increments suggested by the Union on the ground that they are far in excess of the scales paid in other Offices. Mr. Joshi, the learned Counsel for the Company, argued that annual increments were always related to a time scale and that inasmuch as the Union had not asked for a regular time scale for the existing staff the increment asked for should not be allowed. The Company has produced before me an increment chart of representative Office employees and it shows that the Company has been regularly giving annual increments to its employees. It is not disputed that in 1947 increments were given to all the employees. In 1948 according to the Union the increments were not given to all the employees but only to some.

31. So far as the demand for the starting salaries for new employees and adjustment is concerned, Mr. Dudhia, the learned Counsel for the workers, stated at the time of the hearing that he would not press that demand. It is not, therefore, necessary to consider that part of the demand.

32. With regard to the demand for increments, time-scale system has now become a normal feature of the Indian wage structure and it would have been much better if the Union had demanded a suitable time-scale for the employees of the Company. That, however, would not debar the employees from

demanding an annual increment. Mr. Joshi contended that if annual increments were to be given without a time-scale it would result in an absurd position as increments will have to be given annually *ad infinitum*. A similar question had come up for consideration before Mr. Harsidhbhai V. Divatia, in the dispute between Messrs. Lever Brothers (India) Ltd., and the workers employed in their factory at Sewri. In the award made in that dispute on 1st September 1941 Mr. Harsidhbhai observed:—

“I agree that increments to industrial workers cannot be paid annually *ad infinitum*, but once a concern introduces a system of granting increments to its employees until certain maxima in scales of wages are reached, I think that it is incumbent on that concern to grant increments to all its employees until the stage when the maxima it has laid down for different occupations are reached.”

In the course of the argument Mr. Joshi stated that the employees had reached their maxima. He had probably these observations of Mr. Harsidhbhai in his mind. But in paragraph 26 of his award Mr. Harsidhbhai has observed:—

“If as Mr. Aitken stated, the Company had in mind certain maxima which should be reached by incremental stages for the different occupations, I think that it is only fair that the employees should know what they are.”

It is not therefore sufficient for the Company to state now in the course of the argument that its employees have reached the maxima that it had in view. The maxima fixed for the different occupations must, as stated by Mr. Harsidhbhai, be made known to the employees and unless that is done the employees are justified in expecting annual increments. In the present case, as can be seen from the increment chart produced by the Company, ever since 1941 the Company has been granting annual increments to its employees and that fact is sufficient to justify an expectation on the part of the employees that the practice of giving annual increment would be continued by the Company. The demand therefore for annual increment is, in my opinion, justified.

33. The increments claimed by the employees under this demand, viz. 15 per cent. on basic pay for those getting below Rs. 200 per month and 10 per cent. for those getting above Rs. 200, is, in my opinion, unreasonable. In his award in the dispute between the *Imperial Chemical Industries (India) Ltd., and its employees* (27 Labour Gazette, page 339), Mr. Harsidhbhai Divatia has stated that in fixing the salaries and emoluments, the salaries and emoluments which were being paid by industries as well as Government Departments for doing work of a similar nature in the same centre should be taken into

consideration. I think it would not be unfair and unreasonable to apply the same principle in fixing the annual increments. The Company started its business in January 1940 and in 1949 the longest service that any employee could have with the Company would be a period of 9 years. At that stage according to the Bank's award a clerical employee would be entitled to draw an increment of Rs. 7-8-0 while in the case of a clerical employee in the lowest grade in the employment of the Imperial Chemical Industries (India) Ltd., the increment would be Rs. 5 in the 9th year of the service. I, therefore, think that it would be fair and reasonable to grant an increment at the rate of 10 per cent. to those employees drawing Rs. 200 and below and $7\frac{1}{2}$ per cent. for those drawing above Rs. 200. If any one has not been given increment in 1948 he should get a similar increment for that year also from 1st April 1948. For the year 1949 these increments should be given to the employees from the 1st April 1949. The difference payable on that account should be paid to the employees within two months from the date of the publication of the award.

34. The Union has claimed that comptist and typists should be given a machine allowance of Rs. 25 per month. No machine allowance is being paid to the comptists and typists at present. Mr. Joshi contended that this part of the demand was part of the demand for the starting salary for new employees and inasmuch as that demand had been withdrawn this part of the demand should not be considered. I do not think that this contention is justified. In the case of the comptists working with the Imperial Chemical Industries (India) Ltd., an allowance of Rs. 20 per month in addition to the salary as an ordinary clerk has been awarded by Mr. Har-sidhbhai V. Divatia. In the case of the comptists in the employment of the Ford Motor Company of India Ltd., Bombay, the comptists have been given a special scale. In the dispute between Goodlass Wall Ltd., Bombay, and its employees, a clerk who attended on comptometer was awarded an allowance of Rs. 10 per month. It will thus be clear that clerks on comptometer have been given a special additional allowance in the concerns where comptometers are being used and I do not see any reason why the comptists in the employment of this Company should be denied the machine allowance. Taking into consideration the fact that the salaries paid by this Company are some what better than those paid by other commercial establishments, I do not think that the demand for a machine allowance of Rs. 25 is reasonable. I would direct that the comptists should be paid a machine allowance of Rs. 15 per month. I do not think it is necessary to direct any machine allowance in the case of typists.

35. As regards the last paragraph of the demand, in my opinion, so long as the salaries and wages are not standardised

there is nothing to prevent an employer to give a higher increment to an employee for more than average and outstanding services rendered by him. I, however, feel that this part of the demand must be rejected as, if scope was left to the employer to make a differentiation in the increments to be paid and if in exercising of such discretion he gives a special increment to any particular employee, the employer would be charged of being guilty of nepotism and favouritism. This part of the demand is therefore rejected.

36. Demand No. 6—Dearness Allowance.—The Union demands as under:—

(a) Commensurate with the rise in cost of living, dearness allowance should now be revised as under effective from 1st January 1949:—

- (i) Employees receiving up to Rs. 100 per month basic pay—75 per cent. of the basic pay subject to a minimum of Rs. 75.
- (ii) Employees receiving in excess of Rs. 100 basic pay—75 per cent. of first Rs. 100 basic pay and 40 per cent. on the balance.

It should be arranged in such a way that the figure of 75 per cent. should be based on cost of living index figure 317 and that a change upward or downward will be met on the basis of 5 per cent. for every rise or fall of 15 points from the basic figure 317.

(b) Payment of income-tax on dearness allowance by the Company should be restored with retrospective effect from 1st June 1948.

(c) All employees should be allowed benefit of Provident Fund, Bonus, Gratuity, etc., on dearness allowance as well or in the alternative dearness allowance at the above rates should be merged into the basic pay.

At present the Company is paying dearness allowance at the rate of 70 per cent. on first Rs. 100 basic pay and 30 per cent. on the balance with minimum of Rs. 60. The question of dearness allowance has been recently considered by Mr. D. G. Kamerkar in the awards made by him in two disputes, namely, (1) *Roneo Ltd., Bombay, vs. The Workmen employed under it* (1949 ICR, page 897) and (2) *The British Insulated Callender's Cables, Ltd., Bombay, vs. The Workmen employed under it* (1949 ICR, page 909). In the case of Roneo Ltd., on the pay slab Rs. 1—100, the learned Adjudicator has awarded 60 per cent. of the basic pay or the textile scale whichever was higher when the Bombay working class cost of living index was in the 311-320 group. In the case of the British Insulated Callender's Cables, Ltd., the same learned Adjudicator awarded for the pay slab of Rs. 1—100, 65 per cent. of the basic salary or the textile scale on a 30 days' basis whichever is higher when the Bombay

working class cost of living index was in the 311-320 group. In the dispute between the *Western India Match Co. Ltd.*, and the *monthly paid employees employed in its factory at Ambernath* (Bombay Government Gazette, Part I-L, dated November 3, 1949, p. 1772), the learned Adjudicator Mr. Salim M. Merchant and accepted 70 per cent. of the basic salary for the first slab of Rs. 1 to 100, the scale which was already being paid by that Company. The only alteration that the learned Adjudicator made was in fixing the minimum of Rs. 60. Comparing the allowance paid by the Company with these three scales which have been recently awarded, I think the scale already in force in this concern is quite adequate.

37. With regard to the demand of the workers to have it linked up with the cost of index figure I think that it is a fair demand and should be granted. 70 per cent. of the basic salary should be accepted as the dearness allowance payable when the Bombay working class of index is in the 311-320 group. Following the award in the case of the *British Callender's Cables, Ltd.*, I direct that for every 10 points' rise or fall there should be a variation in the percentage by 5 per cent. in the first slab i.e. Rs. 1—100 and $1\frac{1}{2}$ per cent. for the second slab.

38. Clause (b).—By reason of the payment of the dearness allowance, certain employees became liable to pay income-tax dearness allowance being counted as part of wages. Likewise certain of the employees became liable to pay higher income-tax. The Company, therefore, made good to them so much of their salary as was paid for income-tax or for the excess in the income-tax. From the 1st June 1948, the Company stopped paying the income-tax in the manner aforesaid. In the case of this Company there is a Management Office Committee consisting of representatives of the Management and representatives of the staff. The question of the revision of dearness allowance was considered by this Management Office Committee at its meeting held on the 31st May 1948 and the Committee passed the following resolution:—

"The Committee recommends that the dearness allowance scale be revised as follows:—

(1) The existing maximum and minimum dearness allowance to remain the same.

(2) Dearness Allowance of 60 per cent. on the first hundred rupees of base pay plus 30 per cent. on the balance with the proviso that the employees assume the burden of any applicable income-tax.

(3) It is also recommended that a dearness allowance of Rs. 60 be paid to the ten employees employed in a clerical capacity whose earnings are less than Rs. 100 per month.

(4) It is further recommended that the revision in dearness allowance be made retrospective to the beginning of the current income-tax year, April 1, 1948."

The Company therefore contends that the step that it has taken in discontinuing the payment of income-tax was in accordance with the resolution passed by the Management Office Committee. The Union in its statement of claim has styled this Management Office Committee as a Committee dominated by the Management. In the course of his argument Mr. Dudhia had stated that the representatives who were elected to this Committee by the employees did not represent the employees. For this contention he relied on the fact that when the elections took place in the last week of April 1948, a large number of employees had refrained from exercising their franchise. Because a certain section of the workers did not exercise their franchise at the time of the election of their representatives to this Committee, it could not be said that the Members elected to the Committee were not the representative of the workers and that their decision would not be binding on the workers. I do not think that I should interfere with the decision of the Committee in foregoing payment by the Company of the amount of the income-tax. It has further to be remembered in this connection that that resolution had recommended dearness allowance at 60 per cent. on the 1st 100 of basic pay while the Company, has been paying dearness allowance at the rate of 70 per cent. on the 1st Rs. 100 of basic pay. Having regard to this additional amount sanctioned by the Company over and above the one recommended by the Management Office Committee I do not think that the Company has acted unjustly in not paying the income-tax after the rates of the dearness allowance had been increased. This demand, therefore, must be rejected.

39. *Clause (c).*—Under this clause the Union wants the dearness allowance paid to be taken into account in calculating the amount payable towards the Provident Fund, bonus, gratuity etc., or in the alternative the merger of dearness allowance into the basic pay. As was observed by the Central Pay Commission, dearness allowance is by its very nature temporary. Moreover, according to the demand of the workers under clause (a), I have linked it with the cost of living index figure which would vary from month to month. I do not, therefore, think that under these circumstances dearness allowance should be taken into account in calculating the amounts of Provident Fund, bonus and gratuity. As regards the alternative prayer for merger of the dearness allowance into the basic salary that could only be done when the cost of living index figure has stabilised for a period of some months and not till then. As things stand at present, the said figure is varying from month to month and merger as demanded cannot be granted at this stage. The demand is therefore rejected.

40. *Demand No. 7—Provident Fund.*—The Union demands as follows :—

(a) Employees' own subscription and Company's contributions to the Provident Fund should be revised from 8-1/3 per cent. to 10 per cent. each on the basic pay and dearness allowance.

(b) Employees leaving service of their accord after two years of service should be entitled to receive 2/5th of the Company's contribution at their credit, after three years 3/5th, after four years 4/5th and after five years full company's contribution.

(c) All employees who started service before the introduction of the Provident Fund should be compensated by a 5 per cent. contribution by the Company on the basic pay for such previous service as in the case of factory workers.

This demand relates to certain amendments in the Provident Fund Rules of the Company. The Company started a Provident Fund in April 1946. The membership of the Provident Fund is open to any employee engaged or employed by Firestone Tyre and Rubber Co., of India Ltd., who has been in the service of the Company for three full calendar months. The membership is thus open even to the workers employed in the Company's factory. These workers are not parties to these adjudication proceedings. Rule 10 of the Firestone Tyre & Rubber Co. of India Ltd. Employees' Provident Fund provides that the fund shall be constituted on irrevocable trust and shall be vested in not less than three and not more than five Trustees who may, from time to time, be appointed by the Company. These Trustees are also not parties to these adjudication proceedings. There is therefore a difficulty in making an enforceable award in this matter. It is, however, open to me to make recommendations which may be reasonable for adoption and leave to the Company to arrange with the Trustees and the beneficiaries the necessary modification of the Rules in order to give effect to the recommendations.

