REGISTERED No. B-1

The
Bombay Government Gazette
EXTRAORDINARY
PUBLISHED BY AUTHORITY

THURSDAY, 28TH JULY 1949.

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

PART I-L—Notifications.

LABOUR DEPARTMENT.

Bombay Castle, 22nd July 1949.

Order.

No. 790/48.—Whereas an industrial dispute has arisen between the David Sassoon and Company Limited, Bombay, and the workmen (Office Peons) employed under it on the demands mentioned in Annexure "A";

And whereas separate applications have been made by the David Sassoon and Company Limited, Bombay and the Bombay Office Sepoys' Union, Bombay, 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. M. C. Shah, B.A., LL.B., constituted under section 7 of the said Act, 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".

1. *Grades.*—The following should be the grades:—

30—2—60
60—1—65

2. Dearness allowance according to the scale made applicable to the Textile workers of Bombay. While fixing the present pay the number

of years already served should be considered in terms of the grades shown above.

3. *Leave.*—(*a*) One month's privilege leave should be given for every 11 (eleven) months of service with the right of accumulation up to 3 months.

(*b*) One month's sick leave with full pay for every completed year of service.

(*c*) 10 days' casual leave in a year—Casual leave may not be combined with privilege leave nor can it be accumulated.

4. *Provident Fund.*—Provident fund should be introduced, the employees to contribute 8⅓ per cent. and the firm an equal amount.

After ten years' service Company's full contribution should be paid and half the Company's contribution after 5 years' service.

5. *Gratuity.*—Gratuity should be introduced on the basis of:—

(*a*) 15 months' salary after 15 years' continuous service on retirement or death.

(*b*) On termination of service by the Company after 10 years' service but less than 15 years, ¼th of the months salary for every year of service.

(*c*) On termination of service after 15 years' service, 15 months' salary.

6. *Insurance.*—Employees should be insured against mishap or accident.

7. *Free Medical Aid.*—A scheme of free medical aid should be introduced.

General.—

1. Free uniforms—three sets a year to all with an umbrella should be given.

2. Maintenance of service-book for every sepoy and any remark therein shall be written in the presence of the employee and signed and countersigned by the departmental head and Chief Officer respectively.

3. Eligible sepoys should be given the posts of clerks whenever vacancies occur.

4. Overtime payment for extra work done should be made.

5. Suitable arrangements for an eating place, recreation and rest room and Sports Club should be made.

6. Every sepoy should be given a house-rent allowance of Rs. 10 per mensem or free quarters.

7. Every sepoy should be given adequate bonus annually.

8. Separate staff should be maintained for cleaning work; such as, sweeping office premises, cleaning of floor with water and cleaning of windows, etc.

Order.

No. 832/46-I.—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 Firestone Tyre and Rubber Company of India Limited, Bombay and the workmen (office staff) employed under it, regarding the matters specified in Annexure " A " for adjudication to the Industrial Tribunal consisting of Mr. P. S. Bakhle, 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 ".

" The retrenchment notices served on Messrs. P. H. V. Iyer and A. F. Santos on 3rd May 1949 and 11th May 1949 respectively are unjustified, uncalled for and unnecessary and must be withdrawn forthwith. They should be reinstated forthwith and paid their full salaries, dearness allowances, etc., from the date of their discharge to the date of their reinstatement and adequate and substantial compensation for wrongful and unwarranted termination of their services and for involuntary unemployment."

Bombay Castle, 25th July 1949.

No. 315/48.—The Supplementary award of the Tribunal in the industrial dispute between the Bombay Suburban Electric Supply Ltd., Bombay and the workmen employed under it referred for adjudication under Government Order, Labour Department, No. 315/48, dated the 26th July 1948, is hereby published :—

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

APPLICATION (I.T.) 9 OF 1949 (IN A.J.IT 51 OF 1948)

BETWEEN

The Bombay Suburban Electric Supply Ltd., Bombay,

AND

The Workmen employed under it.

In the matter of clarification of the Award.

Mr. V. D'Silva of Messrs. Craigie, Blunt & Caroe, Mr. Colaso and Mr. Kripalani for the Bombay Suburban Electric Supply Ltd.

Mr. L. G. Goes, Honorary General Secretary, Mr. M. B. Menon, Treasurer, and Mr. B. K. Desai, with Mr. S. H. Jhabwalla, Honorary Adviser, for the workmen.

SUPPLEMENTARY AWARD.

The award in this proceeding was made on 6th January 1949 and was published in the *Bombay Government Gazette* Extraordinary, Part I, dated 20th January 1949 on pages 293-A to 293o. Thereafter differences arose

between the Bombay Suburban Electric Supply Ltd. (hereinafter called the Company) and the Bombay Suburban Electric Employees' Union (hereinafter called the Union) representing the workmen as to interpretation of the award on certain points. As the parties could not agree Government was moved and by Labour Department letter No. 315/48-B, dated 26th May 1949, these points have been referred to me for interpretation under Rule 20-A of the Industrial Disputes (Bombay Rules), 1947.

2. The first point raised by the Union is with regard to dearness allowance. In awarding dearness allowance to the workmen at the same rate at which dearness allowance is awarded to the textile workers in Bombay City by the Industrial Court by its award in Reference 1, 4 and 5 of 1946, I observed as follows :—

> "The Company itself is paying dearness allowance which is linked with the cost of living index and I prefer to retain that method. The only thing I have done is to increase the rate at which dearness allowance is calculated. The Company can well afford to pay the rate of dearness allowance awarded to the textile workers, and I, therefore, award that the Company should grant the same rate of dearness allowance as is being granted to the textile workers under the award of the Industrial Court in Reference 1, 4 and 5 of 1946 with effect from 1st August 1948."

Prior to the dispute the Company was paying dearness allowance to all its workmen calculated as follows :

> As. 8 for the first 5 points' rise above the pre-war cost of living index number, i.e., for the first 110 points of the index, and 3·75 annas per month for every additional point above.

Thus, though the dearness allowance was linked to the cost of living index number, the number of days an employee worked in the month did not enter into the calculation of the dearness allowance to be paid. The Company at the time of the dispute was employing only monthly paid staff but now employs daily rated employees also. As regards the daily rated employees there is no difficulty and no dispute has been raised as they are paid dearness allowance for the number of days they work in the month, the rate of calculation of dearness allowance being at the rate of 1·9 pies per day per point's rise above the pre-war cost of living index number for the working class for the City of Bombay as awarded by the Industrial Court. The difficulty has arisen with regard to the calculation of the dearness allowance for the monthly paid staff. The Company has interpreted my award so as to grant dearness allowance to its monthly paid staff calculated for all the days in the month, except Sundays or the weekly off days on which the employees do not work. Thus in a month of 30 days with four Sundays, the Company pays dearness allowance even to the monthly paid staff calculated at the above stated rate for 26 days only. The Union has argued that this is not what has been awarded. The Union argues that as the monthly paid staff is paid salary for all the days in the month they should

be paid dearness allowance at the rate awarded by the Industrial Court, i.e., 1·9 pies per day per point's rise of the cost of living index number over the pre-war level, for all the days of the month. Since I have awarded to the employees of this Company, dearness allowance at the same rate as was awarded by the Industrial Court to operatives in the textile mills in Bombay in Ref. 1, 4 and 5 of 1946, it is necessary to consider carefully what that award lays down. The Industrial Court in its award in the said Reference (1948 I. C. R. Page 47) stated as follows :—

"Since the Court has fixed Rs. 30 as the minimum occupational basic wage for employees in the cotton textile mills in Bombay, with effect from January 1947 by the award dated the 31st May 1947 it is directed that the existing basis of payment of dearness allowance should be revised as follows with effect from the same date :—

"The rise in the cost of living over the pre-war level of 105 in the case of an employee earning Rs. 30 for a month of 26 days should be neutralized to the extent of 90 per cent. and all the employees should be paid at that flat rate. Taking the average index number of 279 for the year 1947, this employee should get a dearness allowance of Rs. 44–11–11 for a month of 26 days. On arithmetical calculation it is found that the rate comes to 1·9 pies per day per rise of each point in the cost of living index number over the pre-war figures."

As will be seen the reference to 26 days is only for the purposes of showing how much the neutralization at 90 per cent. of the cost of living over the pre-war level for an employee earning the minimum occupational basic wage of Rs. 30 per month of 26 working days would work out to per day for each point's rise above the pre-war cost of living index number. What the Industrial Court did was to raise the rate of dearness allowance then being paid to textile workers so as to neutralize the rise in the cost of living over the pre-war level by 90 per cent. for an operative drawing a wage of Rs. 30 per month for 26 working days, which the Court had earlier fixed as the basic minimum wage. On arithmetical calculation the rate works out to 1·9 pies per day per point's rise in the cost of living index number, for the working class in the City of Bombay, over the pre-war level. What is important to bear in mind is that the Industrial Court by its said Award fixed the rate of the dearness allowance to be paid, per day per point's rise ; it nowhere lays down that even for a monthly rated employee the dearness allowance is to be calculated and paid for 26 days in the month or for the number of days he works in the month.. The calculation for the daily paid worker was made for 26 days, as because of the statutory weekly off, operatives paid on daily basis can earn wages in the maximum for only 26 days in a month of 30 days and the Industrial Court was considering the case of operatives in the textile mills in Bombay, majority of whom are paid on a daily basis. The case for the monthly paid staff is, however, different. They are paid salary for all the days in the month including Sundays or weekly offs and holidays. It would be unfair to pay them dearness allowance for only 26 days in the month, when they are paid salary for all the days in the

month. I do not think the Industrial Court's award can be interpreted to mean that dearness allowance should be granted to monthly paid staff at the rate fixed by it calculated for only 26 days in the month as the Company has sought to do. In this connection, I am fortified by the award of the learned Industrial Tribunal, Mr. D. G. Kamerkar, in AJ. IT 87 of 1948, dispute between the British Insulated Callender's Cables Ltd., Bombay, and the workmen employed under it (*Bombay Government Gazette*, Part I, dated 28th April 1949, page 2353-vv-22, Para. 38) where the learned Tribunal directed that, dearness allowance on the textile scale, should be computed, " for all the days of the month 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 ". By my award I directed the Company to pay dearness allowance at the rate awarded to textile workers by the Industrial Court in Ref. 1, 4 and 5 of 1946. Dearness allowance was to be calculated at that rate. I did not state that even for the monthly paid staff it should be calculated for the number of days the Company or the employees work in a month. I granted them dearness allowance at the rate fixed by the Industrial Court for textile workers in Bombay City, for all the days in the month for which they would receive their basic salary. To the monthly paid staff the dearness allowance should be computed as for the number of days in the month for which they would be entitled to receive basic wages and for the daily rated staff for the number of days they work in the month. As I have already stated, there is nothing in that award by which dearness allowance is to be limited for the monthly paid staff only for the number of days on which the Company works or an employee attends to his duties. I, therefore, direct that for the monthly rated staff the Company should compute dearness allowance for all the days of the month and that dearness allowance should be calculated on that basis and the difference between the amount so worked out and the amount already paid for the period from 1st August 1948 should be paid within two months from the date of publication of this supplementary award in the official Gazette.

