

## Summary of Submissions

### Background

In 2021, [REDACTED] and [REDACTED] entered into negotiations for a Collective Bargaining Agreement. The parties could not reach an agreement related to wages for the industrial workers and the matter was referred to the Employment and Labour Relations Tribunal as provided for by section 70 of the Trade Union and Labour Relations (Consolidation) Act 2021.

Prior to the start of the meeting the Parties were offered an opportunity to determine if they could resolve the matter without the assistance of the Tribunal. Both parties agreed but the attempt to resolve the matter was unsuccessful.

### The Case of The Union

1. The [REDACTED] presented their brief and the Employee Representative (ER) started by reviewing a letter from [REDACTED] dated 14<sup>th</sup> April 2020 entitled "effects of COVID-19 on [REDACTED]". This letter outlined the steps taken by the [REDACTED] in accordance with the Government mandated lockdown. The [REDACTED] ended the letter by stating [REDACTED] are looking forward to working with both unions, [REDACTED] and [REDACTED] to implement a plan that will work for everyone and keep 100% of our staff employed".
2. The ER then evidenced a copy of a Memorandum of Understanding, (MOU), [REDACTED]. The essence of the MOU was that, effective May 1, 2020, all staff would be subject to a 10% reduction in gross pay and overtime would be reduced from double-time to time-and-a-half until 31<sup>st</sup> December 2020. Further, that the parties would maintain dialogue and consultation on any future steps in this regard. The MOU was signed by both parties.
3. A summary of Financial Conditions of the Company was also presented. This document signed on the 26<sup>th</sup> June 2020 by [REDACTED] revealed that revenue was [REDACTED] compared to the original budgeted figures. It also noted that administrative and operating expenses were [REDACTED] compared to the previous year.
4. The ER then presented a letter dated 27<sup>th</sup> August 2020 in which the [REDACTED] informed all [REDACTED] Employees that effective 1<sup>st</sup> October 2020 the MOU between the [REDACTED] and the Unions "will be null and void and full pay for all Employees, including overtime rates, will be reinstated.". The letter ended with a thanks to all staff for their sacrifice over the previous five months.

5. Producing an extract from the 2018 Budget Report Revised, the Employee Representative drew the attention of the Tribunal Members to the 2019 Budget Revised and 2020 Budget Revised. The Members were asked to note the size differences in the salaries of the management and admin staff as compared to gross wages and salaries.

Expenses	2019 Budget	2020 Budget	Difference
Industrials Gross wages & salaries	██████████	██████████	██████████
Management and Admin Salaries	██████████	██████████	██████████

6. ██████████ questioned the small increase for the industrials given the staff ratio was 84:21. This was their primary reason for concern.
7. The ER informed the Tribunal that ██████████ in its audit statement for 2020 indicated that revenues were down ██████████. However, in the same statement it made mention of the loan associated with the financing of the ██████████ being fully paid off in ██████████ years compared to the arranged ██████████ years. It also stated that ██████████ "currently has no debt". The ██████████ made a surplus of ██████████
8. The ER indicated that it understood the economic climate prevailing and that ██████████ was entrenched from the beginning on their offer of a 1.5% increase. He was convinced however that as the Company could pay off a ██████████ loan in ██████████, it must have the ability to meet the workers' request. He was, therefore, seeking on behalf of its members a 2% increase in salary and full retroactivity.

**The Case of**

9. The consultant for the ██████████ before Handing over the case to the Management Representative (MR), corrected the error in the staffing levels presented by ██████████. He stated that the industrial staff level was ██████████ employees and not ██████████ as there were supervisory staff included in the numbers.
10. The MR indicated that there was a mandate from the Employer to offer a wage increase of no more than 1.5% and that at the very first meeting instead of starting at 1.0 %, the Team decided not to negotiate by attrition but to put its total mandate, 1.5 % on the table.