41. *Clause (a).*—This clause relates to the amount of contribution to be made to the Provident Fund both by the Company and the employee. The Union desires that the contribution should be raised from 8-1/3 per cent. to 10 per cent. each on the basic pay and dearness allowance. So far as contribution on the basis of the dearness allowance is concerned I have already rejected that demand under demand No. 6(c). Even in Government service the rate of monthly subscription by the employee to the Provident Fund is 1/12 and Government's contribution is cent per cent. of the employees' contribution. It is no doubt true that the Ford Motor Co. of India Ltd., has a Provident Fund to which the contribution is at the rate of 10 per cent. on either side. It has, however, to be remembered that because of that high rate of contribution to the Provident Fund, the amount

of gratuity awarded to the employees by Mr. Sen has been kept at a lower figure than what is ordinarily allowed. I do not think that there is any reason to increase the rate of contribution as demanded.

42. *Clause (b).*—This relates to the payment of the Company's contribution payable to an employee leaving the service of the Company of his own accord. This question has been dealt with by clause 3 of rule 37. That rule lays down that if any employee member resigns or leaves the employment at his own request otherwise than on medical grounds the trustees may direct that the deductions from the Company's contributions and profits accrued thereon may be deducted in accordance with the following scale :—

- (a) Members of less than three years' standing—100%.
- (b) Members of three but less than 6 years' standing—50%.
- (c) Members of six but less than nine years' standing—25%.
- (d) Members of nine or more years' standing—Nil.

It further lays down that employees with a service date with the Company prior to the coming into force of these Rules, shall, on the termination of their membership for reasons stated above, alternatively be entitled to the Company's contributions and profits accrued thereon subject to the following deductions :—

After 5 but less than 10 years of continuous service with the Company—75%.

After 10 but less than 15 years of continuous service with the Company—50%.

After 15 but less than 20 years of continuous service with the Company—25%.

After 20 or more years on continuous service with the Company—Nil.

The result of this rule is that an employee of 10 years' service gets only 50% of the contribution while a membership for 10 years entitles him to Company's contribution in full. The rule thus subjects an employee with a longer service with the Company prior to introduction of the Provident Fund to a great hardship. I would therefore recommend that the deductions from the Company's contribution should be the same in the case of membership as also in the case of service. The other part of the demand seeks increased payment of Company's contribution for shorter service which is unreasonable. I therefore reject that part of the demand.

43. *Clause (c).*—By this clause the Union wants the Company to pay 5% contribution on the basic pay for service before the introduction of the Provident Fund. The Union has stated that the Company had introduced for the factory workers a

Service Discontinuance Fund wherewith the Company contributed 5% of the employee's basic wage. This amount was paid to him on retrenchment or on being declared medically unfit. With the introduction of the Provident Fund, the 5% contribution to the Service Discontinuance Fund was stopped and the amount at each worker's credit was allowed to stand as it was. The Union therefore wants the same benefits to be extended to the office staff employed by the Company. The Company has in reply contended that the case of factory workers was different inasmuch as they were subject to lay-offs and business declines which was not normally the case with clerical staff. It was because of this that the Service Discontinuance Fund had been started for the factory workers and amounts were from year to year credited to that fund. It is thus clear that there was no such Service Discontinuance Fund for the benefit of the clerical staff. If the demand were to be conceded, it would be a sort of an unilateral contribution as the employee himself would not be contributing anything for the period prior to the introduction of Provident Fund. Moreover the Union has demanded a scheme for gratuity and under that scheme the employees would be getting gratuity for the service prior to the introduction of the Provident Fund. The demand is, therefore, in my opinion, unreasonable and I do not propose to make any recommendation on this part of the demand.

44. *Demand No. 8—Gratuity.*—The Union demands as under :—

(a) One month's wages for every year of service should be paid to the employees.

(b) In case of termination of service by the company gratuity should be given as below :—

(i) Six months' wages to those employees with less than 5 years service.

(ii) Twelve months' wages to those employees with more than 5 years of service but less than 10 years of service.

(iii) Fifteen months' wages to those with more than 10 years service.

For the purpose of calculating gratuity, the rate should be the last monthly salary drawn by the employee.

It has been the practice in this Province in most of the awards where both a Provident Fund and gratuity have been demanded to concede both the demands. I do not, therefore, see any reason to make an exception in the case of this Company. The Company have already introduced a gratuity plan for the Management Staff from the 9th May 1949. A similar gratuity plan has been introduced for the Sales Staff and I see no reason why there should not be a gratuity scheme for the clerical

staff. The only objection that the Company has raised by its written statement is that considering the high wages, the usual bonus and the Provident Fund there is absolutely no necessity for gratuity being given. Gratuity is a provision for old age and in my opinion the high wage and bonus are no grounds for not making any provision for the old age. I, therefore, direct that a gratuity scheme on the lines given below should be introduced by the Company :—

- (1) On the death of an employee while in service of the Company or on his physical or mental disability to continue further in service—1 month's salary per each completed year of service subject to a maximum of 15 months' salary to be paid to him, his heirs, executors or nominees.
- (2) On voluntary retirement or resignation of an employee after 15 years' continuous service in the Company—15 months' salary.
- (3) On termination of the services of an employee by the Company :—
 - (a) After completion of 5 years but less than 10 years— $\frac{1}{2}$ month's salary per every completed year of service.
 - (b) After 10 years' continuous service in the Company but less than 15 years— $\frac{3}{4}$ of 1 month's salary per each completed year of service.
 - (c) After 15 years' continuous service in the Company—15 months' salary.
- (4) Gratuity shall not be payable to any employee who is dismissed for gross misconduct such as causing damage to the Company's properties or premises, theft, fraud or dishonesty in connection with the Company's business or property or inciting illegal strikes.
- (5) Salary for the purpose of calculating gratuity shall be the average salary exclusive of allowances during the 12 months just previous to death, disability, retirement, resignation or termination as the case may be.

45. *Demand No. 9—Employees Benefit Fund.*—The Union demands as follows :—

“All unclaimed salaries, bonuses, company's contributions of Provident Fund not payable to employees in accordance with the existing rules and any other monies unclaimed by ex-employees should be transferred to this Fund. Monies from this fund should be utilised for meeting medical expenses of employees and their families, scholarships for children of the employees, etc. in deserving cases as recommended by the Union. The Fund should be controlled by a committee consisting of a majority of the Union representative.”

Rule 38 of the Firestone Tyre & Rubber Co. of India Ltd., Employees' Provident Fund are as follows :—

“38. If a member—

- (a) is dismissed from the employ of Company by reason of misconduct (of which the Board shall be the sole judge), or
- (b) voluntarily retires from the employ of Company otherwise than on account of ill-health of other unavoidable cause having been a member of less than 9 years standing,

the Company shall be able to recover the contributions (or that portion of such contribution not payable to the Members as provided in the Rules) made by the Company to the individual account of such Member and the profits credited in respect thereof.

The Union by this demand wants the unclaimed money on account of salaries, bonuses and Provident Fund to be paid into an Employees' Benefit Fund which should be constituted hereafter. The Union states that there is no reason why such amounts should revert back to the Company. The Company has opposed this demand on the ground that it cannot utilise the said amount until after the limitation period prescribed by law for recovery of that amount. The Company further states that though after the expiry of such period the amount may not in law be payable, the Company would certainly like to pay the same out of equitable considerations. There is no doubt great force in the contention of the Company. At the same time I do not see any reason why such amount should revert to the Company. I would, therefore, recommend the Company to consider the desirability of constituting an Employees' Benefit Fund out of monies which are not claimed by the employees concerned or their heirs or nominees.

46. *Demand No. 10—Housing Scheme.*—The Union demands as under :—

“The Company should start a co-operative housing scheme for the benefit of its employees in consultation with the Union.”

Mr. Dughia at the time of the argument did not press this demand and so no direction is necessary on this demand. I may, however, mention, that in the course of his argument Mr. Joshi, the learned Counsel for the Company, suggested that the workers may start a co-operative housing society on their own initiative and that if such a scheme was launched the Company would consider the scheme with favour.

47. *Demand No. 11—Amenities.*—The Union demands as follows :—

“A Sports Club, Library and Reading Room should be provided by the Company. A departmental store should be started for the benefit of the employees. The construction of the long awaited canteen should be expedited.”

The Company had a Sports programme from June 1943 for the benefit of its employees in the office as also in the factory. Since 10th May 1949, the Company has stopped the same. The Company by its written statement contends that as regards library and reading room it is for the employees to organise them for themselves and that the Company is not bound to provide them. As regards the sports programme the Company's contention is that as the employees did not participate therein to the expected extent or degree, the programme had to be discontinued. Mr. Joshi argued that this demand could not be an industrial dispute and it was for the Company to decide what it should provide, how it should be provided and when it should provide. He further urged that any provision that may be made should be under the Company's management and control. As regards Mr. Joshi's contention that this demand is not an industrial dispute I am not prepared to uphold it. The term “Industrial dispute” is defined in clause (k) of section 2 of the Industrial Disputes Act, 1947, as follows :—

“industrial dispute” means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person ;

In my opinion the words connected with the conditions of labour are sufficiently wide to cover this demand. In the course of his argument Mr. Joshi conceded that recreation facility led to an increase in the efficiency of labour. In this connection I would like to refer to the position of recreation facilities in the United States of America. There the provision of recreational facilities for industrial workers is already assuming a large role. The purpose of all recreation programme is to help the individual make the best and most satisfactory use of his leisure time. Industrial recreation is based on the realization that the workers' plant and outside lives are interdependent. In the United States of America worker recreation programmes instituted by management range from sports to cultural interests. Typical successful programmes include the two basic essentials—100 per cent. backing by management and a high degree of worker direction. Generally

workers join and participate in programmes with the payment of nominal fees, while management contributes facilities, space and often the assistance of recreation instructors. I would, therefore, recommend to the Company to revive the sports programme.

48. As regards the canteen, the Company in its written statement has stated that it is already under construction and was expected to be ready very soon. No direction in that respect is therefore necessary.

49. As regards the library and reading room, Mr. Joshi stated that if the employees were to start a library and a reading room the Company was ready to provide accommodation for the same. I have no doubt that if the employees take the initiative in starting a library and a reading room the Company will provide the employees with the necessary accommodation.

50. As regards the departmental store, the employees should start a store on a co-operative basis which, in my opinion, would be better than to have a departmental store started by the Company alone.

51. I would like to mention here that for such matters as a departmental store and a library, it is not desirable for the employees to look to the employer at all times and that a time has arrived when they should take the initiative themselves. The demand is therefore rejected.

52. *Demand No. 12—Co-operative Credit Society.*—The Union demands as follows :—

“The Company should refund to the Co-operative Credit Society the sum of Rs. 2,000 taken from the latter for clerical services rendered for the year ended 30th June 1948 and should not make any such charges in future.”

The Co-operative Credit Society was started in 1947, for the benefit of the employees of the Firestone Tyre & Rubber Co. of India Ltd. The Society had not engaged any staff but the clerks in the employment of the Company were asked to do the work of the Society.” During the year ending 30th June 1948, the Co-operative Credit Society made a net profit of Rs. 5,855-4-0 and the Managing Committee's Report to the share-holders recommended the allotment of Rs. 2,000 for compensation to be paid to the Firestone Tyre & Rubber Co. of India Ltd., as partial reimbursement for personal service rendered by the employees. After making that provision, the Co-operative Credit Society has been able to declare a dividend of 3 1/8 per cent. per annum. The Annual Report and the Balance Sheet of the Co-operative Credit Society were considered at an Annual General Meeting of the Co-operative Credit Society held in September 1948 and the same were accepted unanimously. I do not think that I would be justified in interfering with the unanimous decision

of the share holders of the Co-operative Credit Society, at the instance of the Office Staff alone, especially when the membership is also open to the factory workers who are not parties to this adjudication. The demand is therefore rejected.

53. *Demand No. 13—Transport.*—The Union demands as under :—

“Bus transport to and from Byculla and Reay Road rail points and the factory should be provided by the Company at their own expense as is done to the Supervisors.”

The Union has stated that transport at the expense of the Company is being provided for the lady employees, factory Supervisors, inspectors, Divisional Heads and Clerks-in-Charge and that the same facility should be extended to the clerical staff in the employment of the Company. The Company has opposed this demand on the ground that it cannot provide transport facilities. Mr. Dudhia had stated that the transport provided for by the Company can carry 27 persons at a time though actually it carries only 10. He further contended that an employee has to spend Rs. 16 per month on account of transport expenses. I had suggested to Mr. Joshi that employees other than the supervisory staff and the lady employees should be allowed to avail themselves of the facility to the extent to which it would be available. Mr. Joshi stated in reply that if this was done there would be discontent among those employees who would not be able to avail themselves of such accommodation and that the Company would even have to face a charge of discrimination. Having regard to the statements made in the statement of claim I have to admit that there is great force in Mr. Joshi's contention. It is not that the employees accepted service with the Company when the Company's Office was located at a centrally situated place and that because of its being shifted to an out of way place at a later date, the employees were required to incur these additional expenses. Had that been the case there would have been some justification for asking transport facilities from the employer. In this connection I may point out that the question of a provision of transport had come up for consideration before the Health Survey and Development Committee (popularly known as the Bore Committee). The Committee had recommended that in view of the utmost importance of the provision of cheap transport facilities for workers to and from their homes, the Provincial Governments and local bodies, with the co-operation of private enterprise, employers and co-operative organisations, should take steps to ensure the provision of such facilities. It is clear from this recommendation that the Committee did not consider provision of transport facilities to be the sole responsibility of the employer. I therefore reject this demand.