3. The second point on which the Union desires clarification is with regard to payment of bonus. On the demand for bonus I stated in my award, " I, therefore, feel that the Union's demand for an additional bonus of one month's wages out of the profits for the year 1946-47 is reasonable and justified and I award the same." The grant of bonus was made subject to certain conditions. One of the conditions was that bonus should be calculated on the earnings from 1st April 1946 to 31st March 1947. By another condition I laid down that employees who had worked for less than 75 days and more than 32 working days shall be graned bonus to the extent of 50 per cent. only and employees who had worked for 32 days and less shall not be paid any bonus. The dispute was referred to my adjudication by Labour Department Order No. 315/48, dated 25th July 1948. During the pendency of the adjudication proceedings on 1st October 1948 the British Insulated Callender's Cables Ltd., mains staff was merged into this Company. The Union

now claims that the members of the mains staff of the British Insulated Callender's Cables Ltd., having joined the Company in October 1948 and having been employees of the Company on the date of my award was made enforceable by Government, i.e., 20th January 1949, they are entitled to the benefit of the extra one month's bonus awarded by me. The Company has opposed this demand and rightly pointed out that since the bonus, which I had awarded, is paid out of the profits of the Company for the period from 1st April 1946 to 31st March 1947 to those who were employees of the Company, these members of the mains staff of the British Insulated Callender's Cables Ltd., who were not employees of this Company during 1946-47 but were employees of the British Insulated Callender's Cables Ltd., are not entitled to any bonus. It has also to be remembered that as employees of the British Insulated Callender's Cables Ltd., mains staff these workmen got a bonus in that year from that Company. Giving them the benefit of this bonus would be giving them double bonus. I did not mean to give the benefit of the bonus to those who were not in the employ of the Company during 1946-47. The benefit of the bonus was to be granted to those employees who by their exertions and efforts contributed to the profits which the Company made during that year. These workmen, for whom the Union now claims the benefit, not having contributed in any way to the prosperity of the Company during 1946-47, are not entitled to any bonus. The Company has rightly not granted these workmen the benefit of the additional bonus awarded and the Union's application on this point is rejected.

4. The third point raised is with regard to calculation of the bonus. I directed that the bonus to be paid should be calculated as follows:

> "Bonus shall be calculated on earnings (exclusive of dearness allowance and bonus paid) during the period from 1st April 1946 to 31st March 1947."

The Union states that bonus equivalent to two months' basic wage voluntarily granted by the Company for the year 1946-47 was calculated on the basis of the salary of each employee as on 1st March 1947 and not on the basis of the average earnings during the 12 months from 1st April 1946 to 31st March 1947. The Union has pointed out that the scales of wages in the Company were revised as a result of the earlier award of Sir Harshidbhai V. Divatia published in the *Bombay Government Gazette* on 15th December 1946 and that the salary as on 1st March 1947 was higher than the average monthly salary of the employees during the 12 months ending 31st March 1947. The Company submits that following the directions given by me in my award it had calculated and had paid the additional bonus for one month on the average earnings for the 12 months from 1st April 1946 to 31st March 1947. The Union on the other hand complains that as a result of the calculation the workmen had got proportionately a smaller amount by way of bonus than they would have got had I directed that the bonus should be paid on the basis of the salary as on 31st March 1947. I quite see that by the calculation of average earnings during the entire period of one year from

1st April 1946 to 31st March 1947, the amount of bonus paid must have resulted in a lesser amount being paid than what would have been paid if the bonus had been calculated and paid on the basis of the salary as on 31st March 1947. However, as at the hearing my attention had not been specifically drawn to the method followed by the Company in payment of bonus granted by it, I made the usual order of calculation of bonus on average earnings during the year. The purpose of an application for clarification under Rule 20-A is not to alter, amend or improve upon the terms of an award but to clarify such directions in the award as may not be clear to the parties and upon the interpretation of which they may not be agreed. The award on this demand is clear in its terms and the Company in calculating bonus on the basis of the average earnings for the year has carried out the precise terms of my award. What the Union wants in effect is that I should alter and improve one of the conditions governing the calculation and payment of bonus. I am afraid I cannot do so. The Union's application, therefore, on this point is also rejected.

5. I may also state that at the hearing Mr. V. D'Silva, the learned Attorney representing the Company, drew my attention that in paragraph 30 of my award when dealing with demand No. 12 for one month's salary as an additional bonus for the year 1946–47, I had observed :—

> " The Company's balance sheets reveal that it is a very prosperous concern. The prosperity of the Company is partially due to the efforts of its workmen who are entitled to a bonus out of its profits particularly as the salary paid by the Company along with dearness allowance does not give a living wage. I think bonus equivalent to 2 months' salary for the year 1946–47 is inadequate."

Mr. D'Silva stated that as in the adjudication there was no dispute with regard to the scale of wages being paid in the Company, sufficient material has not been placed before the Tribunal, particularly with regard to the scales of wages being paid in the Company, for it to warrant the statement that " the salary paid by the Company along with the dearness allowance does not give a living wage". He, therefore, requested that I might consider ordering the deletion of these words from the award. The Union's representatives opposed this application.

6. I am afraid such an application, apart from its merits, cannot be entertained. This is not one of the points that has been referred to the Tribunal for clarification under Rule 20-A. The Tribunal would be travelling beyond the scope of an application under Rule 20-A if it were to enter into a discussion on any points that parties might choose to press at the hearing which go beyond those specifically raised in the application and referred by Government for interpretation of an award under Rule 20-A. I, therefore, declined to entertain the application. I am referring to this oral application of the learned Attorney for the Company as he requested that in the event of my not entertaining the same, I might at least record that the same had been urged.

7. This supplementary award is directed to be submitted to Government under section 15 (*1*) of the Industrial Disputes Act of 1947. No order as to costs.

(Signed) SALIM M. MERCHANT,
Industrial Tribunal.
18th July 1949.

(Signed) K. R. WAZKAR,
Secretary.

Bombay, 18th July 1949.

Order.

No. 315/48.—Whereas the dispute between the Bombay Suburban Electric Supply Ltd., Bombay, and the Workmen employed under it was referred by Government Order, Labour Department, No. 315/48, dated the 26th July 1948, for adjudication to an Industrial Tribunal;

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

Now, therefore, in exercise of the powers conferred by sub-section (*2*) of section 15 read with sub-section (*3*) of section 19 of the Industrial Disputes Act, 1947 (XIV of 1947), the Government of Bombay is hereby pleased to declare that the said supplementary award shall be binding on the Bombay Suburban Electric Supply Ltd., Bombay, and the Workmen employed under it and to direct that the said supplementary award shall come into operation on the 25th July 1949 and shall remain in operation till the period of the original award.

Order.

No. 408/48.—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 R. B. Anant Shivaji Desai Topiwalla Metal Stamping Works, Bombay, and the Workmen employed under it, regarding the matters specified in Annexure "A" for adjudication to the Industrial Tribunal consisting of Mr. M. C. Shah, B.A., LL.B., constituted under section 7 of the said Act, 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."

The nine employees mentioned in the schedule should be paid bonus for the year 1947-48 as paid to others.

Schedule.

1. Mr. Sadu Baloo,
2. Mr. Dattaram Yeshwant,
3. Mr. Pandu Ratna,
4. Mr. Gopal Ganpat,
5. Mr. Pandu Sadu,
6. Mr. Narayan Hari,
7. Mr. Tukaram Dhanu,
8. Mr. Sitaram Ramji,
9. Mr. Ganu Tulaji.

No. 437/48.—The award of the Tribunal in the industrial dispute between the Bombay Metal and Alloys Manufacturing Company Ltd., Bombay, and the Workmen employed under it referred for adjudication under Government Order, Labour Department, No. 437/48, dated the 14th January 1949, is hereby published :—

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

ADJUDICATION

AJ-IT 8 of 1949

BETWEEN

The Bombay Metal and Alloys Manufacturing Co. Ltd., Bombay,

AND

The Workmen employed under it.

In the matter of an Industrial Dispute regarding fixing of minimum wage, dearness allowance, gratuity, etc.

Mr. M. G. R. Aitken, Solicitor, of Messrs. Crawford Bayley & Co., for the Bombay Metal and Alloys Manufacturing Co. Ltd.

Mr. P. D. Kamerkar, Assistant Secretary, Metal Mazdoor Sabha, for the workmen.

AWARD.

This dispute has been referred to me as an Industrial Tribunal by the Government of Bombay under section 10 (*1*) of the Industrial Disputes Act, 1947 (XIV of 1947) by its Order, Labour Department, No. 437/38,

dated the 14th January 1949, in respect of the following demands which are stated in Annexure "A" to the said Order :—

1. *Wage scales.*—The minimum wage of Rs. 1-4-0 per day shall be paid to unskilled labour.

For Peon, Hamals and Watchmen, pay scales should be Rs. 40—3—95 and Rs. 5 more for the Head Peon, etc.

2. *Dearness Allowance.*—Dearness Allowance should be paid with retrospective effect from 1st January 1947 as is paid in the textile industry.

Dearness Allowance should be paid according to Millowners' Association's scale as in the case of the workers to Peons, Hamals, and Watchmen.

3. *Gratuity.*—Every employee should be paid one month's wages with dearness allowance per every year of service on termination of his services.

