

NATIONAL REMUNERATION BOARD

Proposed Recommendations

SUGAR INDUSTRY (AGRICULTURAL WORKERS) (REMUNERATION ORDER) REGULATIONS
AND
SUGAR INDUSTRY (NON-AGRICULTURAL WORKERS) (REMUNERATION ORDER) REGULATIONS



16 October 2009

NATIONAL REMUNERATION BOARD

SUGAR INDUSTRY (AGRICULTURAL WORKERS) (REMUNERATION ORDER) REGULATIONS 1983 AND

SUGAR INDUSTRY (NON- AGRICULTURAL WORKERS) (REMUNERATION ORDER) REGULATIONS 1985

PROPOSED RECOMMENDATIONS

I. INTRODUCTION

On 5 August 2008 the Minister of Labour, Industrial Relations and Employment, acting under Section 94(1) of the Industrial Relations Act 1973, referred to the National Remuneration Board (the Board) the Sugar Industry (Agricultural Workers) (Remuneration Order) Regulations 1983 and the Sugar Industry (Non- Agricultural Workers) (Remuneration Order) Regulations 1985 to make necessary amendment following the decision of the Government to implement the 40-hour week across the whole sugar industry during the crop season, as per the Permanent Arbitration Tribunal's (PAT) Award dated 22 June 2007.

The terms of reference as per the reference document are as follows:

to make appropriate recommendations, including on the following two connected issues:

- (i) the notional calculation of hourly rate for the computation of overtime on a daily basis (i.e. whether the daily basic wage should be divided by 8 hours, as is generally the case for a 45-hour week or 7 hours with the introduction of the 40 hour week);and*
- (ii) the hours of work of the watchmen who, during intercrop season, are required to work 5 days of 12 hours per week in the context of the implementation of the 40 hour week.*

Interested parties were invited through press notices dated 22 August 2008 to submit written representations which were received from the following organisations:

- the Artisan and General Workers Union (AGWU),
- the Cane Growers Association(CGA),
- the Mauritius Sugar Producers Association(MSPA)
- the Organisation of Artisans Unity (OAU),
- the Plantation Workers Union (PWU),
- the Sugar Industry Labourers Union (SILU),
- the Sugar Industry Overseers Association (SIOA),
- the Sugar Industry Workers Association (SIWA), and
- the Union of Artisans of Sugar Industry (UASI).

The Board held public hearings during which parties deponed in support of their respective written proposals.

The recommendations were almost finalised at the beginning of this year. However, with the coming into force of the Employment Relations Act (ERA) 2008 on 2 February 2009, a new Board was constituted. Press notices dated 30 March and 7 April 2009 were again published in Government Gazette and in two daily newspapers following the advice of the State Law Office to start the procedures anew.

II. STAND OF PARTIES

Employers

Employers in this sector can be categorised into the MSPA, CGA and other planters' associations.

The **MSPA** members are not affected by the extension of the 40 hour week over 6 days to the whole of the sugar industry since they are already implementing the PAT Award as from the 2007 crop season. However, they are against any change in the hours of work of watchmen and in the notional calculation of the daily and hourly rates due to its additional impact on the MSPA members over and above what was estimated by the PAT.

In a spirit of fairness, the representative of the **Cane Growers' Association** is in favour of the extension of the 40 hr week over 6 days during the crop season to all workers in the industry so as not to create any discrimination and frustration among workers performing the same job for different employers. But at the same time, the members would not agree to ending up in a situation of increased cost of production, which, according to them, is rather high at the moment. Therefore, the CGA, although having no objection to the introduction of the 40 hr week during the crop season,

- (i) would like to maintain it over 6 days per week;
- (ii) would not be agreeable to any change in the substance of the PAT Award 2007; and
- (iii) like the MSPA, would not agree to any change on the issue of notional calculation of hourly rates nor the working hours of watchmen.

It is worth noting that a large majority of workers not covered by the Award are employed by small planters. Although the **associations of planters other than MSPA and CGA**¹ did not submit proposals as such, it was gathered from their representatives that the implementation of the 40 hour week during the crop season is not likely to cause any hardship to them, unless this results into closure of sugar mills on Saturdays. They pointed out that they do not have permanent field workers even during the crop

¹ Small Planters Association, Mauritius Sugar Cane Planters Association, Mauritius Cooperative Agricultural Federation

season. The acreage of their plantations is such that the amount of work mostly warrants the employment of family members or seasonal workers and they are compelled to pay more than the rate prescribed in the R.O. Such planters therefore do not feel concerned by the implementation of the 40 hour week during the crop season nor by the resulting changes in the provisions of the R.O.

