JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 59/ 2005

BEFORE: **THE HON. MR. JUSTICE PANTON, J.A.**
THE HON. MR. JUSTICE COOKE, J.A.
THE HON. MRS. JUSTICE McCALLA, J.A

BETWEEN	**JAMAICA PUBLIC SERVICE COMPANY LIMITED**	**APPELLANT**
AND	**THE INDUSTRIAL DISPUTES TRIBUNAL**	**1ST RESPONDENT**
AND	**NATIONAL WORKERS UNION**	**2ND RESPONDENT**
AND	**BUSTAMANTE INDUSTRIAL TRADE UNION**	**3RD RESPONDENT**

Dennis Morrison, Q.C. and Laurence Jones, instructed by DunnCox, for the Appellant.

Curtis Cochrane, instructed by the Director of State Proceedings, for the First Respondent.

Lord Gifford, Q.C. and Mrs. Candis Craig, instructed by Gifford Thompson and Bright for the Second Respondent.

July 17, 18, 19, 20, 2006 and March 7, 2007

PANTON, J.A.

1. I have read in draft the reasons for judgment written by my learned brother Cooke, J.A., in this matter. I agree with the manner in which he has

dealt with the issues, and with his conclusion that the appeal should be dismissed with costs to the respondents.

I wish to add that the determination of the Tribunal cannot be viewed in a way that would exclude consideration of the history of the matter placed before it. The agreement and understanding between Mirant Corporation and the Unions, dated 5th April, 2001, cannot be regarded as having been shredded by the reference of the matter to the Tribunal. That agreement was to the effect that Mirant Corporation would "seek to encourage and influence the operations of Jamaica Public Service Company Limited in a manner that is consistent with existing contractual obligations including all its obligations pursuant to the Collective Labour Agreements ... dated November 3, 2000; December 6, 2000; and December 7, 2000 respectively".

The Tribunal, in my view, had the jurisdiction to make the award, and the learned Judge below was correct to uphold it.

COOKE, J.A.

1. By letter dated February 11, 2003, The Honourable Minister of Labour and Social Security pursuant to Section 9 (3) of the Labour Relations and Industrial Disputes Act (the Act) referred to the Industrial Disputes Tribunal (the Tribunal) the dispute between the Jamaica Public Service Company Limited (J.P.S.Co.) and the two trade unions representing the employees of that company — The

National Workers Union and The Bustamante Industrial Trade Union (the Unions). The Terms of Reference were as follows:

> "To determine and settle the dispute between the Jamaica Public Service Company Limited on the one hand and workers employed by the same company and represented by the National Workers Union and the Bustamante Industrial Trade Union on the other hand, over:
>
> (a) the salary structure which should be implemented consequent on the Job Evaluation and Compensation Review Exercise;
>
> and
>
> (b) the effective date of payment of the new rates as a result of the above."

2. There were eleven (11) sittings of the Tribunal between April 2, 2003 and July 3, 2003. On August 29 the Tribunal made its award as follows:

> "(a) The Tribunal awards that the Salary Structure that shall be implemented, consequent on the Job Evaluation and Compensation Review Exercise, is one which conforms with and maintains the established compensation policy/philosophy agreed on by the parties in the 1990-91 Heads of Agreement which is based on a formula of the top 5-10 percentile of the benchmarked market.
>
> (b) The effective date of the payment of the new rates as a result of the above shall be 1st January, 2001."

3. The appellant, by way of Judicial Review challenged the legality of the award of 2(a) supra. The portion of the award stated at 2(b) supra is no longer

an issue. On April 22, 2005, D. McIntosh, J. upheld the Tribunal's award. The appellant now appeals.

4. In the appellant's skeleton argument the issues were identified thus:

> "**ISSUES**
>
> 2. The issue before the learned judge at first instant was whether the Industrial Disputes Tribunal's ("the 1st Respondent") award dated the 29th August 2003 may be quashed by virtue of an error of law on its face in that:
>
> i. The said award calls for the implementation of the established compensation policy/philosophy agreed by the parties in the 1990/1991 Heads of Agreement", when there was in fact no such agreement embodied in the said Heads of Agreement or any subsequent Heads of Agreement.
>
> ii. The 1st Respondent had no jurisdiction pursuant to the terms of reference to direct the establishment of a policy structure based on a formula of the top 5-10 percentile of the bench-marked market."

