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PART I-L

Notifications, orders and awards under the Industrial Disputes Act, 1947, and 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, 7th July 1949.

Order.

No. 739/48.—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 Fazalbhoy Nathoo and Company, Bombay and the workmen employed under it, regarding the matters specified in Annexure "A" for adjudication to the Industrial Tribunal consisting of Mr. I. G. Thakore, B.A., LL.B., Advocate (O. S.), constituted under section 7 of the said Act, under Government Notification, Labour Department, No. 575/46, dated the 2nd March 1949.

Annexure "A".

1. (i) *Wages*.—Present practice of including Dearness Allowance in the wages should be done away with and following wage scale should be accepted:—

(a) *Unskilled*.—Rs. 1-8-0 to Rs. 2-4-0 by annual increments As. 3 only.

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

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

(d) *Highly skilled*.—Rs. 100-10-250.

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

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

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

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

3. *Leave*.—One day off per week on Sunday with full pay should be given. Holidays too should be granted subject to Sunday's working. One month's privilege leave should be granted with full pay. 15 days' sick leave with half pay and dearness allowance and 7 days' casual leave with full pay should be granted. The above leave should be granted with retrospective effect from January 1945. Full compensation should be paid to the workers for the abridgement of the quantum of leave they used to enjoy in the previous year.

4. *Bonus*.—A bonus equivalent to 25 per cent. of the yearly earnings of workers by way of wages and dearness allowance should be declared for the periods of 1946-1947 and 1947-1948. Fifty per cent. of the above bonus should be paid to all workers who have put in between 37 to 75 days during the said periods irrespective of the fact whether they are on the rolls of the Company on the date of payment or not. Full payment of wages should be given for those who have put in more than 75 days.

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

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

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

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

9. *Standing Orders*.—Standing orders should be drawn up in accordance with the Industrial Employment Standing Orders Act,

Bombay Castle, 11th July 1949.

No. 347/48.—The award of the Tribunal in the industrial dispute between Messrs. Richardson and Cruddas, Bombay, and the workmen employed under them referred for adjudication under Government Order, Labour Department, No. 347/48, dated the 7th March 1949, is hereby published :—

BEFORE MR. D. G. KAMERKAR, INDUSTRIAL TRIBUNAL, BOMBAY.

ADJUDICATION

AJ-IT No. 21 of 1949

BETWEEN

Messrs. Richardson and Cruddas, Bombay

AND

The workmen employed under it.

In the matter of dearness allowance.

Mr. A. E. Blair of Messrs. Crawford Bayley & Co., for the firm.

Mr. N. V. Phadke, with Mr. K. K. Khadilkar, for the workmen.

AWARD.

The dispute in this proceeding was referred to me under section 10, sub-section (1) of the Industrial Disputes Act, 1947, by the Government of Bombay by their order No. 347/48, dated March 7th, 1949, of the Labour Department.

2. The dispute relates to a demand for dearness allowance and is stated in Annexure A to the notification in the following terms :—

“The workmen should be paid dearness allowance on the revised textile scale as from 1st January 1947 and from October 1948 they should be paid the said allowance at a scale which will neutralize the rise in the cost of living cent per cent.”

3. The Engineering Mazdoor Sabha appears on behalf of the workmen and it alleges that since the year 1942 the employer firm had been paying dearness allowance to its workmen on either of the two scales A and B, whichever could be chosen by individual workmen as advantageous to themselves. According to it, scale A was in practice the scale of the textile mills related to the cost of living index figure for Bombay and scale B was a percentage scale related to the basic wage. The textile scale was revised by the Industrial Court by its award, dated

20th February 1948, in Reference Nos. 1, 4 and 5 of 1946, with retrospective effect from 1st January 1947. The firm, however, gave effect to the revised scale A from 1st March 1948 only and thereby denied to the workmen the benefit of that scale for a period of 14 months from 1st January 1947 to 28th February 1948. On March 10, 1948, the Engineering Mazdoor Sabha called the attention of the firm to the award of the Industrial Court and requested it to give effect to the revised scale from 1st January 1947. The Sabha also sent a reminder on May 12, 1948, but the firm did not act up. The demand was thereafter taken to Government for adjudication.

4. The Sabha further demands; on behalf of the workmen, that with effect from 1st October 1948 the rate of dearness allowance be revised on the basis of 100 per cent. neutralisation for the rise in the cost of living above the pre-war level. According to it, the average wage in the engineering industry was Rs. 41-0-11 when the average wage in the textile industry was only Rs. 32-8-0. The textile scale as it obtained prior to the award of the Industrial Court afforded neutralisation to the extent of 76 per cent. for the rise in the cost of living over the average wage of Rs. 32-8-0 in that industry; but when the scale was revised by the Industrial Court by its award of 20th February 1948 the basis was changed and the scale was so framed as to award 90 per cent. neutralisation for the rise on the minimum wage of Rs. 30 in the industry. The Sabha contends that the textile scale does not afford adequate compensation for the rise in the cost of living of workmen in the engineering industry and their scale should be so framed as to allow neutralisation to the full extent of cent per cent. and for the rise above the average wage of Rs. 41-0-11 in the engineering industry.

5. The firm objects to both parts of the demand. It contends that although workmen had made demands upon it in the year 1946 and 1947 in other respects, no demand for any increase in dearness allowance had been made until the Sabha's letter of 10th March 1948 and therefore no increase can be claimed or allowed for any period prior to that date. It denies that it had introduced scale A in July 1942 because it was the textile scale or that it had ever represented to its workmen that it would be paying dearness allowance on the textile scale as might be modified from time to time either by an agreement or by an award of the Industrial Court. It points to the circumstance that it had introduced Scale B side by side with Scale A, leaving it open to the workmen to choose whichever was more advantageous to them; and although it had revised Scale A with effect from 1st March 1948 so as to bring it into line with the textile scale as revised by the Industrial Court it was not bound to pay dearness allowance on that scale with retrospective effect from 1st January 1947, as it used to notify on every occasion of a revision that the scale was subject to revision or withdrawal at any time at the discretion of the firm. The firm moreover relies on the circumstance that it used to tender for and execute works on contract and the cost in the tenders used to be estimated at the prevailing rates of wages and materials.

After the works had been executed and the bills paid, no further recovery on the ground of subsequent increase in the rates of wages and materials could be made from customers and it would be inequitable to burden the firm with additional cost now for those works in the form of increased dearness allowance.

6. As to the second part of the demand, the firm takes a preliminary objection that there was no demand at any time, not even in the letter of the Sabha, dated March 10th, 1948, for an increase in the rate of dearness allowance from October 1st, 1948, on the basis of a cent per cent. neutralization for the rise above the average wage in the engineering industry. As there was no such demand, there could be no dispute which could validly be referred to adjudication under section 10, sub-section (1) of the Industrial Disputes Act, 1947, and the Tribunal cannot assume jurisdiction to adjudicate on this part of the demand. On the merits, the firm contends that the total wages, inclusive of dearness allowance, which it has been paying to its workmen in Bombay are very much higher compared to those paid to similar workmen in Calcutta and elsewhere and much of the business in ship repairs has been lost to Bombay on account of competition with firms elsewhere in India and abroad. As the firm's workmen in Bombay are paid more generous wages and dearness allowance than firms elsewhere, there is no ground to raise the rate of dearness allowance or to alter the basis thereof.

7. The demand appears to me unsustainable. The firm has put into evidence (exhibit 1) all the relevant notifications in connection with dearness allowance which it had issued from time to time, the earliest among them being of the date August 30th, 1941. In none of them is to be found any reference to the textile scale or any indication that the firm had held out to these workmen that it was granting dearness allowance on that scale and would continue to grant it as it might be modified from time to time either by agreement or by award of the Industrial Court. It is pertinent to note that from 1st July 1942 the firm had introduced two scales, leaving it to the option of the workmen themselves to choose the one or the other as might be found advantageous in individual cases. Moreover, in every one of the notifications the firm had mentioned that the allowance was subject to modification or withdrawal at any time at the discretion of the firm. It is true that Scale A out of the two corresponded to the scale formulated by the Millowners' Association of Bombay and approved by Government; but that Association had merely extended to index figures beyond 123 the principle of the formula prescribed by the Rangnekar Board of Conciliation in 1940 and hence the scale it devised and which Government approved can in no sense be said to be a scale exclusive to the textile mills. The award of February 20th, 1948, of the Industrial Court was concerned solely with the question of the rate of dearness allowance in textile mills; and unless an industrial concern other than textile had notified or indicated to its workmen, prior to that award, that it would pay on the scale applicable to textile mills, it would be clearly unreasonable to saddle that concern with the burden of that scale as revised by the

award with retrospective effect. In its notification of 11th March 1948 by which the firm prescribed an average rate of 1.9 pies per day per point rise in the cost of living index figure over 105 the firm never referred either to the textile scale or to that award. The facts of this case are on this account outstandingly different from the facts in the Mazgaon Dock, the Alcock Ashdown & Co. and the Ford Motor Company of India's disputes. As has been pointed out by me in paragraph 12 of my award in the dispute between the General Motors, India, Ltd. and the workmen employed under it (AJ-IT. No. 13 of 1949, *Bombay Government Gazette*, Part I-L, dated 12th May 1949, pp. 254-282), the Mazgaon Dock Limited had notified on 20th December 1942 that they intended to give to their workmen dearness allowance "not less than that allowed to the mill workers in Bombay." The Alcock Ashdown & Co. Ltd. used to pay dearness allowance on precisely the same scale as the Mazgaon Dock Ltd. and had signified their intention to the Director of Labour Administration by their letter, dated 19th April 1948, that they would be guided in the matter of dearness allowance by the award in the Mazgaon Dock dispute, which was then awaited. After the original award in that dispute had been published in the Gazette of 17th June 1948, the Alcocks had adhered to that intention and had informed that officer once again in their letter of 21st July 1948 that they had "introduced the revised rate of dearness allowance according to the Millowners' scale" with effect from 1st April 1948. It has been pointed out by me in AJ-IT. No. 2 of 1949 (*Bombay Government Gazette* Extraordinary, Part I, dated 7th April 1949, page 1859) in paragraph 5 (pp. 1860-1861) that it was only after the original award in the Mazgaon Dock dispute had been amended in September 1948 so as to grant retrospective effect to the revised rate of dearness allowance from 1st January 1947 that the Alcocks resiled from their original intention to follow the practice in the Mazgaon Dock Ltd. and the direction in the amended award. I should note here, incidentally, that my observation in that paragraph that all the three Companies, viz., Messrs. Mazgaon Dock Ltd., Alcock Ashdown & Co. and Richardson & Cruddas had been paying since before September 1948 dearness allowance according to the textile scale was erroneous in so far as it relates to Richardson & Cruddas: The firm rightly points out in this proceeding that the observation was made *ex-parte* and it had no opportunity to put up its own facts then. The Ford Motor Company of India Ltd. had likewise notified expressly on 26th March 1947 to its workmen that it would pay "on the Millowners scale for textile workers in the city of Bombay". Therefore the claim of the workmen in those three disputes for dearness allowance on the textile scale as revised by the Industrial Court with retrospective effect from 1st January 1947 was maintainable and could be justly upheld. In the dispute between the General Motors India Ltd. and its workmen, wherein a similar claim for retrospective effect has not been upheld by me, the Company had notified on 27th March 1948 that it would pay dearness allowance with effect from 1st February 1948 on the new scale "as adopted by the Mills"; whereas in the case before us, the firm had not referred to the "textile scale" or to any scale "as adopted

by the Mills". The Sabha's contention that in effect it was the practice of the firm to grant the textile scale and that the firm had created a reasonable belief in the minds of its workmen that it would be modifying its scale as and when the textile scale might come to be modified even with retrospective effect is clearly an after-thought, as will appear from a close reading of the Sabha's letter of 10th March 1948. In the relevant paragraph 2 of that letter the Sabha had not stated that the firm had been following the practice in the textile mills until then and that it was on that account necessary that the rate of dearness allowance as revised by the Industrial-Court should be sanctioned by the firm with retrospective effect from 1st January 1947. On the contrary, the letter reads as though the Sabha was urging the firm to commence paying dearness allowance on the scale adopted by the Mills as other industries had been doing and to pay at the rates revised by the award. Hence it was that the firm had replied by its letter of 15th March 1948 that it had already announced an increase in the rate of dearness allowance on 11th March 1948. It is pertinent to note that on this occasion too the firm had not mentioned that it was granting an increase as adopted by textile mills or as awarded by the Industrial Court.

8. Further, there is considerable substance in the contention of Mr. Blair on behalf of the firm that as the workmen had not made any demand for an increase in the rate of dearness allowance before 10th March 1948 although they had made certain other demands in 1946 and 1947, this Tribunal should not grant any increase retrospective to 10th March 1948. It has to be noted that the workmen of Messrs. Alcock Ashdown & Co. had apparently been content, as has been pointed out by me in paragraph 7 of my award in AJ-IT. No. 2 of 1949 (*Bombay Government Gazette Extraordinary, Part I, dated 7th April 1949, page 1859 at page 1862*), with what revision or amendment might come to be made in the textile scale from time to time and there could therefore be no reason to them to make a demand for an increase in the rate of dearness allowance which they had been already getting.

