

ANTIGUA AND BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO: 18 OF 1999

BETWEEN:

SUNDRY WORKERS

Employee

and

ANTIGUA/BARBUDA PORT AUTHORITY

Employers

BEFORE:

The Hon Cyril L. Maundy
The Hon E. T. Henry
The Hon Hubert Hood

President
Member
Member

Appearances:

The Hon. Baldwin Spencer for the Employees
Dexter Wason, Barrister-at-Law, for the Employers

2000: October 18, 19
November 13, 14, 15, 16, 17, 21, 22, 29, 30
December 1, 11, 13

JUDGEMENT

Negotiations – Collective Agreement – proposed amendments to Collective agreement unacceptable to Bargaining Agent (Antigua Workers' Union) – proposed introduction of double shift-system – under proposed system overtime payable only for work done between 10:00pm and 6:00am – Saturday and Sunday work payable at normal rate until 10:00pm – reduction in overtime previously worked – reduction in gang size – Bonus to be linked to profitability and no longer earnings – employers heavily indebted and operating at

a loss – Port charges higher than in surrounding territories, threat to impose surcharges on Antigua – Uniforms – Protective Clothing (helmets and boots).

- [1] Maundy, P.: A Collective Agreement between the Antigua and Barbuda Port Authority (hereinafter referred to as "the Port Authority") and the longshoremen expired on July 19, 1996, and the parties, despite lengthy negotiations, have not been able to agree on the terms and conditions of a new Collective Agreement, hereinafter referred to as "the New Agreement" – the terms and conditions of the old Agreement have remained in force pending inauguration of the New Agreement. The matter was referred to the Labour Commissioner for conciliation but his recommendations were not accepted and on June 25, 1999, the Antigua Workers' Union, hereinafter referred to as "the Union", the Bargaining Agent/Unit of the Employees filed a Notification of a trade dispute between themselves and the Port Authority. The case for the Employees is contained in their Memorandum dated September 7, 1999, and filed herein on September 8, 1999, and that of the Employers is contained in their Memorandum dated January 17, 2000, and filed on January 18, 2000.

Historical Background

- [2] The Antigua/Barbuda Port Authority, as it is now known, is a statutory body created by the Port Authority Act of 1973, (Cap. 333) and falls under the Ministry of Finance. The Port Authority is responsible for the cargo handling operations of the St. John's Port and to this end has since 1963 negotiated and entered into Collective Agreements with the Union on behalf of the longshoremen, tally clerks, forklift operators and others engaged in cargo handling operations. The administrative arm of the Port Authority is represented by the Antigua and Barbuda Trades and Labour Union, their Bargaining Agent/Unit, and the Stevedores, are also presently represented by the Antigua Workers' Union.
- [3] Prior to 1973 the operations at the Port were under the control of the Terminal Operating Co. Limited (the TOC) but their functions were taken over by the Authority and although their name is still referred to their existence is in name only.

- [4] By letter dated October 4, 1996, the Union wrote to the Employers proposing amendments to the old Agreement as follows:
- (i) That all work performed on Saturdays should be at double the base rate for the first eight (8) hours, 2 ½ times for the next four (4) hours and triple time thereafter.
 - (ii) That Uniforms should be provided for Shed Workers.
 - (iii) Unused uncertified sick days should be added to an employee's vacation time for the ensuing year.
 - (iv) That safety boots should be provided on an annual basis to all staff.
 - (v) Compassionate leave of three (3) days with pay be granted to employees.
 - (vi) That an employee who has worked fifteen (15) years or more with the Authority and has attained the age of 55 years, shall have the option of severance and paid his Severance in accordance with the Collective Agreement.
 - (vii) That there be a wage increase of 4.5% to the employees with effect from January 1, 1996, a further 4.5% in July, 1997, and 5% in July, 1998. See Exhibit KS1.
- [5] By letter dated May 9, 1997, the Employers made a number of counter proposals amending the existing (old) Agreement as follows:
- (2) **Hours of Work:**
 - (a) This section should be read as follows:
"the operation at the Port will be on a 24-hour basis with the normal working days being Monday to Sunday."
 - (b) A shift system will be introduced with the following two shifts in place in the first instance:
6:00am to 2:00pm
2:00pm to 10:00pm
 - (3) **Overtime:**
 - In (a) delete the words "on week days", and add clause "provided that eight hours' work have been completed".
 - (b) and (c) to be deleted.
 - In (d) add the following: "this relates only to hourly paid workers".