5. As the learned judge upheld the Tribunal's award it is necessary to analyse the basis for the award which was characterised by its comprehensive nature. It first sets out what it regarded as the "background". No issue has been taken as to the correctness of the review, a précis of which would be quite inadequate. I therefore reproduce it in extenso. I consider this "background" of

significance as it sets the stage for the resolution of the debate before this court.

The review, which is somewhat lengthy, now follows:

> "In 1990 the management of Jamaica Public Service Company Limited, hereinafter referred to as J.P.S. Co., made a decision to conduct a job evaluation exercise so as to make the Company more competitive in attracting and retaining skilled workers who were leaving. This led to an agreement between the Company and the National Workers Union, hereinafter referred to as the N.W.U. and the Bustamante Industrial Trade Union hereinafter referred to as B.I.T.U. jointly representing the hourly paid staff and the N.W.U. solely representing the clerical staff. The exercise was to establish an internal alignment of compensation packages payable to position holders within the bargaining unit and to enable the Company to be generally competitive in the Labour Market.
>
> It was further agreed that the recommendations of the consultant, Trevor Hamilton and Associates, would be binding on the Company and the Unions. The exercise was successfully carried out and J.P.S. Co. compensation levels were placed within a 5-10 percentile of the market of the benchmarked companies surveyed.
>
> In 2000 the Company based on its vision made a decision that it should be a world class company where workers ought to be able to perform internationally in any power company comparable to J.P.S. Co. This meant implementing systems that would lead to a competency based workforce. A classification system had to be established that would be performance driven.
>
> Under a Heads of Agreement for the period January 1, 2000 to December 31, 2001 the Company and both the N.W.U. and the B.I.T.U. agreed that a 'Job Reclassification/Evaluation Exercise would be

conducted by Trevor Hamilton & Associates. This exercise was to be concluded by March 31, 2001'.

The Company began canvassing its vision for the future. Personal visits were made by management teams and the consultant to workers throughout the Company informing them about the job evaluation exercise. Special newsletters were also circulated among the workforce. One such was titled "Job Evaluation and Classification... A Systematic Approach to Improving Employee's Morale" (See Exhibit 17).

To ensure transparency and acceptability of the exercise there was participation and involvement by the stakeholders at all levels. Representatives of the stakeholders were members of committees established. One such committee of interest was the Steering Committee more commonly referred to as the 'Oversight Committee'. This committee was charged with the following responsibilities:-

(i) "Review and approve job evaluation instrument.

(ii) Approve the ranking order of jobs by bargaining unit.

(iii) Review recommended grade and salary structures.

(iv) Rule in instance where job evaluation committee level is unable to reach consensus affecting the smooth progress of the exercise".

Excerpts from the minutes of the Oversight Committee meeting confirmed the Oversight Committee as a decision making body charged with the responsibility to ensure that "work being done is at all times consistent with what is established, bearing in mind the stake holders expectations."

In April, 2001 J.P.S. Co. changed hands and Mirant Corporation, a global energy company based in Atlanta, Georgia, took over the Company by acquiring

the majority of the shares and signed a Memorandum of Understanding with the Unions agreeing to continue amicable discussions in good faith in relation to issues agreed between the parties as outstanding from the last negotiation.

The new President of the Company gave his support to the on-going job evaluation exercise. Though the project was to be completed by 31st March, 2001 it was not done until February, 2002. The delay was due to an increase in the scope of the exercise that was not envisaged.

At the completion of the Job Evaluation Classification Exercise 'the Company sought to develop salary structure to complement the job classification evaluation exercise'. Peat Marwick and Partners Management Consultants (K.P.M.G.) was contracted to carry out a salary survey exercise. Specifically, the exercise sought for:-

(1) "Comprehensive information re salary and benefits in the market.

(2) Data which will prove useful in guiding the upcoming salary benefit negotiations with the respective unions for the period 2002 – 2003."

K.P.M.G. benchmarked the Company's salaries against seventeen (17) local companies selected for this purpose by the Oversight Committee on the basis of their size of operation, involvement in manufacturing, mining and service business, and perceived market position. Of the 17 companies 11 participated in the survey.
A report on the survey was made by K.P.M.G. to the Oversight Committee on 11th February, 2002 and 4th June, 2002.