Unions

SILU/PWU, in their joint submission, have proposed that with the introduction of the 40 hour week on a 6 day basis and daily hours of work of workers being reduced from 8 to 7 hours, the daily working hours of task workers be reduced accordingly by 1 hour. In addition, the overtime be calculated using the following formula which is more appropriate since, according to them, it is unacceptable that while working on a 40 hour week overtime be computed on the basis of 48 hours :

Hourly rate = $\frac{\text{Monthly Wage}}{52*40/12}$ i.e. $\frac{\text{Monthly wage}}{173.33}$

$$\frac{52*40/12}{173.33}$$

Otherwise, all workers' representatives are of the opinion that the 40 hr week should be implemented on a 5 day basis and extended to the whole of the sugar and cane-related industry. Having said so, they propose that the notional calculation of hourly rates be based on:

- (i) A month consisting of 22 days and
- (ii) A day consisting of 8 hours.

As regards, the watchmen, all union representatives agree that this category of worker should be given equal treatment as any other worker in the industry and be granted a 40 hour week. The main argument put forward was that of non-discrimination concerning hours of work in the same industry. It was also suggested that any work beyond 40 hours be considered as overtime and be paid accordingly to the watchmen.

Although not denying the fact that the 40 hour week on a 5 day basis and the changes in the notional calculation would represent an additional cost to the industry, the union forcefully put forward that in their opinion the industry can bear the additional cost taking into consideration the savings made from the reduction in the labour force following the VRS I & II, the incentives and grants provided for the Sugar Reform and the returns derived from investments in the cane-related industry and other profitable sectors of the economy.

III. OBSERVATIONS OF THE BOARD

- Important changes have been taking place in the industry: centralization, mechanization, declining employment with the implementation of VRS I, VRS II, ERS and closing down of factories and the transformation from sugar to cane industry.
- With the phasing out of the Sugar Protocole, the reduction in the price of sugar exported to the EU by a cumulative 36% to Euro 335 per tonne as from October 2009.
- However, with investment in sugar refineries, refined sugar will attract a higher price than raw sugar (Euro 404 v/s Euro 335 per tonne).
- As from January 2009, the price of sugar in the domestic market has been liberalized, thus alleviating the industry from the financial burden in terms of subsidization of this product to domestic consumers but at the same time subjecting the latter to enormous increases in the local price of sugar.
- The price of sugar is soaring in the world market and stands at around \$ 550 compared to an average of \$ 350 in last year. Such a rise in the world sugar price will bring its benefits in terms of export of sugar as well as disadvantage in terms of increased price of 40,000 tonnes of sugar imported for local consumption.
- Staff salaries and other workers' wages constitute approximately the same percentage of the total cost of production (21.4% v/s 22.6%). It is worth mentioning that available figures point to the fact that the wage bill is shared in the proportion 48.7% to 51.3% between the staff and non-staff of the MSPA, who represent 11.3% and 88.7% of the workforce respectively.
- Labour productivity seems to follow a fluctuating but upward trend in both growing and milling activities. Figures submitted by the MSPA show that labour cost has been declining and so has its share in the production cost for both growing and milling activities. However the operating costs have not declined to the extent targeted in the reform plans of the sugar industry. The Board is of the opinion that the workers should not be required to bear the burden of the external factors affecting the industry.
- With the downward trend in the permanent labour force employed from 31,637 in 1992 to 14,712 in 2002 and further to 6268 in 2008, the MSPA has had the added benefit of engaging those having taken VRS as seasonal labour and remunerating them as per the R.O. rates as compared to the Protocole d'Accord. Such a measure reduces the wage bill. According to the

MSPA, with the VRS II in 2008, the labour cost is estimated to have gone down further by Rs 500m as compared to 2007, thus contributing towards a further reduction in the cost of production of the industry.

- With mechanization, a machine's output per day is estimated to be equivalent on average to 40 to 50 cane cutters per day and in one of its documents submitted to the PAT in 2006, the Mauritius Sugar Authority has mentioned that by 2015 cutting and loading will be fully mechanised pointing to a further reduction in labour force in such activities.