Add new line: "Monthly paid workers will receive time and half for first 8 hours and double time thereafter".

Guaranteed Hours:

Delete (a)

In the case of (b), delete the words "Saturdays, Sundays and"; also delete "and after 4pm on ordinary days".

Thereafter, add "On completion of eight hours, the provisions in 3 (a) will apply".

In (c) delete the words "forklift", and add words "and will also be paid an extra 20% of wages for the period outside the dock".

Add in new paragraph:

"Call out" is the situation existing where workers are required to work, having had no prior knowledge that they would be required to work.

9. **Number of men to be employed:**

In (a) replace "5" with "4" and "6" with "3". Also add the following where there is no ship alongside (i.e. for deliveries)".

In (b) delete (3).

15. **Sick Leave:**

In (c) (i) replace the entire clause with "the workers will be paid a maximum of thirty days' full pay".

(c) (ii) delete and replace with the following:

"thereafter, the employer will pay 50% of basic wages for a period not exceeding thirty days".

(e) delete

New proposal –

Maternity Leave:

Workers are entitled to a maximum of thirteen weeks, provided that they have worked with the Port for a minimum of one (1) year. This clause refers to a maximum of three pregnancies.

(f) Medical check:

Add "Management will establish a schedule for medical checks".

17. **Fouling of Dock by Ships Sewer:**

\$ 700.00 to be increased to \$ 1,500.00

19. **Annual Bonus:**

In (a) add "based on the profitability of the Port".

21. **Protective Wear:**

Delete (a)

In (b) after the word "and" add the word "steeltip".

After the word "all", add the following:

"longshoremen and operators at 50% of cost, and will be replaced through fair wear and tear".

24. **Containers:**

In (b) delete the word "and" after "high".

Thereafter, add "..... and \$ 36.50 for each container stacked four high".

Delete word "and" after the words "to containers stacked two.....".

After word "three" add "and four".

28. **Duration:**

Replace this with the following:

This Agreement shall become effective from the date of conclusion of negotiations and shall remain in force for three years until cancelled or amended by a subsequent Agreement.

Both sides will endeavour to negotiate a new Agreement before this Agreement expires, such negotiations commencing three months prior to the date on which the Agreement expires.

[6] By letter dated June 4, 1997, the Port Authority gave its response to the above letter from the Union as follows:

- (a) Item No 1 was rejected.
- (b) Item No 2 would be considered, providing Uniforms for Clerks only.
- (c) Item No 3 agreed in principle.
- (d) Item No 4. The Port would agree to provide safety boots annually at 50% of cost for longshoremen and operations only.
- (e) Item No 5 – Agreed but suggest it be limited to close relatives, i.e. mother, father, guardian, children and spouses.
- (f) Item No 6 – Agreed in principle but the workers must have completed 20 years of service with the Employers. Also, Management should have the final decision on the matters.
- (g) Item No 7 – The following were suggested:
 - (i) 0% - for Year No 1
 - (ii) 2% - for Year No 2
 - (iii) 3% - for Year No 3

[7] The Union vigorously opposed the Employers' proposals including the amendments to the existing Agreement as follows:

Proposal on – Hours of Work, Overtime, Guaranteed Hours & Call Out as proposed by you, are rejected. Further, should there be any change in the respective existing payment systems, said change must not alter or reduce the earnings of the workers.

Proposal on – Number of me to be employed. This was also rejected and the existing Clause was to remain.

Maternity Leave Proposal. This could be accepted as follows:

"Female employees are entitled to thirteen (13) weeks maternity leave with pay, provided that they have worked with the Port for a minimum of one (1) year". The limitation of pregnancies was rejected.

Medical check proposal – accepted.

Fouling of Dock by Ship's Sewer:

\$ 1,500.00 accepted.

Annual Bonus

Your proposal is rejected. Existing clause to remain.

Protective Wear

Agree to add the word "Steeltip" in Paragraph (b). Everything else remains as in current Agreement.

Containers

We accept your proposal under this heading.

Duration

This proposal is rejected. The current wording with the relevant date changes, i.e. 20th July, 1996 to 19th July, 1999 and 19th April, 1999, should remain.

- [8] Under the Union's proposals there would be a number of improvements in the terms and conditions of work resulting in further expenditure by the Employers. Implementation of the Employers' proposals would substantially reduce their operating costs but would be less beneficial to the Employees and would have the following effects:

- (a) Virtually eliminate overtime work and thus a substantial part of the employees' earnings would be lost.
- (b) No additional pay would be given for work done on Saturdays and Sundays which would be paid for at the basic rate – there would now be a "Seven day work week", the Guaranteed Hours would be substantially reduced.
- (c) Monthly paid workers will receive time and a half for the first 8 hours of overtime and double time thereafter.