The K.P.M.G. report confirmed, with respect to basic pay and allowances, the Company fell within the top four (4) Companies in the survey with all four bargaining units being compensated at above market. There were some benchmarked jobs (500) in total

> which fell below market and the Company has decided to bring those employees up to market minimum as established by the survey. Jobs presently remunerated above the maximum salaries established for the relevant grades by the survey will not suffer a loss of pay nor will they be red circled' (Page 4 of the Company's Brief).
>
> A dispute arose over —
>
> (a) the Salary Structure which should be implemented as a consequence on the Job Evaluation and Compensation Review Exercise.
>
> (b) the effective date of payment as a result of (a) above."

6. The central thrust of the unions' submission to the tribunal was that:

> "The Management of JPSCo took it upon themselves to construct the new salary scale which is not in keeping with the normal procedure which flows from the job evaluation exercise." (P. 517 of the Record)

The Unions further contended that:

> "The company wants to introduce other system in place outside the norm of the job evaluation exercise findings. They want to introduce some productivity incentive rather than introducing the findings." (P. 521-2 of the Record)

Until the dispute, the salary structure at J.P.S. Co. placed the remuneration of its employees within the top four companies operating in Jamaica. The genesis of this structure arose from the desire of the company to recruit and maintain skilled and qualified personnel in its employment. Hence, the agreement

between the parties pertaining to the years 1991 to 1992. The Unions accepted that:

> "What prevails in the '91/92 agreement, which spells out the terms and conditions of the job evaluation, does not contain in the 2000/2001 Agreement, it was the same sentiment, the same conditions we agreed over the years." (P. 558 of the Record)

In answer to a question posed by Mr. McNish – a member of the Tribunal, it was the Unions' stance that:

> "The philosophy of the Company over the years, Mr. McNeish, is that they want to maintain their position in the marketplace. Prior to those job evaluations which I referred to, they were not competitive in the marketplace and the philosophy is that they want to be competitive to ensure that their employees are adequately compensated." (P. 589 of the Record)

It was the position of the unions that:

> "You are dealing with the same company and therefore we are expecting the same procedure to be followed." (P. 552 of the Record)

The Unions felt peeved that in prior job evaluations done by Trevor Hamilton and Associates it was that same firm which conducted the market survey in respect of complete competitive emoluments but in this case it was K.P.M.G. which was given that exercise. However, a more substantial complaint was that:

> "The salary structure that the Company wants to introduce now would put the workers somewhere in the forty-seven percentile of the marketplace." (P. 559 of the Record)

The unions objected to the stance of the Company in wanting to base the pay structure on an average of the eleven companies that took part in the market survey done by K.P.M.G.

7. In respect of Heads of Agreement of November 3, 2000 the Company and the Unions have agreed that:

> "The Company and the Unions have agreed that a job reclassification/evaluation exercise will be conducted by Trevor Hamilton & Associates. This exercise is to be concluded by March 31, 2001."

As to this, the company's position was that:

> "It was no part of either agreement that the job reclassification/evaluation exercise would result in adjustments to salaries of members of the bargaining units during the contract period. The company contends that the intention of the parties was that data resulting from the exercise might be used as compensation guidelines during wage negotiations for the subsequent contract period." See (Para. 5 of the brief of J.P.S. Co. p. 82 of the Record.)

In that same brief at para. 12 (p. 84-5 of the Record) the Company advanced as follows:

> "As a complement to the job reclassification/ evaluation exercise (and following on the Mirant acquisition) the company sought to review its compensation philosophy with a view to aligning it to Mirant's and global trends. The basic tenets of this philosophy include as components of total employee compensation basic pay, allowances, performance incentives and benefits. Performance incentives are linked to the company's performance and allows for employees to share in its profits. These are payable

> in addition to the employees' basic pay, allowances and benefits and, in some instances, would allow employees to earn at the top their salary range in any given year. The Oversight Committee was briefed on the compensation philosophy by Mirant's management on October 24, 2001 and, upon completion of the job evaluation exercise, the company completed the articulation of its new compensation philosophy, which was provided to the unions for discussion and agreement. The new Corporate Compensation Philosophy is annexed hereto marked "J"."

8. I now turn to the basis of the Tribunal's award. It said:

> "The evidence suggests that since 1990 there has been a deliberate attempt to keep J.P.S. Co. employees among the top percentile in the market. There is no evidence that the workers should have expected any less from the Job Evaluation and Compensation Review Exercise. The objectives of the exercise did not indicate that. To the contrary their expectations were heightened in that they were sensitized and conditioned through newsletter dated 1st November, 2000 that their performance would have them 'appropriately compensated' for their competence. Save and except by an agreement between the Union and the Company the management should not unilaterally remove the J.P.S. Co. Compensation Policy from a top position in the market to a middle position. This is inconsistent with custom and practice that have been in existence over the past 11 years."