9. Proceeding to the second part of the demand, it is necessary to dispose of a preliminary objection taken to it by Mr. Blair. He contends that this tribunal has no jurisdiction to adjudicate on this part of the demand as there had been no dispute which could be referred by Government to adjudication under section 10, sub-section (1). He points out that the letter of the Sabha, dated 10th March 1948, contains no indication whatever of any demand for dearness allowance on the basis of a cent per cent neutralisation for the rise in the cost of living above the average basic wage prevailing in the engineering industry as a whole; and he urges that there could consequently be no effort at conciliation in respect of that question and no dispute on the failure of conciliation. Mr. Phadke admits that there had been no specific demand of that type in the Sabha's letter, but he argues that the demand had been urged on the notice of Government and in apprehension of a dispute in relation to it Government had made the reference under section 10, sub-section (1). I had an occasion to consider such an objection in

the dispute between the Alcock Ashdown & Co. Ltd. and their workmen (AJ-IT. No. 33 of 1948, 1948 I. C. R. Bom. 772); and I had observed in paragraph 8 of the award therein that an Industrial Tribunal derives jurisdiction from the notification of Government, provided such notification states that Government has complied with the pre-requisites therefor stated in section 10, sub-section (1). As the notification in that case showed on the face of it that Government had complied with those pre-requisites, the objection was overruled. There was also another occasion, prior to it, in a reference under section 49-A of the Bombay Industrial Disputes Act, viz., Reference No. 22 of 1947—Narayandas Chunilal Spg. & Wvg. Mills, Gadag v. Its employees (1948 I. C. R. Bom. 620). In paragraph 5 (pp. 621-622) I had then observed :—

“ Whether any of the contingencies referred to in that section had truly arisen or not was a matter for the exclusive consideration of Government and on being satisfied as to the arising of the contingencies, Government could make the reference in their discretion. It is not open to any Court to question the action of Government in making the reference, which is an executive action, except in one particular, viz., compliance with the formalities prescribed by the law. In the notification by which the reference was made, it has been specifically stated that the Provincial Government had been satisfied that serious or prolonged hardship to a large section of the community was likely to be caused by reason of the continuance of the industrial dispute relating to the two demands. The conditions necessary for a valid reference having been thus fulfilled, the Industrial Court gets the necessary jurisdiction to decide the dispute thereby ”.

In the case before us, there is nothing in the evidence to show that such a demand had been urged on the notice of Government beyond the bare fact that Government has made the reference; and reading the order of reference, dated 7th March 1949, there are to be found no words in it to the effect that Government had either been satisfied as to the existence of a dispute in relation to such a demand or that it had apprehended a dispute in that behalf. I am therefore of the view that the preliminary objection of Mr. Blair to the jurisdiction of this Tribunal to adjudicate on such a demand must prevail.

10. Turning to the merits of that part of the demand, it must be noted that a substantially similar demand had been made in the dispute between the Mazgaon Dock Ltd. and its workmen (AJ-IT. No. 29 of 1947, *Bombay Government Gazette* Extraordinary, Part I, dated 17th June 1948, pp. 2892-2907) and was rejected by me on the ground that there could be no reason to treat workmen in the engineering industry on a footing different from workmen in the textile industry in the same centre in the matter of dearness allowance. In the dispute between the Premier Automobiles Ltd. and its workmen (AJ-IT. No. 39 of 1948, *Bombay Government Gazette* Extraordinary, Part I, dated 21st February 1949, pp. 801-824), wherein also a similar demand had been made, it was rejected by me on the ground that the contingency which had occasioned the rise in the cost of living had not benefited the industry in like

proportion and that employees or workmen must bear, alike with employers, to a certain extent what after all is a national calamity. These grounds were reiterated in the dispute between the General Motors India Ltd. and its workmen (AJ-IT 13 of 1949, *Bombay Government Gazette*, Part I-L, dated May 12, 1949, pp. 254-282), observing further that workmen in nearly all industries in Bombay have been generally satisfied with the dearness allowance on the textile scale as revised by the Industrial Court's award of 20th February 1948. There appears to me no reasonable ground in the present case to differ from the view taken by me in those several disputes.

11. In the result, the demand has to be rejected.

No order as to costs.

D. G. KAMERKAR,
Industrial Tribunal,

K. R. WAZKAR,
Secretary.

Bombay, 30th June 1949.

Order.

No. 347/48.—Whereas the dispute between Messrs. Richardson and Cruddas, Bombay, and the workmen employed under them was referred by Government Order, Labour Department, No. 347/48, dated the 7th March 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 Messrs. Richardson and Cruddas, Bombay, and the workmen employed under them and to direct that the said award shall come into operation on the 11th July 1949 and shall remain in operation for a period of one year.

Bombay Castle, 13th July 1949.

Order.

No. 779/48.—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 Jagjivandas Amichandbhai Factory, Ahmedabad, and the workmen employed under it, regarding the matter specified in Annexure "A" for

adjudication to the Industrial Tribunal consisting of Mr. P. D. Vyas, Judge, Labour Court, Ahmedabad, constituted under section 7 of the said Act, under Government Notification, Political and Services Department, No. 575/46, dated the 13th January 1948.

Annexure "A".

All the workmen of the Factory should be paid bonus equivalent to 20 per cent. of their annual wages, for the year 1948.

Order.

No. 789/48.—Whereas an industrial dispute has arisen between the Surat Bus Company Limited, Surat, and the workmen employed under it on the demands mentioned in Annexure "A";

And whereas a joint application has been made by the Surat Bus Company Limited, Surat, and the Surat District Motor Drivers' and Cleaners' Association, Surat, of which the majority of the workmen directly affected are members, under sub-section (2) of section 10 of the Industrial Disputes Act, 1947 (XIV of 1947), for referring the dispute to adjudication;

Now, therefore, in exercise of the powers conferred by sub-section (2) of section 10 of the said Act, the Government of Bombay is pleased to refer the said dispute for adjudication to the Industrial Tribunal consisting of Mr. D. G. Kamerkar constituted under section 7 of the said Act, under Government Notification, Political and Services Department, No. 575/46-II, dated the 19th June 1947.

Annexure "A".

1. Every worker should be paid a bonus equivalent to four 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 1948-1949.

2. Conductor Sayed Mohiyuddin should be reinstated in his original post and he should be paid compensation equal to the loss of wages sustained by him.

3. If a post of Motor Driver is to be filled in, preference should be given to a Conductor holding a driving licence before bringing in an outsider.

Bombay Castle, 15th July 1949.

Order.

No. 1451/46.—Whereas an industrial dispute has arisen between the Borough Municipality, Thana, and the workmen employed under it on the demand mentioned in Annexure "A";

And whereas separate applications have been made by the Borough Municipality, Thana, and the Municipal Kamgar Sangh, Thana, of which the majority of the workmen directly affected are members, under sub-section (2) of section 10 of the Industrial Disputes Act, 1947 (XIV of 1947), for referring the dispute to adjudication ;

Now, therefore, in exercise of the powers conferred by sub-section (2) of section 10 of the said Act, the Government of Bombay is pleased to refer the said dispute 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 " A ".

Demand.

The salaries and grades of the employees should be fixed as below and given effect to from 1st January 1947 :—

Chief Sanitary Inspector and Vehicle Mechanic—Rs. 250—10—1—350.

Accountant, Head Clerk, Ayurvedic Vaidya, Market Inspector (qualified), Sanitary Inspector, Inspector of Taxes, Octroi Inspector, Building Inspector, Inspector of Shops and Establishments—Rs. 200—10—1—300.

Store Keeper, Head Plumber, Nurse—Rs. 100—10—1—200.

Clerks, Market Inspector (non-qualified), Assistant Plumber, Mistry, Tracer, Drivers, Compounders—Rs. 80—10—1—180.

Nakedars—Rs. 60—4—1—100.

Mukadams, Trip Markers, Bambwallas, Dressers, Black Smiths, Gothewallas—Rs. 60—3—1—90.

Havildar, Sluicemen, Assistant Gothewallas—Rs. 40—3—1—70.

Adult Peons, Night Watchmen, Carriage-Watchmen, Lamp Lighters, Motor Cleaners, Mali, Ayya—Rs. 40—2—1—60.

Boy Peons (to be treated as adult peons on attaining 21 years—Rs. 30—2—1—60.

Zaduwallas, Refuse Fillers, Refuse Motor Fillers, Refuse Cart Fillers—Rs. 40—2—1—60.

Dabewallas, Gutterwallas (unclean work allowance Rs. 10 per mensem)—40—2—1—60.

Sullage Motor Fillers (unclean work allowance Rs. 10 per mensem)—Rs. 50—3—1—80.

Sullage Cart Fillers (unclean work allowance Rs. 10 per mensem)—Rs. 45—3—1—75.

Dung Boys—Rs. 40—2—1—60.

By order of the Governor of Bombay,

C. K. MARU,

Under Secretary to Government.

IN THE INDUSTRIAL COURT, BOMBAY.

MISCELLANEOUS APPLICATION No. 1 OF 1949.

The Textile Labour Association, Ahmedabad . . . Applicant;

versus

The Millowners' Association, Ahmedabad . . . Opposite Party.

Subject.—Modification of award in Ref. 18/47 and standardization of wages.*Industry.*—Cotton Textile.*Present.*—Mr. K. C. Sen, President.

Mr. D. G. Kamerkar, Member.

Mr. M. C. Shah, Member.

Appearances.—Mr. S. R. Vasavda for the Textile Labour Association.
Mr. Ramanlal Lallubhai; Mr. Ratilal Nathalal,
Mr. Navatlal Sakarlal, Mr. Surettam P. Hatheesing
and Mr. H. G. Acharya for the Millowners' Association.

ORDER.

This is an application under section 116-A of the Bombay Industrial Relations Act, 1946, for modification of an award made by this Court in Reference No. 18 of 1947 between these very parties. The award was made on the 21st April 1948.

2. The reference, which had been made under section 49-A of the Bombay Industrial Disputes Act, 1938, was in respect of demands for standardization and a general increase in wages, abolition of the system of contract labour, etc. At the time of the reference Ring-pickers in the spinning department used to be paid at the following rates:—

*For a month of 26 days.*A. *Warp*—

For minding less than 170 spindles—

	Rs.	a.	p.
Single side	28	4	5
Two sides	39	1	0

For minding 170-190 spindles—

Single side	28	9	2
Two sides	39	11	0

For minding more than 190 spindles—

Single side	28	9	2
Two sides	39	2	0

B. *Wef*—

As 8 more per "hapta" for the same number of spindles.

By the award, which was made on the report of an Assessor (Mr. Nandulal Mehta) and upon hearing the parties on either side as to the report, that mode of computing wages or remuneration was altogether changed and the following was substituted. (See Schedule I to the Award, Occupational Group B, Spinning Department, page. 1716, *Bombay Government Gazette Extraordinary*, April 24, 1948).

For Warp or Weft—

Ring piecers attending warp or weft frames up to and including 200 spindles—Rs. 34-15-0.

For every 20 spindles in addition or part thereof, the wage to be raised by—Rs. 1-3-6.

The Textile Labour Association, Ahmedabad, feels aggrieved by this change in the mode and it urges that whereas under an award of 1935, known as the Delhi Settlement and Mr. Patkar's Award (See Appendix A to the application), mills desirous of rationalising work in any section of the spinning department had been permitted to do it on granting to the workers 45 per cent. or $47\frac{1}{2}$ per cent. increase (according to counts worked upon) in their wages for additional work entailed thereby and Ring piecers minding "doubles", i.e., two sides, had been thereunder getting wages increased according to that percentage, by the mode substituted by this Court's award the percentage of increase was considerably reduced, particularly in the case of those working on frames with 170 spindles to a side and less. The Textile Labour Association further points out that the net gain over the pre-award wage of those ring-piecers is negligible. In paragraph 6 of the application the Association has shown in comparative tables the increase per cent. obtained under the mode in the award and also the net gain per cent. over the pre-award wage of a "double" Ring-piecer.

3. According to the Association, a principle had been established by the Delhi Settlement regarding the apportioning of the savings resulting to the Mills from rationalization and as in the award of this Court the principle had not been followed and the percentage of increase had been substantially reduced and there had resulted little or no gain to the Ring-piecers minding "doubles", there is now left no inducement to those Ring-piecers. This would result in impeding or arresting the progress of rationalization in the Mills at Ahmedabad to which the Association had consented on certain terms and on introducing which the Mills have recently been very keen. The Association had demanded, when the reference was being heard in this Court, that all warp Ring-piecers attending to a side of 170 spindles or less should be paid a basic wage of Rs. 35-12-0 for a month of 26 days with an additional 13 annas for every 10 spindles attended to. The Association had even made an application for a review of the award, but the application had to be withdrawn for technical reasons. After section 116-A was enacted, the present application was preferred by the Association urging its original demand. In paragraph 7 of the application the Association has set out a table showing the wages which Ring-piecers minding "doubles" would be getting according to the demand.

4. The Ahmedabad Millowners' Association opposes the application. It contends that as the award has been in force for just a year, a demand for its modification within such a short time is not called for and, if conceded, no sanctity will be left to awards of this Court. In 1935 the Millowners' Association had agreed to an additional remuneration of 45 per cent. and 47½ per cent. as an incentive to working "doubles" in the conditions then prevailing, but those conditions have since undergone a complete change. The mode prescribing a basic rate for a minimum of 200 spindles or less and a step-up allowance for every additional 20 spindles had been originally recommended by Mr. Khandubhai Desai for mills in Bombay and was advisedly adopted by this Court for Ahmedabad and Sholapur. The Assessor in the present case, Mr. Nandulal Mehta, had heard both the parties at Ahmedabad and had preferred to recommend a scheme of wages to Ring-piecers on a work-load basis, under which their wages can automatically increase in direct ratio to the increase in the number of spindles attended to by them. The Court has awarded a higher basic wage rate than in the Bombay scheme recommended by Mr. Khandubhai Desai and has besides awarded a higher rate of increase per slab of 20 spindles. The Millowners' Association maintains that under the rate prescribed by the award the average increase in the wages for working "doubles" over wages for working "singled" has been approximately 30 per cent. and a majority of Ring-piecers working "doubles" have been getting between 25 and 41.5 per cent. increase over the pre-award wages. It contends that when Government are attempting to bring wage rates in the textile industry to a uniform level all over India it is unfair that Ahmedabad alone should be singled out to adopt a new basis and a higher standard of wages.

5. We have heard Mr. Vasavda on behalf of the Textile Labour Association and Mr. Shodhan on behalf of the Mills at considerable length and we are by no means satisfied that there is good ground to improve upon the award in relation to Ring-piecers. In the first place, while we are conscious of the right given to parties by section 116-A recently inserted in the Bombay Industrial Relations Act, 1946, to obtain modification of a portion only of an award on giving the notice prescribed thereunder, we would ordinarily be reluctant to interfere with the scheme or details of an award which we think has not had a fair trial for a reasonably long period, unless we are satisfied that they have been inequitable in their operation or have resulted in hardship or obvious injustice to individuals considerable in number. Looking to the merits of the application, we are unable to find that these conditions necessary for our interference exist in the present case. The argument that there is now little or no inducement to Ring-piecers to mind two sides because the award has reduced the remuneration for "doubles" to a much lower percentage than what had been agreed to under the Delhi Settlement and that the net gain under the award to these Ring-piecers is much less than what it was before the award appears to us to be entirely unconvincing. The argument takes it for granted that for all time to come the Mills will have to pay in terms of the Delhi Settlement an increase of 45 per cent. or 47½ per cent. for "doubles" over corresponding wages for "singles".