- [9] The Employer's proposals would have the following effects:

- (a) "Call out" would be specifically defined so as to obviate any misunderstanding.

- (b) There would be a maximum of thirty (30) days full sick leave per annum and thereafter the Employers would pay 50% of basic wages for a period not exceeding thirty (30) days.
- (c) Maternity leave would be for a maximum of thirteen (13) weeks provided the employee worked with the Port for a minimum of one (1) year; foregoing shall apply to a maximum of three (3) pregnancies.
- (d) Longshoremen and forklift operators would be provided with steel tipped boots at 50% of the cost and would be replaced through fair wear and tear.
- (e) A gang would consist of three (3) men (2 longshoremen and 1 forklift operator) instead of 6 longshoremen and 5 forklift operators and 1 tally clerk.
- (f) Annual bonus would be based on profitability of the Port and no longer on an employee's earnings.
- (g) The new Agreement would become effective from the date of conclusion of negotiations and remain in force for 3 years until cancelled or amended by a subsequent Agreement.
- (h) Both sides would endeavour to negotiate a new Agreement before the one presently being negotiated expires, such negotiating commencing three (3) months prior to the date on which the Agreement expires.

[10] Under the existing terms and conditions of work of the Longshoremen, Forklift operators and Tally/Shed Clerks, they work one shift (7:00am to 4:00pm with an hour for lunch, Mondays to Fridays and all work done after 4:00pm is classified as overtime and is paid at time and a half for the first eight hours and thereafter at double time. Overtime starts at 4:00pm regardless of at what hour the men were called out or commenced actual work. Saturday work is paid for at time and one half for the first 8 hours and double time thereafter whilst Sunday work is paid at triple time. Also, at present, workers are guaranteed 1080 hours per year and once called out are guaranteed 8 hours pay irrespective of whether any work at all is done or how much was done and for what length of time.

The Port Authority has a history of financial problems, has unpaid debts, and is in need of new and modern equipment. According to Austin Cook, the Employer's Accountant, in

1996, the Employers suffered a loss of \$ 2,709,486.00 and the situation has continued to this day with the annual loss estimated at between One and Two Million Dollars, Eastern Caribbean Currency. Added to this are two outstanding loans from the Import Export Bank of the United States of a total of \$ 13,023,546.00 plus accrued interest of \$ 6,292,505.00 from as far back as the 1970s and it has not been able to make any repayments towards capital and interest payments have been approximately \$ 356,163.00 per annum. In fact, the situation has been such that it has had to obtain a loan to pay the annual bonus to the longshoremen and others at times.

- [11] Although the longshoremen are employed by the Port Authority and paid by them for their services, these costs are charged to the shipping agents together with a percentage profit but the cost of new equipment, the servicing and repairs to existing equipment, the cost of training staff, including tug pilots as well as repairs to the tugs or the purchase of tugs are the sole liability of the Port. The cost of shipping goods from Miami to Antigua is more expensive than shipping them to Barbados, Trinidad and Tobago, Dominica, St. Vincent and Grenada, which countries are further from Miami than Antigua; although being nearer the ocean freight to Antigua is higher. See Exhibit LG1.
- [12] The Port Authority has been losing money and business because many ships refuse to come to Antigua during the hours when unloading will have to be done outside of 7:00am to 4:00pm and will be subject to the payment of Overtime. Indeed the Caribbean Shipowners Association has threatened to increase their charges by US\$ 1,000.00 for 40 ft containers and US\$ 500.00 for 20 ft containers unless Overtime work is eliminated or reduced.
- [13] The principal issues on which the parties failed to agree were: introduction of a new Shift system, a definition and the meaning of "Call Out", and amendments to a number clauses in the existing Agreement, viz:
- (a) Clause 1: - Wages
 - (b) Clause 2: - Hours of Work
 - (c) Clause 3: - Overtime

- (d) Clause 5: - Guaranteed Hours
- (e) Clause 9: - Number of men to be employed
- (f) Clause 15:- Sick Leave
- (g) Clause 19:- Annual Bonus
- (h) Clause 21:- Protective Wear
- (i) Clause 24:- Containers
- (j) Clause 25:- Pension Scheme
- (k) Clause 26:- Severance Pay
- (l) Clause 28:- Duration