4. *Provident Fund.*—The existing rules should be so revised as to enable every employee to contribute 18 pies, per rupee with equal contribution by the Company. Full payment of the Provident Fund should be made by the Company on completion of five years of continuous service in the Company.

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

(*a*) Ten days' sick leave with half pay and dearness allowance to be allowed to accumulate up to six months.

(*b*) Ten days' casual leave with full pay and dearness allowance.

(*c*) Fifteen days' leave without pay.

For Peons, Hamals and Watchmen as under :—

(*a*) *Privilege Leave.*—One month with full pay and dearness allowance.

(*b*) *Sick Leave.*—Fifteen days' leave with half pay and dearness allowance to be allowed to accumulate up to six months.

(*c*) *Casual Leave.*—Ten days' leave with pay and dearness allowance.

6. *Bonus.*—Bonus equivalent to two months' salary per year be paid for the years 1946-47 and 1947-48.

2. After the usual notices were issued, the Metal Mazdoor Sabha (hereinafter called the Sabha) representing the Workmen of the Bombay Metal and Alloys Manufacturing Co., Ltd., filed its statement of claim on 10th February 1949 and the Bombay Metal and Alloys Manufacturing Co., Ltd. (hereinafter called the Company) filed its written statement in reply to the Sabha's statement of claim on 23rd March 1949. The matter was fixed for hearing before me on 13th June 1949 on which date on the joint application of both parties the hearing was adjourned to 15th June 1949 on which date both parties were fully heard. Thereafter the Company applied for time to file certain particulars which were furnished after about a week.

3. I may state that during the pendency of this adjudication the Sabha made an application purporting to be under section 33 of the Act for a notice against the Company to show cause for alleged illegal retrenchment of certain workmen. Later by another application dated 18th June 1949, the Union withdrew the said application. It is, therefore, not necessary to deal with this application.

4. The Company belongs to a group of metal industries and its chief work is of melting and refining non-ferrous metals such as white metal, bell metal and aluminium. It also undertakes engineering work. The Sabha in its statement of claim has argued that the company has been doing flourishing business and has ammassed huge profits. I, however, find on an examination of the balance sheets of the Company, submitted to me under a sealed cover, that this is not correct. I may state at the very outset that in dealing with the demands I have been considerably influenced by the financial incapacity of the Company. In many respects this Company can fairly be compared with the Indian Standard Metal Co., Ltd., as they both do like manufacturing work. It is hardly necessary to deal with the history of the dispute as the workers organized themselves and joined the Sabha only in April 1948. On 25th April 1948 the Sabha informed the Company about its formation and requested recognition as the sole representative of its workmen. It is heartening to note that the Sabha admits that its relations with the Company are very cordial. The Sabha submitted certain demands to company but the company naturally desired that the decision on the demands should be stayed till my award, in the dispute between the Indian Standard Metal Co., Ltd., and its Workmen, was published. The Sabha was not inclined to wait till then and ultimately the dispute was referred to adjudication by the Government Order, dated 14th January 1949. I now proceed to deal with the demands *seriatim*.

Demand No. 1 : Wage Scales.—The minimum wage of Rs. 1-4-0 per day shall be paid to unskilled labour.

For Peons, Hamals and Watchmen, pay scales should be Rs. 40—3—95 and Rs. 5 more for the Head Peon etc.

5. The Sabha demands a minimum wage of Rs. 1-4-0 per day for unskilled labour. For peons, Hamals and Watchmen it demands the wage scale of Rs. 40—3—95 and Rs. 5 more for the Head of each of these categories. The Company at present pays a minimum wage of As. 12 along with an allowance of As. 4 per day, making a total wage of Re. 1 per day. The Company has filed an exhaustive statement (Exhibit 4) showing that only 28 of its daily paid employees are getting a salary of Re. 1 per day inclusive of the allowance—all the rest are getting higher wages. The Company states that if the Sabha's demand of a minimum basic wage of Rs. 1-4-0 per day were to be granted, it would impose a recurring burden of about Rs. 400 per month or about Rs. 4,800 per annum (Exhibit 4). The Company has stated that the only other concern comparable with it is the Indian Standard Metal Co., Ltd., which however has the big advantage of having the backing of the House of Tatas. In my award in the dispute between the Indian Standard Metal Co., Ltd., and its daily paid workmen (AJ-IT 40 of 1948, *Bombay Government*

Gazette Extraordinary, Part I, dated 5th February 1949, page 604) I directed that Company to continue to pay the basic wage of Re. 1 per day and a tea allowance of As. 3 per day which it was paying to each of its workmen and which had later been incorporated by that Company in the basic wage. Thus virtually in that Company I awarded a minimum basic wage of Rs. 1-3-0 per day while the Union was demanding a minimum wage of Rs. 1-2-6 per day and continuance of As. 3 per day by way of tea allowance. At the rate of Rs. 1-2-6 per day for a month of 26 days the monthly wage works out to Rs. 30 per month. This is the minimum basic wage awarded to the operatives in the textile mills of Bombay. It is also the minimum basic wage recommended by the Central Pay Commission for the lowest category of Class IV employees. Rs. 30 per month has now generally come to be accepted as the basic minimum wage to be paid to the lowest class of unskilled workmen in Bombay City. I do not think the Sabha has justified its demand for a mimimum basic wage of Rs. 1-4-0 per day for unskilled workmen. The only award in which the minimum basic wage of Rs. 1-4-0 per day has been awarded is in the dispute between the Tata Oil Mills Co., Ltd., and the workmen employed under it (1948 I. C. R. page 241). This Company cannot be compared to any concern of the Tatas. I think the minimum basic wage of Rs. 1-2-6 per day is reasonable and satisfactory and I direct that the Company should pay the same.

6. As regards the date from which this new rate of minimum basic wage shall be payable, I find that the Sabha has not made any demand as regards the date from which the revised wage scale shall take effect. Where no such demand is made, it is open to a Tribunal to fix any date after the date of the reference of the dispute to its adjudication. The dispute has been referred to my adjudication by Government Order dated 14th January 1949. Since it is a question relating to the minimum basic wage I should like to make the rate awarded by me, payable from as early a date after 14th January 1949 as would be conveniently possible. I, therefore, direct that the minimum basic wage of Rs. 1-2-6 per day should take effect from 1st February 1949. The difference between the wages calculated at this new rate and the wages already paid for the period from 1st February 1949 shall be paid within a month from the date of the publication of this award in the official Gazette. Employees who have been in the service of the Company on 1st February 1949 but who have left the Company thereafter shall be entitled to receive their arrears, except those employees who have been dismissed from service for misconduct. These employees shall be paid the difference in their salaries calculated on the basis of the new rate on their making a written application for the same within three months from the date of the publication of this award in the official Gazette. I further direct that the payment of the arrears shall be made within a month of the receipt of the application by the Company.

7. For Peons, Hamals and Watchmen the Sabha demands a wage scale of Rs. 40—3—95. For Heads of Peons, Hamals and Watchmen the Sabhademands, Rs. 5 extra. In my award in the dispute between the

Indian Standard Metal Co., Ltd., and its monthly rated employees, AJ-IT 41 of 1948 (*Bombay Government Gazette*, Part I, dated 5th February 1949). I have awarded Peons, Hamals and Watchmen a wage scale of Rs. 35—1—45—2—55. To Heads of Peons, Hamals and Watchmen I have awarded Rs. 5 extra per month. By Heads of Peons, Hamals and Watchmen are also to be understood the most senior member of each category. At the hearing the Sabha was prepared to accept this wage scale and the Company did not seriously oppose the same. I, therefore, award that Peons, Hamals and Watchmen shall be paid a wage scale of Rs. 35—1—45—2—55 and Heads of Peons, Hamals and Watchmen, Rs. 5 more per month. This new wage scale shall come into force from 1st February 1949. As regards adjustment of the present salaries, i.e., salary on the date of the award, into the new scales awarded herein, I direct that the same shall be adjusted on the following principles with effect form 1st February 1949 :—

Adjustment.

For less than 1 year's service—No increment in the revised scale.

For service of 1 completed year—One increment in the revised scale.

For service of more than 2 years but less than 4 years—Two increments in the revised scale.

For service of more than four years—Three increments in the revised scale.

These increments should be added to their existing salaries, i.e. salary as on the date of the award. The adjustment will not take any of the workmen above the maximum of the grade. Those who may be getting more than the maximum will get the same and their salaries will not be reduced. After these increments are granted the employees shall stepped up to the nearest increase in the revised scale if the amount of the salaries with the increments as added above falls short of the amount in the graded step. After the salaries are adjusted no employee shall be staggered and he will continue to get the future annual increments. I further direct that the dues of the workmen after the adjustment of salaries in accordance with the abovestated scheme shall be paid to the workmen within one month from the date of the publication of this award in the official Gazette.

Demand No. 2 : Dearness Allowance.—Dearness allowance should be paid with retrospective effect from 1st January 1947 as is paid in the textile industry.

Dearness allowance should be paid according to Millowners' Association's scale as in the case of the workers to Peons, Hamals and Watchmen.