54. *Demand No. 14.*—The Union demands as follows :—

“All clerks who have not been paid their salary and dearness allowance for the period from 21st January 1949 to 9th March 1949 inclusive, should be paid the same as others have been paid.”

This is one of the most important demands and it was very hotly contested by both the parties. To appreciate this demand it is necessary to note certain facts. Prior to December 1948, the employees of the Firestone Tyre & Rubber Co. of India Ltd. both from the factory and the Office had organised themselves into the Firestone Rubber Workers' Union. In December 1948, on account of some differences, the Office staff resigned from that Union and joined the Bombay Automobile Employees' Union. Intimidation to that effect was given to the Company by the General Secretary of the Union on 27th December 1948. The Firestone Rubber Workers' Union had taken a decision to go on a strike from the 21st January 1949. On the evening of the 20th January Mr. McHugh, the Secretary of the Company, had convened a meeting of the Heads of the Departments and Sections and had stated to them that in spite of the strike by the workers the Office would remain open as usual and that the members of the Office Staff should make a genuine attempt to attend office. He further added that those members of the Office staff, who were unable to attend and could not contact with their superiors, should intimate to the management in writing about their inability to attend on account of intimidation, force or violence by the strikers. Mr. B. Srinivasa Iyengar, who has been examined on behalf of the workmen and who was present at that meeting, has corroborated these instructions. The workers from the factories struck work on the 21st and there is on record the evidence of Mr. Bharat Iyer, Mr. Vaidyanathan, Mr. Iyengar and Mr. Subramanyan to the effect that on the 21st morning, members of the Office staff (a majority of whom resides at Matunga) left Matunga Station by train and reached Byculla. From Byculla the member of the staff used to take a bus to go to the Office at Sewri. On that date some strikers had collected at the Byculla Railway Station and they asked the members of the staff not to attend Office on account of the strike by the workers. After waiting at the Byculla Station for some time the members of the staff, who had collected there, went back to their homes. Sometimes during the course of 21st January, some of the members of the staff went to the Office of the Bombay Automobile Employees' Union and placed their difficulties before the General Secretary. The General Secretary wrote a letter to the Managing Director of the Company which is in following terms :—

“This is to advise you that the members of our Union from your clerical staff have made it clear that they have not gone

on strike as from this day, i.e., 21st January 1949 but at the same time they inform you that by affiliating themselves with the Indian National Trade Union Congress they have accepted the principle of adjudication. Hence they have to inform you that they cannot attend to their duties as usual on account of the picketing all over town and the very serious tension prevailing, which kindly note and oblige."

The letter no doubt states that the clerical staff of the Company had made it clear that they had not gone on strike as from that date. No evidence has been adduced before me to show when and to whom this fact had been made clear. It is further to be noted in connection with this letter that though the instructions given to the members of the staff on the previous day required intimation to be given to the management in writing about their inability to attend on account of force, violence etc., this letter has not been accompanied by a list of persons on whose behalf it was written. The Union has not been recognised by the Company and unless the Company was made known the names of the persons on whose behalf this letter was sent, it is difficult to say that this letter could be treated as an intimation given as per instructions issued on the previous day. A copy of that letter was sent to the Secretary to the Government of Bombay, Labour Department. Notwithstanding that letter, the Secretary, Labour Department, by his letter dated 28th January 1949, written in connection with the demand by the workers for bonus for the year 1947-48, has made a specific enquiry of the General Secretary of the Bombay Automobile Employees' Union whether the clerical staff in the Firestone Tyre & Rubber Co. of India Ltd., had been on strike. From this it would not be unreasonable to assume that the Union's letter was not interpreted by the Secretary, Labour Department, as conclusively showing that the Office staff were not parties to the strike.

55. As a result of the closure of the factory and the Office on account of the strike the Company's grain shop had also to remain closed. There was a move to have the grain shop kept open to enable the workers to draw their weekly rations. Having come to know of this the General Secretary of the Bombay Automobile Employees' Union, on 2nd February 1949, wrote a letter to the Managing Director of the Company wherein he observes as follows:—

"We wish to make it clear that the Grainstore work being an essential service, we have not advised the Grainstore clerk to refrain from attending to his normal duties. If, however, you require the services of extra men due to the store being open only once a week, etc., we request you to kindly

pass such orders for extra help *in writing* to the individual or individuals whom you may like to call through the Union or otherwise. Such an authority from you *in writing* will enable them to attend to this work by producing same to the picketers at the gate and other places. Otherwise, they also stand exposed to the same risks as other clerks who have not been able to attend to their normal duties since the commencement of the strike in your factory for reasons already intimated to you."

The words "*we have not advised the Grainstore clerk to refrain from attending his normal duties*" contained in the above passage are very significant. One would be justified in concluding from that sentence that the Union had advised the other clerks to refrain from attending to their normal duties. I am not therefore prepared to blame the management for not treating this letter as clear evidence of the intention of the Office staff to attend their work.

56. On the 18th of February the General Secretary of the Union wrote another letter to the Managing Director. After referring to the previous two letters it proceeds to say:—

"We wish to inform you once again that we are not on strike and are anxious to attend to our work. We of course expect you to provide us with adequate police protection in order that the clerical staff may not be put to any inconvenience or embarrassment as a result of the factory strike to which they are no party at all."

This letter was sent to the Managing Director by Registered Post A/D and copies thereof were sent to the Hon. Minister for Labour and the Secretary to the Government, Labour Department. This is the first letter in which the anxiety of the Office Staff to attend Office is clearly expressed and the risk and danger in their attempts to attend Office was sought to be averted by requesting the Managing Director to arrange for adequate police protection. On the 3rd of March the General Secretary of the Union wrote to the Hon. the Home Minister wherein he referred to his letter to the Managing Director dated the 18th February asking for police protection for members of the Office staff who wanted to attend office and stated that the employees therefore looked up to him for necessary police protection in case the Management opened the Office and started functioning of the Office. On the same date the General Secretary addressed a letter to the Managing Director to the following effect:—

"In continuation of our three letters Nos. F/31/21/1, F/31/2/2, 1949, we wish to inform you once again that we are

not on strike and are anxious to attend to our work but we regret there is no response from your side. We have been since trying every day to get inside the office premises but have not been successful in our attempts since the premises have been kept closed by you. We request you to make immediate arrangements to start the Office functioning as we do not wish to remain outside. Please advise that you have made necessary arrangements either to the Union or to the individual employees concerned."

Though the whole evidence adduced before me establishes that the Office staff had made no further attempt to attend Office during the strike beyond collecting at the Matunga Railway Station, it is surprising to find that this letter stated that the Office staff had been trying every day to get inside the Office premises but had not been successful in their attempts since the premises had been kept closed by the Management. It is difficult to understand how by collecting together at the Matunga Railway Station the members of the staff attempted to get inside the Office premises. On the 9th March it was announced that the Company's Office would start functioning from the 10th March. Intimation was sent round to such of the workers as it was possible to contact. Mr. Vaidyanathan has stated that on the 9th March, Mr. Ganesh went to his house and told him that he had received instructions that Mr. Vaidyanathan with his clerks should be asked to be present at the Office at 6 a. m. on the 10th. Mr. Vaidyanathan also stated that on the 10th March morning, he along with other clerks first went to the Byculla Police Station according to Mr. Schuster's instructions and from there they and Mr. Schuster went to the Office.

57. During this period of strike Mr. Bharat Iyer, the Assistant Secretary of the Union, had two occasions to meet Mr. Cable, the Industrial Relations Officer of the Company, at the Conciliator's Office, once on 4th February and again on 1st March. Mr. Iyer, has in the course of his evidence stated that on that occasion Mr. Cable asked him as to how the members of the Office Staff were enjoying their vacation. In my opinion that was exactly the time when Mr. Iyer a responsible Officer of the Union, could have directly told Mr. Cable that it was an enforced holiday on the members of the Office staff who were not on strike and that if the management would arrange to give police protection for such of the members of the staff as would attend their duty, the members of the Office staff would be glad to attend Office. Instead of doing anything of that sort Mr. Iyer's complaint is that Mr. Cable did not mention to him anything about the alternative place of work.

58. It is the complaint of the Union that during the period from 21st January to 10th March, the Office and the factory

of the Company were completely closed. In the statement of claim it has been stated that most of the workers used to telephone to the Company's Office from time to time only to get a reply from the watchman, "Koi NAI HAI. Office Bundh HAI." The witnesses who have given evidence in this case did not depose to their having used the telephone in the manner alleged. The Company, on the other hand, has by its written statement submitted that many of its clerks were working at special places provided by the Company and that those of the employees, who were so working throughout the strike period, earned their wages and that they were paid accordingly. There is no evidence adduced before me by the Company in support of the allegation that any other alternative place of work had been fixed by the Company. On the contrary the whole evidence adduced before me shows that Sectional Heads, Divisional Heads, Secretary-Stenographers, Supervisors, Assistant Chemists, Assistant in the Development Department, entire shipping department, and clerks in the Supply Department, were paid their salary for the strike period though many of them had not attended to any work. Mr. Bharat Iyer and Mr. Vaidyanathan, both have deposed that they had not attended Office during the strike period and still they were paid their salary for that period. This clearly shows that the statement in the Union's statement of claim that the Company had in paying the salary for the period in question, made discrimination between members of the Union and non-members is not correct. Both Mr. Iyer and Mr. Vaidyanathan are members of the Union. It is thus clear that the Company's contention that persons who did work at the alternative place of work were paid their salaries cannot also be true. About 200 persons have been paid their salary for the strike period and there are about 125 who have not been paid their salary.

59. From the evidence it must be admitted that the instructions given on the evening of 20th January have not been strictly followed by the members of the Office staff. I do not, however, feel that such a strict compliance with the instructions should be insisted upon by the Company under the circumstances of the case. There is no doubt that the members of the Office staff could have tried some other alternative route or transport to reach the Office. There is, however, no evidence that any alternative route or transport was ever tried by the workers.

60. The withholding of the salary to the members of the Office staff is more due to the tussle between the Union which was not recognised by the Company as representatives of the Office staff and the Company. When the dispute was before the Conciliator the Conciliator had ascertained the strength

of the Union and from the report prepared in his Office I find that the Union does represent a substantial majority of the workers from the Office staff of the Company. The representative character of the Union cannot therefore be disputed. It would have been in the interest of the Company itself to have accepted the intimation from the Union as compliance with the instructions given on the 20th January. The letter of the 21st January does not, however, convey the intention of the members of the staff to attend their duties. Such an intention could only be gathered from the letter of the 18th February. If the workers were really kept away from Office through fear of any use of violence by the strikers and were prepared to attend Office if the necessary police protection was given to them there was nothing to prevent the General Secretary of the Union from making such a request in his letter of the 21st January. If after such a request the Management had not made any arrangement for police protection and had still deprived the workers of their salary for the period of absence, I would have had no hesitation in coming to the conclusion that the Company's conduct was unreasonable and unjustified. Inasmuch as such protection was for the first time asked for on the 18th February, it could not be said that withholding of the salary prior to that date was unjustified or unreasonable. In my opinion the withholding of the salary from 18th February onwards is unjustified and unreasonable. I would therefore direct the Company to pay to the members of the Office staff their salary for the period from 18th February to the 9th March (both days inclusive).

61. I must however add that the case of the Grain Shop clerk must be treated on a different footing. During the period of the strike the Company used to keep its Grain Shop open only for one day in a week and the Grain Shop clerk did attend on those days and worked in the Grain Shop. This fact by itself was a sufficient indication that the Grain Shop Clerk was at all times ready and willing to attend work as usual. When, in the course of the argument, I pointed this out to Mr. Joshi, the learned Counsel for the Company, he fairly conceded that that would be the correct position and that the Company should be directed to pay to the Grain Shop Clerk his full salary for the period commencing from 21st January to 9th March (both days inclusive). I therefore direct that the Grain Shop Clerk should be paid his full salary for the whole of that period.

62. *Demand No. 15—Existing amenities and advantages.*—
The Union demands as under :—

“Without prejudice, nothing contained in these demands should adversely affect or take away from any employee or

groups of employees any privileges, advantages or amenities and earnings already vested in and enjoyed by such employees or groups of employees."

The demand as it stands is vague inasmuch as it does not specify the advantages or amenities which are at present being enjoyed by the employees. On my drawing Mr. Dudhia's attention to this fact, he produced before me a list of amenities and advantages which were being enjoyed by the employees at present. The Company also has produced a list of existing amenities enjoyed by the Office Staff as on 30th June 1949. I have compared both the lists and I find that such of the amenities as are not found in the Company's list can hardly be considered to be amenities enjoyed by the employees. Mr. Joshi stated in the course of his argument that the Company is not prepared to provide any more amenities than those included in the Company's list. I, therefore, direct that the amenities mentioned in the Company's list (a list whereof is annexed hereto as Annexure 'A') should be continued.