[14] The following clauses were not challenged and, therefore, remain as is, viz:

- (a) Clause 4:- Public Holidays
- (b) Clause 6:- Meal Hours
- (c) Clause 7:- Meal Allowance
- (d) Clause 8:- Ships Docking at Coolidge
- (e) Clause 10:- Shop Stewards
- (f) Clause 11:- Dangerous Cargo
- (g) Clause 12:- Hot Cement
- (h) Clause 13:- Refrigerated Cargo
- (i) Clause 14:- Drinking Water
- (j) Clause 16:- Vacation Leave
- (k) Clause 17:- Fouling of dock by ships sewerage
- (l) Clause 18:- Forklifts in Hatches
- (m) Clause 20:- Union Dues/Negotiating Fees
- (n) Clause 22:- Registered Port Workers
- (o) Clause 23:- Time off for Union Representatives
- (p) Clause 27:- Grievance Pay

[15] The Port Authority sought to add two new clauses to the Collective Agreement, viz, one to set down a new shift system and the other, a definition of "Call Out".

Under the new system there would be two shifts, 6:00am to 2:00pm and 2:00pm to 10:00pm, the work week would consist of seven (7) days. Saturday and Sunday work would be subject to the base rate. Overtime of 1 ½ times normal rate will be paid for the first four (4) hours and double time thereafter but only when more than eight (8) hours work is performed or the work performed is between 10:00pm and 6:00am.

With regard to "Call out" this would be defined in the new Agreement as a written Notice published by the Port Authority to the workers or a message/instructions otherwise conveyed by them to the workers that they will be required to work on a stated day and at a stated time and will not include a situation where workers at work are asked or required to work beyond the period of their shift.

The Arguments

- [16] Mr Wason, for the Employers, argued most strongly for adoption of the new shift system which he said was crucial for Antigua and Barbuda. Counsel said that there was too much overtime worked at the Port and the Shipping Agents were complaining of the large amount of overtime which they have to pay, that Antigua and Barbuda was losing money as several ships refuse to come to Antigua because of the overtime payments, the overtime has made shipping from Miami to Antigua and Barbuda more expensive than, e.g. shipping from Miami to Dominica, Barbados, Trinidad and Tobago and St. Lucia, even though these countries are further away from Miami than Antigua and Barbuda – the ocean freight is higher – See Exhibit KG1.

Mr Wason submitted that, inter alia:

- (1) It was necessary to eliminate the annual financial loss of between One and Two Million Dollars, presently being paid out annually as overtime.
- (2) More ships would call at the Port and thus more revenue would come to the Authority.
- (3) The savings on the wages bill and greater volume of cargo would result in increased profit which could be used to purchase additional cargo handling equipment which could in turn increase efficiency and profit. Also, the Port Authority would be able to expand the operations of the Port

by developing a Transshipment facility to attract the large ships, e.g. from Europe with 100 containers.

- (4) There would be greater efficiency in cargo handling because of the reduction in gang size, more gangs could be deployed to handle an increased volume of cargo.
- (5) It would reduce the charges to the shipping agents and ultimately the consumer.
- (6) As stated by Austin Cook, the Financial Comptroller, and this was not challenged, the Port Authority was having financial difficulties and has been unable to service some of its loans.
- (7) The 1996 draft Financial Statement from Pannel Kerr Foster shows the extent of the problem – See Exhibit AC1.
- (8) The annual wages bill of the Employers is disproportionately high.

[17] For the Union, Mr Spencer agreed with Mr Wason, on some of the new proposals relating to Maternity Leave, Unused Uncertified Sick Leave, Compassionate Leave but contended that:

- (a) **UNIFORMS AND PROTECTIVE WEAR:** Uniforms and protective wear should be provided for all Bargaining Unit Employees i.e. Longshoremen, Forklift Operators, Shed Workers and others, and not only to Shed Clerks as at present. Mr Spencer said that there is no justifiable reason to continue to deny these to employees other than Shed Clerks and that this is a justifiable expenditure.
- (b) **SAFETY GEAR:** Safety boots should be provided on an annual basis. Mr Spencer contended that this is a safety issue which cannot be ignored.
- (c) **SEVERANCE:** A person with 15 or more years of service with the Port Authority and who has reached age 50 – 55 years should have the right to opt to be severed and paid severance entitlements as per the Collective Agreement. Mr Spencer contended that the 15 year period is more realistic than the present 20 years.