11. The MR believes that 1.5% is reasonable and fair and indicated that a similar offer was accepted by [REDACTED] Union on behalf of its members as well as the management team. The offer was implemented from 1<sup>st</sup> January 2021.
12. Anticipating an argument by the [REDACTED] that the difference in the "claim was mere cents" the MR stated that "it was not as simple as that". They proffered that the industrial employees had received "increases above the Bermuda norms and indeed above those of other [REDACTED] employee groups".
13. It was indicated that a higher increase than 1.5%, would come as an unacceptable cost as [REDACTED] would have no reserves to pay for significant potential costs for [REDACTED] and other activities that speak to the primary functions [REDACTED].
14. The MR placed great emphasis on the fact that the [REDACTED] workers are paid at a higher rate than others in government and the industry and quoted increases of 3% in 2018 compared to the 2% for other units with 1.9% and 2% in 2019 and 2020 respectively for other years.
15. MR expressed the Company's satisfaction that it was proud of the fact that instead of 8 months of a 10% salary deduction; the deduction only lasted 5 months while staff were paid full salary during the 4-6 weeks period of lockdown.
16. MR proffered that Management's offer of a 1.5% increase was indeed reasonable.
17. With regards to the financial position of [REDACTED] it was articulated that "the strong cash position does not mitigate the liabilities of the organization."
18. As a gesture of good faith, the MR advised that at year end staff were offered an additional \$500 in appreciation in addition to the usual bonus of \$200 that is normally paid. He further pointed out, in an aside, that a 1% in wages would have resulted in staff receiving less take home pay based on the proposed increase they would experience in health insurance payments.
19. MR indicated that the Company does not agree with retroactivity and believe that as other sections of the organization accepted 1.5% the [REDACTED] members should as well.

20. At the closing of the hearing, the Parties were asked to clarify their positions and to state exactly what they wished the Arbitrators to do. Both agreed that the Arbitrators should select one of the positions of the litigants.

#### **Deliberations**

21. The Tribunal was surprised by the lack of financial comparisons provided by either party. It was through the probing of Tribunal members that there was some understanding of the financial implications.
22. The Tribunal probed for details regarding the wage increases and was eventually advised that an [REDACTED] who earned \$34.09 per hour would receive an additional 51 cents at 1.5% or 68 cents at 2% per hour.
23. The MR was unable to give details of the amount a 2% would add to the Company's wage bill or the impact that it would have on the financial status of the organization.
24. In summary, the MR built the employer's case on what they determined was reasonableness evidenced by the fact that:
  - a. [REDACTED] staff are paid at levels higher than industry norms although no definitive evidence was submitted to substantiate the claim.
  - b. The [REDACTED] staff and management had already accepted the 1.5%.
  - c. That given the potential liabilities the Company faced in upcoming litigations, any increase above 1.5% would put the Company at risk financially and operationally.
  - d. The Arbitrators were perturbed at the argument of financial hardship by the MR given that its own auditors in their notes to the financial report stated the following:
    - i. *"While the amounts that the [REDACTED] may need to disburse as a result of these proceedings may be significant, as at December 31, 2020 management of the [REDACTED] does not consider this condition to represent a material uncertainty in relation to a going concern."*
  - e. *Further, the report saw no material affect to the Company by COVID-19 or [REDACTED].*

25. The Employer did acknowledge that during the Government ordered lockdown and the early stage of the pandemic the staff took a 10% reduction in salary for 5 months. However, there did not seem to be any desire on the Company's part to compensate staff for that reasonable action. Additionally, little consideration seems to have been given to the staff working as front-line workers during the height of the lockdown.
26. The ER contended that the Company had the ability to pay based on the excess of revenue over expenses and their ability to pay off a [REDACTED] mortgage in [REDACTED] indicated that the Company was a going concern.
27. It also was cognizant of [REDACTED] ability to pay off a loan [REDACTED] meant that they had made some savings on interest payments.
28. The Arbitrators were not persuaded by the argument that because one Union accepted a wage increase, it was incumbent on other Unions to accept the same increase. Such a system would bring the whole negotiation process into question.

#### **Determination and Order**

29. Having given the Parties the opportunity to state their positions and having weighed the arguments from both sides, it is the Determination of the Tribunal that:
  - The financial position of [REDACTED] would not be critical nor dire because of a 2% increase for [REDACTED] industrials.
  - The fact that other divisions/unions accepted 1.5% was not sufficient rationale to bind another bargaining unit.
  - Management's arguments lacked the test of reasonableness or rationality as evidenced by the notes in their own financial statements.
30. It is therefore ordered that:
  1. 2% increase in wages be awarded to the industrial staff of the [REDACTED], and
  2. The increase be retroactive to 1<sup>st</sup> January 2021.

The Tribunal makes no further Order in this matter.

*John Payne*

John Payne

- Chairman

*Eugene Creighton*

Eugene Creighton

- Member

*Clevelyn Crichlow*

Clevelyn Crichlow, JP, ACI Arb

- Member

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