63. I shall now deal with a question which was not the subject matter of any demand but which had arisen incidentally. The question is whether employees designated as 'Section Head' are covered by the definition of the work 'workman' as given in clause (s) of Section 2 of the Industrial Disputes Act, 1947. It is the contention of the Union that they are covered while the Company contends they are not. The question assumes importance because the order referring this dispute to me mentions the dispute as being one between the Company and the Workmen (Office Staff) employed under it. Therefore if as contended by the Company, the 'Section Heads' were not covered by the definition they would not be entitled to the benefit of this award. These "Section Heads" are also designated as "Clerks-in-charge". The Union has examined Mr. P. P. Bharat Iyer and Mr. R. Vaidyanathan, who are themselves Section Heads or Clerks-in-Charge. Mr. Bharat Iyer has deposed that even after he was given the designation 'Section Head' or "Clerk-in-charge" he had to do clerical work. Mr. Vaidyanathan is the Section Head of the Comptist Section and is designated "Comptist-in-charge". He has enumerated his duties in detail. The evidence given by him clearly shows that he had to do clerical work. Mr. Iyer has also produced a memorandum issued by Mr. McHugh, the Secretary of the Company to Mr. Schuster. That memorandum also shows that Mr. Iyer as a 'Section Head' had to do clerical work duties in connection with Pay roll and had to maintain the General Books of both the Provident Fund and Credit Society as well as individual accounts of salary personnel. The duties of a 'Section Head' or a "Clerk-in-charge" correspond to the duties of a Head Clerk. Mr. M. C. Shah, Member, Industrial Court, has in his

award in the dispute between *The Millowners' Association, Bombay, and the employees in occupation "H"* in the Cotton Textile Industry (*Bombay Government Gazette Extraordinary, Part I, dated 28th October 1948, p. 4772*) observed that the Head Clerk was essentially the Head of the clerical establishment and that his duties were not purely of a supervisory character in that he had to attend to clerical work such as correspondence and accounts etc., and that he must therefore be treated as a clerk. I respectfully agree with that view. It is not disputed and in fact it cannot be disputed that a clerk is covered by the definition of "workman" as given in the Industrial Disputes Act, 1947. I therefore hold that the Section Heads and the "Clerks-in-charge" are "workman" and that they would be entitled to the benefit of this award.

(Signed) P. S. BAKHLE,
Industrial Tribunal.

(Signed) K. J. SHAH,
for Secretary.

Bombay, 8th December 1949.

Annexure "A".

FIRESTONE TYRE & RUBBER Co. OF INDIA LTD.

**EXISTING AMENITIES-OFFICE STAFF
JUNE 30TH, 1949.**

- (1) Free tea—Twice Daily.
- (2) Employees permitted to take advances against leave pay when proceeding on leave to extent of earnings due to date of return.
- (3) Employees are permitted to take one advance monthly against salaries earned to date of request after the 15th of the month; special consideration being given to cases of urgent need before that date.
- (4) In cases of necessary overtime of 5 hours or more worked on Sundays or holidays, Rs. 2 tiffin and transportation allowance is given.
- (5) In case a Head Office clerical employee, other than employees normally employed in outside duties, is required to spend his tiffin hour away from the Office on Company business, Rs. 1-8-0 is paid as tiffin allowance. Sepoys under the same circumstances are paid Re. 1 tiffin allowance.

- (6) Paymaster staff appearing on duty before regular hours to pay wages to off-going first shift are given a food allowance of Re. 1.
- (7) Grain shop purchases are permitted on credit to be deducted from salaries earned.
- (8) Employees are permitted to purchase motor and cycle tyres and tubes for their own equipment at net dealer prices.
- (9) Co-operative Credit Society Office facilities and furniture have been provided, plus occasional audit facilities performed by one of our qualified Accountants.
The membership is permitted to use available space within the premises for Society meetings as occasion demands. The facility of payroll deductions of Society loans, subscription and insurance premium from members' earnings is given.
- (10) The Company provides for payroll deductions of Office Staff dues to transport Company from their earnings.
- (11) Employees are encouraged to submit suggestions to improve efficiency of their own duties or to point out to the Company improvements which may result in a saving to the Company and Awards are given to these employees commensurate with the practicability of the ideas and the attendant savings due to these improvements.

Order.

No. 832/46.—Whereas the dispute between the Firestone Tyre and Rubber Co. of India Ltd., Bombay, and the workmen (Office staff) employed under it was referred by Government Order, Labour Department, No. 832/46, dated the 9th May 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 Firestone Tyre and Rubber Co. of India Ltd., Bombay, and the workmen (Office staff) employed under it and to direct that the said award shall come into operation on the 29th December 1949 and shall remain in operation for a period of one year.

Bombay Castle, 22nd December 1949.

Order.

No. 557/48.—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 dispute between the Surat-Rander Bus Company, Surat, and the workmen employed under it, regarding the matters specified in the Annexure for adjudication to the Industrial Tribunal consisting of Mr. P. D. Vyas, B.A., LL.B., 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) Every worker should be paid a bonus equivalent to three months' basic salary calculated on March 1949 salary and which should be pro-rata in case of employees who have not completed twelve months' service with the Company during the year 1948-49.

(2) One set of woollen uniform (1 pant and 1 coat) should be supplied for winter to drivers, conductors, checkers and controllers every three years whether they are permanent or temporary.

(3) The two drivers named Mr. Ramzankhan Rahimkhan and Mr. Gulam Mohamed Husein who left the service were not given their own contribution of provident fund. Due amount of provident fund be paid to them.

(4) Controller Mr. Naginbhai Manganbhai and Conductor Mr. Gulamnabi Amirmiya should be reinstated in their original post and compensation paid equivalent to the loss of wages sustained by them.

(5) If the post of a motor driver is to be filled in, preference should be given to a conductor holding a driving licence before bringing in an outsider.

(6) (a) The present system of receiving the day's collection from the conductors on the following morning should be stopped; the collection should be received by the Company either the same day or just prior to the time the conductors join duty the following day.

(b) The present practice of keeping a voucher book in the custody of the driver should be stopped. No responsibility of keeping or maintaining voucher book be enforced on drivers.

(7) All the existing rights, amenities and/or privileges etc. should not be prejudiced and/or taken away. Existing good conditions should not be affected.

Order.

No. 961/48.—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 dispute between the Gannon Dunkerley & Co. Ltd., Bombay, and the workmen employed under it regarding the matters specified in the Annexure, for adjudication to the Industrial Tribunal consisting of Mr. Salim M. Merchant, B.A., LL.B., constituted under section 7 of the said Act, under Government Notification, Labour Department, No. 575/46, dated the 19th April 1948.

Annexure.

1. *Recognition of the Union.*—The Gannon Dunkerley Employees' Union should be recognised by the Management.

2. *Reinstatement.*—Messrs. V. L. Pendharkar, F. Clegg and B.A. Printer whose services have been wrongly terminated by the Management should be immediately reinstated with continuity of service and with full compensation for the loss of salary they have suffered. In the alternative, they should be otherwise suitably compensated.

3. *Revision of Grades.*—(a) In consultation with the Union, all occupations should be properly standardised and duties under each of them defined.

(b) The following salary scales should be introduced with retrospective effect from 1st January 1949:—

(1) *Coolies, Peons, Watchmen, Cleaners and Butlers.*—Rs. 55—3—85 (10 years) (Mukadams and Havaldars to have Rs. 15 more).

(2) *Carpenters.*—Rs. 90—8—170 (10 years) (Assistant Carpenters to have Rs. 15 less and Mistries to have Rs. 15 more).

(3) *Drivers.*—Rs. 90—8—170 (10 years) (Diesel Drivers to have Rs. 25 more).

(4) *Mechanical Fitters.*—Rs. 120—8—200 (10 years) (Assistant Fitters to have Rs. 30 less and Head Fitters to have Rs. 30 more).

(5) *Clerks.*—

(C) Grade Rs. 90—8—170 (10 years).

(B) Grade Rs. 120—10—220 (10 years).

(A) Grade Rs. 150—15—300 (10 years).

(6) *Bill Collectors and Despatch Assistants.*—Rs. 90—8—170 (10 years).

(7) *Assistant Salesman.*—Rs. 150—15—300 (10 years).

(8) *Salesmen.*—Rs. 250—20—450 (10 years).

(9) *Typists and Telephone Operators.*—Rs. 120—10—220 (10 years).

- (10) *Stenographers and Comptists.*—Rs. 150—15—300 (10 years).
- (11) *Draughtsmen.*—Rs. 150—15—300 (10 years).
- (12) *Building Mistries.*—Rs. 120—10—220 (10 years).
- (13) *Building Supervisors.*—Rs. 250—20—450 (10 years).
- (14) *Assistant Supervisors.*—Rs. 250—20—450 (10 years).
- (15) *Supervisors.*—Rs. 400—25—650 (10 years).
- (16) *Engineers.*—Rs. 400—35—750 (10 years).
- (17) *Cashiers.*—Rs. 250—20—450 (10 years).
- (18) *Accounts Clerks.*—
Junior Rs. 120—10—220 (10 years).
Senior Rs. 150—15—300 (10 years).
- (19) *Accountants.*—Rs. 400—25—650 (10 years).
- (20) *Assistant Godown-Keepers.*—Rs. 250—20—450 (10 years).
- (21) *Godown Keepers.*—Rs. 400—25—650 (10 years).

(c) Immediately on the enforcement of the revised scales of salaries, the existing employees should be considered as having reached the level of increments corresponding to their period of service.

4. *Dearness Allowance.*—All the employees should be paid dearness allowance at the rate of 60 per cent. of their basic salaries, with a minimum of Rs. 60 and a maximum of Rs. 150.

5. (a) *Privilege Leave.*—One month's privilege leave with full pay including dearness allowance should be granted for every eleven months' service, and such leave should be allowed to be accumulated up to three months. An employee when going on privilege leave should be allowed a travelling allowance amounting to one month's salary including dearness allowance.

(b) *Sick Leave.*—One month's sick leave with full pay including dearness allowance in a year should be allowed. This leave should be allowed to be accumulated for three months. For sickness of less than three days, no medical certificate should be insisted.

(c) *Casual Leave.*—Fifteen days' casual leave with full pay including dearness allowance during a year should be allowed and an employee should be allowed to avail of a maximum of six consecutive days at a time.

6. *Holidays.*—All employees should be given Sundays, Bank Holidays and Public Holidays.

7. *Bonus.*—Every employee should be paid bonus equivalent to four months' salary and dearness allowance for the years 1947-48 and 1948-49 each. No conditions should be attached to the payment of this bonus and it should be paid in cash. No special bonus should be paid to any employee over and above the standard bonus sanctioned.

8. *Probation.*—New employees should be confirmed after a probationary period of three months. All those who are already on probation and who have completed this period should be immediately confirmed.

9. *Promotions.*—Promotions to higher posts should be made from among those who are already in the service of the Company.

10. *Retirement.*—All employees should be made to retire at the age of sixty.

11. *Medical Aid.*—Proper and adequate medical facilities should be put at the disposal of the employees and their families.

12. *Uniforms to Lower Grade Staff.*—All lower grade staff should be given three sets of uniforms and an umbrella per year. Each godown coolie should be given one Kamblee per year. Persons on outdoor duty should each be given an overcoat in addition.

13. *Transfers.*—No employee should be normally transferable from Bombay to any other office of the Company in other parts of India, without his consent. There should be specific agreement with those employees who are transferable.

14. *Travelling Allowance for Lower Grade Staff.*—All the lower grade staff should be given travelling allowance between the office and their residence.

15. *Social Amenities.*—Provision of suitable dining, recreation and rest rooms should be made.

16. *Office Hours.*—The working hours of the office and the godown should be from 10-30 a.m. to 5-30 p.m. with an hour's recess on week days and 10-30 a.m. to 1-30 p.m. on Saturdays. Any work outside these hours should be considered as overtime and an employee should be paid at double the normal rate.

17. *Officiating Allowance.*—When an employee is called upon to officiate in another's capacity, he should be paid the minimum remuneration attached to the post.

18. The present provident fund scheme should be modified on the following lines :—

(a) The scheme should be made compulsory for all the employees.

(b) The rate of contribution on both sides should be 10 per cent.

(c) In the case of an employee leaving the service of the Company 50 per cent. of the Company's contribution should be available to him after three years and the whole of the Company's contribution after five years.

(d) In the case of death, disability, retrenchment or discharge of an employee by the Company, no limit of period of service should be placed to enable an employee to claim and get Company's full contribution.

(e) While calculating the above period, an employee's previous service should be taken into account.

(f) 50 per cent. of the Trustees should be elected by the employees themselves.

19. *Gratuity*.—Every employee who has completed five years of service should be paid gratuity at the rate of one month's salary per year of service to be calculated at the last rate of his salary provided he is paid a minimum of six months' salary. While applying this scheme all the service of an employee should be taken into consideration. Gratuity should be available to employees before completion of five years in the case of death, disability, retrenchment or termination of services due to reasons beyond their control.

20. Nothing contained in these demands should adversely affect or take away from any employee or group of employees any privileges, benefits, advantages or other amenities already enjoyed by them.

Bombay Castle, 23rd December 1949.

No. 432/48.—The supplementary award of the Tribunal in the industrial dispute between the Royal Western India Turf Club Limited, Bombay, and the workmen employed under it referred for adjudication under Government Order, Labour Department, No. 432/48, dated the 29th October 1948, is hereby published :—

BEFORE P. S. BAKHLE, ESQUIRE, B.A., LL.B., INDUSTRIAL
TRIBUNAL, BOMBAY.