It is rightly contended on behalf of the Mills that they had agreed to that much increase because they had simultaneously succeeded in obtaining a cut of $6\frac{1}{2}$ per cent. in the basic rate of wages for "singles" working and that under this Court's award an initial advantage has been granted to Ring-piecers working on frames with spindles less than 170 to a side by substantially increasing their basic remuneration or wage-rate. When such basic rate for "singles" is increased substantially it appears to us unreasonable to insist on maintaining the same or similar percentage of increase as before for "doubles" over that increased rate. The difference between the two is bound to show a smaller percentage, especially in respect of frames with spindles less than 340. If the same percentage of increase must remain, the Mills have the corresponding right to insist on the workmen's maintaining the same production efficiency. There has, on the other hand, come about a material change in working conditions in the years subsequent to the Delhi agreement of 1935. Whereas the average of counts worked upon in 1935 was about 25, the present average is 40. That is to say, owing to the mills taking to production on finer counts, the work-load per individual and the output per unit have been appreciably reduced. It was stated to us at the hearing on behalf of the Mills that it has been reduced by nearly $33\frac{1}{2}$ per cent.—an assertion which was not seriously controverted by Mr. Vasavda on behalf of the Textile Labour Association. The working hours, too, have come to be reduced since August 1946, a circumstance which has added to the cost of production. The further argument that the net benefit under the award to a majority of Ring-piecers working "doubles" on frames with 340 to 380 spindles has been only between 8 to 17 per cent. and to other working on similar frames it has been negligible has likewise failed to impress us. It is but an ordinary incidence of any scheme of standardization that not all workmen will be benefitted in point of wages in like proportion. We are familiar, on the other hand, with instances wherein, owing to maladjustment of differentials previous to the award, the standardized wage rate came to be lower than the existing wage rate and a special directions had to be given to maintain the existing level of wages.

6. As under the Delhi Settlement the Textile Labour Association had consented on behalf of the textile workers of Ahmedabad to introducing rationalised processes of work in any section of the Spinning Department, there could be nothing wrong on the part of the Assessor or the Industrial Court to proceed on the assumption that all Ring-piecers would be minding two sides of a frame and to standardise the wage rate for them by relating it to the work-load. In so doing the Assessor and the Court had apparently been influenced by the scheme of standardisation introduced in the textile mills in Bombay. In paragraph 23 of the award can be noticed an observation of the Court that it was necessary that there should be uniformity in the standardization schemes at the two important textile centres of our Province. Under the scheme in Bombay, a basic wage rate of Rs. 34-2-0 had been fixed for Ring-piecers attending to frames up to 200 spindles and an increase at the rate of Rs. 1-2-0 had been provided for every 20 spindles over 200.

The Bombay scheme had been based upon the recommendation of Mr. Khandubhai Desai, who was one of the Assessors. It has to be noted that in the Ahmedabad scheme the Assessor and the Court had advisedly fixed a higher basic rate of Rs. 34-15-0 in respect of 200 spindles or less and a higher rate of Rs. 1-3-6 for every 20 spindles in addition. The Ahmedabad Millowners Association had strenuously opposed granting this advantage to Ring-piecers in Ahmedabad over Bombay, as will appear from paragraph 14 of the award, especially when the Court was not prepared to retain intact their own scheme in the Weaving Section which had been introduced 13 years previously and had been tried. The Textile Labour Association had urged for adoption of the Bombay scheme *in toto* and the Court too had preferred to adopt it, at the recommendation of the Assessor, in order to maintain uniformity with Bombay. Apparently, the Court had been aware of the necessity to maintain that advantage to Ring-piecers in Ahmedabad because of the history of the introduction of doubles working in Ahmedabad under the Delhi Settlement of 1935. In the standardization scheme for Sholapur textile mills the Court has provided a basic rate of only Rs. 32-8-0 for 200 spindles and an increase of Rs. 1-3-6 for every additional 25 spindles. We have also before us the report of the United Provinces Labour Enquiry Committee (1946-48). At p. 127 of Vol. I—Part I of the report we notice that under the scheme of standardization obtaining there a basic wage rate of Rs. 32-0-0 has been fixed for 200 spindles and an increase of Re. 1 for every 25 additional spindles.

7. We do not see any substance in the contention of the Textile Labour Association that the Industrial Court had been concerned only with fixing standard wages for various occupations in the industry and that it was not within its sphere to prescribe additional remuneration for rationalised processes by relating it to work-load. On principle, no scheme of standardization can be complete without relating wages to work-load. And if in the standardization schemes in Bombay, Ahmedabad and Sholapur work-load has not been specified in certain instances, it has to be understood that wages have been standardised in relation to the work-load as until then borne by the workmen concerned. Where the need arose, as in the case of Ring-piecers, to alter entirely the mode or the basis of calculation of wages, work-load had to be specified. We do not think that the Textile Labour Association can have any grievance on that ground.

8. As we do not see good ground to modify the award, we reject this application. No order as to costs.

(Signed) K. C. SEN,
President.

(Signed) D. G. KAMERKAR,
Member.

(Signed) K. R. WAZKAR,
Registrar.

(Signed) M. C. SHAH,
Member.

Bombay, 7th July 1949.

Late Notifications.

LABOUR DEPARTMENT.

Bombay Castle, 13th July 1949.

Order.

No. 2230/46.—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 Metro Theatre Bombay, Limited, Bombay and the workmen employed under it, regarding the matter specified in Annexure "A" for adjudication to the Industrial Tribunal consisting of Mr. M. C. Shah, B.A., LL.B., constituted under Government Notification, Political and Services Department, No. 575/46, dated the 11th August 1947, read with Government Notification, Political and Services Department, No. 575/46, dated the 21st October 1947.

Annexure "A"

Bonus.—A bonus equivalent to 16 weeks' basic salary should be paid to all the workers who were on the Muster Pay Roll for the last six months of the Financial year, i.e., from March 1st to August 31st, 1948. This bonus should be calculated at the basic rate at which the workers were entitled to draw their salary for the week ended 26th August 1948.

Bombay Castle, 15th July 1949.

No. 443/48.—The award of the Tribunal in the industrial disputes between the Estrela Batteries Limited, Bombay, and the workmen employed under it referred for adjudication under Government Orders, Labour Department, No. 443/48, dated the 18th November 1948 and 24th January 1949, is hereby published :—

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

AJ-IT Nos. 82 of 1948 and 11 of 1949

ADJUDICATION

BETWEEN

The Estrela Batteries Limited, Bombay

AND

The Workmen employed under it.

In the matter of an Industrial dispute regarding minimum wage, dearness allowance, service gratuity, leave, holidays, provident fund scheme, and reinstatement of Mr. Madhavrao Gopalrao.

Appearances.—Mr. B. Narayanaswamy, Advocate, for the Company, Mr. T. Godiwala, Advocate, with Mr. A. D. Gadkari, Secretary of the Estrela Batteries Kamgar Union, Bombay.

Counsel Mr. A. K. Amin for Mr. Madhavrao Gopalrao.

AWARD

This industrial dispute between the Estrela Batteries Limited, Bombay, and the workmen employed under it, has been referred to me for adjudication by the Government of Bombay under section 10 (1) of the Industrial Disputes Act, 1947 (XIV of 1947), by Orders No. 443/48, Labour Department, dated the 18th November 1948 and No. 443/48, Labour Department, dated the 24th January 1949. The matters in dispute are as follows:—

1. *Minimum Wage.*—Every worker should be paid a minimum wage of not less than Rs. 35 per mensem.

2. *Dearness allowance.*—(i) All the workers should be paid the difference of the dearness allowance at the rate of 80 per cent. from September 1947 as the Company had agreed to pay at the rate of Rs. 1-6-0 per day or 80 per cent. of the Millowners' Association's scale whichever is higher from September 1947.

(ii) All the workers should be paid dearness allowance on the basis of Millowners' Association's scale with retrospective effect from 1st January 1948.

3. *Service gratuity.*—A scheme of gratuity should be adopted on the following basis:—

Service.	Gratuity.
A—After six months' service ..	15 days' wages.
B—One year and above ..	One month's wages for every year of service.

4. *Leave.*—The workmen should be given the following leave for every completed year of service:—

(a) One month's privilege leave with full pay.

(b) Twenty days' sick leave with full pay,

(c) Fifteen days' casual leave with full pay.

Workmen should be allowed to accumulate leave due for a period of two years.

5. *Weekly and other holidays.*—All workers should be paid the weekly holidays prescribed under the Factories Act, and in addition all public holidays notified by Government from time to time.

6. All workers should be granted an increment of 25 per cent. in their present basic wages.

7. The Provident Fund Scheme should be revised in favour of the workers.

8. Mr. Madhavrao Gopalrao one of the discharged employees should be reinstated with full compensation from the date of his dismissal or adequate compensation should be paid for his dismissal.

Demands Nos. 6, 7 and 8 are demands Nos. 1, 2 and 3 respectively in the notification dated the 24th January 1949.

2. The workmen are represented by the Estrela Batteries Kamgar Union and have filed a statement of claim through the said Union and the Company has filed a written statement in reply. One of the demands is the reinstatement of Mr. Madhavrao Gopalrao and the said Mr. Madhavrao Gopalrao has been permitted to file a separate written statement on his own behalf and the Company has filed a reply to the same.

3. The Estrela Batteries Ltd., Bombay, was originally a proprietary concern started in 1934 and was incorporated as a Joint Stock Company in the year 1939. The Company is manufacturing dry cells and batteries and is one of the very few industrial concerns in the country manufacturing these goods, another important concern being the National Carbon Co. Ltd., Calcutta, which manufactures the well known Eveready brand of cells and batteries but that is admittedly a much bigger and better established Company. The Estrela Batteries Ltd., originally employed about 1,000 to 1,100 workmen but on account of accumulation of stocks and a fall in the quantum of new work the Company was obliged to retrench about 550 men from March to August 1949 and it now employs on an average about 650 men. The Union made the present demands on the Company on the 9th September 1948. There were attempts at a settlement by negotiation but these proved futile and the matter was then taken up by the Deputy Director of Labour Administration whose attempts to effect a settlement also did not bear any fruit. The Union then gave a notice to the Company on the 31st October 1948 intimating that the workmen would go on a strike on the 15th November in case their demands were not conceded. The Company was prepared to refer the dispute to adjudication through the Government but the Union was not prepared for it and the workmen commenced the strike on the 15th November, but as a result of this reference by the Government on the 18th November 1948 the strike was called off and the workmen resumed work on the 19th November. In the meantime Mr. Madhavrao Gopalrao who was the General Foreman of the Company was discharged from the Company's service on the 23rd September 1948. The Union thereafter made supplementary demands including the demand for the reinstatement of Mr. Madhavrao Gopalrao and these demands are the subject of the other reference AJ-IT 11 of 1949.

4. *Demand No. 1—Minimum Wage.*—The Company pays a minimum wage of Re. 1 per day except that a person newly employed is paid at the rate of 14 annas per day for the first fifteen days, which is treated as the period of training. The Union asks for a minimum wage of Rs. 35 for a month of 26 working days, which works out to Rs. 1-5-6 per day and Mr. Godiwala for the Union has urged that the demand for this minimum wage is modest having regard to the increase in the cost of living. The

question of the minimum wage has been the subject of discussion both in the Bombay Textile Inquiry Committee's Report as also the Report of the Central Pay Commission in both of which the matter has been considered threadbare and its recommendations have been duly considered in several awards of the Industrial Court and the Tribunals. In the award relating to the workmen employed in the Textile Mills in Bombay Rs. 30 for a month of 26 working days has been considered to be a fair minimum wage for an industrial worker in Bombay and after giving my best consideration to Mr. Godiwala's arguments for raising the said minimum to Rs. 35 per month, I am unable to find that the estimate of the Textile Inquiry Committee or that of the Pay Commission is in any manner an underestimate. Mr. Narayanaswamy for the Company has, on the other hand, pointed out that the present wage of Re. 1 together with the dearness allowance of Rs. 1-6-0 per day is higher in the aggregate than the sum recommended by the Pay Commission and he has urged that the present minimum wage is fair and should not be increased. I am unable to agree with his contention also and in my opinion, a minimum wage of Rs. 1-2-6 or Rs. 30 per month of 26 working days is a fair and reasonable wage for an industrial worker in the City of Bombay and I accordingly award the said rate for the workmen of this Company. The Union wants that the system of paying 2 annas less to a workman for the first 15 days should be abolished and that every workman should receive the minimum wage from the start. This part of the claim is not unreasonable and it is only proper that when once a workman is employed by the Company he should receive the wage which is the bare minimum. The work which they are required to do is of an unskilled nature and does not require any particular training and in my opinion fairness demands that even at the inception the worker should not receive anything less than the minimum wage. Accordingly I direct that the abovesaid minimum wage of Rs. 1-2-6 per day should be paid to all workmen from the day of their employment and no workman should be employed on a wage lower than the said wage.

5. As to the date from which this minimum is to become payable, the demand for a minimum wage and the other demands were made for the first time by the Union by its letter dated the 9th September 1948 and it is obviously unreasonable to ask that effect should be given to the Tribunal's findings from a date prior to the date of the said demands. As it is, the Company had all along adopted a reasonable and conciliatory attitude and it was prepared for adjudication of the demands through Government but it was the Union which was not agreeable to such a course. In any case the strike was not at all necessary; and as for the time taken in referring the dispute to adjudication thereafter, the Company cannot be held solely responsible. In the circumstances the payment of the minimum wage awarded as above should in my opinion take effect from 1st November 1948, that being the convenient date. The arrears on account of the same, due to the employees should be paid to them within two months of the publication of this award in the *Official Gazette*.