8. The Company is paying dearness allowance since 1944 on the same basis as is paid to textile operatives in Bombay City. Since February 1948 the Company is paying dearness allowance at the rate awarded to textile workers by the Industrial Court in Ref. 1, 4 and 5 of 1946, i.e.,

at the rate of 1·9 pies per day per point's rise in the cost of living index number for the working class in Bombay above the pre-war level. This rate was prescribed by the Industrial Court with retrospective effect from 1st January 1947 and the workmen in the textile mills in Bombay City were paid the difference between the old rate of dearness allowance and the new rate prescribed for the period of 13 months from 1st January 1947 to 31st January 1948. The Company was paying dearness allowance till 31st January 1948 at the old textile rate and since 1st February 1948 is paying dearness allowance at the new rate fixed by the Industrial Court. The demand of the Sabha is that the workmen should be paid the difference between the old rate of dearness allowance and the new rate fixed by the Industrial Court for the period of 13 months, i.e., from 1st January 1947 to 31st January 1948. The Company has opposed this demand and has stated that there is no contract entered into by the Company by which dearness allowance was to be paid at the same rate as to the textile workers in Bombay. According to Mr. Aitken, the learned Solicitor for the Company, the Company has since 1944 been paying dearness allowance to its workmen at a rate comparable to the rate of dearness allowance being paid by the Bombay Millowners' Association to textile workers. He further argued that as there was no agreement or contract on the part of the Company to pay the same rate of dearness allowance as would be paid from time to time by the Bombay Millowners' Association, it was not obligatory on the Company to pay the difference between the old rate of dearness allowance and the new rate for the said period of 13 months. The same question was considered by Mr. D. G. Kamerkar, learned Industrial Tribunal, in his award in AJ-IT 2 of 1949, dispute between Alcock Ashdown & Co., Ltd., and the workmen employed under it (*Bombay Government Gazette*, Part I, dated 7th April 1949, page 1860) where the contention of that Company was exactly the same as the contention raised by this Company. The learned Tribunal observed, "It appears that the contention of the Company is unsustainable. It is not necessary that the Company should have given an express assurance to its workmen that it would pay dearness allowance on the textile scale or would abide by the terms of agreements or awards in disputes between the textile mills and their workmen. It was enough that from 1st July 1942 it manifested its intention to pay dearness allowance according to either of the two scales, one of which was, to everybody's knowledge and understanding, precisely the scale prescribed for textile workers. It is difficult to conceive how the A scale 'happened to be' the textile scale unless the Company had in fact intended to grant dearness allowance to its workmen on the precise basis on which the textile mills had been paying such allowance to their workmen." The Company has further argued that the demand having been made by the Sabha only somewhere in May 1948 after the new rate of dearness allowance came into force, this demand is not tenable. The same point was urged before the learned Tribunal Mr. D. G. Kamerkar in the above referred to dispute and the learned Tribunal held, "A demand could only be made on the Company's expressing its refusal to accede to it. There could be no ground to the workmen to

apprehend that the Company was not prepared to accede. It has further to be noted that in the dispute between the textile mills and their workmen, the revised scale of dearness allowance was directed to be made applicable retrospectively from January 1947 for the reason that the standardized wage rates had been made operative from that date. There is the stronger reason, therefore, to direct employers who had not revised their basic wage structure but had been only giving dearness allowance on the textile scale to pay with retrospective effect from 1st January 1947." I follow this award with respect and award that the Company shall pay to its workmen the difference between the dearness allowance paid for the period of 13 months from 1st January 1947 to 31st January 1948 and the revised rate of dearness allowance within two months from the date of the publication of this award in the official Gazette. All workmen who were in the service of the Company at any time during this period shall be entitled to the same on making a written application for the same within three months from the date of the publication of this award in the official Gazette. I further direct that the dues to such workmen shall be paid by the Company within a month from the date of receipt of the applications. Employees dismissed for misconduct which shall have resulted in monetary loss to the Company shall, however, not be entitled to the same.

9. The Sabha further demands that dearness allowance to Peons, Hamals and Watchmen should be paid according to the rate of dearness allowance paid to textile operatives in Bombay and which has popularly come to be known as the Bombay Millowners' rate of dearness allowance. At present the Company pays Peons, Hamals and Watchmen dearness allowance of Rs. 40 per month and a surcharge of Rs. 5 extra, which works out to Rs. 45 per month. The Sabha now demands that they should be paid dearness allowance at the same rate as the rest of the workmen in the factory, i.e., on the basis of the rate of dearness allowance paid to workers in the textile mills. In my award in AJ-IT 41 of 1948, dispute between the Indian Standard Metal Co., Ltd., and its monthly paid workmen (*Bombay Government Gazette*, Part I, dated 5th February 1949) I have awarded Peons, Hamals and Watchmen the same dearness allowance as is paid to operatives in the textile mills in Bombay or 50 per cent. of their salary, whichever is higher. I do not see why this category of subordinate employees should get a lower rate of dearness allowance than is paid to the daily rated staff. I, therefore, award that Peons, Hamals and Watchmen shall be paid dearness allowance at the rate at which dearness allowance has been awarded to the workers in the textile mills in the City of Bombay under the orders of the Industrial Court in Ref. 1, 4 and 5 of 1946, with effect from 1st February 1949. I further direct that the difference between the old rate of dearness allowance paid to Peons, Hamals and Watchmen and the new rate awarded shall be paid to them within two months from the date of publication of this award in the official Gazette.

Demand No. 3 : Gratuity.—Every employee should be paid one month's wages with dearness allowance per every year of service on termination of his services.

10. The Sabha demands that every employee shall be paid on retirement a gratuity on the basis of one month's wages with dearness allowance for every year of service put in. The Company in 1947 started a Provident Fund scheme. No doubt gratuity in addition to provident fund is a desirable condition of service. A similar demand was made against the Indian Standard Metal Co., Ltd., and I refused the same on the ground that the Company's financial position did not warrant the framing of a scheme of gratuity. As I have stated earlier the financial position of this Company is in my opinion not satisfactory. I think a scheme of gratuity would place an unduly heavy burden upon the financial resources of the Company. The employees can well wait till the financial position of the Company improves. I am, therefore, reluctantly compelled to disallow this demand.

Demand No. 4 : Provident Fund.—The existing rules should be so revised as to enable every employee to contribute 18 pies per rupee with equal contribution of the Company. Full payment of the Provident Fund should be made by the Company on completion of five years of continuous service in the Company.

11. As already stated the Company has a Provident Fund scheme which took effect from 1st July 1947. Under the Company's scheme of Provident Fund the monthly paid staff has to contribute 8 per cent. of its basic salary, i.e., a little more than 15 pies in the rupee and the daily paid staff has to contribute 12 pies for each rupee of basic wage. The Sabha demands that the rules should be so revised as to enable every employee to contribute 18 pies in the rupee from his salary and an equal contribution should be made by the Company. In the Indian Standard Metal Co., Ltd., the rate of contribution by the monthly paid staff to the Provident Fund is 6¼ per cent. of basic wage, i.e., one anna in the rupee. In the Indian Standard Metal Co., Ltd., the demand was made for increasing the rate of contribution to the Provident Fund from 6¼ per cent. to 9 per cent. and I rejected the demand as being unreasonable out of regard to the then financial position of the Company. I think the Company's rate of contribution which works out to nearly 16 pies in the rupee is fair and reasonable and does not need any increase.

12. The Sabha further demands that the Company's Provident Fund Rules should be so altered that each employee should receive the Company's contribution to the Provident Fund on completion of 5 years of continuous service in the Company. Rule 23 of the Company's Provident Fund Rules governs the payment to members on termination of service other than by death. The rule reads as follows :—

"The payment to a Member on termination of service other than by death will be as shown in the following Table :—

Completed years of membership of the fund.	Proportion of account payable to member.	
	"A" Account.	"B" Account.
Less than 6	100 per cent.	*Nil.*
6	100 per cent.	25 per cent.
7	100 per cent.	50 per cent.
8	100 per cent.	75 per cent.
9 or over	100 per cent.	100 per cent.

In addition there will be paid a share in the Equalisation Account as defined in Rule 13."

Provided that—

(*a*) If the Member's service is terminated by the Company by reason of being surplus to requirements (but not otherwise) after the member has completed three years membership the proportion of the "B" account payable will be increased to 100 per cent.

(*b*) The Trustees in any special case when requested to do so by the Company, but not otherwise, may divert in favour of the member from the terms of this Rule.

(*c*) No payment of any part of his "B" Account shall be made to any Member, who is dismissed for serious misconduct, but in that case the total amount of the member's "B" account shall revert to the Company."

The rules of the Provident Fund Scheme in the Indian Standard Metal Co., Ltd., are comparatively more stringent. Under these rules 50 per cent. of the Company's contribution can be paid to a Member only after completion of ten years' service and the full 100 per cent. can be earned only after completion of 14 years' service. The Sabha had made a similar demand against that Company to alter its Provident Fund Rules out of consideration for the Company's dissatisfactory financial position. The same consideration weighs with me in rejecting this demand.

Demand No. 5 : Leave.

13. The Sabha demands the following leave for every completed year of service for workmen :—

(1) 15 days' sick leave with half pay and dearnes allowance to be allowed to be accumulated up to six months.

(2) 10 days' casual leave with full pay and dearness allowance.

(3) 15 days' leave without pay.

The Company at present grants privilege leave as provided for under the Factories Act, 1948, and the Sabha has made no demand with regard to privilege leave for workers.

14. I will take up the case of casual leave first. In my award in the dispute between the Indian Standard Metal Co., Ltd., and its daily rated and monthly rated workmen (AJ-IT 40 and 41 of 1948, *Bombay Government Gazette*, Extraordinary, Part I, dated 5th February 1949) I granted 7 days' casual leave both to the daily rated workmen and the monthly rated staff. The Sabha demands casual leave of ten days with full pay and dearness allowance. Considering that this is an industrial concern I think casual leave of 7 days in the year quite adequate. I, therefore, award that casual leave of 7 days in the year on full pay and dearness allowance shall be allowed to the workmen. It must be remembered that casual leave shall only be granted according to the exigencies of work in the Company and for not more than three days at a time. It must also be emphasised that casual leave is to be taken only for emergent and unforeseen events and not to be deemed as a matter of right.

15. As regards siek leave the Sabha demands 15 days' sick leave on half pay and dearness allowance with right to accumulate up to six months. In the Indian Standard Metal Co., Ltd. (AJ-IT 40 and 41 of 1948, *Bombay Government Gazette*, Extraordinary Part I, dated 5th February 1949) the parties agreed to 15 days' sick leave in a year being granted on half pay on a medical certificate from a registered medical practitioner. Sick leave is to be granted only on exhaustion of all privilege leave. Accumulation was allowed for 60 days. The Company in its written statement has offered the same casual leave and sick leave as was awarded to the workmen of the Indian Standard Metal Co., Ltd. I, therefore, award 15 days' sick leave in the year on half pay only with right to accumulate up to 60 days on the conditions stated above.

16. The Sabha further demands that 15 days' leave without pay should be granted each year. The Company by its written statement has offered to every workman who has been in the Company's employ for at least two years unpaid leave on the basis of 50 per cent. of the earned leave, such unpaid leave to be taken in conjunction with the accumulated paid leave. There has hitherto been no practice in this Company of granting any leave without pay. Since the Company has offered to grant 50 per cent. of the earned leave as leave without pay, I award in terms of the Company's offer. This leave shall take effect from 1st June 1949.