APPLICATION (ITB) No. 3 OF 1949 IN REF. (ITB) No. 22 OF
1948.

BETWEEN

The Royal Western India Turf Club Ltd., Bombay

AND

The Workmen employed under it.

In the matter of clarification of the award in the Industrial dispute dated 7th January 1949.

Appearances.—Mr. V. F. Bapat, Member, Executive Committee of the Royal Western India Turf Club Workers' Union for the workmen.

Mr. P. R. Mehta, Assistant Secretary of the Royal Western India Turf Club Ltd., Bombay, for the Club.

SUPPLEMENTARY AWARD.

The original award was made by me on the 7th January 1949. Thereafter the General Secretary, Royal Western India Turf

Club Workers' Union approached the Club on two questions arising out of the award viz. :—

- (1) regarding the calculation of the dearness allowance, and
- (2) the position of the non-permanent or sectional workers.

There could be no agreement between the parties on these two points and therefore the Union approached the Government of Bombay for clarification on the points arising from the direction in the award. Under rule 20-A of the Industrial Disputes (Bombay Rules, 1947), the Government have referred the matter to me for disposal by their letter No. 432/48-B, dated the 25th October 1949, of the Labour Department.

2. In my award in the last paragraph under the demand for dearness allowance, I had stated as follows :—

“To summarise, the Club should pay to its permanent employees dearness allowance at the rate of Rs. 45-4-3 for a month of 26 days from 1st January 1948. The amount of dearness allowance shall hereafter fluctuate according to the rise or fall in the cost of living index number at the rate of annas 3 pies 9 per point per month. If any of the employees is at present receiving an amount larger than that awarded, he will continue to receive that amount. Casual labourers will not be entitled to any separate dearness allowance. The amount of difference for the year 1948 between the rate paid and the rate awarded should be paid within two months from the date of the publication of this award.”

The Club has paid to its employees Rs. 45-4-3 as dearness allowance for a month of 26 days from 1st January 1948 to 31st December 1948. This was quite in compliance with the directions given in the award. For the period subsequent to that the Club has been paying dearness allowance at the fluctuating rate according to the rise and fall in the cost of living index number at the rate of annas 3 pies 9 per point per month. For this fluctuation the Club has adopted as basis the cost of living index number as it was in January 1949. As a consequence thereof the neutralisation percentage has fallen below 70 per cent. This action on the part of the Club has been challenged by the Union. According to the Union the basis for calculating the dearness allowance must be taking the index figure of 105. The Club has relied upon the sentence in my award to the following effect :—

“The amount of dearness allowance shall hereafter fluctuate according to the rise or fall in the cost of living index number at the rate of annas 3 pies 9 per point per month.”

3. In an earlier paragraph of my award I had observed that it would be fair and reasonable to allow 70 per cent. neutralisation in the case of the Turf Club employees. Calculating on that

basis I had arrived at the figure of Rs. 45-4-3 on the basis of the average cost of living index figure for the first 10 months of 1948 viz. 299. The neutralisation that I had directed in the case of the Turf Club employees was thus clearly 70 per cent. of the rise in the cost of living over the pre-war figure 105, that is to say on the difference between the existing cost of living figure and the figure 105. Consequently when I referred to the calculation of the dearness allowance subsequent to December 1948, it must be on the basis of 70 per cent. neutralisation taking 105 as the basis. It is no doubt true that the direction given in the paragraph quoted above is not so clear. I, therefore, now make it clear that the dearness allowance for the period subsequent to January 1949 should be calculated and paid at the rate of annas 3 pies 9 per point per month for the increased figure over the basic index figure of 105. The difference due on account of dearness allowance on this basis for the period from 1st January 1949 up to this date should be paid to the employees within two months from the date of this clarification, and as for the future it should be calculated on the lines stated above.

4. The other point on which the Union seeks clarification is the position of non-permanent or seasonal workers. The Union alleges that the seasonal workers were prior to the award getting the same privileges as the permanent workers and that they should be allowed the benefits that have been given to the permanent workers under the award. The Club contends that the position of the seasonal or non-permanent workers was not the subject matter of consideration at the time of my award. At the hearing the only three categories of workers mentioned before me were (1) permanent workers, (2) temporary workers and (3) casual workers. In respect of the temporary workers Mr. Godiwala, who then appeared for the Union, had stated that there were about 50 to 60 workers who had not been made permanent till then. No mention was made about the seasonal workers and no direction could be given by me in my award in respect of seasonal workers. If I were now to give any direction in respect of the seasonal workers who were not then mentioned before me, it would be modification of my award and not clarification. The case for the seasonal workers was not placed before me at the time of the hearing of these adjudication proceedings and no directions were therefore given in respect of them. There can therefore be no clarification of the award in this respect.

(Signed) P. S. BAKHLE,
Industrial Tribunal.

K. J. SHAH,
for Secretary,
Bombay, 30th November 1949.

Order.

No. 432/48.—Whereas the dispute between the Royal Western India Turf Club Limited, Bombay, and the workmen employed under it was referred by Government Order, Labour Department, No. 432/48, dated the 29th October 1948, for adjudication to an Industrial Tribunal;

And whereas the Industrial Tribunal has now given its supplementary 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 supplementary award shall be binding on the Royal Western India Turf Club Limited, Bombay, and the workmen employed under it and to direct that the said supplementary award shall come into operation on the 29th December 1949 and shall remain in operation for a period of one year.

By order of the Governor of Bombay,

G. V. DAVE,

Under Secretary to Government.

Bombay Castle, 20th December 1949.

No. 932/48.—Whereas an industrial dispute has arisen between the Shapurji Maneckji Kotwal Dye and Bleach Works, Bombay, and its employees (hereinafter referred to as "the said industrial dispute") relating to the latter's demands specified in the Annexure;

And whereas the Provincial Government is satisfied that the said industrial dispute is not likely to be settled by other means;

Now, therefore, in exercise of the powers conferred by section 73 of the Bombay Industrial Relations Act, 1946 (Bom. XI of 1947), the Government of Bombay is pleased to refer the said industrial dispute to the arbitration of the Industrial Court.

Annexure.

(1) *Wage Increase.*—The rates of wages payable to all classes of employees and for all types of work should be revised and raised.

(2) *Uniform dearness allowance.*—The present scale of dearness allowance should be revised and raised and there should be uniformity in the scale of dearness allowance paid to the employees.

By order of the Governor of Bombay,

N. K. DRAVID,

Secretary to Government.

LATE NOTIFICATIONS.

LABOUR DEPARTMENT.

Bombay Castle, 16th December 1949.

No. 2451/46-I.—The award of the Tribunal in the industrial disputes between the Bidi Employers at Nasik mentioned in the schedule to the Government Order, Labour Department, No. 2451/46-I, dated the 30th March 1949, read with Government Corrigendum, Labour Department, No. 2451/46, dated the 8th April 1949, and the workmen respectively employed under them referred for adjudication under the said Order, is hereby published :—

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

Reference (IT) No. 26 of 1949

BETWEEN

1. Messrs. R. Y. and L. Y. Khatriya, Nasik,
2. Mr. N. K. Pawar, Nasik,
3. Mr. Ismail Bhagoorkar, Nasik,
4. Messrs. K. C. Tiwari and Sons, Nasik,
5. Mr. K. K. Patel, Nasik,
6. Mr. S. G. Kamble, Nasik,
7. Messrs. Prakasha Brothers, Nasik,
8. Messrs. Thakur, Savadekar and Company, Nasik,
9. Mr. Daood Mahamad, Nasik,
10. Mr. Daood Usman, Nasik, and
11. Mr. Bashir, Nasik,
Bidi employers.

AND

The Workmen employed under them.

In the matter of wages, bonus, provident fund, gratuity, standing orders, etc.

Appearances—

- Counsel Mr. S. D. Vimadalal for employer No. 1.
Mr. S. P. Abhyankar, Advocate for employer No. 1.
Mr. B. C. Gadgil, Pleader for employers Nos. 2, 3 and 7.
Mr. P. M. Murkute, Pleader for employer No. 2.
Mr. K. C. Tiwari in person for No. 4.
Mr. R. V. Rahalkar, Pleader for Nos. 5, 9, 10 and 11.
Mr. S. G. Kamble in person for No. 6.
Mr. J. V. Deshpande, Advocate for No. 8.

Counsel Mr. C. L. Dudhia with Mr. V. N. Naik, M.L.A., and Mr. L. R. Abad, Secretary, Nasik Bidi Kamgar Sangh, for employees.

AWARD.

This dispute 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. 2451/46-I, dated 30th March 1949. The dispute relates to rates of wages for bidi making, bonus, system of reducing wages in the rainy season, provident fund, medical aid, and several other matters mentioned in Annexure "A" to the said Order. Employer No. 1 has been described in the Schedule to the said Order as Messrs. R. Y. and L. Y. Khatriya, Nasik. The correct name is Messrs R. Y. and C. Y. Kshatriya, Nasik, and should be read as such.

2. Prior to the date of the hearing I received several applications from the employers that the matter be heard at Nasik as there were several parties to the dispute and a very large number of witnesses may have to be examined. I, therefore, fixed a preliminary hearing in Bombay to determine whether the hearing should take place either in Bombay or Nasik. At the hearing all the employers again applied that the matter be heard at Nasik. The Union, however, opposed the application. I was convinced after hearing the parties that a very large number of witnesses may have to be examined in this matter and several records for the last few years gone into. The inconvenience that may have been caused to the parties to bring all the records and the witnesses to Bombay would have been very great. It would have been necessary also for me to visit Nasik to inspect the various factories. I, therefore, acceded to the employers' request to fix the hearing at Nasik.

3. The matter was fixed for hearing at Nasik on 5th September 1949. On or about the 3rd September 1949, however, some of the active workers of the Union including Mr. Vasantrao Naik, M.L.A., met with a serious car accident. Mr. Dudhia, Counsel for the Union, therefore, at the hearing on 5th September 1949, asked for an adjournment as he was greatly handicapped in conducting the proceedings without instructions from these people. I, therefore, adjourned the hearing after two days after the inspection of the various factories at Nasik and Sinnar was completed and certain details regarding the various statements of accounts and other statements to be filed by the parties were settled. Further hearing of the reference took place at Nasik on 1st, 2nd, 3rd, 4th and 5th November 1949.

4. I am glad that after prolonged negotiations lasting for several days this dispute has been settled. There are certainly many demands but the most important related to the rate for making 1,000 bidis. The employers have agreed to pay Rs. 2-2-0 instead of Rs. 2 for making 1,000 bidis. The employers have also agreed not to reduce this rate and to continue to pay the same for a period of 18 months from the

date of the agreement. The demand of the Union for non-reduction of the rates during the rainy season and at the sweet will of the employer has also thus been conceded for the period of the agreement. In view of the employers agreeing to pay this higher rate for a period of eighteen months from the date of the agreement, the Union did not press the other demands including the demand for bonus.

5. The agreement to pay Rs. 2-2-0 for 1,000 bidis extends over a period of 18 months. The period provided for in respect of certain other demands is also 18 months. Under the Industrial Disputes Act, the Government has power to make my Award binding for any period not exceeding one year. I pointed out this to the parties and the parties have therefore agreed that the terms of the agreement will be binding on them for the period of the Award by virtue of the Award and for the remaining period thereafter by virtue of the said agreement.

6. The Union's demand for bonus was in respect of the year 1948. It was agreed between the employers and the Union that this demand referred to S. Y. year 2004. I pointed out to the parties that as S. Y. 2005 also had elapsed, the parties should make some provision for bonus for that year also as a fresh dispute was likely to arise in respect thereof immediately. I am glad that the parties have provided in this agreement for bonus not only for S. Y. 2004 but also for S. Y. 2005 as otherwise there would have been a fresh dispute almost immediately this dispute was over. As the demand for bonus in the reference was for the calendar year 1948 (understood by both parties as equivalent to S. Y. 2004) my Award shall be read only as in respect of S. Y. 2004, although the agreement refers to S. Y. 2005 also.

7. I have seen the terms of the agreement and looking to all the circumstances, I think the agreement arrived at between the parties is fair and reasonable. I, therefore, make an Award in terms of the said agreement which is annexed hereto and marked Annexure "A". In the said Annexure, however, wherever, a period longer than one year is provided in the agreement for the purposes of this Award the same should be read as the "period during which the Government of Bombay has declared this Award binding".

8. There is, however, one circumstance which requires to be specifically mentioned here. The persons described as bidi-employers in the Government's Order of reference have all along in this dispute maintained that the jural relationship between them and the makers of bidis is not that of employer and employee and that the bidi makers are *qua* them independent contractors; that they are not *qua* bidi makers' employers and the bidi makers are not workmen within the meaning of the

Industrial Disputes Act, 1947; that the fact of their having entered into this agreement should not, therefore, be interpreted as in any way affecting their above contention; and that they should not be in any way thereby estopped from contending the same at any time in future before any authority if and when occasion arises. It is on that express understanding that they have entered into this agreement. They have, however, waived that objection in respect of this particular adjudication in order to enable me to record this compromise and to pass an Award in terms thereof.