6. *Demand No. 2—Dearness Allowance.*—This demand is in two parts. There was an agreement between the Company and the Union regarding the rate of dearness allowance and the Union's version regarding the agreement is that the Company had agreed to pay dearness allowance at the rate of Rs. 1-6-0 per day or 80 per cent. of the dearness allowance at the Bombay Millowners' Association's scale whichever was higher from September 1947. The Union has asked for the difference between the rate of Rs. 1-6-0 per day and that due at the rate of 80 per cent. of the Bombay Millowners' Association's scale. The Company has disputed this position and according to it the agreement was that dearness allowance was to be paid at the rate of Rs. 1-6-0 per day, but that in case 80 per cent. of the dearness allowance given to the Textile workers of Bombay came to more than Rs. 1-8-0 per day, then the excess of the sum over Rs. 1-8-0 per day was to be paid in addition to Rs. 1-6-0 per day. At the hearing after a certain discussion the parties have reached a settlement as to this part of the demand and have filed a statement Exhibit 12 substantially accepting the Company's contention in this respect and I therefore direct that the parties should abide by the terms of the said settlement, which is appended as an annexure hereto.

7. The second part of the demand is that dearness allowance should be paid to the workmen on the same scale as that of the Bombay Millowners' Association from the 1st January 1948, but with regard to this latter, the Union has now conceded that it could not be paid from a date prior to the date of the demands, viz., the 9th September 1948. Mr. Godiwala has laid stress on the abnormal rise in the cost of living and has urged that the average amount of the dearness allowance on the Bombay Textile scale which was about Rs. 50-12-0 in 1948 would give to the workmen about Rs. 85-12-0 on the basis of Rs. 35 as the minimum wage and that this was the minimum necessary for a working class family consisting of three consumption units. It is asked that the increase in the cost of living affects all workers alike whether they belong to the textile industry or any other industry and that there is no justification for paying to the other industrial worker anything less than what is paid to the textile worker. It is pointed out that the neutralisation in the increase in the cost of living is only up to 90 per cent. and that this should serve as an additional reason for paying dearness allowance to the workmen of this Company at the Textile rate. On this question however, the Company's financial position and its capacity to bear the burden is a relevant factor and it must be taken into account in fixing the scale of dearness allowance. After all an employer is not always liable to neutralise the increase in the cost of living to the full extent or to any particular extent and his capacity to pay will necessarily have to be taken into account. The following statement shows the Company's

capital and the profits made by it during the years 1939-40 to 1947-48 (both inclusive):—

Year.	Authorised	Issued and	Paid up	Profit.	
	Capital.	Subscribed	Capital.	Rs.	a. p.
	Rs.	Rs.	Rs.		
1939-40 ...	5,00,000	1,50,000	1,45,200	15,320	8 7
1940-41 ...	5,00,000	3,00,000	1,45,200	10,080	7 7
1941-42 ...	5,00,000	3,00,000	1,02,800	47,971	6 5
1942-43 ...	5,00,000	3,00,000	3,00,000	1,00,477	13 5
1943-44 ...	5,00,000	5,00,000	5,00,000	1,31,123	1 11
1944-45 ...	25,00,000	25,00,000	17,00,880	2,70,514	5 0
1945-46 ...	25,00,000	25,00,000	19,85,120	2,32,137	2 11
1946-47 ...	25,00,000	25,00,000	24,94,380	1,35,016	15 6
1947-48 ...	25,00,000	25,00,000	24,95,800	3,06,611	0 0

Bearing in mind the paid-up capital the Company has no doubt prospered gradually. 1946-47 was more or less a lean year but in 1947-48 the Company has made a fairly large profit of Rs. 3,06,000 odd. The Company has built up a Reserve Fund of Rs. 2,00,000 but that cannot be said to be large. It is pointed out that the Company has not done well in the year 1948-49 and that the profits have declined substantially. The statement Exhibit 9 shows that the selling rate of the finished product, viz., cells and batteries, is in several instances much lower than the cost rate and it appears that the Company has not done well in the said year, but that need not be taken as a criterion for the future and on the whole the Company's financial position is sound and satisfactory and it can be said that it has attained a certain stability. At the same time in considering the various demands of the employees regard should be had to an important factor which distinguishes this Company from other industrial concerns, viz., the nature of the goods manufactured. Batteries and cells being of a perishable nature the Company would be obliged to sell them in order to minimise the loss which might otherwise be caused by the goods perishing altogether; and further the manufacture would ordinarily be against orders secured.

8. As already stated, the Company pays Rs. 1-6-0 per day as dearness allowance and it had already agreed that in case 80 per cent. of the Millowners' Association's scale of dearness allowance was in excess of Rs. 1-8-0 per day it would pay the said excess in addition to Rs. 1-6-0. The average dearness allowance at the Millowners' rate works out to Rs. 50-12-0 in 1948 and 80 per cent. thereof comes to Rs. 40-9-6 which exceeds the rate Rs. 1-8-0 per day (Rs. 39 for a month of 26 working days) by Rs. 1-9-6. At the Company's rate of Rs. 1-6-0 the monthly dearness allowance comes to Rs. 35-12-0 and adding the abovesaid excess of Rs. 1-9-6 to it, the workman would receive Rs. 37-5-6, which works out roughly to 73½ per cent. of the Millowners' Association's scale. In my opinion that is not quite adequate having regard to the increase in the cost of living and the Company's capacity to pay and on a consideration of these and other factors I propose to fix the rate of dearness payable by the Company to its employees at a sum equivalent

to 80 per cent. of the dearness allowance paid by the Millowners' Association, Bombay. Accordingly I direct the Company to pay dearness allowance at the rate of 80 per cent. of the scale of dearness allowance of the Millowners' Association, Bombay, with effect from the 1st November 1948. The arrears on account of the same, due to the employees should be paid to them within two months of the publication of this award in the *Official Gazette*.

9. *Demand No. 3—Gratuity.*—The Union wants that gratuity should be paid as stated in the demand. The demand is opposed by the Company on the plea of want of capacity to pay and it has urged that the awarding of gratuity will impose a heavy and unbearable burden on its finances. The need of payment of gratuity for long and faithful service has been now well recognised even in industrial concerns and, in my opinion, the Company is in a position to bear the burden. At the same time the demand for payment of gratuity on completion of a service of 6 months is ridiculous and having regard to the very concept of gratuity, which means remuneration paid to the employee for long and faithful service rendered to the employer, the minimum period for earning it partially should, in my opinion, be 10 years and not less. At the same time having regard to the stability which the Company has attained and its overall financial position, I am unable to accept the Company's contention that no gratuity should be paid to its workmen. For these reasons I direct that gratuity should be paid to the workmen on the following basis:—

(1) On the death of an employee while in the service of the Company—

One month's salary for each year of service subject to a maximum of 15 months' salary to be paid to his heirs or 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 his service by the Company—

(a) After 10 years' continuous service but less than 15 years' service in the Company— $\frac{2}{3}$ of one month's salary for each year of service.

(b) After 15 years' continuous service in the Company—15 months' salary.

(4) Gratuity will not be paid to any employee who is dismissed for dishonesty or misconduct, but will be paid to the employees who have been discharged between the 1st November 1948 and the date of the publication of this award in the *Official Gazette*.

Wages for the purpose of calculating gratuity shall mean substantive wages (exclusive of dearness and other allowances) of an employee on the date the employee ceases to be in the employment of the Company. The Company may at its discretion grant gratuity in excess of the above.

10. *Demand No. 4—Leave.*—The employees have asked for one month's privilege leave, 20 days' sick leave and 15 days' casual leave all with full pay for every completed year of service. The Company at

present allows 14 days' privilege leave with full pay. Under section 79 of the newly enacted Factories Act (Act No. LXIII of 1948) the worker is allowed leave with wages for one day for every 20 days of work which means on an average about 15 or 16 days in a year. It must be assumed that the period of leave permitted under the Act has been arrived at after paying due consideration to the workers' needs and, in my opinion, it will not be fair to the employers to grant privilege leave in excess of that allowed under the Factories Act. It should be remembered that continuous absence from duty for long periods in an industrial concern should be discouraged because it is bound to affect seriously the production and administrative economy of the concern. In the circumstances it is not necessary to make any orders regarding privilege leave and for the purposes of privilege leave the parties will be governed by section 79 of the Factories Act. The Union has next asked for 20 days' sick leave with full pay but the demand seems to me unreasonable. Sick leave is ordinarily granted on half pay and it will not be fair to extend it beyond 15 days in industrial concerns. In my opinion the Company's offer of 15 days' sick leave with half pay is fair and I therefore award 15 days' sick leave with half pay to the workers for every completed year of service and allow the same to be accumulated up to a period of 30 days, that is in respect of 2 years' service. The Company may in special cases grant additional sick leave at its discretion. Sick leave can be granted only on production of a certificate from a registered medical practitioner provided that the Company may require the applicant to be examined by its own medical officer at its expense, if it thinks necessary to do so. Sick leave may not be granted if privilege leave is available. The Union's demand for 15 days' casual leave is equally unreasonable and 7 days' casual leave, in my opinion, should prove to be adequate. I therefore award 7 days' casual leave in a year with full pay and direct that not more than three days casual leave shall be given at a time. However such three days leave may be permitted to be prefixed or suffixed to a Sunday or holiday.

11. *Demand No. 5—Weekly and other holidays.*—The demand is that the workers should be paid weekly holidays prescribed under the Factories Act and in addition all public holidays notified by Government from time to time. The system of weekly off with pay is not recognised even in old and well established industries like the Cotton Textile, Engineering and others in the City. It is true that the employee is required to incur a certain expenditure on a weekly off-day even though he might be a daily rated worker but the plea ignores the fact that he is earning his wages for the days for which he is working and the payment of the wages itself takes into account the number of days actually worked and wages are fixed on that basis and I do not think any case has been made for making a departure in the case of this Company and I would reject this part of the demand therefore. The Union next asks for all public holidays with pay notified by the Government. The need for certain public holidays with pay even in industrial concerns has been recognised of late but it is necessary to remember that the prime need of the moment is the stepping up of industrial production and although

rest by way of holidays might be considered necessary in the interests of the workers' health and efficiency, they should be limited to the bare minimum in times like the present when considerations of production should be held paramount. On a consideration of all the circumstances, therefore, I propose to award the following five holidays with pay to the workmen of this Company :—

- Diwali (1),
- 30th January, Mahatma Gandhi's Death Anniversary (1),
- Holi (Shimga) (1),
- 15th August, Independence Day (1),
- Ganesh Chaturthi (1)

and I direct the Company to give the abovesaid five holidays with pay and allowances to the workers.

12. *Demand No. 6 (No. 1 in Notification No. 443/48, dated 24th January 1948)—Increase in basic wage.*—It is asked that all workers should be given an increase of 25 per cent. over their basic wages. There are no regular wage scales but the Company has been voluntarily giving increases every year in the basic wage and the practice till 1948 was to give an annual increase of 2 annas in the daily rate. It appears, however, that in 1948 the Company gave an increase of 4 annas per day in the wages but this was due because the factory was shifted to its present site in that year and the distance which the workmen were required to cover was much longer. It was in consideration of this new factor that the Company of its own accord gave the higher increase and it will not be fair to adopt it as a standard for an increase in the wages in subsequent years. The Company is agreeable to give an increase of 2 annas per day in 1949 that is with effect from the 1st January 1949 and having regard to its overall financial position and the fact that the reliefs given by this award will mean a substantial increase in the Company's wage bill an increase of 2 annas in the daily wage of the worker should be regarded as appropriate. I therefore direct that the Company should give a wage increase of 2 annas per day to all its workers with effect from the 1st January 1949.

13. *Demand No. 7—(No. 2 in Notification No. 443/48, dated 24th January 1949)—Provident Fund Scheme.*—The Company has already a Provident Fund Scheme under which the Company's contribution is fixed at 12 pies in a rupee that is 1/16th of the workers' wages. The Union wants this rate to be increased to 20 pies in a rupee. It also urges that the present limit of 15 years' membership of the Provident Fund for being eligible to receive the Company's contribution is unduly high and should be reduced to 5 years and further that on completion of 3 years' service the workmen should be eligible for 50 per cent. of the Company's contribution. It is also asked that the period of eligibility should be counted from the date of joining the service and not from the date of joining the Provident Fund Scheme. Now apart from the merits of the demand, there is the legal difficulty in making the changes asked for in the Provident Fund Scheme because the trustees of the Fund and

some of the beneficiaries are not parties to the present proceedings and this Tribunal can at best make a recommendation. The demand for the reduction in the higher and the lower limits, viz., from 15 to 5 years for eligibility for full contribution and from 10 to 3 years for receiving half of the contribution is on the face of it most unreasonable and strikes at the very concept of providing a benefit to the workmen in the shape of provident fund. After all, provident fund is intended to accrue as a benefit to an employee who has put in a reasonably long service with his employer and to allow the employee to get his employer's entire contribution at the end of 5 years' service will obviously induce the worker to leave the service and join another concern and thus deprive his employer of the benefit of his experience and knowledge of work. At the same time the limit of 15 years and 10 years respectively which obtains at present appear to be rather long and I would recommend that the rules and regulations of the provident fund be so amended as to permit the Company's contribution to be made to the employee "who leaves the service of the Company otherwise than for misconduct" as follows:—

Less than six years but not less than 5 years—	50 per cent.
Less than seven years but not less than 6 years—	60 " "
Less than eight years but not less than 7 years—	70 " "
Less than nine years but not less than 8 years—	80 " "
Less than ten years but not less than 9 years—	90 " "
Ten years' service and more—	100 per cent.

Under the proviso to Rule 23 (ii) of the Provident Fund Rules the period of service in the case of an employee on daily wages is calculated from the date of joining the Provident Fund and in the case of an employee on monthly salary it is calculated from the date of his joining the service of the Company. The distinction between the daily rated worker and the monthly paid employee is rather invidious. Moreover, the rule for counting the service for the purpose of eligibility to receive the Company's contribution as from the date of the employee joining the Provident Fund Scheme will work hardship on the employee in that it does not take into account his service with the Company till the date of joining the Provident Fund Scheme and this might be considerable in some cases. The Provident Fund Scheme has been introduced only recently, viz., from 1944 and it will be unfair to the old employees to count their service, for the purposes of the Provident Fund Scheme from the date of their joining the scheme. I would therefore recommend that the proviso to Rule 23 (ii) of the Rules may be suitably amended so that the period of service in the case of an employee on daily wages may be calculated from the date of his joining the service of the Company and not from the date of his joining the Provident Fund Scheme.