17. The Sabha demands that Peons, Hamals and Watchmen should be granted leave as under :—

(*a*) One month's privilege leave with full pay and dearness allowance,

(*b*) 15 days' sick leave with half pay and dearness allowance,

(*c*) 10 days' casual leave with full pay and dearness allowance.

18. With regard to sick leave and casual leave, there is no difficulty, as in the Indian Standard Metal Co., Ltd.'s award they were awarded the same sick leave and casual leave as was awarded to the daily paid

workmen. I, therefore, award that Peons, Hamals and Watchmen shall be granted casual leave of 7 days in the year on full pay and dearness allowance. It must be remembered that casual leave cannot be claimed as a matter of right and the grant of casual leave is dependent on the exigencies of work in the Company. Not more than three days' casual leave can be taken at a time. I further direct that Peons, Hamals and Watchmen shall be granted 15 days' sick leave with half pay only with right to accumulate up to 60 days. Sick leave should only be granted on production of a medical certificate from a registered medical practitioner and subject to exhaustion of all privilege leave due to the workmen.

19. With regard to privilege leave, the monthly paid staff of the Indian Standard Metal Co., Ltd., including Peons, Hamals and Watchmen are granted one month's privilege leave after 11 months' service. The grievance of the Union there was that the Company was not allowing privilege leave for more than once in 11 months and that too not for a period less than 15 days with the result that it caused a certain amount of avaoidable hardship. This Company has offered to grant the same leave as is being granted to the workmen of the Indian Standard Metal Co., Ltd. I do not see why in respect of leave for Peons, Hamals and Watchmen, who are also members of the monthly paid staff, a difference should be made in the leave rules of this Company and those prevailing in the Indian Standard Metal Co., Ltd. I, therefore, award that Peons, Hamals and Watchmen shall be entitled to one month's privilege leave on full pay and dearness allowance for every completed year of service and that the same shall be allowed to be accumulated up to 3 years, i.e., 90 days.

Demand No. 6 : Bonus.—Bonus equivalent to two months' salary per year be paid for the years 1946-47 and 1947-48.

20. The Sabha demands that the Company should be called upon to pay bonus equivalent to two months' salary for each of the years 1946-47 and 1947-48. The Sabha complains that uptil the end of the financial year 1945-46 the Company was granting bonus. It claims that bonus equivalent to two months' basic wage should be allowed for each of the two years 1946-47 and 1947-48. Bonus is paid, no doubt, to make up the difference between the wages paid and the living wage when the wages fall short of the living wage. It is also paid to the workmen as their share in the profits made by the employer, the workmen having by their exertions, contributed to the prosperity of the Company. However, when the financial results of the Company for any year do not show any profits or show a very small margin of profits, it would not justify a Tribunal to award payment of bonus to the workmen. This Company has showed me its accounts for the years 1946-47, 1947-48 and for the six months ending 31st March 1949. As it is a private limited Company I am not at liberty to discuss its present financial condition. Upon a careful scrutiny of its accounts, I am satisfied that the present financial position of the Company does not justify my awarding any bonus to the workmen. As stated by the Company in

its written statement for the financial year 1946-47 the Company made a smaller net profit than has been paid out by way of Independence bonus and in the form of attendance and production bonus for that year. The financial position of the Company during 1947-48 deteriorated still further. In fact the Company has stated in its written statement that it has been working on bank facilities and borrowings. In the circumstances I do not think the Union has made out a case for grant of any bonus. This claim for bonus is, therefore, rejected.

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

(Signed) SALIM M. MERCHANT,
14th July 1949. Industrial Tribunal.

(Signed) K. R. WAZKAR,
Secretary.

Bombay, 15th July 1949.

Order.

No. 437/48.—Whereas the dispute between the Bombay Metal and Alloys Manufacturing Company Ltd., Bombay, and the workmen employed under it was referred by Government Order, Labour Department, No. 437/48, dated the 14th 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 Bombay Metal and Alloys Manufacturing Company Ltd., Bombay, and the workmen employed under it and to direct that the said award shall come into operation on the 25th July 1949 and shall remain in operation for a period of one year.

No. 576/48.—The award of the Tribunal in the industrial dispute between the Jagjivandas Narotamdas Metal Factory, Bombay, and the workmen employed under it referred for adjudication under Government

Order, Labour Department, No. 576/48 (*i*), dated the 22nd February 1949, is hereby published :—

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

ADJUDICATION

AJ-IT No. 17 of 1949.

BETWEEN

Jagjiwandas Narotamdas Metal Factory, Bombay.

AND

Workmen employed under it.

In the matter of Recognition of Union, Ticket System, Leave, Bonus, Dearness Allowance, etc.

Counsel Mr. H. S. Desai for the Company.

Mr. B. B. Sawant with Mr. Wadhavkar for the workmen.

AWARD.

The dispute in this proceeding was referred to this Tribunal under section 10, sub-section (*1*) of the Industrial Disputes Act, 1947, by the Government of Bombay by their Order No. 576/48 (*i*) of the Labour Department, dated February 22, 1949. The dispute relates to 12 demands, which have been stated in Annexure " A " to the notification.

2. The employer factory in this dispute was established in about the year 1925 for manufacturing household utensils from copper, brass and German silver plate. From about 1938 it commenced manufacturing utensils from aluminium plate also. The factory is situate at 3rd Kumbharwada Lane in Bombay and until November 1948 it had a complement of 37 workmen, four of whom had been employed on monthly wages and the rest on daily wages. For supplying aluminium plate of various sizes required for manufacturing utensils the employer has a workshop at Malad, wherein plate is manufactured from aluminium scrap. In November 1948, the workmen of the factory joined the Metal Mazdur Sabha and made certain demands by their letter of December 15, 1948. As the employer refused to meet the Sabha's representative, the Sabha approached the Labour Directorate for intervention and conciliation. The employer put up a notice on 3rd January 1949 closing the factory from 4th January for the reason stated therein that sufficient raw material, i.e., aluminium plate, was not available. According to the workmen, this was a deliberate lockout by the employer for the purpose of bullying them into submission. As in the course of the conciliation proceedings the employer refused to lift the lockout, the Sabha approached Government for referring the dispute for adjudication on the demands made in their letter of December 15, 1948.

Demand No. 1 : *Recognition.*—The Metal Mazdur Sabha should be recognised as the sole representative of the workmen of your factory.

3. This demand, apparently, has been made without a proper appreciation of the provisions of Chapter III-A inserted by the Indian Trade Unions (Amendment) Act, 1947, in the original Indian Trade Unions Act, 1926. Granting recognition to trade unions is a quasi-judicial function assigned by the amending Act to Labour Courts appointed by the newly inserted section 28-E. It is not desirable that the powers and the functions of that Court should be arrogated to itself by an Industrial Tribunal. I had several occasions to point this out in other disputes referred to me for adjudication. If the amending Act has not yet been extended to this Province, it is for the Provincial Government to move in the matter. The demand is rejected.

Demand No. 2 : *Ticket system.*—All the employees should, forthwith, be given the tickets, with particulars thereon such as—(*i*) Name of the employee, (*ii*) Token Number, (*iii*) Designation, (*iv*) Department, (*v*) Date of joining, (*vi*) Rate of wages.

4. The employer is agreeable to introducing a ticket system and is prepared to show in the ticket all the details referred to in this demand, except Nos, (*iii*) and (*iv*), viz., designation and department of the workman concerned. He contends that his concern is small and it is neither necessary nor possible to have specific departments therein and assign individuals to them under specific designations as for exclusive occupations. As will appear from a discussion on demand No. 5, the parties are agreed as to the categories into which the workmen should be classified. It should not, then, be difficult to specify as designation the category of each individual workman in the ticket, if not the department. I direct the employer to introduce a ticket system and to show in the ticket of each individual workman all the details mentioned in the demand, except the one as to department. The date of joining should be shown from the record available.

Demand No. 3 : *Standing Orders.*—Standing Orders, as per Model Standing Orders Act, Government of Bombay, should be formulated to guide the relationship between the workers and the employers.

5. The employer agrees to adopt reasonable standing orders on the lines of those obtaining in other metal factories. The Industrial Employment (Standing Orders) Act, 1946, cannot apply to this factory as it employs less than 100 workmen and Government have not applied the provisions of that Act to this factory. However, it is desirable that the working conditions in this factory should be regulated by some standing orders. The employer is directed to frame proper standing orders on the lines of the Model Standing Orders of Government within six months of the publication of this award and to notify them on the notice board of the factory for the information of all workmen.

Demand No. 4 : Leave.—Leave rules should be formulated on the following basis :—

15 days' privilege leave with full pay and dearness allowance per year.

10 days' casual leave with full pay and dearness allowance per year.

15 days' sick leave with full pay and dearness allowance per year.

6. *Privilege Leave.*—The workmen have not been getting holidays with pay under the Factories Act hitherto, although the Act applies to them. The employer has been allowing only 10 days' casual leave with full pay, the leave being limited to only three days at a stretch. All concerns falling within the definition of the term "Factory" as stated in clause (*m*) of section 2 of the Act must abide by the provisions of the Factories Act and no exemption can be claimed on the ground that the factory is a small one. The demand for 15 days privilege leave with full pay and dearness allowance is in substance met by the provisions of Chapter VIII of the amended Factories Act of 1948. Section 79 of the Act provides for every adult worker who has completed a period of 12 months continuous service in a factory annual leave with wages for 1 day, to be available during the subsequent period of 12 months, for every 20 days of work performed by him during the previous period of 12 months. And, under section 80, which regulates wages for the period of that leave, dearness allowance also has to be paid for the period of the leave. Under section 81, he has to be paid such total wages in advance for the period of the leave, provided the period is not less than four days. The provisions of this Chapter adequately meet the demand for privilege leave. I direct the employer to grant "annual leave with wages" as provided in Chapter VIII of the Factories Act.