9. I cannot help observing that the proceedings before me were conducted in a very friendly manner without any bitterness or rancour on either side and that both the Union and the employers displayed a genuine desire to understand and appreciate each other's point of view. The lawyers appearing on both sides also contributed not a little in maintaining this atmosphere. I am glad therefore that the parties have come to terms. I hope that the same cordial relations between the employers and employees which have prevailed at Nasik in the past will continue in future and that even if disputes arise they will be settled in the same spirit to the mutual benefit of all concerned.

10. I take this opportunity to thank the employers and the Union as also their legal representatives for the co-operation extended by them to this Tribunal throughout the proceedings.

INDRAJIT G. THAKORE,
Industrial Tribunal.

K. R. WAZKAR,
Secretary.

Bombay, 30th November 1949.

ANNEXURE "A".

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

Reference (IT) No. 26 of 1949

BETWEEN

Eleven Bidi Employers of Nasik

AND

Their Workmen.

In the matter of wages, bonus, provident fund, gratuity, standing orders, etc.

Both the parties to the above reference have come to the following terms:—

1. It is hereby agreed that the question of jural relationship between the First Party and the Second Party will

not be deemed to be decided in any way because of the compromise being recorded in this Tribunal, but is expressly left open for being decided as and when it may arise. It is expressly agreed that recording this compromise before this Tribunal will not estop any of the parties thereto from agitating this question before any authority if and when it arises in future.

2. That though the First Party has raised a contention that this Tribunal has no jurisdiction to inquire into the dispute referred to it, it waives that objection for the purposes of investing this Court with jurisdiction for the purpose of recording this compromise and pass an award in terms thereof.

3. The terms of this compromise will be binding on both parties thereto for the period of the Award by virtue of the Award and for the remaining period thereafter till the 4th of May 1951 by virtue of this mutual agreement—

Demands.	Terms of settlement.
(1) The bidi workers should get Rs. 2-4-0 for making one thousand bidies with effect from 1st January 1948.	Taking into consideration the desirability of mutual good relations between both the parties and for the purpose of obtaining peace and good will, the First Party hereby agrees to pay at the rate of Rs. 2-2-0 for making one thousand, bidies from 5th of November 1949 to 4th of May 1951 (both days inclusive) and the Second Party hereby agrees to accept the same for the above mentioned period of one and a half year.
(2) The system of reducing wages in the rainy season should be abolished.	Given up for the above stated period of one year and a half in view of the agreement on demand No. 1.
(3) The Bidi factory owners should not be allowed to reduce wages according to their sweet-will.	Given up for the above stated period of one year and a half in view of the agreement on demand No. 1.
(4) The workers should get bonus for the year 1948.	Given up for the Samvat Years 2004 and 2005.

Demands.	Terms of settlement.
(5) Provident fund and gratuity schemes should be instituted forthwith for the bidi workers.	Given up for the period of one year.
(6) Nothing should be deducted from the wages of the bidi workers for supplying thread bundles for bidi-making.	Given up for the above stated period of one year and a half.
(7) There should be a good arrangement to sit on for the bidi workers. (Supply of carpets, etc.).	Given up for the above stated period of one year and a half.
(8) Male inspectors or clerks should not be allowed to be appointed in the female workers' section.	Given up for the above stated period of one year and a half.
(9) Medical aid should be given to the bidi workers by the factory owners.	Given up for the above stated period of one year and a half.
(10) There should be one dispensary in each bidi factory.	Given up for the above stated period of one year and a half.
(11) Standing Orders should be framed by the bidi factories.	Given up for the above stated period of one year and a half.
(12) Wages should be given for the Chat (Tarai) Bidi.	Given up for the above stated period of one year and a half.
(13) Workers should not be dismissed at the sweet-will of the factory owners.	Given up for the above stated period of one year and a half as the factory owners contend that they do not dismiss workers at their sweet-will.
(14) Separate places for work should be given for male and female sections (male and female workers should not be allowed to work in one room or building).	Given up for the above stated period of one year and a half.
(15) The following workers who have been discharged	The demand for compensation is given up. The

Demands.

Terms of settlement.

should be reinstated and/or paid compensation :—

1. Mr. P. D. Nath.
2. Mr. C. M. Lingayat.
3. Mr. S. R. Shinde.
4. Mr. J. L. Chavan.
5. Mr. B. N. Dongare.
6. Mr. S. N. More.
7. Mr. P. K. More.
8. Mr. T. V. Thakare.
9. Mr. Balu P. Shinde.
10. Mr. K. T. Kale.
11. Mr. N. S. Karpe.
12. Mr. M. F. Kadam.
13. Mr. R. B. Shinde.
14. Mr. S. M. Rane.
15. Mr. B. K. Kasture.
16. Mr. J. B. Kadlag.
17. Mr. K. B. Dondhe.
18. Mr. Dagadu Shaha-
budin.
19. Mr. Gafoor Akabar.
20. Mr. L. B. Tile.
21. Mr. Tukaram Mali.
22. Mr. Shankar B. Gite.

demand for reinstatement does not survive as all those who desire to be employed have already been reinstated.

For and on behalf of the First party.

For and on behalf of the Second party

1. Chimansa Yamasa Kshatriya and Raojisa Yamasa Kshatriya, Partner Raojisa Yamasa Kshatriya.
S. P. Abhyankar, Advocate.
R. V. Rahalkar.

C. L. Dudhia, Bar-at-Law.
O. M. Kalulkar,
General Secretary, Nasik
Bidi Kamgar Sangh, Nasik.

L. R. Abad,

2. Narhari Kondaji Pawar, Partner Narhari Kondaji Powar.

President, Nasik Bidi Kamgar Sangh.

B. C. Gadgil, Pleader.

3. Ismail Khan Mahomedkhan for Messrs. Ismail Khan Mahomedkhan.

B. C. Gadgil, Pleader.

For and on behalf of the First party. *For and on behalf of the Second party.*

4. K. C. Tiwari,
for M/s. K. C. Tiwari &
Sons.
5. Ambalal Kishorbhai Patel
for Kishorbhai Kalidas.
R. V. Rahalkar.
6. Shankar Govind Kamble.
7. Mahadeo Satu Murkute
on behalf of Messrs.
Prakash Bros.
B. C. Gadgil, Pleader.
8. Govindrao Beniram
Thakur for Messrs.
Thakur Savdekar & Co.,
Nasik.
J. V. Deshpande, Advocate.
9. Muhomedkhan Dawood-
khan for Dawood Khan
Mohomed Khan.
R. V. Rahalkar.
10. Shaikh Dawood Shaikh
Usman.
R. V. Rahalkar.
11. Bashir A. Raheman.
R. V. Rahalkar.

Before me,
INDRAJIT G. THAKORE,
Industrial Tribunal.

Nasik Road, 5th November 1949.

Order.

No. 2451/46-I.—Whereas the disputes between the Bidi Employers at Nasik mentioned in the schedule to the Government Order, Labour Department, No. 2451/46-I, dated the 30th March 1949, read with Government Corrigendum, Labour Department, No. 2451/46, dated the 8th April 1949, and the workmen respectively employed under them were referred by the said Order for adjudication to an Industrial Tribunal;

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

No. 512/49.—In exercise of the powers conferred on me under section 11(1) of the Bombay Industrial Relations Act, 1946, I hereby amend the Notification No. 8/48, dated 18th February 1948, as follows:—

(a) After entry No. 102 in the said notification the following new entries shall be inserted, namely:—

103. Hindustan Colour Chemical & Mfg. Co., Ltd., Ahmedabad.
104. Dinesh Silk Industries, Bhandup.
105. Balgopal Silk Mills, Bombay.
106. Cadell Weaving Mill, Ltd., Bombay.
107. Diamond Silk Mills, Bombay.
108. Eldee Velvet & Silk Mills, Bombay.
109. New Shah Silk Mills, Limited, Bombay.
110. Prakash Silk Mills, Bombay.
111. Shri Central Silk Mill, Bombay.
112. Novelty Silk Mills, Dahisar.
113. Pratibha Silks, Goregaon.
114. Rayona Silk Mills, Goregaon.
115. Mahavir Silk Mills, Kalyan.
116. Sarvodya Silk Mills, Kurla.
117. United Silk Mills Ltd., Kurla.
118. Silk Manufacturers Company, Malad.
119. United India Silk Mills, Vikhroli.

(b) Entry No. 65 in the said notification shall read as follows, namely:—

65. Tarun Silk Mills, Bhiwandi.

(c) Entries Nos. 17, 11-A and 15 in the said notification shall be deleted.

No. 514/49.—In exercise of the powers conferred on me under section 74(2) of the Bombay Industrial Relations Act, 1946 and rule 70 of the Bombay Industrial Relations Rules, 1947, I have on this 20th day of December 1949 registered the following award made by the Industrial Court, in the industrial dispute between the managements of the Belapur Co. Ltd., Belapur and the Maharashtra Sugar Mills Ltd. and their

respective employees regarding six months' wages as bonus for the year 1947-48 :—

IN THE INDUSTRIAL COURT, BOMBAY.

Reference (IC) No. 28 of 1949.

ARBITRATION

BETWEEN

(1) The Belapur Company Ltd., and Its employees

AND

Reference (IC) No. 29 of 1949

BETWEEN

(2) The Maharashtra Sugar Mills Ltd., and Its employees.

In the matter of an Industrial Disputes regarding six months' wages as bonus for the year 1947-48.

Industry.—Sugar.

Present.—Mr. P. S. Bakhle, Member.

Appearances.—Mr. A. C. Beynon and Mr. Khambatta, with Mr. M. D. Vaidya instructed by Messrs. Crawford Bayley & Co., Solicitors for the Companies.

Mr. S. D. Kamerkar for the workers.

AWARD.

These are references made under section 73 of the Bombay Industrial Relations Act, 1946, by the Government of Bombay under Labour Department, Order No. 653/48 and No. 1967/46 both dated the 6th April 1949, referring to this court for arbitration the disputes between the Belapur Company Ltd., and Maharashtra Sugar Mills Ltd., and their respective employees, relating to the payment of bonus for the year 1947-48. As the points involved in the two references were identical, at the request of the parties, both the references were heard together.

2. The Belapur Kamgar Union, which is a representative Union registered under the Bombay Industrial Relations Act,

has filed a statement of claim on behalf of the workers of the two factories. The Union has made a demand for bonus for 1947-48 equivalent to six months' wages for all seasonal and non-seasonal employees including the "contract labour" without attaching any conditions to the payment thereof. The claim for bonus is sought to be justified on the grounds :—

- (1) That the wages fall far short of the living wage standard, and
- (2) That the Companies have made abnormal profits during the year 1947-48.

The Union contends that these abnormal profits are partly due to the contribution of the workers to the increased output and partly due to the incidental market conditions.

3. Both the Companies have filed separate written statements advancing more or less the same contentions in respect of the demand for bonus. It is contended on behalf of the Companies that the demand for bonus is not justified. The Companies further contend that this court has no jurisdiction to entertain the demand in respect of payment of bonus to the so called "contract labour". It is contended that "contract labour" are not employees of the Company within the definition of that word as given in the Bombay Industrial Relations Act and that a claim for bonus to such "contract labour" is not an industrial dispute. The Companies have submitted that the sugar industry in India is still a comparatively young industry, which for a variety of reasons has not yet been able to achieve a level of stability and efficiency which would allow the industry to compete any free world market. During the war years the industry worked under a system of control of an exceedingly rigorous nature and consequently the Company could earn only restricted profits within the limits permitted by the Governments concerned. Control of sugar was terminated by Government on 8th December 1947 and this enabled the Company to earn substantial profits in 1947-48. The profits made by the Company, therefore, in the year 1947-48 were due to fortuitous and special circumstances and were not effected by any additional effort on the part of the workers so as to justify a demand for bonus from out of these profits. It is further urged by the Companies that it was necessary to provide for replacement of the Plant and Machinery and that such replacement will have to be effected at very high prices. It would also be necessary to make substantial provision for further improvement and modernisation of methods of agriculture with a view to improve the yield of sugar cane crop. The Companies also urged that a substantial reserve fund will have to be built up to guard against contingencies such as bad monsoon, damage by fire or disease or attacks on the crops by pests. The Companies

therefore submit that the additional profits made during the year 1947-48 should be allowed to be utilised for providing the things mentioned above. Without prejudice to all these contentions, the Belapur Company Ltd. has expressed its readiness to pay to its employees (other than the so called "contract labour") a bonus equivalent to 1/4th of the basic wages earned by them during the year 1947. The Maharashtra Sugar Mills, Ltd., have by their written statement, offered to pay out of the profits of the year 1947-48, a total of 3 months' basic wages by way of bonus composed of an Independence Day bonus equivalent to one month's pay and a further bonus equivalent to one-sixth of the basic wages of each worker, excluding of course the so called "contract labour". Both the Companies had contended that the payment of bonus should not be unconditional. It is stated that absenteeism has a much more serious effect on the sugar industry than any other normal manufacturing process, such as, the textile industry and that consequently the qualifying period for bonus should be higher than in the case of textile industry. It is also submitted that misconduct affecting the production of the factory or joining an illegal strike should disqualify a person from receiving any bonus.

4. The parties have produced documentary evidence and witnesses have been examined on behalf of the two Companies. Elaborate arguments were advanced on behalf of both the parties.