14. Demand No. 8—(No. 3 in Notification No. 443/48, dated 24th January 1949)—Reinstatement of Mr. Madhavrao Gopalrao.—Mr. Madhavrao Gopalrao was the General Foreman of the Company since some years prior to his discharge from the Company's service on the 25th September 1948 and was then drawing a salary of Rs. 475 per month

besides allowances. He was originally in the employ of the Jasco Chemical and Allied Industries Co. and when the said firm was taken over by the Estrela Batteries Ltd., in 1939 his services were continued in the Estrela Batteries. The terms of his employment with the Company are contained in an appointment letter, dated the 25th January 1940, to which he has subscribed, and admittedly he continued in the Company's service on the same terms thereafter except that his salary came to be raised from time to time. It appears there was discontent among the workmen over the retrenchment of about 500 workmen by the Company in March 1948 and over other matters and the workers had issued a printed leaflet (Exhibit 19) for circulation among the shareholders detailing the many acts of omission and commission of the management and complaining of the incompetence of the Directors and the technical staff. The leaflet was issued three or four days before the Annual General Meeting of the Company scheduled to be held on the 23rd September 1948. The meeting was duly held and in the course of the discussion that followed on the main resolution for receiving and adopting the audited reports and accounts of the year certain explanations which were sought for and were given by the Management were considered by the meeting and the meeting ultimately passed the main resolution. Two days thereafter the services of Mr. Madhavrao were dispensed with by the Company. Mr. Madhavrao's contention is that Mr. Maneklal Chunilal and Mr. Bhogilal Patel, two of the Directors who formed the Committee of Directors for the management of the Company's affairs, had called him on the 21st September and had demanded of him to state in writing that what was stated in the said leaflet was false, but that he said he had no knowledge of the leaflet upon which they explained to him the contents. He expressed his inability to give the writing and he refused to give it in spite of his pressure, and eventually stated that he had no knowledge of the leaflet, and it was therefore not possible for him to say whether the contents thereof were true or false. It is his case that his refusal to become a tool in their hands upset them and Mr. Maneklal thereafter called him to the Company's Head Office on the 25th September 1948 and handed him a discharge order together with one month's salary in lieu of notice. Mr. Madhavrao has alleged that even at that time Mr. Maneklal had said that if he was prepared to state that the contents of the leaflet were false, he would be retained in service but he declined to make the statement and his services were terminated. It is alleged that he was dismissed and the dismissal was an act of victimisation.

15. The Company's version, on the other hand, is that Dr. Jariwala who was the proprietor of the Jasco Chemicals and Allied Industries Co. continued to be the technical adviser and partner of the Managing Agency of the Estrela Batteries Company. The Managing Agents resigned their positions on the 22nd April 1947 and Dr. Jariwala also resigned his position as Ex-Officio Director and Technical Adviser of the Company and he ceased to have all connections with the Company. Even so, he made all efforts to stage a come back and even filed a suit against the Company in the High Court in August 1947 praying for his

reinstatement as a Director of the Company. There were certain negotiations thereafter to resolve the dispute raised by Dr. Jariwala but they proved infructuous and came to an end in February or March 1948. The Company alleged that Mr. Madhavrao was Dr. Jariwala's man and owed his rise to his present position to Dr. Jariwala and had therefore great sympathy for Dr. Jariwala. He was in charge of the production of cells and batteries and was responsible both for the quality and quantity thereof. It was most surprising to find that the lot of 6,730 battle batteries manufactured by the Company in about April and May 1948 against Government of India's orders and supplied to the Government in May, and a small quantity in June of the same year, came to be rejected wholesale. The production of these batteries whose total value was approximately Rs. 90,000 was in the hands of Mr. Madhavrao and the rejection of the entire lot therefore gave rise to a legitimate suspicion, viz., that it was due to Madhavrao's deliberate desire to cause loss to the Company and to damage the reputation of the Management. Certain other incidents including the publication of the leaflet occurred thereafter which forfeited all the confidence which the Company had in Mr. Madhavrao and the Management was convinced that the continuance of Mr. Madhavrao's employment was undesirable in the Company's interests and it was for this reason that his services were terminated. The Company's further contention is that Mr. Madhavrao was not a "workman" as defined by the Industrial Disputes Act and that any dispute relating to him could not therefore properly fall within the purview of the said Act and the Tribunal had no jurisdiction to decide the dispute.

16. I will take up this latter contention first. "Workman" is defined in section 2 (s) of the Act as meaning any person employed in any industry to do any skilled or unskilled manual or clerical work for hire or reward. Mr. Madhavrao admittedly was not employed to do any clerical work, and in order that he may be covered by the term "workman" it has to be proved that he was employed to do any skilled or unskilled manual work. In the first written statement which the Union has filed on Madhavrao's behalf, it has been stated that he was a Foreman in charge of the quantity of production and the handling of labour pertaining to it and was not responsible for the quality of the production. However it has not been stated that he was employed for or was actually doing manual work as part of his duties. That is also not stated in Madhavrao's letter to the Labour Commissioner, Bombay, dated the 29th October 1948 (it should be the Director of Labour Administration) wherein he has merely mentioned that he was the General Foreman of the Company and had in that capacity the responsibility of supervising the work of about a thousand workers. It was only after the Company contended in its written statement that Mr. Madhavrao was not a "workman" within the meaning of that term in the Industrial Disputes Act, that a plea was taken in the course of the subsequent written statement (Exhibit 4B filed by him) that one of his duties was to see that the hand-machines were functioning properly and to carry out the running repairs of the said machines when required. Obviously this was

an attempt at falling within the requirements of the definition of "workman" by claiming that he was also required to do personal manual work as part of his duties. Mr. Madhavrao has deposed that he not only helped the Sectional Foreman in attending to the repairs of the machinery but himself effected the repairs doing manual labour for about 3 to 4 hours every day. Now that is a tall statement which it is not possible to accept without convincing corroborative evidence. He admits that it is the Sectional Foreman's duty to set right the breakdown in the machinery and that he (Mr. Madhavrao) goes to the Sectional Foreman's assistance only when the latter are unable to do it. That might be so but that does not necessarily imply that he works with his hands like a manual labourer or that it is part of his daily work. As it is, there is a mechanical section in the Company and it is the mechanics who are ordinarily expected to carry out the repairs. Genu Taty and Ramchandra Gopal, both Sectional Foremen, say that it is primarily the Sectional Foreman's job to carry out the repairs in the machinery and that Mr. Madhavrao is sent for only when he is unable to do it. Genu also speaks of a mechanic being called in in case Madhavrao is unable to effect the repair but it seems improbable that if the mechanic is available Madhavrao would carry out the repairs with his own hands. As the General foreman of the Company he would no doubt direct the repairs but it is difficult to accept the statement that he is doing manual labour and that again for 3 to 4 hours a day.

17. Mr. Viswanathan, an ex-Works Manager of the Estrela Batteries Ltd., who has been examined on behalf of Mr. Madhavrao has deposed to an altogether different version, viz., that it is the General Foreman, meaning Mr. Madhavrao, who has to carry out the repairs personally, that is, with his manual labour, and not the Sectional Foremen. In fact he was emphatic that the Sectional Foremen were not supposed to carry out the repairs to the machinery, and in fact they did not do any and that it was the sole responsibility of Mr. Madhavrao to get the machines repaired. The story of Mr. Madhavrao engaging personally in manual labour over repairs to machinery every day for 3 to 4 hours is, in my opinion, an afterthought and I have not the least doubt that it has been got up simply with a view to making him a "workman" under the Industrial Disputes Act. It is quite likely that he is being consulted in effecting the repairs to the machinery but it is highly improbable that these repairs are being carried out by him or that he spends 3 to 4 hours every day on them. The appointment letter Exhibit 15 dated the 25th January 1940, under which he was appointed as a Factory Foreman in the Estrela Batteries Ltd., after the Jasco Chemicals was taken over, does not require him to do any manual work. One of his duties as stated in condition No. 2 (d) is that he was to look after the machinery, but that does not imply that he was to effect the repairs of the machinery by his own hands. What the condition implies is that he was to have general supervision over the machinery and to see that it was kept in order. Condition No. 3 of the letter lays down his powers and sub-clause (b) thereof say that he was to get repairs to machinery as well as alterations in the dispositions thereof carried out for its efficient working

as may be directed by the Factory Manager. That also does not indicate that he was to effect the repairs himself and, on the other hand, it indicates that he was to get them done by others competent to do the job. Mr. Maneklal who has been examined for the Company has denied that Mr. Madhavrao was ever employed for carrying out, or did in fact carry out, repairs to the machinery by his manual labour and I am inclined to believe his evidence on this point. I hold therefore that Mr. Madhavrao was not employed to do any skilled or unskilled manual work and that he did not do such work except in an occasional way, and that this latter does not bring him within the definition of a "workman" under the Act.

18. The fact that he was given an appointment letter indicates that he was regarded as an Officer and not a workman or an operative and that is also evidenced by the terms of the letter Exhibit 15. He is not required to sign the muster of operatives. The Standing Instructions No. 11 dated the 18th December 1942 (Exhibit 16) is yet another document to show that Mr. Madhavrao was one of the officers of the Company and was assigned work on that basis. He was put in charge of the Cell, Box Making, Zinc Cup Making and Cup and other accessories Making Sections and was made responsible for the actual day to day production of the first two Sections. This was part of the Section relating to actual production and the instructions provide that the production section will receive the production programme from the planning section and they, meaning the officers named therein including Mr. Madhavrao, undertake the responsibility of its correct execution in time, and further that they are responsible for the quality of the production. It is futile to urge in the face of these instructions that Mr. Madhavrao is an ordinary workman. Dr. Jariwala had made certain arrangements for the working of the Factory when he went abroad in 1944 and had issued a circular dated the 2nd August 1944 (Exhibit 18), and the duties assigned to Mr. Madhavrao in this circular distinctly show that he was taken as one of the Company's Officers. He was responsible for the operational processes of the manufacture of batteries, cells, etc., and apart from the question whether he was responsible for the quality of production or otherwise a question with which I will deal later, the fact does remain that he was, on his own admission, held responsible for the quantity at any rate.

19. The evidence in the case therefore proves conclusively that Mr. Madhavrao was not a workman as defined in the Industrial Disputes Act, 1947, but was, on the other hand, an officer of the Company charged with very responsible duties; and if that is so, the question is whether the reference of a dispute relating to a person who is not a workman, is at all competent, or, in other words, whether the Industrial Tribunal can have jurisdiction to decide a dispute not relating to a workman. Mr. Amin, counsel for Mr. Madhavrao, has urged relying on the definition of "industrial dispute" in section 2 (k) of the Act, that a dispute connected with the employment or non-employment of any person is an industrial dispute and that such person need not necessarily be a person

employed in the Company's service. The words "any person", however, are to be read in the context in which they occur and not in isolation, and a plain construction of the language of the definition of "industrial dispute" must indicate that the dispute or difference which is connected with the employment or non-employment should be of a workman and not of any one who does not fulfil the requirements of that expression as defined in section 2 (s) of the Act. Essentially that dispute or difference is to be between (1) employers and employees, or (2) employers and workman, or (3) workmen and workmen, and it is to have a connection with the employment or non-employment, etc., of those who are covered by the abovesaid categories. Obviously therefore if the dispute relates to any one who does not fall within any of the abovesaid categories, it cannot be taken as an industrial dispute for the purpose of the definition in section 2 (k). Mr. Madhavrao is not a workman and therefore any dispute connected with him cannot become an industrial dispute. The result is that this part of the reference, relating as it does to a person who is not a workman, is incompetent and the Tribunal will have no jurisdiction to adjudicate upon it. The demand for Mr. Madhavrao's reinstatement is therefore liable to be rejected on this short ground.

20. In this view the question whether the termination of Mr. Madhavrao's services was illegal or improper or whether he should be reinstated in the Company's service does not arise. Since however considerable evidence, both oral and documentary, has been adduced on this point, I proceed to consider it. Mr. Madhavrao was no doubt an efficient hand and the management had nothing to complain about him till the time of the incident relating to the wholesale rejection of the 6,730 battle batteries manufactured by the Company. At any rate, there was nothing on the surface to give any scope for dissatisfaction against him till then. It is not now disputed that the Company did manufacture and deliver to the Government of India 6,730 battle batteries, the bulk of it in May and a small portion, viz., 730 in June 1948, and it is also not disputed that the entire lot was rejected by the Government. The Inspection Certificates (Exhibit 31) show that 4,730 of the batteries were rejected *in toto* as the D. T. Section gave poor output and the remaining 2,000 were rejected *in toto* as 41 per cent. of bulk showed internal connections broken, low current and short circuit. But with the question whether Mr. Madhavrao was responsible for the rejection of the said battle batteries or otherwise, I will deal later.

21. Now an employer is at all times entitled to discharge an employee, subject to conditions of any special agreement stipulating the duration of service, unless the discharge involved an unfair labour practice or was manifestly unjust and I may here cite with advantage the following pertinent observations of Kinsella, J., in the Caldwell and Crookwell District Hospital case reported at pp. 39-40 of the January 1949 Number of the New South Wales Industrial Gazette:—

"Just as an employee is entitled to leave the employer's service when he pleases, subject to any agreement expressed or implied that

he will serve for a fixed period or will give certain notice of intention to leave, so an employer has a lawful right to terminate the employment of any servant when he pleases, and this Commission will not interfere unless the action of the employer involves some oppression, injustice or unfair dealing. In short, the Commission will interfere with the employer's right to dismiss only if it is satisfied that the right has been abused."