The Tribunal, in effect accepted the submissions of the Unions that there had been in existence an established compensation policy to have the employees of the Company paid within the context of the top companies operating in Jamaica. As such the Tribunal was impressed by the evidence tendered by the Unions. In particular the Tribunal placed great weight on the evidence of Dr. Trevor

Hamilton of Hamilton and Associates who "maintained his professional integrity". The Tribunal considered Dr. Hamilton's evidence "as crucial and it withstood cross-examination". The award recaptured Dr. Hamilton's evidence thus:

> "Dr. Hamilton stated that the Company's pay structure was developed around the top 5-10 percentile of the benchmarked market. Under examination in chief he pointed out that J.P.S. Co. aligned itself with three or four companies that formed part of the top 5 percent in the country."

The excerpted passages in para. 6 (supra) was from the evidence of Wesley Nelson, Negotiation Officer for the Bustamante Industrial Trade Union. Professor Gordon Shirley also gave evidence on behalf of the Company. This is the comment of the Tribunal in respect of his evidence:

> "It was instructive to hear Professor Gordon Shirley's evidence, Chairman of J.P.S. Co. between 1996-2001, commenting on the salary structure. In response to Mr. Morrison's question in examination in chief he was asked "if there was a commitment from the Company to maintain compensation levels within the top 5 Percent of the general range of compensation among the comparables."
>
> In response he said 'the Human Resources Division of the Company would prior to the negotiations go out and do some survey of companies that they consider to be comparable for use in those discussions. There was always contention about these surveys but it was information that was useful. "Our employees were close to the top of those surveys if not at the top"."

The Tribunal concluded that:

> "There is obvious corroboration of the evidence of Messrs. Hamilton, Nelson and Shirley in regards to the salary structure operating within the Company."

9. Although the Tribunal did not advert to the position that was postulated in the Company's brief to which I referred in para. 7 (supra), I think it is significant that it was said that:

> "the Company sought to review its compensation philosophy with a view to aligning it to Mirant's and global trends."

It would seem obvious from this statement that there must have been a then existing compensation philosophy which was now to be reviewed.

10. Perhaps, it is now convenient to examine the grounds of appeal. One of these grounds was that in the Judicial Review Court:

> "...the Learned Judge erred in law in holding that there was no error of law on the face of the award of the 1st Respondent which called for the implementation of "the established compensation policy/philosophy agreed by the parties in the 1990-1991 Heads of Agreement", when there was in fact no such agreement embodied in those Heads of Agreement or any subsequent Heads of Agreement."

The submission to support this ground was stated thus:

> "The 1st Respondent erred, as a matter of law in finding that there was an implied term of the 2000/2001 Heads of Agreement with respect to the Appellant's compensation policy. It was no part of either the 1990/91 or the 2000/01 agreements that the job reclassification/evaluation exercise would result in adjustments to salaries of members of the bargaining units during the contract period. The Appellant contends that the intention of the parties was that data resulting from the exercise would be

> used as compensation guidelines during wage negotiations for subsequent contract periods."

11. I wish firstly to comment on the use of the words 'implied term'. The Tribunal did use those words. It is necessary to appreciate the import of those words – to determine their relevance to the ultimate conclusion. This can be ascertained by a scrutiny of the context in which those words were used. I now therefore reproduce this:

> "To highlight further the principle of custom and practice and its relevance to this dispute, the Tribunal refers to the Author, Frank Elkouri "How Arbitration Works" Public Library of Congress 60/11972. Pages 266-267.
>
> *"Unquestionably, custom and past practice constitute one of the most significant factors in Labour-Management Arbitration. Evidence of custom and past practices may be introduced for any of the following purposes."*
>
> *(1) to provide the basis of rules governing matters not included in the written contract.*
>
> *(2) to indicate the proper interpretation of ambiguous contract language or*
>
> *(3) to support allegations that clear language of the written contract has been amended by mutual action or agreement .....*
>
> *Under certain circumstances customs and past practices may be held enforceable through arbitration as being in essence a part of the parties "whole" agreement. Some of the general reasons of arbitrators in this regard should be noted".*
>
> *(a) Arbitrator Dudley E. Whiting:*