IV. RECOMMENDATIONS

Having taken into consideration the principles stipulated at Section 97 of the Employment Relations Act 2008 in addition to the enlightening evidence and facts put forward by the parties, notwithstanding the limited resources at its disposal, the Board has arrived at the following conclusion and recommends accordingly:

The extension of the 40 hour week on a 6 day basis having already been endorsed by the Government before this matter was referred to the Board, it should be clear that the issue of whether the 40 hour week could be granted on a 5 day week basis or not was not a matter to be canvassed before the Board. As per the Board's reading of the reference sent to it by the Minister, the first issue debated by the Board was that of *notional calculation of hourly rates* for those affected by the PAT Award granted on 22 June 2007. No doubt NRB is not the forum to question a PAT Award. However, the Board fails to follow the logic behind the number of normal working hours per day being reduced from 8 hours to 7 hours without having any implication on the daily or hourly rate. Having considered the options available, the Board concludes that the most reasonable way to compute the hourly rate would be as follows:

A. **$M / [(40 \text{ hours} \times 52 \text{ weeks}) / 12 \text{ months}]$ i.e. $M / 173.33 \text{ hrs}$**

where M stands for the Monthly Basic Wage

The rationale behind this computation is that it leaves no room for any discrepancy/discrimination in the reward per hour of the worker between the crop or the intercrop season - the worker receives the same hourly rate irrespective of whether he /she will be working during the intercrop or the crop season. Furthermore, it also eliminates the fear of the workers that the daily rate is being unjustly calculated on an 8 hour-day basis while they are required to put in 7 hours of work per day during the crop season. To be fair to all parties, the adoption of the above computation is recommended, which in the Board's opinion rewards the worker for the hours put in, entitles him

to the overtime rate after the normal working hours actually required to be put in and also ensures that the employer is paying for the actual hours put in by the worker. The Board recommends accordingly.

Following the same rationale, it is recommended that **during the crop season**

- A day shall be deemed to consist of 7 hours on weekdays and 5 hours on Saturdays, thus cumulating into a 40 hour week spread over 6 days;

B. As far as the watchman is considered, the Board wishes to draw attention to the injustice being done to the watchman's computation of hourly rate. As per the actual provisions, the watchman's daily wage is divided by 14 to arrive at its hourly rate. This is an anomaly which should be done away with. Therefore the Board recommends that since the watchman is required to put in 12 hours per day during the intercrop season, the daily rate should be calculated on that basis only.

C. The Board also agrees with the fact that since the 40 hour week during the intercrop season translates into a 60 hour week for the watchman, it would be fair to grant the latter category a 60 hour week following the 40 hour week granted by the PAT to the other workers in the industry. Following the same reasoning as above, it is recommended that the hourly rate for the purpose of computing overtime should be as follows since it also eliminates any discrepancy in hourly rate arising due to the crop or intercrop season:

$M/[(60 \text{ hrs} \times 52 \text{ weeks})/12 \text{ months}]$ i.e. $M / 260 \text{ hrs}$

where M stands for the Monthly Basic Wage

It is also recommended that **during the crop season**

- A day shall be deemed to consist of 10 hours;

The Board is aware that any decision would necessarily entail a cost implication. However, it should be noted that at no point in time parties were able to prove to the Board that it would be an unbearable cost. The above recommendation follows the principle of 'Give to Caesar what belongs to Caesar' and that workers should not be made to bear the burden of the industry each time. While it is rather

difficult to make any changes to the payment to factors of production without at the same time increasing the cost of production, it goes without saying that if parties accept the 40 hour week on a 6 day basis, in a spirit of fairness they should also be prepared to accept the implications that it brings along.