It will therefore be necessary to see whether the Company has abused its right or whether the discharge was actuated by an unfair labour practice. The case made for Mr. Madhavrao on this point is that he was discharged for the sole reason that he refused to state in writing that the allegations and the other statements in the leaflet Exhibit 19 were false. The said leaflet which was published by the Foremen and Workmen of the Company contained serious allegations, many of them of a malicious and scandalous nature against those in charge of the Company's affairs and painted them in the blackest hue. In fact several officers of the Company and the Committee of Directors are accused of sheer incompetence and inefficiency and of pursuing methods of waste causing heavy losses to the Company, etc., but it is not a little curious to find that Mr. Madhavrao and Mr. Parikh have not been mentioned in the leaflet. Dr. Jariwala who, as is now obvious, was playing a rival's role against the Company, has been indirectly extolled in the leaflet and it has been insinuated that after Dr. Jariwala's leaving the Company, the Company's affairs have reached a chaotic state. Mr. Madhavrao has denied having anything to do with the leaflet or to have any knowledge of it and it has been urged on his behalf that his attitude in refusing to state in writing that what was stated in the leaflet was false was absolutely justified and did not merit the termination of his services. It is not possible to believe that he was not aware of the publication of the leaflet or the manner in which it came to be prepared and published, and this inference is reinforced by the statements contained in his letter dated the 29th October 1948 to the Director of Labour Administration. Apart from this latter, the foremen were after all his own men and it is not unreasonable to infer that they would not publish the leaflet without consulting him. Much stress was laid on Mr. Maneklal's evidence but, in my view, his evidence only amounts to saying that he asked Mr. Madhavrao to state in writing what he knew of the facts, and if the facts were not true to his (Madhavrao's) knowledge he should say that they were false. I do not believe that he insisted on Madhavrao stating that the statements were false, regardless of the fact whether Madhavrao took them to be false or not. I really fail to see how Mr. Madhavrao's statement could have absolved the Directors from their responsibility, and it seems that Mr. Maneklal was only anxious to place Mr. Madhavrao's views on the points raised in the leaflet before the share-holders as Mr. Madhavrao was one of the important officers of the Company. As it is, his support was not of any vital consequence and it was not going to count in the final reckoning. It is most improbable that an old employee of Madhavrao's status would be discharged from service simply because he refused to make the statement asked for and this

suggestion of Mr. Madhavrao is wholly unacceptable to me. It is clear that the reasons for his discharge were other than this and were far more grave and serious.

22. That brings me to the question of the rejection of the battle batteries. It has been strenuously urged that Mr. Madhavrao was not responsible for the quality of the production and he could not therefore be blamed for the rejection of the said battle batteries but the facts are otherwise. To start with, under the letter of appointment Exhibit 15 one of his duties was to assist "the Factory Manager in the production of Dry Cells and other articles now manufactured in the Factory with particular attention to its quality and employment of necessary workmen for the purpose." The Standing Instructions No. 11 too held him and other officers named in Exhibit 16 responsible for the quality of the production and the last paragraph thereof says "it is to be regarded as an accepted principle that the cell section must give the voltage and amperage in the bulk production as is found in the advanced samples. Any slackness or lowering of the amperage will be treated as the responsibility of Cell section, i.e. of Mr. Madhavrao." By the arrangements (Exhibit 18) made by Dr. Jariwala in August 1944 the Dry Battery Department was to be managed by Mr. Madhavrao under the supervision of Mr. Viswanathan. Mr. Parikh was to look after the mixtures both in Dry as well as Motor Battery, and, which is important, in Mr. Viswanathan's absence the sole responsibility of production in the Dry Cells and Motor Batteries was to be that of Mr. Madhavrao who was to be assisted by Mr. Parikh in all routine matters and mixtures. It is futile in the face of these very clear instructions and directions, which it is admitted held good since then, to maintain that Mr. Madhavrao was not responsible for the quality of the production. He has admitted that there was no change in the nature of his work. Mr. Viswanathan, whose sympathies are glaringly with Mr. Madhavrao, at first stated that Mr. Madhavrao was not responsible for the quality of the production because he was not competent to make any mixtures, and had never made any, and that it was the making of the mixture which was the most material item in the manufacture of dry cells and batteries. However in the course of cross-examination he was constrained to make several admissions which prove conclusively that Mr. Madhavrao was responsible for the quality of the production. He says:—

"The various proportions of the mixture were determined and fixed in the laboratory and finally handed over to Mr. Madhavrao, and in the bulk mixture it was Madhavrao's duty to prepare mixture in accordance with the formula given to him. In that sense Madhavrao was responsible for the bulk mixture at that stage, and he was responsible for the mixing of the bulk mixture. That bulk mixture was invariably tested by the laboratory. If that mixture was passed by the Laboratory then for the operational process of bulk manufacture Madhavrao was responsible. To the extent that the operations are properly carried out by the labour according to the instructions given to Mr. Madhavrao, Madhavrao is responsible. In addition to

instructions given to him he used to check up with the various processes and he used to satisfy himself at every turn. After samples from the bulk mixture are tested in the Laboratory and passed Madhavrao has to commence the operations. Subject to supervision from the Laboratory people after the bulk manufacture started Madhavrao was responsible for it."

Mr. Viswanathan has tried to maintain that the Laboratory was the deciding factor as far as the quality of the product was concerned and has suggested that the defect in the raw materials and in the mixtures thereof must have been responsible for the rejection of the Battle Batteries but he admits that the raw materials are at first tested and analysed before they are utilised for the mixtures and the mixture is also admitted. He admits "if the laboratory has tested the raw material and if the finished product is not up to the mark then it is not the defect in the raw material. Then the defect will be in the process of mixing or during the various operations. If at the stage of bulk mixing if the person in charge of bulk mixing commits a mistake it will be detected at the time of testing the sample of the mixture. If the Laboratory passes it and if still it is found in the finished product then the defect would be in the operational stages. The operational responsibility subject to the visual supervision of the chemist was definitely on Madhavrao. If a person responsible at the operational stage desires to spoil the product he can spoil the finished product. The operational stages after mixing are: Pressing, Wrapping, Cooking, Capping and Washing, Sealing and Torching. These are up to the cell stage. Then there is the Assembly stage. Then the cells are assembled together in a cardboard box, each cell being insulated from one another by means of impregnated boards. All these operational stages were the responsibility of Madhavrao. Any defect in these operational stages will be only found out after they are tested in the Laboratory. Generally we can take it that goods are manufactured from good raw materials. The usual percentage of rejection is due to operational mixtures. As the Works Manager I was mainly responsible for the quality of production. In discharging the functions as Works Manager I had to depend upon the departmental heads and my assistants. The responsibility for the quality was a collective responsibility of the Works Manager and the Departmental Heads. By departmental heads I mean persons in charge of production side and the laboratory side the chemists. If a person in charge of production says that he is not responsible for production he would be wrong partly. I said partly wrong because the planning is done by the Laboratory."

I have quoted at length Mr. Viswanathan's evidence, because he has an expert knowledge of the manufacture of cells, and it cannot be disputed for a moment that even on his evidence Mr. Madhavrao was responsible for the quality of the production and he cannot escape from the responsibility on the plea that he was concerned only with the quantity of the production. The manufacture of battle batteries which came to be rejected wholesale was undertaken in May 1948, viz., about

two months after the negotiations with Dr. Jariwala fell through. It cannot be denied that Mr. Madhavrao had close relations with Dr. Jariwala and in fact he owed his very career to Dr. Jariwala. It appears that he was keeping in touch with Dr. Jariwala although he does not say so in terms. If in the circumstances when the entire lot of the battle batteries came to be rejected by the Government, there was nothing unreasonable in the management suspecting Mr. Madhavrao for the defect and for forming an inference that on account of grave dereliction of duty or calculated negligence the rejection of the battle batteries was due mainly to Mr. Madhavrao. That would naturally cast a doubt on his loyalty to the Company and it would not be the less so simply because Mr. Maneklal did not express it openly nor took any steps against Mr. Madhavrao. It appears that Dr. Jariwala was taking an interest in the Company's affairs in spite of having severed his connections with it, and he had sent two letters and a telegram to the Government of India in connection with the rejection of the battle batteries. In reply the Government of India sent him a telegram which came to be delivered at the Company's office. Exhibit 22 which is a photo copy of the said telegram states that the letters (of Dr. Jariwala) referred to in his telegram were not received by the Government and it asks him to forward copies thereof. As Mr. Madhavrao was in the know of the processes of the manufacture of the battle batteries and as he had still connections with Dr. Jariwala, the management naturally drew an inference that the information regarding the rejection of the battle batteries *in toto* must have leaked out through Mr. Madhavrao. At any rate it was a legitimate inference which, in the circumstances, they would be justified in drawing. It was urged by Mr. Amin that Dr. Jariwala might have received the information from the representatives of the Government of India stationed at the Factory or from some other employees of the Company. There is nothing to warrant such an inference and, in my opinion, it cannot be said that the Management was wrong in drawing a natural inference against Mr. Madhavrao. But apart from the leakage of the information and the drawing of the inference therefrom, Mr. Madhavrao cannot be absolved from his responsibility for the wholesale rejection of the battle batteries and for the suspicion created in the Directors' mind regarding his loyalty to the Company. Finally came the leaflet which was published three days before the share-holders' meeting and Mr. Madhavrao's attitude at that time naturally confirmed the suspicions further. In the circumstances Mr. Maneklal and Mr. Bhogilal can well be justified in coming to the conclusion that it was not in the Company's interest to continue Mr. Madhavrao any longer in the Company's service. It is clear that it is not a case of his services being terminated because he refused to support the Management at the share-holder's meeting. That was only one of the reasons which aggravated the suspicion against his loyalty to the Company. The management was justified in taking the view that the continuance of Mr. Madhavrao in service might further damage the Company's interests and reputation particularly so as Dr. Jariwala had already made preparations for starting a similar Company for manufacturing cells and batteries. If on these justifiable

reasons the management proceeded to terminate his services it could not be said that the termination was wrongful or improper. The management had no grudge whatever against Mr. Madhavrao who was till then an old and trusted officer of the Company and in fact Mr. Maneklal had given him an increase of Rs. 100 per month in the previous year.

23. It was urged by Mr. Amin that Mr. Madhavrao was not given a charge sheet and was not given an opportunity to explain. It is vital to remember that this is a case of suspected loyalty to the Company and in the state of affairs as they shaped it was not possible to get any definite evidence to prove that it was an act of deliberate spoiling of the battle batteries. It was therefore not possible to prepare and give a regular charge sheet and an opportunity to meet it. In my view that was not necessary because it was perfectly open to the employer to terminate the services of an employee whose very loyalty to the employer was suspect; and here there were more than reasonable grounds to entertain the suspicion. The termination of services in such a case will not amount to a dismissal and the question of serving the employee with a charge-sheet and of giving an opportunity to explain will not really arise. Mr. Amin has relied on the Order of Mr. Sen, President of the Industrial Court, in Appeal No. 28 of 1948 in support of his contention, but that was a decision relating to the interpretation of the Standing Orders for textile operatives in Bombay. Even so, there are observations in paragraph 3 of the Order to indicate that in a case where there is actual misconduct and where no evidence is forthcoming, for instance none of the operatives may be willing to depose against the guilty man, action under Standing Order No. 22 may not be possible and that in such cases it may be proper for the management to act under Standing Order No. 19, provided there is some evidence showing the probability of the operative in question being guilty, and provided further that the management are justified in thinking that the retention of such a person in service is fraught with risks which must be avoided or eliminated in the interests of the industry or undertaking in question. That is precisely what has happened here and the management was therefore justified in discharging Mr. Madhavrao with one month's salary in lieu of notice instead of dismissing him. Mr. Narayanaswamy for the Company pointed out that there is a secrecy clause in the Service Regulations under which Mr. Madhavrao is appointed, by which every employee of the Company was expected to maintain full secrecy on all Company's affairs and if the management had any reason to believe that any employee was acting otherwise, his services were liable to be immediately dispensed within the absolute discretion of the management and the employee in question had no right whatsoever to dispute the decision of the management in this connection. The stipulation need not be taken as conclusive and it will not prevent a Tribunal from inquiring into the justness or otherwise of the termination of the services but as I have amply shown the Company was, even on the merits, perfectly justified in taking the action which it did. After all the question will still be whether in view of the facts it is necessary or advisable to reinstate him in the Company's employ and I cannot persuade myself to take the view that in spite of

what has happened he should be reinstated. For these reasons I uphold the Company's action and find that the discharge of Mr. Madhavrao was proper and justified. On both the grounds therefore the demand for reinstatement cannot be allowed and the same is rejected. The question of awarding compensation does not arise and need not be considered.

(Signed) K. R. WAZKAR,
Secretary,

(Signed) M. C. SHAH,
Tribunal.

Bombay, 5th July 1949.

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

In the matter of an industrial dispute

BETWEEN

The Estrela Batteries Ltd.

AND

The workmen employed under it.

AJ-IT No. 82 of 1948.

Agreement.

The following terms of settlement are agreed between the Estrela Batteries Ltd., and the workmen employed under it :—

Demand No. 2—Dearness Allowance.—(1) All the workers should be paid the difference of dearness allowance at the rate of 80 per cent. as the Company had agreed to pay at the rate of Rs. 1-6-0 per day or 80 per cent. of the Millowners' Association's scale whichever is higher from September 1947.

It is agreed that the Estrela Batteries Ltd. will pay to all its employees the dearness allowance from September 1947 up to the date from which a new scale of dearness allowance is awarded by the learned adjudicator on the following basis :— If the dearness allowance is more than Rs. 1-8-0 per day calculating at 80 per cent. of the dearness allowance given by the Millowners' Association's scale, then the excess over Rs. 1-8-0 per day would be paid to the employees. If the dearness allowance calculated as above is Rs. 1-8-0 or less per day the question of difference will not arise.

Dated this 21st day of February 1949.

For Estrela Batteries Ltd.

Estrela Battery Kamgar Union.

(Illegible)

A. D. GADKARI,
Secretary.

Before me.
(Signed) M. C. SHAH,
Industrial Tribunal.

Order.

No. 443/48.—Whereas the disputes between the Estrela Batteries Limited, Bombay, and the workmen employed under it was referred by Government Orders, Labour Department, No. 443/48, dated the 18th November 1948 and 24th January 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 Estrela Batteries Limited, Bombay, and the workmen employed under it and to direct that the said award shall come into operation on the 15th July 1949, and shall remain in operation for a period of one year.

Order.

No. 801/48.—Whereas an industrial dispute has arisen between Messrs. Mangaldas Jethabhai Iron and Brass Factory No. 1 and 2, Ahmedabad, and the workmen employed under them on the demand mentioned in Annexure "A" ;

And whereas a joint application has been made by the Mangaldas Jethabhai Iron and Brass Factory No. 1 and 2, Ahmedabad, and the Ahmedabad Factory Kamdar Sangh, Ahmedabad, of which the majority of the workmen directly affected are members, under sub-section (2) of section 10 of the Industrial Disputes Act, 1947 (XIV of 1947), for referring the dispute to adjudication ;

Now, therefore, in exercise of the powers conferred by sub-section (2) of section 10 of the said Act, the Government of Bombay is pleased to refer the said dispute 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 "A"

Every employee should be paid a bonus equivalent to 20 per cent. of his total earning in 1948.