- (d) **WAGES:** There should be a wage increase of 4.5% with effect from July 1, 1996. A further 4.5% from July, 1997, and a further 5% in July, 1998. Mr Spencer contended that these increases were justifiable in light of the increase in cost of living over the period and are the percentage adjustments granted to employees generally in Antigua and Barbuda over the said period although he would accept an adjustment of 4%, 4% and 3 ½% for each of the above years. The Court should follow its decision in Reference No 35 of 1996 where it granted a 12% increase over three years to the stevedores.
- In addition, on the testimony of Hugh Mack, there has been a significant increase, both in terms of percentage and actual tons of cargo resulting in an average of 7.5% increase in total revenue over the last five years.
- (e) **DURATION:** The new Collective Agreement should cover the period July 20, 1996, to July 19, 1999.
- (f) **OVERTIME:** The Court should not dismantle the Collective Agreement as has been established over time by agreement and superimpose inferior and/or less advantageous terms and conditions upon the workers concerned without any consideration at all being given to putting forward a compensatory package in light of the automatic, direct and substantial reduction in the "take-home"/disposable income of the workers.
- (g) **INDEPTH STUDY:** No in-depth study was ever carried out or submitted to the Court to show the financial position of the Port Authority and thus there is no sufficient evidence on which to accept their proposals.
- (h) **SHIFTING OF THE GOAL POST:** The Port Authority's counter proposals in Exhibit KS3 – it did not merely shift the goal post, it removed it entirely. The fundamental shift removal occurs with respect to Hours of Work, Overtime, Guaranteed Hours, Number of men to be employed (Gang Size), Annual Bonus, Containers and Duration. These provisions present the hinge upon which everything else in the Collective Agreement, and by extension the employer/employee relationship, hangs and to unilaterally or otherwise remove the hinge without a commensurate replacement is

tantamount to removing the heart and the intestines from the body without the possibility of having a heart transplant and the Court should not be a party to such an injustice.

- (i) **MATERIAL BENEFITS TO WORKERS:** To give any consideration at all to the sweeping changes envisaged in Exhibit KS3, the Court must be totally satisfied that these are material benefits, not only for the Authority and Ship-owners, but for the workers. No evidence at all has been led to show that there will be any benefits to the workers in the medium or long term.
- (j) **HOURS OF WORK & OVERTIME:** – The existing Agreement is a direct response to the changing methods of cargo handling at the Port starting in the 1970's with the change over from break bulk to containerised cargo. As a result of the loss of employment and the significant reduction in man-hours, both sides, after careful consideration and examination, and what obtained in Barbados and what would be reasonable in Antigua and Barbuda, arrived at an acceptable payment system for Longshoremen and operators and Shed Clerks. There is no shift system for the workers in Dominica or Grenada.

It is most unconscionable to have Port workers work on Saturdays and Sundays between 6:00am and 10:00pm and pay them the "straight time" hours.
- (k) **GUARANTEED HOURS:** The said charging arguments apply here also and it is totally unjustified to eliminate the extra 20% of wages for the Forklift Operators working outside the docks.
- (l) **CALL OUT:** The Employers' definition of Call-out is entirely different from what is envisaged in the present Collective Agreement where it applies whenever the employee is not at work and is then called to work.
- (m) **ANNUAL BONUS:** The present Bonus system, 4% to 6 ½%, of annual earnings was agreed upon by the Employees because under the previous arrangement (Productivity Incentive Bonus Arrangement) the Port was paying substantially more in Bonus payments than was intended; it was

then changed to a straight % of total annual earnings. This point was not challenged and no salient evidence was advanced for the change.

- (n) **NUMBER OF MEN TO BE EMPLOYED (GANGSIZE):** The present number of men is not unreasonable. Over the years Management has reduced the number below what is stipulated when the circumstances merit it. While the Employers are seeking to reduce direct cargo handling operators a substantial increase is being allowed – Security Guards have moved from 30 in mid 1980 to over 120 in 1999.
- (o) **CONTAINERS:** No evidence has been adduced to support any change to the existing situation.
- (p) **THE CARIBBEAN SHIPOWNERS ASSOCIATION:** The contents of the letters that passed between the Caribbean Ship-owners Association and the Port Authority were never shared with the workers and their Union representatives. The ultimatum is without legal precedent and in effect tantamounts to blackmail. The Court should not lay too much emphasis on the letters. Lyndon Gellizeau was not in a position to state the precise reason for the disparity and he did not give any conclusive evidence that ocean charges have a direct effect on landing charges or cargo handling charges at the Port of St. John's.
- (q) **FINANCE:** The Employers, through the evidence of Austin Cook, attempted to link the annual loss of over EC\$ 1,000,000.00 to the labour costs directly associated with the Employees but this is not true. The Port Authority bills the Shipping Agents for work done by the Employees so there is a built in profit on transactions.
It is in the Administrative and Management side of things that serious cost cutting measures need to be taken.