> *"Collective Labour Agreements are not negotiated in a vacuum but in a setting of past practices and prior agreements. Such an agreement has the effect of eliminating prior practices which are in conflict with the terms of the agreement but, unless the agreements specifically provides otherwise, practices consistent with the agreement remain in effect."*

(b) *Arbitrator Whitley P. McCoy:*

> *"Customs can, under some circumstance form an implied term of contract. Where the Company has always done a certain thing, and the matter is so well understood and taken for granted that it may be said that the contract was entered into upon the assumption that, that customary action would continue to be taken such customary action be an implied term."*

See underline (1) above.

With respect to (a) above there is no evidence to show that the parties had agreed to vary the market position deliberately established in 1991 to make the Company more competitive.

With respect to (b) above it is reasonable to conclude that keeping J.P.S. Co. compensation policy near the top or at the top of the market was an implied term of the current agreement."

It is my view that when the Tribunal used the words "implied term" it meant to convey its view that there had been, as between the parties, a mutual understanding that wage negotiations would be conducted on the accepted premise that the employees would be paid "near the top of the market". As such within this context I do not think that the words 'implied term' should be subject

to the analysis which would be pertinent to commercial contracts. Accordingly **London Export Corp. Ltd. v. Jubilee Coffee Roasting Co.** [1958] 2 All E.R 411 cited by the appellant is not helpful. I would say that there was evidence before the Tribunal on which the Tribunal could properly come to their conclusion that there was in existence prior to the dispute a "compensation/policy philosophy". It is indeed correct that neither the 1990/91 nor the 2000/01 Heads of Government enunciated a "philosophy/policy". However, the course of conduct between, the parties based on the evidence, entitled the Tribunal to come to the view that there was this underlying understanding which would guide wage negotiations. The language used by the Tribunal in its conclusion (see para. 2 supra) on a literal interpretation suggests that the "compensation/philosophy was agreed by the parties in the 1990/91 Heads of Agreement". This is not so. The appellant has latched onto this, to attack the award as being an "error of law" on the face of it. I do not find merit in this submission. A perusal of the award in its entirety demonstrates that the award was not based on the 1990/91 Heads of Agreement but rather on what was regarded as the Tribunal's understanding of the underlying mutual acceptance of the policy which should inform wage negotiations. These guidelines were born of the 1990/91 agreement. The Company had accepted this policy to keep its employees paid "near the top or at the top of the market". I am satisfied that the reasoning underpinning the award, when considered in its totality, is not accurately reflected in the concluding paragraph of the award.

The substance of the award, when considered globally, demonstrates that it was the opinion of the Tribunal that, following the agreement of 1990/91 there was the mutual acceptance between the parties that the employees of the Company would be paid according to an agreed pay structure – vis–a-vis the top companies in Jamaica. It would seem to me that the company accepted that there was this agreed pay structure. Why else would there have been the necessity to "review its compensation philosophy"? I reject the contention of the appellant that the intention of the parties was "that data resulting from the exercise (i.e. the market survey by K.P.M.G.) would be used as compensation guidelines during wage negotiations for subsequent contract periods'. The evidence would suggest that the purpose of the market survey was to determine the remuneration of each employee as a consequence of the job evaluation/classification exercise. This would be in line with the top companies in Jamaica. This ground of appeal fails.

12. Another ground of appeal was stated in these terms:

> "That the Learned Judge erred in law in failing to hold that the 1st Respondent had no jurisdiction pursuant to the terms of reference to direct the establishment of a pay policy structure "based on a formula of the top 5 – 10 percentile of the benchmarked market"."

In support of this ground it was submitted that:

> "The evidence before the Learned Judge was that the 1990/1991 Heads of Agreement does not contain a

> clause purporting to provide a compensation policy based on a 5 – 10% of the benchmark market."

It is correct that there was no such clause in the 1990/1991 Heads of Agreement. However, as a result of the exercises consequent upon that agreement the compensation levels were placed within a 5-10 percentile of the market of the benchmarked companies surveyed. As discussed previously, the Tribunal found that following that award there was the acceptance of a mutually agreed pay structure consonant with that award. The terms of reference called for the Tribunal to "determine and settle the dispute" over:

> "the salary structure which should be implemented consequent on the Job Evaluation and Compensation Review Exercise."