Order.

No. 1063/46.—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 Ahmedabad Municipality, Ahmedabad, and the workmen employed

under it, regarding the matters specified in Annexure "A" for adjudication to the Industrial Tribunal consisting of Mr. P. D. Vyas, Judge, Labour Court, Ahmedabad, constituted under section 7 of the said Act, under Government Notification, Political and Services Department, No. 575/46, dated the 13th January 1948.

Annexure "A"

(1) Gain Relief allowance of Rs. 5 per month that was being paid to all the employees and which was discontinued from 1st September 1948 should continue to be paid with effect from the above said date.

(2) An *ad hoc* increment of 50 per cent. should be given in the basic wage rates of employees, who are paid on daily basis, with effect from 1st September 1948.

(3) The peons or attendants of supervisory outdoor staff should also be paid cycle allowance.

(4) A children education allowance should be paid to those employees who have to spend for tuition fees of the children.

(5) The rates of climate allowance paid to Jamalpur Pumping Station staff should be the same as that at which it is paid to the staff of Sewage Farm.

(6) The employees, who are acting for a long period be made permanent and those who are treated as temporary should be placed on a permanent footing and sufficient leave reserve staff should be permanently maintained.

(7) The cycle allowance of Rs. 5 per month should be increased to Rs. 10 per month.

(8) The employees, who are treated as daily wagers or temporary servants even though their work is of permanent character should be placed on permanent footing.

(9) Weekly days of rest should be given to every category of employees, without exception.

(10) The pay-scales of the typists in the newly created typists' pool should be suitably revised from the date of the creation of the pool.

No. 2411/46.—The following Order of the Industrial Tribunal, dated the 8th July 1949, in the matter of the award No. AJ-IT. 87 of 1948, dated the 16th April 1949, in the trade dispute between the British Insulated Callendar's Cables Limited, Bombay, and the workmen employed under it, is hereby published:—

BEFORE D. G. KAMERKAR, ESQUIRE, INDUSTRIAL TRIBUNAL.

Application (IT) 14 of 1949.

(in AJ-IT No. 87 of 1948).

British Insulated Callender's Cables Ltd.,
Bombay

AND

The Workmen employed under it.

In the matter of correction of certain alleged errors and clarification of award in AJ-IT No. 87 of 1948, dated 16th April 1949.

Counsel Mr. A. C. Beynon instructed by Messrs. Crawford Bayley & Co., for the Company.

Mr. K. P. Rajadhyaksha with Mr. R. B. Shroff for the workmen.

ORDER.

This is an application under Rule 20 of the rules framed by the Government of Bombay under section 38 of the Industrial Disputes Act, 1947, for correcting certain errors arising from an accidental slip or omission in an award and also under Rule 20-A for interpretation of certain directions in the award. The award was made by this Tribunal in AJ-IT No. 87 of 1948 between these very parties.

2. As to the first part of the application, viz., the one relating to errors, Mr. Beynon concedes at the hearing that it is unnecessary to act upon it. The errors relate to certain details stated in the award and were due either to a mis-statement of the details by the Company or to a misapprehension of what the Company truly purported to state. But as they do not affect the ultimate conclusion material to the dispute, it is clearly unnecessary to correct them.

3. The second part of the application relates to certain directions given in the matter of dearness allowance. The Company desires this Tribunal to give a list of the categories of employees who, under the directions in the award, will have to be paid dearness allowance on the scale prescribed in the award for clerical and technical monthly rated staff. The scale is set forth at page 2353 vv-23 of the *Bombay Government Gazette* Extraordinary, Part I, dated April 28, 1949. In particular, the Company desires to know whether jointers, fitters, carpenters, blacksmiths and masons should be considered as belonging to the technical or skilled staff. Reading the entire discussion under demand No. 2 (paragraphs 38 and 39), I do not see why the Company should have had any ground for a misapprehension or doubt in that respect. It is stated in clear terms in paragraph 38 (at page 2353 vv-22) that as the basic wage

rates for daily rated employees were being substantially revised by the award, the textile scale to which the Union of the employees had agreed on 12th May 1948 was adequate and there could be no reason why daily wage earning labour elsewhere should be placed in a more favourable position than labour in the textile mills. Difference was made only among the monthly rated employees, it being clearly stated that the service staff such as sepoy, stores coolies and drivers, though monthly rated, were also to be paid dearness allowance on the textile scale improved in one respect, *viz.*, that the computation was to be made as for all the days of the month and for not only 26 days. Stores coolies were until then paid a daily wage, but they were mentioned as they were promised to be placed by the Company on the monthly wage basis because the Union insisted upon it in the course of the hearing. It appears from paragraph 24 of the award that the Company was prepared to place even coolies attending to despatch work on the monthly wage basis along with the other stores coolies; hence they, too, will have to be paid dearness allowance on the textile scale computed for all the days of the month. The rest of the employees comprised the clerical and the technical or skilled staff and they were directed to be paid dearness allowance on the scale prescribed at page 2353 vv-23 of the award. Evidently then, clerks, typists and steno-typists, draughtsmen, store-keepers, stores clerks, jointer supervisors and line supervisors, mains assistants (junior and senior), jointers—L. T. H. T. and 22 KV. (including apprentices), fitters, carpenters, blacksmiths, masons and the workshop manager will all be included under this head. To preclude the possibility of a mistake, I would make it clear here that dearness allowance on the scale prescribed at page 2353 vv-23 of the award will have to be paid to all monthly rated employees other than sepoy, stores coolies and coolies attending to despatch work, and drivers.

4. The Company next desires this Tribunal to clarify whether by the expression "all the days of the month" occurring in line 18 on page 2353-vv-22 of the *Gazette (ibid)* it was contemplated to take only 30 days, irrespective of the actual days of the month even if they were 29, 28 or 31. Reference is made by the Company in this behalf to the direction relating to clerical and technical monthly rated staff on the pay slab of Rs. 1-100. I am surprised why in spite of the clear direction in the award such a misapprehension should arise at all. I have said:

"The only improvement I need direct is that the allowance should be computed for all the days of the month and not for only 26 days."

The error, if at all, lies the other way round, in my using the expression "on a 30 day month basis" in column 2 of the scale prescribed. It is quite obvious, however, on reading the entire paragraphs 38 and 39 that the Company's practice of allowing to the clerical and technical staff earning a pay up to Rs. 100 per mensem dearness allowance limited to the flat rate worked out as for 26 days on the textile scale was deprecated

by me. It was clearly intended to allow dearness allowance in respect of all days for which that staff is to receive basic wages. The following observations in the award deserve to be particularly noticed in this connection :—

“The Company’s practice of allowing to the clerical and technical staff earning a pay up to Rs. 100 per mensem dearness allowance limited to the flat rate worked out for 26 days on the textile scale appears to me pre-eminently to stand in need of revision, having regard to the practice in those Companies and to the amount of the allowance they have been paying to such staff. The rate on the textile scale should be computed as for 30 days and not for 26 days only, as it is manifestly unfair not to allow dearness allowance for the days for which the employee receives basic wages.”

If an employee is paid by the month, he necessarily receives the amount of his basic wages as for all the days of the month, inclusive of Sundays and close holidays; and the direction clearly was to pay dearness allowance for all days for which the employee is entitled to receive basic wages. The expression “on a 30 day month basis” and “as for 30 days” were merely illustrative and there certainly was no intention to deprive monthly rated employees of a day’s dearness allowance when the month consisted of 31 days or to direct the Company to pay dearness allowance for 2 days more when the month consisted of only 28 days. It is hoped that the Company will interpret the scale in the award in the light of this clarification and avoid needless disputes.

(Signed) D. G. KAMERKAR,
Industrial Tribunal.

(Signed) K. R. WAZKAR,
Secretary.

Bombay, 8th July 1949.

Order.

No. 2411/46.—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 Order of the Industrial Tribunal dated the 8th July 1949 in the matter of the award No. AJ-IT. 87 of 1948, dated the 16th April 1949 in the trade dispute between the British Insulated Callenders Cables Limited, Bombay, and the workmen employed under it shall be binding on the parties to the dispute and shall remain in operation up to the 22nd April 1950.

By order of the Governor of Bombay,

C. K. MARU,
Under Secretary to Government.

BY THE REGISTRAR, BOMBAY INDUSTRIAL RELATIONS
ACT, 1946.

No. 190/49.—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 4th day of July 1949 registered the following award made by the Industrial Court, in the industrial dispute between the management of the New Shorrock Mills, Nadiad, and the Textile Labour Union, Nadiad, regarding payment of dearness allowance to the employees of the Mills:—

In the Industrial Court, Bombay.

SUBMISSION No. 8 OF 1947

BETWEEN

The Textile Labour Union, Nadiad

AND

The New Shorrock Mills, Nadiad.

Re : Dearness Allowance.

Industry.—Cotton Textile

Present.—Mr. K. C. Sen, President

Appearances.—Messrs. S. P. Dave and S. R. Vasavada for the Union.

Counsel.—Mr. M. P. Amin (Advocate General), for the Company.

AWARD

This submission is regarding a dispute as to dearness allowance between the New Shorrock Mills, Nadiad, which is the only textile concern at that place, and their employees. The dearness allowance has for some years past been linked with the dearness allowance paid to textile workers at Ahmedabad, though it cannot be said that the cost of living index figures at the two places have been moving parallel or at the same rate; from the statements (which are stated to be subject to many limitations) prepared by the office of the Deputy Commissioner of Labour (Information), there appears to have been a bigger percentage of increase over the cost of living figure of 1939 at Nadiad than at Ahmedabad. For a considerable time the dearness allowance at Nadiad used to be taken as 75 per cent. of the dearness allowance payable at Ahmedabad. Later

this rate was revised and increased to 90 per cent. of the Ahmedabad dearness allowance and that continues to be the present rate. The minimum wage fixed for Ahmedabad is Rs. 28-0-0 for a month of 26 working days and that at Nadiad is fixed at Rs. 26. Mr. Dave on behalf of the employees in this case has contended that as at Ahmedabad full neutralisation for the lowest paid worker has been given the Nadiad workers should be allowed, by the application of rule of three, 92·8 per cent. of the dearness allowance for Ahmedabad workers. Several circumstances, however, seem to indicate that there is no guarantee that a simple rule of three operation will give the proper figure for dearness allowance for Nadiad. It is true that the increase in the cost of living at Nadiad has been to a higher extent than the increase at Ahmedabad during the period 1939-1949, but that would also seem to imply that the Court has been somewhat generous in fixing the minimum wage for Nadiad. Nadiad is at a distance of about 35 miles, and Viramgam is about 40 miles, from Ahmedabad, and yet the minimum wage fixed for Viramgam is only Rs. 24-8-0. Nadiad had a population in 1941 of about 53,000 while Ahmedabad in the same year had a population of about 7,00,000. The learned Advocate General, on behalf of the Company has pointed out that the large portion (said to be 35 per cent.) of the workers do not have rice, wheat or *bajri* as their staple food but live mainly on *pavta* and *kodra* grains the cost of which is definitely cheaper than that of rice, wheat and *bajri*. This statement has not been seriously challenged by the workers. The Nadiad worker, besides, has to incur no expenditure for travelling by bus and pays a smaller amount as rent for his lodgings. In Nadiad, again, the mills provide for medical expenses not only for the workers but for their families also, a concession which does not seem to be available to the workers at Ahmedabad. On the consideration of these circumstances it does not appear to me that the present rate of dearness allowance is inadequate or needs revision. There being no separate cost of living index figures for Nadiad published by Government, it is necessary to link the dearness allowance to be given to the workers at Nadiad with the dearness allowance paid at Ahmedabad. I direct that the present rate, viz., 90 per cent. of the dearness allowance paid to the textile worker at Ahmedabad, should be the dearness allowance payable to the employees of the New Shorrock Mills, Nadiad.

K. R. WAZKAR, Registrar.
30th June 1949.

K. C. SEN,
President.

Bombay, 4th July 1949.

No. 201/49.—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 7th day of July 1949 registered the following award made by the Industrial Court,

in the industrial dispute between the Raymond Woollen Mills, Thana, and its employees regarding minimum wage, dearness allowance, etc. :—

In the Industrial Court, Bombay.

REF (IC) No. 2 of 1948.

ARBITRATION

BETWEEN

The Raymond Woollen Mills, Thana

AND

Its employees.

In the matter of an industrial dispute regarding standardisation of wages, minimum wage, dearness allowance, etc.

Industry.—Woollen Textile.

Present.—Mr. K. C. Sen, President.

Appearances.—Mr. B. Narayanaswamy, Advocate for the Mills.

AWARD.

PART II.

The parties to this reference have arrived at an agreement (attached herewith) mainly based on the Assessor's report regarding standardization of wages submitted to this Court on the 9th April 1949. The award will be in terms of the said agreement.

K. C. SEN,
President.

K. R. WAZKAR,

Registrar.

Bombay, 2nd July 1949.

Bombay, 7th July 1949.

IN THE INDUSTRIAL COURT, BOMBAY.

Reference No. 2 of 1948

BETWEEN

The Raymond Woollen Mills, Thana

AND

Its employees.

In the matter of standardization of wages, etc., for Knitting Section
May it please the Honourable Court,

The parties to the above reference have arrived at the undermentioned agreement and pray that the Court may be pleased to pass an Award in terms hereof :—

1. That the Assessor's Report standardizing the wages as submitted to the Court on 9th April 1949 is accepted subject to the changes made by the parties by agreement. The changes are annexed hereto.

2. That the wage rates agreed to as above shall be given effect to from 1st January 1948 and difference in wages payable by reason of this retrospective effect shall be paid in a lump sum on or before 26th August 1949, irrespective of worker being in service on the date of agreement or not.

28th June 1949.

For the Employers,
Raymond Woollen Mills Ltd.

(Signed) B. NARAYANASWAMY,
Advocate for Employer Co.

(Signed) P. N. ENGINEER,
General Manager.

For the Employees,

(Illegible),
President.

Woollen Mill Kamgar Union, Thana.
(Representative Union).