Casual leave.—The Sabha has claimed casual leave for 10 days in a year with full pay and dearness allowance for purposes of an emergent nature. The practice of granting casual leave for at least 7 days in a year, with full pay and dearness allowance, is now well settled in all factories, workshops or industrial concerns whose disputes have come up for adjudication. I direct the employer to grant casual leave to workmen for 7 days in a year, subject to the following conditions which should be noted by workmen in particular. Casual leave cannot be claimed as a matter of right but only for purposes of an emergent nature and subject to the exigencies of work in the factory. It can only be obtained upon an application previously made in that behalf, unless the nature of the emergency prevents the making of such an application in advance. Not more than three days of casual leave can be obtained at any one time. In appropriate cases such leave should be permitted to be tacked on to a Sunday or a holiday, in the discretion of the employer. But in no case can such leave be tacked on or prefixed to annual leave with pay or to sick leave.

Sick leave.—It is true that there is no provision for sick leave in the Factories Act. But some provision for sick leave deserves to be made and the practice has been nearly well settled either to grant sick leave for 15 days on half basic pay and dearness allowance or for 7 days with

full basic pay and dearness allowance. The preference, latterly, has been for 7 days with full pay and dearness allowance and, accordingly, workmen in this proceeding also have expressed their desire to have 7 days with full pay and dearness allowance. But sick leave cannot be claimed by merely sending a sick note. An application in that behalf will have to be made, accompanied by a certificate as to the need therefor from a registered medical practitioner nominated by the employer. The employer is directed to nominate a panel of registered medical practitioners for the purpose, within a month of the publication of this award. He is directed to grant, on production of such medical certificate, sick leave on full pay and dearness allowance for a period not exceeding 7 days in a year.

7. As no demand has been made for accumulation for privilege or sick leave, no direction need be given in that behalf.

Demand No. 5 : Categories.—Workmen should be properly classified according to their skill as (1) unskilled, (2) semi-unkilled, (3) skilled.

8. It is true that the Sabha has not made a demand for settling wage scales for skilled, semi-skilled and unskilled categories of employees, but on that ground the employer cannot refuse to classify his workmen under those three heads. It is common ground that since the re-opening of the factory in March 1949 there have been working only 35 out of the previously employed 37 workmen. Their description and wages are as follows :—

Pressmen (3)—	Rs. 180 per month	(1)
	Rs. 3-8-0 per day	(1)
	Rs. 3-0-0 per day	(1)
Turner (1)—	Rs. 120 per month.	
Rollman (1)—	Rs. 3-4-0 per day.	
Spinners (4)—	Rs. 2-4-0 per day	(1)
	Rs. 2-0-0 per day	(1)
	Rs. 1-12-0 per day	(2)
Fitters (4)—	Rs. 105 per month	(1)
	Rs. 2-6-0 per day	(1)
	Rs. 1-10-0 per day	(2)
Charakwalas (3)—	Rs. 2-6-0 per day	(1)
	Rs. 2-0-0 per day	(1)
	Rs. 1-4-0 per day	(1)
Buff Polishers (2)—	Rs. 2-4-0 per day	(1)
	Rs. 1-2-0 per day	(1)
Furnaceman (1)—	Rs. 2-4-0 per day.	
Mukadam (1)—	Rs. 105 per month.	
Helpers (3)—	Rs. 1-8-0 per day.	
Coolies (12)—	Rs. 1-6-0 per day	(2)
	Rs. 1-4-0 per day	(5)
	Rs. 1-2-0 per day	(5)

It is common ground that the turner and the rollman are skilled workmen. The employer further concedes that the senior one out of the three pressmen and the senior fitter out of the four can be considered as skilled

workmen. The dispute is only as to the remaining two pressmen and one out of the three remaining fitters. According to the Sabha, all the three pressmen and the two senior fitters out of the four deserve to be classified as skilled workmen. It is admitted by Mr. Desai, for the employer, that the two remaining pressmen are capable of carrying on the work of the senior pressmen in his absence and they can well also be substituted in his place. That being so and looking to the wages which the two remaining pressmen have been getting, it appears to me that the Sabha's claim to class them all as skilled workmen must be upheld. Out of the three remaining fitters, the question is whether Ganu (serial No. 9 in Exhibit 9), who is at present getting Rs. 2-6-0, can properly be classed as a skilled workman. In similar concerns such as the Oriental Metal Pressing Works, the R. B. Anant Shivaji Desai Topiwalla Metal Works and the Indian Standard Metal Co. Ltd., fitters earning between Rs. 55 and Rs. 143 per month or between Rs. 2 and Rs. 3-8-0 per day have been classified as skilled workmen. In the Topiwalla Metal Works that classification was accepted by mutual consent, as appears from the award in AJ-IT No. 20 of 1948 [1949 I.C.R. (Bom.) p. 141]. It appears to me that the second fitter on wages of Rs. 2-6-0 per day should likewise be shown as a skilled workman. I direct the employer to recognise the three pressmen, the turner, the rollman and the two senior fitters, viz., the one on Rs. 105 per month and the other on Rs. 2-6-0 per day, as skilled workmen.

9. It is common ground that the Mukadam should be placed in a category of his own, independently of the skilled, the semi-skilled and the unskilled. There is no dispute that the 12 coolies are unskilled workmen. The employer contends that along with the coolies must be included the junior-most charakwala on Rs. 1-4-0, the two junior spinners on Rs. 1-12-0 per day and the three helpers on Rs. 1-8-0 per day within the unskilled category. The Sabha desires to include the helpers among the semi-skilled and is not prepared to concede that the junior-most charakwala and the two junior spinners are unskilled workmen. It appears to me that the work of the junior-most charakwala and of the two junior spinners can by no means be considered as unskilled. The type of work which they have been doing is the same as of their seniors and the difference in wages of the junior spinners and the senior spinners is just As. 8, which is not considerable. I cannot, however, accede to the contention of the Sabha that helpers are semi-skilled workmen. They are, in my opinion, no better than senior grade coolies on a daily wage of Rs. 1-8-0. I direct that the three helpers and the 12 coolies only should be placed within the unskilled category. Within the semi-skilled category will be shown the remaining, viz., the four spinners, the two junior fitters on Rs. 1-10-0 per day, the three charakwalas, the two buff polishers and the furnaceman.

Demand No. 6 : Dearness allowance.—Dearness Allowance should be paid to all the employees according to the scale of Millowners' Association, Bombay, with retrospective effect from 1st January 1947.

10. Until 1st July 1948 no dearness allowance as such used to be paid to the workmen, but only a consolidated wage. From 1st July

1948, however, the employer made a partial reduction in the wages of about 21 workmen, as will appear from the tabular statement at Exhibit 9, and commenced paying Rs. 26 per month separately to daily rated and Rs. 30 per month to montly rated workmen as dearness allowance. The Sabha urges that in nearly all industries, including the metal industry, employers have been granting dearness allowance on the textile scale to their workmen since 1942, whereas the employer in this concern has withheld a substantial portion of such dearness allowance between 1942 and June 1948 and even from July 1948 he has granted what is but a meagre portion of the letigimate amount deserved by the workmen. The financial position of the concern, according to the Sabha, is very sound and it can certainly afford to pay dearness allowance to compensate to the extent of even cent. per cent. for the rise in the cost of living. The Sabha is however content with a demand for allowance on the level of the textile scale. It appears to me that without doubt the rate of dearness allowance at which the workmen in this factory are being paid is very much below what is being granted in other industrial concerns and considerably below even the rate in sister concerns. The rate prescribed by the Industrial Court for textile mills by its award of February 1948 seems to have been advisedly adopted by diverse industrial concerns as it allows 90 per cent. neutralisation for the rise over only the minimum wage of Rs. 30, exceptions being noticed in the cases of concerns of recent origin or with smaller resources or making relatively smaller profits. In the Topiwalla Metal Works dispute (AJ-IT No. 20 of 1948), workmen have been granted dearness allowance equal to 70 per cent. of that paid by Millowners to textile workers. Before the award, that concern used to pay at the flat rate of Rs. 1-3-0 per day to all its workmen. The full textile scale was not granted by the Tribunal in view of the Company's resources, which appeared to it to have been depleted. It was pointed out on behalf of the employer Company in that dispute that it had been suffering losses during the preceding two or three years and that there had been a marked drop in production (see paragraph 4 of the award). Moreover, the Company had been paying liberal bonus to its workmen since 1943, equal to wages between three and four months (see paragraph 5). In the Oriental Metal Pressing Works dispute [AJ-IT No. 3 of 1948, 1949 I. C. R. (Bom.) 269], the Tribunal has directed the employer Company to pay dearness allowance at a rate equal to 2/3rds, i.e., 66 2/3 per cent. of that paid to textile workmen. That was presumably because the basic wage rates were being simultaneously revised and the burden of other benefits was being imposed on the Company under the award. The Company was moreover noticed to have borrowed a loan from a bank for the development of its activities. It should be noted that the Company had been already paying dearness allowance on the scale recommended by the All-India Non-Ferrous Metalware Manufacturers' Association, which was 5/8ths of the textile scale. In the dispute between the Indian Standard Metal Co. Ltd. and its workmen [AJ-IT No. 40 of 1948, 1949 I. C. R. (Bom.) 477] it appeared that the Company had been paying dearness allowance

equal to 50 per cent. of basic wages with a minimum of Rs. 35 per month. Under the award the daily rated workmen were directed to be paid at a rate equal to 85 per cent. of the textile scale. The concern in the dispute before us is a private firm and therefore audited balance sheets and profit and loss statements are not available for scrutiny of the concern's financial position. The employer has not even disclosed to this Tribunal the capital sunk in the concern or the working capital employed. He has only put in at Exhibit 15 an abstract of the income-tax returns he had submitted for the assessment years 1947–48 and 1948–49 and of the assessment of tax by the income-tax authorities. It appears therefrom that on defraying all expenses and paying interest and other charges, if any, he was assessed in respect of a profit of Rs. 46,255 for the first of the two years and Rs. 54,700 for the second year. On paying income-tax he had a net profit of Rs. 24,780 for the first and for the second Rs. 29,934. Apparently, the concern has been in a flourishing condition and has been making substantial profit. If this inference is erroneous, which does not appear to be probable, the employer must thank himself for not disclosing the working capital employed for obtaining this margin of profit. On the question of the concern's capacity to pay there has not been placed any circumstance or evidence to convince this Tribunal that it will not be able to bear the burden. It is expressed in paragraph 25 of the written statement that the employer is willing to pay dearness allowance at a rate equal to 5/8ths, i.e., 62½ per cent. of the textile rate. Giving due regard to the circumstance that the concern is not a major one, it appears to me appropriate that the employer should be directed to pay dearness allowance to his workmen at a rate equal to 85 per cent. of the textile rate. I direct accordingly. Such dearness allowance should be paid with effect from 1st January 1949. As there had been no demands on the concern and no disputes prior to 14th December 1948, I do not see good reason to grant an increase in the rate for any period prior to that date. The amount of arrears to be paid within two months of the publication of this award.