The Decision

- [18] **THE NEW SHIFT SYSTEM:** I have scrutinised the evidence and noted the demeanours of the parties and their witnesses, considered the submissions of Counsel and Mr Spencer

and understand the feelings of the Employees. No one finds it easy to lose that which he has, especially when it concerns finance and this is what the new shift system will cause to result. Under the new shift system Overtime will virtually become something of the past and no longer a major supplement to the Employees' wages.

While acknowledging the effects on what the new system will have on the earnings of the Employees this must be weighted against the benefits that will accrue, not only, to the Employers, but to the consumers and the country as a whole. The evidence is that the new system will lead to more ships calling at the Port, the mega ships with approximately 100 containers will be attracted to Antigua and the development of Antigua into a Transshipment Port.

En passant, one is tempted to say that something is clearly unsatisfactory or indeed wrong if a business has to pay huge sums in overtime in order to survive, indeed, can it survive in these circumstances?

[19] And one cannot ignore the statement by the Caribbean Shipowners Association that they will be obliged to increase their charges by US\$ 1,000.00 for a 40ft container and US\$ 500.00 for a 20ft container if the existing single shift system and volume of overtime are continued. I do not regard the foregoing statement as an attempt to intimidate or to direct or coerce anyone into taking a particular course of action or arriving at a particular decision but surely it is something which cannot be ignored and should be seriously considered, and it is the consumer who suffers most in cases such as this.

[20] One is mindful of what happened at the time of the Industrial Revolution in the United Kingdom when, with the introduction of machinery and new technology, widespread redundancies and unemployment followed but this became history as a full labour force emerged shortly thereafter and the society benefited more than before.

For the reasons given I am obliged to conclude that the new shift system is acceptable and order that it be inserted into the New Agreement and the necessary deletions and adjustments to those clauses in the existing Agreement be made.

- [21] **FINANCE**: One of the principal reasons for the introduction of the new shift system is to cut costs and reduce the debt burden of the Employers. Although the earnings of the longshoremen, forklift operators, Shed clerks and others concerned in cargo handling is charged to the shipping agents and reimbursed to the Port Authority and there is a special charge imposed by the Authority, the evidence is that the Authority is heavily indebted to some of its lenders and that the monies so collected have not been able to make the Authority viable. Further, according to the evidence of Austin Cook, because of its debts the Authority has great difficulties in obtaining loans and, at times, has to depend on loans, to meet its obligations. And, of course, the Port Authority has personal expenses that are not paid by the Shipping Agents or any third party, as said before, without which it could not function.
- [22] **TRANSHIPMENT**: Reference has already been made of the development of Antigua into a major transhipment port in the region which is undoubtedly a step forward. Expansion of business is the order of the day and no convincing reason has been adduced to show that this project would not be advantageous to Antigua and Barbuda and should not be undertaken.
- [23] **"CALL OUT"**: I see no reason why "Call out" should not be defined in the new Agreement and have difficulty in comprehending why the Union found this objectionable. Mr Benjamin, the Port Manager, alerted the Court to some of the difficulties that have resulted in the past and can result from the term not being defined, e.g. that where a gang is unloading a ship and they are not able to complete same by 4:00pm but are asked to work on until the ship is fully unloaded, the Employees have wished to regard this as a "Call out" and subject to a guaranteed 8 hours pay even though it may have taken 2 hours or less to complete the job. With a built in definition of the term no misunderstanding should arise and I would therefore order insertion of the term as defined in the new Agreement.
- [24] **WAGES (Clause # 1)**: I accept the evidence re the financial situation of the Employers and find it very difficult to ask an Employer whose business is operating at a loss, and the evidence of Austin Cook to this effect is accepted, burdened with a debt of over

\$ 19,000,000.00 and having to pay approximately \$ 356,163.00 as interest annually, to grant wage increases. I recognise that the cost of living has been increasing annually, although no conclusive evidence of this was adduced by the Employees and thus an argument can be made why wages should not remain static. But any increase must be tempered with reason and in this regard it seems to me that an increase of 4% in the first year of operation of the New Agreement, 3% in the second year and 3% in the third year would be reasonable and so order.