Elected Representatives :

1. (Signed) (Illegible).
2. (Signed) Shankar Arjun.
3. (Signed) Bhaskar Ladku.
4. Left hand thumb impression of Shankar Ganpat.

THE RAYMOND WOOLLEN MILLS LTD., THANA

ANNEXURE.

Knitting Department.

Occupation.	Rate for 26 days as per Assessor's Report.			Rate as agreed between the parties.			Remarks.
	Rs.	a.	p.	Rs.	a.	p.	
Fitters	42	4	0	52	0	0	
Pressmen	32	4	0	34	15	0	
Linkers	10.5	pies per Dozen pairs.		11	pies per Dozen pairs.		
Overlock Tailors ..	71	8	0	58	8	0	

Thana, 28th June 1949.
(Signed) B. NARAYANASWAMY.

(Signed).....,
President,
Woollen Mill Kamgar Union,
Thana.

No. 197/49.—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 12th day of July 1949 registered the following Award (Part II) made by the Industrial Court in the industrial dispute between certain cotton textile mills and factories in Bombay which are not members of the Millowners' Association, Bombay, and their employees regarding Bonus for the year 1948 in one instalment and in addition an adequate share in the profits of the industry.

In the Industrial Court, Bombay.

REF (IC) No. 7 of 1949.

ARBITRATION

In the matter of an industrial dispute

BETWEEN

1. The Millowners' Association, Bombay,
2. Acme Thread Co. Limited, Bombay,
3. Amritlal Harjivandas and Company, Bombay,
4. Anwar Textile Mills, Bombay,
5. B. K. Dalal Knitting Factory, Bombay,
6. Bankdum Industries Ltd., Bombay,
7. Bombay Textile Ltd., Bombay,
8. Calcuttawala Tape Works, Bombay,
9. Diamond Surgical Works, Bombay,
10. Eastern Tape Mfg. Co. Ltd., Bombay,
11. Kathiawar Textile Mills, Bombay,
12. Lokamanya Textile Mills, Bombay,
13. Modern Textile Mfg. Co., Bombay,
14. National Cotton Products Ltd., Bombay,
15. New India Textiles, Bombay,
16. Samarth Engineering & Wvg. Co. Ltd., Bombay,
17. Sunrich Mills, Bombay,
18. Suryakant Textile Mills, Bombay,
19. Swastik Textile Mills Ltd., Bombay,
20. Universal Textiles, Bombay,
21. Universal Textiles Ltd., Bombay,
22. Venus Silk Mills, Bombay,
23. Bombay Cotton Waste Mill, Bombay, and
24. Apollo Mills Ltd., Bombay and others—Members of the Millowners' Association, except the New Sun Mills Co. Ltd., Bombay, now non-member,

AND

Their Employees.

Re : Bonus for the year 1948 in one instalment and in addition an adequate share in the profits of the industry.

Industry.—Cotton Textile.

Present.—Mr. K. C. Sen, President.

Mr. D. G. Kamerkar, Member.

Mr. M. C. Shah, Member.

Appearances.—Mr. B. Narayanaswamy for Companies Nos. 2, 4, 5, 7, 8, 12, 13, 16, 17, 19, 20 and 21.

Mr. N. A. Engineer for Company No. 14.

Mr. N. A. Engineer and Mr. Vithaldas P. Shah for Company No. 15.

Mr. S. H. Bhrugushastri for Company No. 18.

Mr. R. M. Kothari for Company No. 22.

Mr. Shantilal H. Shah with Mr. G. D. Ambekar for the elected representatives of the employees in 8 concerns.

Mr. N. V. Phadke, Mr. S. D. Kamerkar and Mr. Raja Kulkarni for the elected representatives of the employees in 9 concerns.

Mr. S. S. Rege, Government Labour Officer, in person.

AWARD.

PART II.

This part of the award relates to a dispute regarding bonus for 1948 between the 22 mills and factories which are not members of the Mill-owners' Association and their employees. Those employees have not clearly formulated the demand as in the case of the employees of the mills dealt with in part I, but the existence of a dispute is to be presumed from Government Notification dated the 15th November 1948 which has been referred to in paragraph 1 of said part of the award. These 22 mills and factories are not all undertakings of the same kind, though the majority of them are small cotton-weaving factories. They include one (Acme Thread Co. Ltd., Bombay) which produces sewing thread from purchased yarn, two (Calcuttawala Tape Works, Bombay and Eastern Tape Mfg. Co. Ltd., Bombay) which produce tapes and wicks, two (National Cotton Products Ltd., Bombay and Bombay Cotton Waste-Mill, Bombay) which are concerned with waste spinning and one (New India Textiles, Bombay) which does the work of art silk weaving. Among the cotton weaving factories the number of workers employed ranges from 15 to 367 and the number of looms from 8 to 213 per factory. The other factories are also small, each employing between 12 and 200 workers. We have visited several of the undertakings concerned and have found that the machinery employed is generally old and only moderately efficient. The capital employed per concern ranges from Rs. 70,000 to Rs. 18,25,000.

2. The considerations that have guided us in adjudicating the claims of the workers in the mills which are members of the Millowners' Association have little relevance to the question of bonus to be awarded in the case of these 22 undertakings as a fairly large number of them not only do not appear to have made profits but have actually incurred losses in 1948. The total number of workers in all these concerns does not appear

to exceed 1,500. Mr. Narayanaswamy has filed a statement concerning those undertakings giving different kinds of information required by us and the fact shown therein that nine of them have incurred losses has not been seriously challenged, though only in eight cases have the accounts of the Companies been audited. We are of opinion that it would have been more proper if the dispute regarding bonus in respect of these 22 concerns had not been included in the same reference with the dispute in respect of mills which are members of the Millowners' Association. This part of our enquiry has had to be conducted on lines materially different from the enquiry which has resulted in part I of this award. We find a great discrepancy in the 22 concerns in the practice relating to the payment of dearness allowance. Some of them pay no dearness allowance at all, and some have paid (in 1948) a large amount in basic wages than in dearness allowance, and some *vice versa*. It would, therefore, be impracticable in this case to prescribe a given multiple of the monthly basic wage as bonus to the workers of all the concerns, for that would result in anomalies and discrepancies which would be obviously unjust and improper. We shall, therefore, in this part of our award, as a special case and upon agreement expressed before us, direct the payment of bonus in terms of the combined or total earnings (basic wages plus dearness allowance) in a specified proportion.

3. Mr. Shantilal Shah has asked us to direct the payment of three months total earnings in all cases. He has contended that the average total earnings in the case of the workers in the 22 concerns being Rs. 76 per month as against Rs. 94 in the case of the weavers in the big mills dealt with in part I, if what he asks for is granted that would barely bring the combined earnings and bonus up to the total earnings of the workers dealt with in part I, exclusive of their bonus. We have been unable to accede to this request for the reasons given below. The 22 undertakings concerned are largely, from several points of view, of a heterogeneous character. The nature of their produce, the materials and the processes used, and the markets for which they produce are not the same in all cases; some of them have made profits and some incurred losses and in most the machinery is old, inefficient or small, in some few it is larger and more modern. In such circumstances, we have felt that it would be anomalous and unjust to lay down a uniform scale of bonus for all the 22 concerns. We have felt, and the parties have agreed, that it is necessary to classify the concerns in certain groups, unless we are to take up the case of each concern separately, and we have found it best to group the concerns concerned into the following six classes:

- (1) Venus Silk Mills, Bombay (No. 22),
- (2) Acme Thread Company Limited, Bombay (No. 2),
- (3) National Cotton Products Ltd., Bombay (No. 14) and Bombay Cotton Waste Mill, Bombay (No. 23),
- (4) New India Textiles, Bombay (No. 1.),
- (5) Calcuttawala Tape Works, Bombay (No. 8), Eastern Tape Manufacturing Co. Ltd., Bombay (No. 10) and B. K. Dalal Knitting Factory, Bombay (No. 5) and
- (6) All other concerns.

4. As to (1), Venus Silk Mills, Bombay, we find that on the 18th March 1949 a letter was addressed by the elected representatives of the workers of the said mill to the "representatives of the employees, care of Rastriya Mill Mazdoor Sangh" protesting against their being involved "in matters concerning the cotton industry", as only art silk cloth is manufactured in the said mills and stating that they have already received bonus for 1948 and have no complaint against the management regarding bonus or any other matter. In view of this letter we give no direction regarding the employees of this Company.

5. With regard to (2) Acme Thread Co. Ltd., Bombay, we find that with Rs. 7,00,000 as their employed capital they have made the large profit of Rs. 5,22,000. Both Messrs. Naryanaswamy and Shantilal Shah however, agree that bonus equal of 1/6th of the consolidated earnings would suffice in this case, and we direct accordingly.

6. Taking now the next group (3), the National Cotton Products Ltd., and the Bombay Cotton Waste Mill, both of which are concerned only with waste spinning, we find that the first concern have made a profit of only Rs. 3,123 and that the second has incurred a loss of Rs. 59,000. The monthly wage bill (inclusive of dearness allowance) of the first Company is about Rs. 10,000 and that of the second about Rs. 15,000. It is obvious that it is not possible to grant even half a month's earnings as bonus in either case. We, therefore, direct that the employees of these two companies should get no bonus for 1948.

7. In the next class (4), in New India Textiles, Bombay, which has made a profit of Rs. 10,369, employing a capital of Rs. 1,50,000. It manufactures only art silk products. The mill was formerly producing cotton textile and is thus still being treated in the same way as other cotton mills. For the year 1947 certain companies, including this one have received bonus equivalent to 2½ months' basic wages. It is said that in the conciliation proceedings now going on regarding silk and art silk concerns about 15 have agreed to pay three months' basic wages for 1948, though this Company is not a party to the said proceedings. In view of all this and the fact that the total consolidated wage bill of the Company is Rs. 4,000 per month, we think that it would be proper for the concern to give a bonus equivalent to 1/8th of the total earnings of the workers for 1948, and we direct accordingly.

8. The next group (5) consists of Calcuttawala Tape Works, Eastern Tape Manufacturing Co. and B. K. Dalal Knitting Factory. Of these the first two produce tapes and wicks, and we have thought it expedient to include the third factory also in this Group. The first Company has already paid bonus to its workers equivalent to one month's basic wages. Figures for the third Company have not been given. The first two Companies work with 12 and 48 looms, and have 30 and 38 workers, the employed capital being Rs. 70,000 and Rs. 1,00,000 respectively. Only the first of these have made a profit which amounts to Rs. 13,589. Its monthly consolidated wage bill is Rs. 2,140 and that of the second

Company Rs. 1,264. We think that it would be proper in the case of these three companies to grant bonus equivalent to 1/12th of the total earnings of the workers, and we direct accordingly:

9. There now remain all the other companies, which all produce cotton textiles. Several of them have made no profits but the best managed amongst them, the Swastik Textile Mills Ltd., has made a profit of Rs. 3,00,000, employing a capital of Rs. 18,25,000. Mr. Narayanaswamy has agreed that the workers in all these concerns should be given bonus equivalent to 1/12th of the total earnings of the workers. We think that this is a fair proposal, and we direct accordingly.

10. There remains the question of conditions. Normally conditions laid down in the first part of the award should apply, but it has been argued that owing to the supply of insufficient yarn many of the looms have had to remain idle and so a large percentage of workers have had to remain compulsorily unemployed for any appreciable part of the year. This appears to be a correct statement. We, accordingly, substitute the following for condition No. 1 mentioned in part I:—

“1. Employees who have worked for less than 48 days and more than 15 days in the year shall be granted bonus to the extent of 50 per cent., and employees who have worked for 15 days or less shall not be paid any bonus.”

The rest of the conditions given in part I will apply. We further direct that the bonus directed above shall be paid in one instalment by the 30th July 1949.

K. C. SEN,
President.

D. G. KAMERKAR,
Member.

M. C. SHAH,
Member.

K. R. WAZKAR,
Registrar.

Bombay, 30th June 1949.

Bombay, 12th July 1949.

No. 203/49.—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 13th day of July 1949 registered the following award made by the Industrial Court, in the industrial dispute between the Rashtriya Girni Kamgar Sangh, Barsi, and (1) The Barsi Spinning and Weaving Mills Ltd., Barsi and (2) the

Lokamanya Mills Ltd., Barsi, regarding scales of pay, dearness allowance, etc. :—

In the Industrial Court, Bombay.

Reference No. 35 of 1948.

ARBITRATION

BETWEEN

The Rashtriya Girmi Kamgar Sangh, Barsi

AND

(1) The Barsi Spinning and Weaving Mills Ltd., Barsi

and

(2) The Lokamanya Mills Limited, Barsi.

Re : Scales of pay, dearness allowance, etc.

Industry.—Cotton Textile.

Present.—Mr. M. C. Shah, Member.

Appearances.—Counsel Mr. C. L. Dudhia, with Mr. S. G. Athavle, for the Sangh.

Mr. J. H. Shah, Advocate, for the Bars. Mills.

Mr. B. Narayanaswamy, Advocate, instructed by Mr. R. B. Sulakhe, for the Lokamanya Mills.

AWARD

This is a reference under section 73 (A) of the Bombay Industrial Relations Act (XI of 1947) made by the Rashtriya Girmi Kamgar Sangh, Barsi, which is a representative Union, against the opponents, the Barsi Spinning and Weaving Mills Ltd., and the Lokamanya Mills Ltd., Barsi, regarding disputes relating to scales of pay, dearness allowance and other service conditions of the clerks employed in the said two Mills. On the reference coming up for hearing, both parties were heard at length and after a general discussion the Union withdrew some of the demands and agreed that in respect of certain other demands the Court should recommend to the Government, under section 86KK of the Bombay Industrial Relations Act, to refer the same to the Wage Board. However I pointed out to the parties that this being a reference under section 73 (A) of the Act and not under section 73, section 86KK will not apply and no recommendation could be made to the Government for referring the dispute to the Wage Board. Thereupon the parties took time to consider the position and the applicant Union has finally decided to withdraw this reference and has filed a statement asking for permission to do so. Accordingly I allow the reference to be withdraw. No order as to costs.

(Signed) K. R. WAZKAR,
Registrar.
Bombay, 2nd July 1949.

(Signed) M. C. SHAH,
Member.

N. P. KHARE,
Assistant Registrar,
Bombay Industrial Relations Act.

Bombay, 13th July 1949.