This is exactly what the Tribunal did. It would seem to me that the Tribunal has a wide discretion in the settlement of disputes. Section 12 (4) (c) of the Act states that an award made by the Tribunal in respect of any industrial dispute referred to it:

> "shall be final and conclusive and no proceedings shall be brought in any court to impeach the validity thereof, except on a point of law."

This wide discretion given to the Tribunal was based on the assumption that the members of the Tribunal "would from a position of unquestionable objectivity arrive at a just balance" between the rival contentions of the parties. See page 3 **Jamaican Association of Local Government Workers and National Workers Union v. Industrial Disputes Tribunal** Suit M 38 and 56 of 1994 delivered on 14th February 1995. It should be noted that the members of the

Tribunal are persons experienced in labour relations and along with the presiding chairman there were two others, one of whom was from the panel supplied to the Minister as representing employers and the other from a panel supplied as representing workers. This is in accordance with section 8 of the Act. In this instance the award was unanimous. In **Village Resorts Ltd. v. The Industrial Disputes Tribunal and Uton Green representing the Grand Lido Negril Staff Association** (S.C.C.A. No. 66/97 delivered on June 30, 1998) Rattray P., outlined the legislative developments which culminated in the passing of the Act. He did this within the historical context of the relation between employer/employee in this country. Rattray P., had this to say as the rationale for the creation of the Tribunal.

> "The need for justice in the development of law has tested the ingenuity of those who administer law to humanize the harshness of the common law by the development of the concept of equity. The legislators have made their own contribution by enacting laws to achieve that purpose, of which the Labour Relations and Industrial Disputes Act is an outstanding example. The law of employment provides clear evidence of a developing movement in this field from contract to status. For the majority of us in the Caribbean, the inheritors of a slave society, the movements have been cyclic, – first from the status of slave to the strictness of contract, and now to an accommodating coalescence of both status and contract, in which the contract is still very relevant though the rigidities of its enforcement have been ameliorated. To achieve this Parliament has legislated a distinct environment including the creation of a specialized forum, not for the trial of actions but for the settlement of disputes."

The Act came into effect in 1975. Since then there have been developments particularly in the economic sphere as regards 'liberalization' and 'globalization'. I detect that at the heart of this dispute between the appellant and the Unions is that the former, a foreign entity, is not happy with the present labour relations regime. I say no more on this. I hold that this ground of appeal fails. The Tribunal was possessed with the jurisdiction to make the impugned award.

13. The final ground of appeal was that:

> "The learned judge was therefore of the misconceived view that the Appellant abandoned the ground that the 1st Respondent had no jurisdiction pursuant to the terms of reference to direct the establishment of a policy structure "based on a formula of the top 5 – 10 percentile of the bench — marked market". Rather the Appellant abandoned the ground that the 1st Respondent erred in law in making the award retroactive to the 1st January 2001 as there was no evidence before it upon which such an award could be based or any legal principle capable of sustaining such an award."

In his written judgment D. McIntosh, J. did incorrectly state that the appellant at the hearing had abandoned the ground set out in this complaint. However, the tenor of his judgment indicates that he had this complaint in mind. He addressed this issue when he said:

> "They (the Tribunal) put their reasons in a careful and congruent manner. While they did not arrive at either of the salary structure or effective payment date suggested by the parties they did use their own formula to arbitrate."

I understand the Learned Judge to be endorsing the award made by the Tribunal and thereby holding that it had jurisdiction pursuant to the terms of reference to do as it did. Therefore, while the appellant is right in respect of what the Learned Judge wrote, this misconception does not materially detract from the conclusion to which he arrived. In any event this appeal has been in the nature of a rehearing. So this ground of appeal, although factually true, will not affect the resolution of the debate.

I would dismiss this appeal and award costs to the respondents. Before departing I think I should say that, as seems to be the consensus, the Tribunal ought to be commended for the thorough manner in which it carried out its task. Finally the parties may well find it useful to give serious consideration to the suggestions of the Tribunal as to the method of ultimately resolving this dispute.

McCALLA, J.A.

I have read in draft the judgment of Cooke. J.A.. I agree with it and for the reasons that he has given, I, too, would dismiss the appeal.

ORDER

PANTON, J.A.

The appeal is dismissed. The order of the Court below, upholding the award of the Tribunal, is affirmed. Costs to the respondents to be agreed or taxed.