[25] **HOURS OF WORK (Clause # 2):** With the advent of the new shift system the Hours of Work will be changed from the existing to Mondays to Sundays from 6:00am to 2:00pm and from 2:00pm to 10:00pm and it is so ordered.

[26] **OVERTIME (Clause # 3):** Implementation of the new shift system would make overtime payable for work done between 10:00pm and 6:00am, work done on Saturdays and Sundays payable at flat rate and after 48 hours of work or call out in any 168 hour period payable as previously stated. But in the present situation this seems unavoidable and in the interest of all concerned and not only the workers but that of the Employers also and the community at large I believe that this will have benefits to the Port Authority and the community as a whole from which the Employees and their children and their children's children stand to benefit, if not in the short term, certainly in the long. I therefore order the new provisions to be included in the new Agreement.

[27] **GUARANTEED HOURS (Clause # 5):** Presently the Employees have a guarantee of 1080 straight time hours per annum and the Port Authority's has proposed that this be deleted and that on completion of eight (8) hours after being called out to work, workers covered by the Agreement shall be paid overtime at the rate of time and one half for the first four (4) hours and double time thereafter provided 8 hours have been completed. Also, operators called out to perform duties outside the docks will be paid an extra 20% of their wages for this period. The new proposal seems reasonable and should be adopted; the 1,080 guaranteed hours should also remain unchanged and it is so ordered.

- [28] **NUMBER OF MEN TO BE EMPLOYED (Clause # 9):** This is another of the prominent issues for decision. The present gangsize is 6 longshoremen, 5 forklift operators and 1 Shed Clerk and the Union wish this to remain unchanged. With the new technology and equipment in operation the Employers maintain that a gang should be reduced to 3 longshoremen, 4 forklift operators and 1 Shed Clerk and I so agree and order.
- [29] **SICK LEAVE (Clause # 15):** The Union wants the Sick Leave Clause (# 1(e)) in the present Agreement to remain but the Employers want it amended to provide in C(1) that the Employees will be paid a maximum of 30 days full pay and that thereafter the Employers will pay 50% of an employee's basic wage for a period not exceeding 30 days, the shortfall being made up by Social Security. I do not think this proposal is unreasonable and would order its inclusion in the new Agreement.
- [30] **ANNUAL BONUS (Clause # 19):** One was quite alarmed to hear that on one occasion the Employers had to obtain a bank loan to pay the Annual Bonus which is presently based on earnings. The Employers would like payment of the Annual Bonus to be based on profitability. I believe the prime object of a bonus scheme is to act as an incentive and this continues even if it is based on productivity; consequently, a payment based on productivity does not seem unreasonable and I would order that the new Agreement be amended accordingly.
- [31] **PROTECTIVE WEAR (Clause # 21):**
- (i) The Employers would like paragraph (a) deleted
 - (ii) Paragraph "B" be amended to read "Safety helmets and steel tipped boots be issued to all longshoremen and operators @ 50% of cost and will be replaced through fair wear and tear. I believe it is in the interests of both the Employers and the workers that reasonable steps be taken to protect the workers and on this basis I would order that the present Agreement be amended and that the Employers shall provide the workers with one helmet and two pairs of steel tipped boots per annum. All protective wear remains the property of the Port Authority

and shall be surrendered to them at the end of each year or on the cessation of an employee's employment with the Port Authority.

- [32] **UNIFORMS (Clause # 22):** The Union wants uniforms supplied to all Shed Workers while the Employers want these limited to "cargo workers". The provision of uniforms is an expenditure which would be an added financial burden to the Port Authority which is again being asked to incur further expense. But I note that under the existing Agreement both Shed and Cargo workers are provided with Uniforms and in the circumstances I would order supervisors, payroll clerks and file clerks be similarly supplied.
- [33] **CONTAINERS (Clause # 24):** Implementation of the new shift system would result in a number of amendments to the present Collective Agreement which, it is apparent, the Employers are a party. The Port Authority's proposal is not unreasonable or disadvantageous to the Employees and I would therefore order its insertion in the new Agreement; which shall read, "Premium payment should not be paid for containers stacked less than three (3) high and four (4) high." The remainder of Clause 23(a) still remaining as do the other paragraphs amended by inserting 3 & 4 respectively for paragraphs a, b & c and I so order.
- [34] **PENSION SCHEME (Clause # 25):** This was agreed and therefore no amendment is necessary.
- [35] **SEVERANCE PAY (Clause # 26):** The Union advocates that Employees who have worked with the Employers for 15 years or have reached the age of 55 years be severed with full benefits. The Port Authority wants the years of work to be 20 and the age to be 60 years. Retirement is 60 years for all Government employees, non-established excepted, and is the normal age limit and I find it reasonable and order that it be inserted into the new Agreement.
- [36] **DURATION (Clause # 28):** This is indeed a very sensitive area and one that is not without controversy. The Employees want the new Agreement made retrospective to July 19,