Demand No. 7 : Provident Fund.—The Provident Fund scheme should be introduced, wherein workers should be allowed to contribute 16 pies per rupee, with equal contribution from the Company, full payment whereof should be made on employee leaving the service of the Company after continuous service of five years ; in any other case, on his being dismissed or discharged by the Company.

11. The concern has already had a provident fund scheme providing for a contribution of 12 pies in the rupee, since July 1948. The Sabha has claimed a rate of 16 pies in the rupee, pointing to the award in the Topiwalla Metal Works dispute. I do not think there is good ground to enhance the rate from 12 pies to 16. In the Indian Standard Metal Company the practice has been to contribute 12 pies in the rupee ; and in the Oriental Metal Pressing Works the rate of contribution fixed by the award is only 12 pies in the rupee. The rate of 16 pies in the Topiwalla Metal Works was settled by agreement and not determined by

adjudication. The employer is directed to constitute a trust and to frame a scheme for this provident fund on the lines of the Model Provident Fund Rules for Industrial Employees framed by Government, within six months of the date of publication of this award and to obtain the requisite sanction therefor from the Commissioner of Income-tax. It is admitted that no rules for working the scheme have been framed by the employer and no trust has been constituted.

12. As to the amount of the employer's contribution and interest thereon payable on an employee's death, incapacity, resignation, discharge or dismissal, the employer is prepared to abide by the rules in that behalf obtaining in the Oriental Metal Pressing Works. In my opinion, that proposal is reasonable and the following rules should be incorporated in the rules to be framed :—

"(1) The employer's contribution and interest thereon shall not be payable for service of less than 5 years. Subject thereto, the entire contribution of the employer and interest thereon shall be payable :—

(*i*) On the death of the member ;

(*ii*) On the member's ceasing to be in employ—

(*a*) on completing 10 years' service ;

(*b*) on his retiring from service owing to continued illness or incapacity for further employment as certified by a competent medical authority nominated by the employer ;

(*c*) on account of retrenchment due to reasons personal to the employer.

(2) Members ceasing to be in employ for reasons other than the above shall be entitled to a fraction of the employer's contribution and interest thereon on the following scale—

(*i*) on completion of 7 years' service—75 per cent ;

(*ii*) on completion of 5 years' service—50 per cent ;

(3) Where a member is dismissed for gross misconduct, the employer's contribution and interest thereon shall be forfeited to the fund."

13. The rules to be effective from 1st July 1948, the date on which Provident Fund has been already started in this concern.

Demand No. 8 *: Gratuity.*—Every employee on being dismissed, discharged by the Company or otherwise leaving the Company of his own accord should be paid gratuity at the rate of one month's wages with dearness allowance per every year of service in the Company on the basis of the last salary drawn.

14. A demand for gratuity and retrenchment bonus had been made in the Topiwalla Metal Works dispute and was rejected by the learned Adjudicator in view of the concern's slender capacity to pay. It is admitted that the practice to grant gratuity does not obtain even in the Oriental Metal Pressing Works. A demand for gratuity had not even been made on that Company, as appears from the award in AJ-IT No. 3.

of 1948. A demand had been made in the Indian Standard Metal Company's dispute and it was rejected by the learned Adjudicator on the ground of the Company's inability to bear the burden. As the financial resources of the employer in the present case also appear to be small, I do not think the demand for gratuity should be granted in this case. The demand is rejected.

Demand No. 9: Bonus.—For the financial year 1947–48 every employee should be paid bonus equal to three months' wages with dearness allowance.

15. It cannot be disputed that the basic or the consolidated wages which the concern has been paying to its workmen have been below the living wage standard during all these years. Nor can it be disputed that the dearness allowance of Rs: 26 to workmen on daily wages or Rs. 30 to those on monthly wages has not been affording adequate compensation for the rise in the cost of living. There can, therefore, be good ground for the demand for bonus. It has only to be seen to what extent the demand can be met from the profits made by the concern during the year in question, viz., 1947–48. The concern has been paying bonus equal to a month's basic wages since 1943–44 and for 1947–48 it has already paid at that rate. We have already seen from the abstract of income-tax returns (Exhibit 15) that from the working of the year 1947–48 (assessment year 1948–49), the concern had made a net profit of Rs. 29,934 on meeting all expenses and other charges, including even the income-tax assessed. From the statement Exhibit 14 of wages paid during the year 1947–48 it appears that on an average the concern had to pay to its workmen at Kumbharwada Rs. 3,034 a month, inclusive of dearness allowance, and to those at Malad Rs. 1,370. It is unfortunate that the statement does not show separately the bill for basic wages from the bill for dearness allowance; however, it appears from the same statement that during the year 1945–46, when no dearness allowance used to be paid but only a consolidated wage, the average wage bill at Kumbharwada used to be Rs. 1,207 a month and at Malad Rs. 721 a month. Allowing for the increase in basic wages granted between 1945–46 and 1947–48 (Exhibit 9), the total monthly basic wage bill at Malad and Kumbharwada for 1947–48 can safely be taken at Rs. 2,300 on an average. It appears to me that an additional bonus equal to basic wages for 1½ months, amounting approximately to Rs. 3,450, can easily be paid by the concern to its employees for the year 1947–48 out of the net profit of Rs. 29,934. The total amount of bonus for the year would thus be equal to 2½ months' basic wages. The Topiwalla Metal Works had granted a bonus for that year equal to four months' basic wages, inclusive of Independence Pay bonus. Presumably, that concern desired to keep its workmen satisfied with a liberal bonus in lieu of an increase in the rate of dearness allowance. Since the quantum of bonus is related to the amount of profits actually made, it is immaterial whether what is granted includes dearness allowance or excludes it. If dearness allowance is included, the grant in terms of a month's earnings will have to be correspondingly reduced.

16. I direct the employer to pay additional bonus equal to average basic wages of each individual for 1½ months for the year 1947-48 to all workmen who had put in work in that year. No bonus to be paid to workmen dismissed for gross misconduct.

17. The amount of bonus to be paid within a month of the publication of this award.

Demand No. 10 *: Independence Bonus.*—Every employee should be paid this bonus as it was paid to all the workers in the Metal Industry.

18. The employer did not pay any Independence Day bonus in addition to the annual bonus for the year 1947-48. As other industrial concerns have paid such bonus, the workmen in this concern made a demand for it and on the employer's refusing to pay it they have sought to make an industrial dispute of it. The concern takes strong objection to the demand and urges that it cannot be put into dispute for adjudication as an industrial matter as it is entirely within the employer's discretion whether to grant such bonus or no. The contention appears to me sound and must be upheld and the demand rejected. A similar demand had been made in a dispute in Calcutta between the Basanti Cotton Mills Co. Ltd., Calcutta and their employees and was rejected on this precise ground [1948 I. C. R. (Bom.) 288]. Mr. Sawant, who appears on behalf of the Sabha, conceded at the hearing that the workmen had no right as such to Independence Day bonus, but they rely upon the practice in other concerns in that behalf. As however it does not appear to me that such a claim can be made the subject matter of an industrial dispute, it is not within my competence to grant it. The demand is rejected.

Demand No. 11 *: Calendar Month.*—The present practice of calculating the working days in a month should be forthwith given up and instead, month should be computed as per calendar, with minimum of 26 working days.

19. The account year of the concern is the "samvat" year, which commences ordinarily in November and ends in about October of the following year. Wages of workmen in this concern are computed according to the days of the "SAMVAT" year and this has been found by the Sabha to be inconvenient in certain respects, although it admits there can strictly be no loss in point of wages on the whole. It is demanded that wages should be paid according to the days of the calendar month. The employer has no objection to this demand, as Mr. Desai expressed at the hearing. The demand is granted.

Demand No. 12 *: Wages for the lockout period.*—All the workers of the factory should be paid full wages plus dearness allowance for the involuntary unemployment caused by the lockout, declared by the Company from 4th January 1949.

20. According to the Sabha, the employer had virtually declared an illegal lockout when by his notice of 3rd January 1949 he had closed the factory from 4th January 1949 ostensibly for "non-availability of raw

materials." It contends that the closure had been declared after the conciliation proceedings had commenced and had, on that account, been illegal since the inception; and as it had been continued till March 2, 1949 i.e., beyond February 22, 1949, on which date Government by their notification had prohibited the continuance of the lockout, the employer is guilty of a breach of the provisions of section 23 (*a*) of the Industrial Disputes Act read with sections 20 (*1*) and 24 (*1*) (*i*). Moreover, it was a vindictive lockout amounting to unfair labour practices on the part of the employer, as the true intent was to victimise the workmen because of their notice of demand of 15th December 1948 and their approaching the Labour Directorate by their letter of 29th December 1948 for intervention and conciliation. The Sabha therefore demands that all workmen should be paid compensation for their involuntary unemployment from 4th January to 2nd March 1949 by reason of that lockout.