5. Mr. Beynon, the learned Counsel for the two Companies, has argued that the dispute referred to this Court for arbitration does not cover the demand for bonus in respect of the so called "contract labour". In support of this argument he has relied on paragraphs 1 and 2 of the statement of claim filed by the Union. In paragraph 1 of the statement of claim, the Union has made a demand for payment of *six months'* wages as bonus for the year 1947-48. In paragraph 2 of the statement of claim one of the reasons given to justify the demand is that wages paid to the employees fall short of the living wage standard and that the dearness allowance which is being paid to them does not fully neutralize the rise in the cost of living. It is contended by Mr. Beynon that "contract labour" do not get monthly wages or in fact they get no wages at all and that, therefore, the demand is meaningless in so far as the "contract labour" were concerned. He argued that reference to dearness allowance made in paragraph 2 (a) of the statement of claim would be in appropriate to the case of "contract labour" and can have no application to them. In this connection I would like to refer to sections 4 and 5 of the Workmen's Compensation Act, 1923. Section 4, which deals with the amount of compensation, states that subject to

the provisions of the said Act the amount of compensation shall be as follows :—

“A. Where death results from the injury—

- (i) in the case of an adult in receipt of *monthly wages* falling within limits shown in the first column of Schedule IV—the amount shown against such limits in the second column thereof.”

Section 5 deals with the method of calculating wages and it states that for the purposes of the said Act the expression “monthly wages” means the amount of wages deemed to be payable for a month’s service (whether the wages are payable by the month or by whatever other period or at piece rates). The section then proceeds to give three methods of calculating the monthly wages. It is a matter of common knowledge that in various industries workers are engaged on monthly as well as daily rates. It cannot therefore be said that because a particular class of workers is not paid on the monthly basis his monthly wages cannot be ascertained. In *Alimohamed Jumardikhan v. Shanker Tukaram Pote*, 47 Bombay Law Reporter 857, which was a case of a labourer only for a day the average monthly wages were calculated in accordance with the provisions contained in Section 5 of the Workmens’ Compensation Act. The use of the words “payment of six months’ wages as bonus” would not, therefore, in my opinion, exclude the ‘contract labour’ from the benefits of this award if they are otherwise entitled to such benefits.

6. The reference to dearness allowance in paragraph 2(a) of the statement of claim would not similarly exclude the so called ‘contract labour’. It may be that in fixing the rates to be paid to the ‘contract labour’ the prevailing high cost of living was taken into consideration and a consolidated rate was fixed. I do not therefore think that ‘contract labour’ are excluded from the present two references.

7. Mr. Beynon next argued that ‘contract labour’ were not the employees of the Companies at the material time, that is to say, the date of reference and that they must therefore be excluded from the benefit of the award. In this connection I would refer to the decision of the Full Bench of the Industrial Court in Application No. 33 of 1941 (*Government Labour Officer, Ahmedabad, vs. Anand Mills Ltd. and others, Labour Gazette October 1941, page 153*). In that case the Industrial Court has laid down that the term ‘employees’ was not restricted to persons employed in the industry at any particular time and that the term should therefore include any person who is engaged in the industry at any time. It is no doubt true that that was a decision under the Bombay Industrial Disputes Act, 1938. But the definition of the word ‘employee’ given in

clause 13 of section 3 is practically a reproduction of the definition of that word as given in the Bombay Industrial Disputes Act, with the exception of clause (a) relating to 'contract labour'. The decision would therefore be applicable to the present case notwithstanding the additions made by the present act.

8. Mr. Beynon has further argued that 'contract labour' are not employees of their Company or of the contractor. It is his contention that the contract is taken by the group itself and the whole group is a contractor. According to Mr. Beynon's contention the workers who form the 'contract labour' are not employees of anybody but are the contractors themselves. In other words, the proceeds resulting from the work done by the 'contract labour' are shared by the persons forming each group as partners.

9. It is disclosed by the evidence that the 'contract labour' is composed of two types of workers. One class is engaged for agricultural operations, such as, preparatory tillage, planting, weeding, interculturing, manuring and digging drains. The other class of workers consists of persons, such as, cane harvesters and are entrusted with the operations of cane cutting, carting and loading. 'Contract labour' is paid according to the schedules of rates fixed for these various operations. In respect of agricultural operations the rates are calculated on an acreage basis. In respect of the harvesters the rates are on the tonnage basis. Bills are prepared in the name of the person who is recognised by the Company as a contractor and payment is made to him. The amount so paid to him is then distributed by him among the individuals forming his group according to an arrangement mutually agreed among themselves. The so-called contractor is separately remunerated by the factory which pays him a percentage of the total amount paid in respect of the work carried out by the contracting groups organised by him. No muster rolls are maintained by the factory and there are no fixed hours of work for them. The Farm Overseer, as deposed to by Mr. N. D. Bhandarkar, gives orders to the Mukadams working under him as to what piece of work is to be done on a particular day and the Mukadam gets the orders executed through these groups of the contractors.

10. The word "employee" is defined in clause 13 of section 3 of the Bombay Industrial Relations Act, as follows:—

"Employee" means any person employed to do any skilled or unskilled manual or clerical work for hire or reward in any industry, and includes—

(a) A person employed by a contractor to do any work for him in the execution of a contract with an employer within the meaning of sub-clause (e) of clause (14);"

The word "employer" is defined in clause 14, as including :—

"Where the owner of any undertaking in the course of or for the purpose of conducting the undertaking contracts with any person for the execution by or under the contractor of the whole or any part of the undertaking, the owner of the undertaking."

Unlike the sugar industry in the United Provinces, the factories in question own lands on which sugar cane crop is raised for being crushed in the factories. Thus the work that is entrusted to the contractor is connected with the sugar industry and if a contractor employs a person to do any such work, then he would be covered by the definition of the word 'employees' as given in the Act whether the work done is in respect of agricultural operations or that of harvesting. Thus according to the definition 'contract labour' would be employees of the undertaking within the definition unless it is proved that the persons so employed are not the employees of the contractor but are co-contractors.

11. Mr. Beynon has urged that the proceeds resulting from the work done by "contract labour" are shared by the individuals forming the group as partners. It is stated in Halsbury, Vol. 34, p. 803, para 1141, that whether a person is partner or not is a question of fact and that participation in profits is evidence of partnership, but that Partnership Act, 1890, Section 2, declared that a contract for remuneration of a servant or agent of a person engaged in a business by a share of the profits of the business did not of itself make the servant or agent a partner. In para 782 of Halsbury, Vol. 24, it is stated that "person who share the gross returns of a business or adventure are not necessarily partners. ***Receipt of a share of gross returns, as distinguished from receipt of a share of profits, is not even *prima facie* evidence of partnership." It is therefore necessary to consider the relationship between the contractor and the contract labour.

12. Mr. N. D. Bhandarkar, the Senior Farm Overseer in the employment of the Maharashtra Sugar Mills Ltd., has stated as follows :—

"The operations consist of planting, irrigation, manuring, weeding, interculturing and hand-earthing up and off-barring. Irrigation is carried out by daily wages—Labour and the other operations are carried out on contract basis. There are nearby villagers who undertake to do this work. They undertake to do it collectively. The number of persons constituting a group varies from 4 to 25. They are paid according to the schedule of rates fixed for these various operations. The rates are calculated on an acreage basis. The rates for weeding varies from Rs. 3 to Rs. 7 per acre according to the intensity of weeding. The amount is paid to the leader of the

contractors. I can't say what happens of the money after it is so handed over to the contractor."

Mr. S. G. Tongaonkar, speaking about "contract labour", has stated :—

"In case of harvesting contract labour, the fortnightly bill of work is prepared in the contractor's name. The basis of the calculation is per ton. The whole amount is paid to the contractor who distributes the amount to his men as per their mutual understanding. All the amount is so distributed unless the contractor himself works. If the contractor is also a worker he takes his share and distributes the balance. In the case of the non-harvesting contract labour the bill for the work during a fortnight is prepared in the name of the contractor. One of the gang is in this case the contractor. We have scheduled rates for such work and calculations are made on the basis of those rates. When the amount is paid to the contractor, he distributes the same among his men. Sometimes the contractor is himself a worker. When he is a worker he takes his share along with the others. The amount is distributed as per their mutual understanding."

13. I have given these two long extracts from the depositions of Messrs. Bhandarkar and Tongaonkar with a view to give a clear idea as to the working of the "contract labour" system. This evidence does not establish any partnership between the contractor and the "contract labour".

14. Mr. Beynon relying upon the decision in *Simmons v. Health Laundry Co.*, (1910) 1 K. B. 543 contended that inasmuch as the Companies had no direct control over the "contract labour", it could not be said that the relationship of master and servant existed between the Companies and the Contractor. It is not the case of the Union that "contract labour" is under the direct control of the Company and that as a consequence thereof "contract labour" are the employees of the Company. The contention of the Union is that "contract labour" are employees within the terms of the definition of that word as given in clause 13 of section 3. From the definition, as I have already shown, it is not necessary that the Company should have direct control over the "contract labour". On the question of control, the evidence adduced on behalf of the Companies consists of Mr. G. S. Kulkarni, the Estate Superintendent, Mr. N. D. Bhandarkar, Farm Overseer, Mr. G. R. Kulkarni, Harvesting Superintendent and Mr. S. G. Tongaonkar, all of the Maharashtra Sugar Mills Ltd., and Mr. G. B. Talwalkar of the Belapur Company Ltd., Mr. G. S. Kulkarni states :—

"The Company gives direction to the Contractor as to what particular piece of work is to be done. If the Company were dissatisfied with the work of any member of these family groups it could not dismiss him."

Mr. N. D. Bhandarkar states :—

“I give the order as to what piece of work is to be done on the particular day. I give the orders to the Mukadams working under me. The Mukadam gets the orders executed through these groups. The Mukadam is not the leader of the group.”

Mr. G. B. Kulkarni states :—

“The Company decided which particular piece of work shall be done on a particular day. The quantum of work which the Company wants done is communicated to the Contractor. We are not concerned with the hours they work.”

He later on in the course of his evidence has also stated that the work at each centre was supervised by an Overseer-in-charge. Mr. Tongaonkar has stated that he controlled the quantity of cane to be cut by them and that every day he gave instructions to the Contractor about the quantity and quality of the cane to be cut on that day and that that quantity and quality of cane depended upon the requirements of the mill. Mr. Talkalkar states :—

“The Overseer of the Company points out to the Contractor the particular part of the survey number to be cut and then it is for the Contractor to arrange his labour there and to cut the cane and load it after it is cut. The Contractor if he is absent usually has a Mukadam of his own to supervise the work. If the work is not done satisfactorily complaints are made to the Contractor.”

Mr. Talwalkar has also stated that they had to ascertain the strength of the group from day to day just to determine whether the turn out of the work would be enough to run the factory.

15. This is practically the whole of the evidence on the question of control exercised on behalf of the Company. It is clear from these statements that though the Contractor has taken a contract to cut the cane and/or to load it, it is not open to him to cut the cane at any place within the area for which he has contracted. For that purpose the Contractor is to take instructions from the Officers of the Companies. The evidence that I have referred to above does not relate to the question of control exercised by the Contractor over the “contract labour”. Mr. Puckley L. J. has in the case referred to above observed :—

“A contract of service is one which necessarily involves the existence of a servant, and the parties contemplated by this Act may be called, I think, either employer and workman or master and servant, but subject to the limitation that the servant must be one who falls within the definition of workman as contained in section 13.”

"A servant", said Bramwell L. J. in *Yewens v. Noakes*, (1880, 62. B.D.530 at p. 538), "is a person subject to the command of his master as to the manner in which he shall do his work". To distinguish between an independent contractor and the servant the test is, says Crompton J. in *Sadler v. Hemlock* (4E & B.570 at p. 578) whether the employer retains the power of controlling the work. Sir Frederick Pollock in his book on Torts, p. 79, says:—"The relation of master and servant exists only between persons of whom the one has order and control of the work done by the other."

In the present case as is deposed to by Mr. Talwalkar, the "contract labour" carries out work under the control of the Contractor and in his absence, of a Mukadam appointed by him to supervise the work. The "contract labour" have no independence of action in the matter of cutting cane. On the evidence before me, therefore, I am unable to hold that the "contract labour" do their work without any control either of the Company or of the Contractor. Therefore, it is not possible to hold that the relation of master and servant does not subsist between the "contract labour" and the Contractor.

16. Mr. Beynon has also contended that "contract labour" do not receive any wages and so there could not be any relationship of master and servant between the "contract labour" and the Contractor. From the evidence of Messrs. Bhandarkar and Tongaonkar that I have already quoted above it is not known on what basis the amount is distributed among the "contract labour". Even if the distribution is in the form of a share of the gross returns, that by itself, as observed in Halsbury, Vol. 24 (passage quoted above) is not even *prima facie* evidence of partnership.

17. In the case of harvesting labour, which is also a "contract labour", a blank form of contract which is entered into by the Contractor with the Manager of the Maharashtra Sugar Mills has been produced in the case. In paragraph 4 thereof it is stated:—

"I am to engage for the purpose of carrying out works according to your instructions and for supervision *responsible servant* such as you may approve of, at my cost.

Clause 12 states, "I am to distribute wages of the *coolies engaged by me* and that in your presence, or if you do the same I have no objection."