1996, whereas the Employers want the date of coming into effect to be the date of this decision. Adoption of the Union's view would result in financial loss to the Employers as they would have to recover the retroactive costs and expenses from the Shipping Agents and it has been said that this is a virtually impossible task. And if not recovered the said costs would have to be borne by the Port Authority thereby adding a further financial burden to an already overburdened employer – one cannot kill the goose that lays the golden egg. It is unfortunate if the Employees would have to lose the additional income but I have not been persuaded why it should be the Employers. The problems that would arise as a result of a retro-active order are literally insurmountable and, in the circumstances, I would decline to make a retro-active order and the order made is that the new Agreement shall be for three (3) years i.e. from the date of this Judgment. The old Agreement was due to expire on July, 1996, and both sides were to endeavour to negotiate a new Agreement before the old Agreement expired, such negotiations to commence by April 19, 1996. The time period for conclusion of the negotiations was July 19, 1996, i.e. 3 months and history has shown that this period was manifestly too short. It is my belief that the Employees should be protected against a similar shortfall showing its head again and I would therefore order that there be a provision in the new Agreement that the negotiations for a new Agreement shall commence at least six (6) calendar months before expiration of the old Agreement and if not completed before the expiry date the Employees shall be entitled to an interim wage increase pending its finality, the Court to determine the amount of the interim increase if the parties cannot agree.

[37] At the end of his submission Mr Spencer, apparently out of a preponderance of caution, asked the Court, in the event that it should grant the changes requested by the Employers, the following also should be made:

- (a) Shift premium at 45% of hourly rate for the 2:00pm to 10:00pm shift and 25% of hourly rate for the 6:00am to 2:00pm shift.
- (b) Any shift system be only applicable Monday to Friday and work performed and Saturdays and Sundays remain unchanged.
- (c) All employees be provided with transportation to and from work when scheduled to work the early morning and evening shift. In the absence of

transportation, a transportation allowance of EC\$ 75.00 per week or EC\$ 15.00 per day, Monday to Friday and EC\$ 25.00 per day for Saturdays, Sundays and public holidays be paid to each employee.

- (d) That hourly rates of pay be adjusted by a further 15% per category.
- (e) That the forty (40) hour work week be guaranteed or paid for with a minimum annual base salary equivalent to 2080 hours.

[38] The above would cause further financial strains upon the Port which, as seen above, is already facing a financial crisis. In the circumstances, I cannot see where it would be in any way reasonable to grant these requests. Of course, no arguments in support of these requests were presented to the Court nor were the Employers given an opportunity to make a response and thus, in any event, no yardstick against which they could be measured was put before us. To grant these requests would not be reasonable at this moment in time and they are therefore declined.

Conclusion

[39] I have been persuaded that the time for change, indeed major changes, at the Port, has arrived and the foregoing amendments to the old Collective Agreement are made after full and careful consideration of the Industrial Court Act, Cap. 214, the Antigua and Barbuda Labour Code, Cap. 27, the evidence adduced and all other relevant matters, I believe the amendments to the old Collective Agreement will be in the best interests of the parties concerned and the community at large.

[40] It is hereby ordered that the present Collective Agreement be amended in accordance with the terms and conditions set out above and signed and executed by the parties by the 2nd day of April, 2001. The new Agreement shall take effect as from today, the 19th day of March, 2001.

[41] There shall be no Order as to Costs.

DATED the 19th day of March, 2001



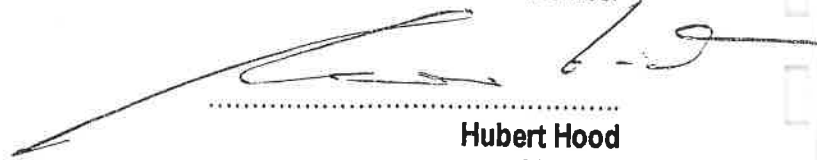
Cyril L. Maundy
President

I concur



E.T. Henry
Member

I concur



Hubert Hood
Member