21. It appears to me that the demand is not sustainable on the evidence and must be rejected. In the workshop at Malad, which is run on electric power obtained from the Bombay Suburban Electric Supply Co., Ltd., the concern had been manufacturing aluminium plate of requisite dimensions from Aluminium scrap. The plate is supplied as raw material to the factory at Kumbharwada, wherein several types of utensils are manufactured therefrom. Prior to the night of 21st November 1948, on which there was a terrific cyclone in Bombay and the suburbs, the factory at Malad used to turn out 500 to 600 lbs. of such raw material per day. But owing to damage done by the cyclone to the mains of the Electric Supply Co. the supply of electric power was entirely stopped for 10 days and thereafter it was rationed to just two hours a day. In consequence, the production of raw material in the Malad workshop was reduced to about 150 lbs. per day, i.e., to about a fourth of the original quantity. In the hope of power supply being restored within a short time the Proprietor worked the Kumbharwada factory between 21st November and 31st December 1948 on the raw material in stock; and when by the end of December he saw no prospect of power supply being restored, he decided to close the factory from 4th January 1949 and put up the notice of 3rd January 1949 to that effect, stating therein the true reason. It is idle to contend that the factory should have been run on purchasing aluminium plate directly from the market in the manner other factories had been doing, and that, if power supply could not be restored, the employer should have installed the oil engine which had been specially indented for and had been lying in the workshop at Malad. It should always be the right and discretion of a manufacturer to use raw material of his own choice in order both to keep up the reputed quality of his product in the market and maintain the economy of his business. This right and discretion he cannot be compelled to forego just for the purpose of keeping his workmen in employ. The Proprietor has produced his record from the Malad workshop to show the drop in production from November 22nd onwards and he has put in extract Exhibit 12 therefrom. As to the oil engine, he had satisfied the Deputy Director of Labour Administration, who had intervened

in order to conciliate, that it was not possible to get the requisite quota of oil for running it and that the pipe connection therefore had to be fitted up and the water cooling arrangement adjusted. Mr. Sawant was not in the position even to contradict the statement of Mr. Desai at the hearing that the engine had not been installed and could not be put to work on account of those deficiencies.

22. It is difficult to understand why the closing down of the factory from January 4, 1949, can be considered a "lockout" at all. A "lockout" presupposes a refusal on the part of employees or workmen to carry out a change desired and duly notified by an employer or the continuation of a strike on their part in spite of warning from the employer. It is difficult, further, to understand why the lockout should be considered illegal from the inception. Mr. Sawant attempted at an earlier stage of his argument to rely on section 23 (*a*) of the Industrial Disputes Act read with section 20 (*1*) and section 24 (*1*) (*i*) in that behalf. He contended that as the closure had been notified after conciliation proceedings had commenced, it amounted to an illegal lockout. According to him, conciliation proceedings had commenced the moment the Sabha had requested by its letter of 29th December 1948 the Deputy Director of Labour Administration to intervene and conciliate. But on being pointed out that section 23 (*a*) could only apply to conciliation proceedings before a Board and not before a Conciliation Officer and that section 20 (*1*) can apply where the Conciliation Officer receives a notice under section 22 of a strike or a lockout, Mr. Sawant was convinced of the futility of his contention. He then urged that the continuance of the closure until the 2nd of March, after the Government notification of 22nd February 1949 prohibiting under sub-section (*3*) of section 10 continuance of any strike or lockout, rendered it an illegal lockout. This argument, too, is of little avail. In the first place it has to be noted that continuance of a strike or a lockout which was not at its commencement in contravention of the provisions of the Act cannot be deemed to be illegal though such continuance may come to be prohibited by an order under section 10, sub-section (*3*). See sub-section (*2*) of section 24 of this Act. The closure in this case, granting for a moment that it was a lockout, was by no means illegal at the inception. Turning next to the facts, it appears that the letter conveying the notification of Government was received by the employer on 25th February 1949, which was a public holiday on account of "Mahashivratri". February 26th was a Saturday, and on consulting his legal adviser on that day and the 27th, which was a Sunday, he put up a notice (Exhibit 3) on 1st March 1949 withdrawing the closure and asking the workers to resume "immediately". He has clearly notified therein the cause of the delay that the order had been served on him on 25th February. If the workmen did not choose to resume work on the 1st or 2nd, that could not be the fault of the employer.

23. Noticing the futility of the argument that the closure was an illegal lockout, Mr. Sawant next turned to section 33 of the Act. According to him, the employer's notice of 8th January 1949 (Exhibit 6)

notifying to the workmen his inability to restart the factory for want of materials and calling them to accept wages for the month ending 3rd January 1949 and two weeks' wages in addition in lieu of notice amounted to a discharge. On that basis he proceeds to argue that as the discharge had been made during the pendency of a conciliation proceeding, the Proprietor was guilty of a breach of the provisions of that section. This argument, too, appears to me to be without substance. In the first place, there is no ground to suppose that the employer contemplated to "discharge" the workmen in the sense in which that expression is understood in industrial enactments. He had clearly notified his regret for his inability to restart the factory for want of material and had expressed that if the position as to raw materials materially improved, he hoped to restart the factory with such workmen as might be needed. In substance, he was "laying off" the men temporarily and the mere offer to pay two weeks' wages in lieu of notice, which he was not bound to pay in law but which he offered to pay only by way of precaution, could not constitute the "laying off" a discharge. Moreover, I am clearly of the opinion that section 33 can have no application where the discharge is not in the nature of punishment. The word "otherwise" in the expression "discharge, dismiss, or otherwise punish" occurring in section 33 must be read *ejusdem generis* with the words "discharge, dismiss". It appears to me that the comma after the word "dismiss" cannot nullify the significance and import of the word "otherwise".

24. Nor is there ground to suppose that the employer in this case was guilty of any unfair labour practices in ordering the closure. As already pointed out, the notification of 3rd January 1949 merely happened to be issued soon after the Sabha had moved the Deputy Director of Labour Administration on 29th December to intervene and conciliate. There is nothing to indicate that the employer had noticed before 3rd January that the conciliation officer was going to attempt at conciliation. Looking to the provisions of section 12 (*1*) of the Act, it was not obligatory upon that Officer to hold conciliation proceedings; it was merely discretionary with him. On the Sabha's own statement of claim, it appears that the Officer did not move before the 5th of January. A joint meeting of the workmen and the employer was arranged on 5th January; and in pursuance of the suggestion of the Officer, the employer opened the factory immediately in order that the workmen could re-enter and resume work. The workmen worked for just one day, but did not turn up on the following day. They held a demonstration and took out a procession. Some of them were arrested and later on released by the police. At the further suggestion of the Officer, the employer expressed his willingness to employ just 15 men, as that number only was sufficient for restarting work in the factory. But the workmen themselves refused to join unless all were employed and all their demands were satisfied. Hence on 8th January a notice (Exhibit 6) was put up by the employer at the instructions of the Officer himself. Although there was not enough work for all the workmen,

he had to reopen the factory from 1st March because of the prohibition under sub-section (*3*) of section 10 contained in the notification of Government, dated 22nd February. Ever since then he has had to employ the full complement of workmen, although power supply has not yet been restored and there could not be enough supply of raw material from the Malad workshop. Power is supplied for just two hours in the course of a day.

25. There is, therefore, no ground to award compensation to the workmen for involuntary unemployment for the period 4th January to 2nd March 1949. The demand is rejected.

26. The award is directed to be submitted to Government under section 15 (*1*) of the Industrial Disputes Act.

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

(Signed) K. R. WAZKAR,
Secretary.

Bombay, 15th July 1949.

Order.

No. 576/48.—Whereas the dispute between the Jagjivandas Narotamdas Metal Factory, Bombay and the workmen employed under it was referred by Government Order, Labour Department, No. 576/48 (1), dated the 22nd February 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 Jagjivandas Narotamdas Metal Factory, Bombay and the workmen employed under it and to direct that the said award shall come into operation on the 25th July 1949 and shall remain in operation for a period of one year.

Order.

No. 706/48.—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 Amalgamated Chemicals and Dyestuffs Company Limited, Bombay and the workmen employed under it regarding the matters specified in the Annexure "A" for adjudication to the Industrial Tribunal consisting of Mr. I. G. Thakore, 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) *Wages.*—Minimum basic wage should be Rs. 40 per month with grade and scales for each category of workers.

(2) *Dearness allowance.*—Dearness allowance should be paid on the Bombay Millowners' scale to those who are not paid the same.

(3) *Leave.*—15 days' sick leave, 10 days' casual leave and 20 days' leave with pay should be granted to the workers in a year.

(4) *Medical aid.*—Free medical aid should be given to the workers.

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

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

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

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

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

Order.

No. 802/48.—Whereas an industrial dispute has arisen between Mr. Gopaldas Khemchand, manufacturer of cabinets at Ahmedabad, and the workmen employed under him on the demand mentioned in Annexure "A";

And whereas a joint application has been made by Mr. Gopaldas Khemchand 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, 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".

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

By order of the Governor of Bombay,

C. K. MARU,
Under Secretary to Government.

BY THE REGISTRAR, BOMBAY INDUSTRIAL RELATIONS ACT, 1946.

No. 200/49.—In exercise of the powers conferred on me under section 11 (*1*) of the Bombay Industrial Relations Act, 1946, I hereby amend the Notification No. 8/48, dated 18th February 1948, as follows :—

Entry No. 2 in the said notification shall read as follows, namely :

2. Merchant Silk Mills, Bombay.

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

Bombay, 23rd July 1949.

IN THE INDUSTRIAL COURT, BOMBAY.

APPEAL No. 40 OF 1949.

The Laxmi Vijay Hosiery Mills, Ahmedabad .. Appellant (Original Opponent) ;

versus

(1) Amarsing Sardarsing ; (2) Ramkuber Bhawanibhim ; (3) Pratapji Javanji ; (4) Jivatsing Batsing ; (5) Amarsang Pratapsing ; (6) Ramlal Auram ; (7) Pratapsing Hamirsing .. .. Respondents (Original Applicants)

Subject.—Appeal against the order dated the 21st March 1949 made by the Judge, Labour Court, Ahmedabad, on Application No. 414 of 1948.

Industry.—Cotton Textile.

Present.—Mr. K. C. Sen, President.

Appearances.—Mr. P. B. Patwari for the Appellant.
Mr. Shantilal H. Shah for the Respondents.

Order.

This is an appeal by the Laxmi Vijay Hosiery Mills, Ahmedabad, against a decision of the Labour Court, Ahmedabad, on an application made by the seven discharged watchmen of the said mills. The lower Court has found that the act of the appellant mills amounts to an illegal change and has ordered withdrawal of the same. The parties to the appeal have arrived at a compromise, viz., that the order of the lower Court should be set aside and that the appellant should pay each of the respondents a month's wages. I order accordingly.

(Signed) K. R. WAZKAR, Registrar.
K. C. SEN, President.

Bombay, 19th July 1949.

MO-III I-L—127

BOMBAY : PRINTED AT THE GOVERNMENT CENTRAL PRESS.