Clause 13 states, "If your officers distribute wages to the *coolies engaged by me* I have no objection." It further states, "I have sufficient number of coolies and carts enough to supply the said goods."

In Clause 15 of the said contract it is stipulated that the Company is to pay to the Contractor at the end of the season a commission of 6½ per cent. for the labour bill of transport and

of 5 per cent. for that of cutting. It is clear from these passages from the contract that the "contract labour" are servants of the Contractors and are paid wages by the Contractor.

18. Mr. Beynon has also relied upon the decision in *Curtis v. Plumtre* (1913) 6 B.W.C.C. 87. The question that was considered in that case was about the relationship between the Contractor Curtis and his employer Plumtre. In the present case I am concerned with the relationship between the Contractor and men working under him. To that extent at any rate that case has no application. The question of control was also considered in that case but the directions given in the present case cannot be considered as a mere "piece of advice by the land owner to a man employed by a sub-contractor". Even from the point of view of control that case of *Curtis v. Plumtre* is clearly distinguishable from the present case. The next case relied upon by Mr. Beynon is *Barnes v. Evans & Co.* (1914), B.W.C.C. 24. That case dealt with the question whether the person who had originally entered into a contract as an independent contractor had by the subsequent act of the employer become a servant of the employer. That is not the question which is to be considered in the present case. The question before me is whether the person working under the independent contractor is or is not a servant of the contractor and the case of *Barnes v. Evans & Co.*, can have no application.

19. Mr. Beynon also relied upon the case of *Vamolew & others v. Parkgate Iron & Steel Company Ltd.*, (1903) 1.K.B.851. In that case Mr. Coolins M. R. had observed :—

"Where a man undertakes to do work as a Contractor, that, *prima facie* at any rate, negatives the existence of the relation of employer and employed, and shows that the contract is not one of employment within the meaning of the Act. Here, the burden of proof being on the appellant, the evidence appears in substance to have been that the deceased was engaged in breaking steel and cinders for the respondents; that he was paid so much per ton; and that he was responsible as a contractor for getting the work done, and he himself engaged workmen for that purpose, though of course he was not debarred from working himself."

In the present case, as is clear from the evidence, the contractor himself was not debarred from doing the work himself though he had taken the contract. But unless it is established by evidence that the persons employed by him were also the contracting parties, the relationship between the Contractor and the workers engaged by him would be that of master and servant. I am not, therefore, satisfied that the 'contract labour' employed by the two Companies are not covered by the definition of the word "employee".

20. Dr. Radhakamal Mukarjee, in his book 'The Indian Working Class' has at page 61 observed :—

"One of the marked features of industrial employment in India is the engagement of workers by contractors, and the consequent elimination of direct responsibility of the employers towards the condition of employment, hours of work, and wages of a considerable section of the labour force."

When, therefore, in the present case Mr. Talwalkar says that to engage 'contract labour' is not only for the convenience of payment but is also a convenient from the point of view of arrangement of work and the responsibility to a certain extent, he only corroborates the views expressed by Dr. Mukerjee. The system of 'contract labour' would not therefore change the status of such labour *vis-a-vis* the Contractor or the Company.

21. It is clear from the evidence given by Mr. Bhandarkar, Mr. Kulkarni, Mr. Tongaonkar and Mr. Talwalkar that the Companies do not maintain any muster roll relating to 'contract labour' and that it would not be possible for the Company to identify the persons engaged by the Contractor. There is no evidence before me to show whether the Contractor himself maintained any muster rolls of the persons engaged by him. It was contended on behalf of the Companies that it would be impracticable to distribute bonus to contract labour. The names of the Contractors are available on the records of the Company and it would not be impossible for the Companies to contact the 'contract labour' through the Contractor and pay to them the bonus on a proper identification of each individual worker. I do not, therefore, see any reason to exclude the contract labour from receiving bonus awarded under this award.

22. The Union, as already stated, has asked for bonus on two grades, viz.—

(a) that the wages fall short of the living wage standard, and

(b) that the Companies made abnormal profits during the year 1947-48.

The Industrial Court has in Reference Nos. 1, 4 and 5 of 1948 observed as follows :—

"The Millowners' Association's contention that bonus is an *ex gratia* payment is true from the standpoint of civil law which can only enforce the terms of a contract between the parties, but in the domain of industrial relations between employers and workers the rights and duties of the parties are not governed merely by civil law but by collective bargaining in the settlement of disputes arising out of demands

made by one on another for more earnings, better conditions of work and increased production. The justification for such demands as "industrial matter" arises especially when wages fall short of the living wage standard and the industry makes huge profits part of which are due to the contribution which the workers make in increasing production. *The demand for a bonus is therefore an industrial claim when either or both these conditions are satisfied.*"

Though in the present case the Union has contended that the wages paid to the workers by the two Companies were below the minimum wage no evidence has been adduced before me as to the cost of living at Belapur where the factories of the two Companies in question are located. I am not prepared to accede to the Union's contention that the minimum wage fixed by the Industrial Court for the Textile Workers at Sholapur should be accepted as a fair and reasonable minimum wage for workers at Belapur. The wage scale prescribed by the Industrial Court for the Textile Workers at Sholapur has not been applied even to the Textile Workers at Barsi which is in the Sholapur District itself. It is a matter of common knowledge that even the minimum wage fixed by the Industrial Court or by the Industrial Tribunals does not take the minimum wage to the living wage standard which has not been attained in any industry in India so far. Consequently there is always a gap between the minimum wage paid to the workers and the living wage standard. As the wages paid by the Companies are thus below the living wage standard and the Companies have made an abnormal profit I do not think it necessary to pursue this point any further.

23. It was argued on behalf of the Companies that the sugar industry in India is still a comparatively young industry which has not yet been able to achieve a level of stability and efficiency. In this connection I would only refer to the Resolution of the Government of India (Res. No. 218-T(6) of 46, dated the 20th January 1947, in the Department of Commerce). The Resolution, in announcing an enquiry by the Tariff Board into the further continuance of the protection given to some of the industries, stated that in the present abnormal conditions it would not be possible to formulate a long term tariff policy in respect of *well established industries like sugar, paper, cotton textiles, and iron and steel*. In the face of this statement it is not possible to hold that the sugar industry is still a comparatively young industry.

24. It has been urged on behalf of the Companies that during the war years the industry worked under a system of control of an exceedingly rigorous nature and that the industry could make profits only after the control of sugar was terminated by the Government on 8th December 1947. The Companies therefore contended that the profits earned during the

year 1947-1948, for which bonus is claimed, were due to fortuitous and special circumstances and not due to any contribution by the labour. I fail to see how it would have been possible for the Company to make even these additional profits except without the output of sugar from the factory to which the workers had surely contributed.

25. It is argued by the Companies that the additional profits earned during the year 1947-48 should not be disbursed by way of bonus but should be reserved for rehabilitation and replacement of Plant and Machinery. The Maharashtra Sugar Mills Ltd., had in the year ending 30th September 1948 made a gross profit of Rs. 31,32,365-2-10. Out of that amount Rs. 3 lakhs (Rs. 3,00,000) were taken to the Depreciation Fund and Rs. 8 lakhs (Rs. 8,00,000) were allocated for Reserve for new machinery. The Belapur Company Limited made a gross profit of Rs. 53,89,452-14-5 out of which about Rs. 11 lakhs (Rs. 11,00,000) were transferred to the Reserve Fund.

26. On behalf of the Maharashtra Sugar Mills, Ltd., Mr. J. S. Holster, Chief Adviser to Maharashtra Sugar Mills, has given evidence as to the condition of the existing plant and the future requirements of the Mills. He has stated that when he joined the Maharashtra Sugar Mills Ltd., in 1939, the major part of the plant was already about 25 years old and that there have been no big unit additions to the plant since then. The Maharashtra Sugar Mills, Ltd., have filed a statement relating to the crushing operations during the 1947-48 season. After looking at the figures given in that statement Mr. Holster, in the course of his cross-examination, had to admit that the total number of stoppages on account of mechanical trouble was between 5 and 6 per cent. of the total hours during which the mill worked and that compared to the duration of the season it came to less than four per cent. This clearly shows that the plant and machinery, though old, is not so worn out, as was sought to be established because the factories are only seasonal factories and do not work throughout the year like the Textile Mills. In fairness to the Belapur Co. Ltd., I must state that no such plea was put forward on their behalf.

27. According to Mr. Holster a sum of Rs. 1,25,00,000 would be required to set up a completely modern plant for manufacturing sugar. In this connection I would refer to the decision of the Industrial Court in the dispute between the *Rashtriya Mill Mazdoor Sangh and the Nagpal Woollen Mills, Bombay, and others* (Reference (IC) No. 57 of 1949, *Bombay Government Gazette, Part I-L, dated 29th September 1949, page 1408(54)*). In that case Mr. Kamerkar, President of the Industrial Court, has observed :—

“The need to provide for replacement and rehabilitation in addition to the regular depreciation reserve arises because the cost of replacement has gone up during the post war period and cannot be adequately met from the depreciation reserve. But the claim of labour to bonus cannot be postponed to any additional expenditure on account of replacement or rehabilitation of plant and equipment to a condition before it was last acquired by the particular concern. The concern will have to find such fund from the surplus that might remain after providing for bonus, taxation, replacement reserve and dividends.”

In the present case the contention advanced on behalf of the Maharashtra Sugar Mills does not only seek a provision for replacement of Plant and Machinery to a condition before it was last acquired but to a condition still better than that. Agreeing respectfully as I do with the observations of the learned President quoted above, I do not think I would be justified in postponing the claim of the workers for bonus till provision for complete modernisation of Plant and Machinery has been made.

28. According to the Directors' Report about the working of the Maharashtra Sugar Mills Ltd., during the year 1947-48, after making a provision for Depreciation Fund, Dividend and Reserve for new machinery and other matters, a balance of Rs. 12,78,959-3-8 has been carried over for taxation, contingencies etc., etc. In the course of the arguments it was stated to me that income-tax has been paid by the Company only up to the year 1944-45 and that the whole amount of balance viz. Rs. 12,78,959-3-8 has been taken over to taxation reserve to make up the approximate amount of taxation for the years 1945-46 to 1947-48, both inclusive, viz. Rs. 21,16,000. The Company ought to have made provision for taxation from out of the profits made during each of the years of assessment. I am, therefore, unable to hold that the workers' claim for bonus should be postponed or rejected on account of the necessity to make provision for taxation for previous years especially when the Company has made such a huge profit in the year in question.

29. Both the Companies have by their Written Statement offered to pay bonus equal to three months' basic wages earned by the workers during the years 1947-48. The Maharashtra Sugar Mills, however, want to include in the bonus to be paid the amount paid by it to the workers as bonus in commemoration of the Independence Day. The year of the Company begins from the 1st October 1947 to 30th September 1948. 15th of August 1947 was celebrated all over India as the Day of Independence and I do not see any reason why the bonus

paid in commemoration of that day should be included in the bonus payable for the year commencing a month and a half after the Independence Day.

30. Considering all the circumstances of the case I think that a bonus equivalent to $\frac{3}{8}$ th of the total basic earnings of each of the workers accrued in the year 1947-48 would be reasonable.

31. It was urged on behalf of the Union that the payment of bonus should be unconditional. The Companies have opposed unconditional payment. There is substance in the contention advanced by the Company that absenteeism has much more serious effect on the sugar industry than in any other normal manufacturing process such as textile industry. The Company had also urged that misconduct affecting the production of the factory or joining an illegal strike should disqualify a person from receiving bonus. In the course of his arguments, Mr. Kamerkar, who appeared for the Union, fairly conceded that dismissal on account of misconduct resulting in a financial loss to or damage to the property of the Company during the period for which bonus is claimed should be a disqualification for receiving bonus. Strike results in breaking the continuity of service and the workers' losing the paid holidays to which they become entitled under the Factories Act. It also reduces the amount of his yearly earnings because of the loss of wages during the period of the strike. As however, bonus is to be paid in proportion to the wages earned during the year it is not necessary to attach any condition in this respect.

32. I, therefore, direct that the two Companies in question should pay to their seasonal and non-seasonal employees bonus for the year 1947-48 at the rate of $\frac{3}{8}$ th of the total basic earnings earned by each of the workers in that year subject to the following conditions :—

(a) that a seasonal employee who has been absent from work for more than 50 days (excluding holidays and earned leave) will not be entitled to receive any bonus. A non-seasonal employee who has been absent from work for more than 25 per cent of the number of working days will not be entitled to any bonus. (Such of the workers on the muster rolls as were required to work on contract during closure days shall be considered to be present on those days).

(b) that an employee who has been dismissed during the year 1947-48 on account of misconduct resulting in direct financial loss to or damage to the property of the Company shall not receive any bonus even if he satisfies the condition (1).

(c) that employees who would be entitled to bonus under this award but who are not at present in the service of the Company shall submit a written application for getting bonus before the 31st May 1950.

(d) 1/3rd of the amount payable as bonus should be paid in the form of National Savings Certificates.

(e) the bonus should be paid within two months from the publication of this award.

(Signed) P. S. BAKHLE,
Member.

(Signed) K. R. WAZKAR,
Registrar.

Bombay, 30th November 1949.

D. G. KALE,
Registrar,
Bombay Industrial Relations Act.

Bombay, 20th December 1949.