Consequential Amendments

Following the Board's recommendation above and in accordance with the spirit of the Award, the 40 hour week on a 6 day basis translates into a 7 hour day during the weekdays and a 5 hour day during Saturday and hence the Second Schedule of the respective R.O.s is amended as follows:

- (1) paragraph 1(1) (b) (ii) of the Sugar Industry (Agricultural Workers) R.O. Regulations be deleted and replaced by the following "7 hours for every other worker";**
- (2) paragraph 2(2) (a) (ii) of the Sugar Industry (Non-Agricultural Workers) R.O. Regulations be deleted and replaced by the following "7 hours on any other day which is not a public holiday";**

Similarly, following the reduction from 45 hours week to 40 hour week for other workers of the industry, the watchman's working week is being reduced to the same number of hours as in the intercrop season, that is, 60 hour week. In addition, correction of the anomaly in the computation of the watchman's hourly rate, would entail the following amendments:

- (3) paragraph 1(4) of the Sugar Industry (Agricultural Workers) R.O. Regulations be deleted and replaced by the following "The length of a normal day's work for a watchman shall be 10 hours."**
- (4) paragraph 1A (3) of the Sugar Industry (Agricultural Workers) R.O. Regulations be deleted and replaced by the following "The length of a normal day's work for a watchman shall be 12 hours.";**

As regards, the payment for extra work, the Labour Act having been repealed, the following recommendations are being proposed as regards remuneration payable for extra work:

- (5) paragraph 2(1) of the Sugar Industry (Agricultural Workers) R.O. Regulations be deleted and replaced by the following "Where a worker works on a week day for more than the stipulated hours or works during intercrop season on any Saturday, the employer shall, in respect of the extra work, remunerate the worker at not less than one and a half times the rate at which the work is remunerated when performed during the stipulated hours.";**
- (6) paragraph 2(2) of the Sugar Industry (Agricultural Workers) R.O. Regulations be deleted and replaced by the following "Where a worker works on a public holiday, the employer shall, in addition to the remuneration payable under the employment agreement, remunerate the worker in respect of any work done –**
 - (a) during the stipulated hours, at not less than twice the rate at which the work is remunerated when performed during the stipulated hours on a week day.**

- (b) beyond the stipulated hours, at not less than three times the rate at which the work is remunerated when performed during the stipulated hours on a week day.”
- (7) paragraph 3 (1) of the Sugar Industry (Non-Agricultural Workers) R.O. Regulations be deleted and replaced by the following “Subject to the other provisions of this paragraph,
- (a) where a worker works on a week day for more than the stipulated hours or works during intercrop season on any Saturday, the employer shall, in respect of the extra work, remunerate the worker at not less than one and a half times the rate at which the work is remunerated when performed during the stipulated hours;
- (b) where a worker works on a public holiday, the employer shall, in addition to the remuneration payable under the employment agreement, remunerate the worker in respect of any work done –
- (i) during the stipulated hours, at not less than twice the rate at which the work is remunerated when performed during the stipulated hours on a week day.
- (ii) beyond the stipulated hours, at not less than three times the rate at which the work is remunerated when performed during the stipulated hours on a week day.”
- (8) paragraph 3(3) of the Sugar Industry (Non-Agricultural Workers) R.O. Regulations be deleted and the remaining sub-paragraphs under paragraph 3 be renumbered accordingly.

As far as the notional calculation of daily and hourly rates is concerned, based on the rationale provided above, the Board proposes the following amendments:

- (9) paragraph 3 of the Sugar Industry (Agricultural Workers) R.O. Regulations be deleted and replaced by the following
- “For the purposes of calculating remuneration payable –
- (a) for work done in excess of a normal day’s work;
- (b) on a public holiday;
- (c) for task work;
- (d) in respect of deductions for absences;
- (e) to workers paid at daily rates,
- A. the basic hourly rate shall be calculated using the following formula:

- (i) **M/260 in the case of a watchman;**
 - (ii) **M/173.33 in the case of any other worker,**
where M means the monthly basic wage of the worker.
 - B. a day shall be deemed to consist of 12 hours during the intercrop season and 10 hours during the crop season for a watchman;**
 - C. a day shall be deemed to consist of 8 hours during the intercrop season and 7 hours during the crop season for any other worker.”**
- (10) paragraph 4 of the Sugar Industry (Non-Agricultural Workers) R.O. Regulations be deleted and replaced by the following**
- “For the purposes of calculating remuneration payable –**
- (a) for work done in excess of a normal day’s work;**
 - (b) on a public holiday;**
 - (c) in respect of deductions for absences;**
 - (d) to workers paid at daily rates,**
- A. the basic hourly rate shall be calculated using the following formula:**
M/173.33 where M means the monthly basic wage of the worker; and
 - B. a day shall be deemed to consist of 8 hours during the intercrop season and 7 hours during the crop season.”**

Effective date

The Board also recommends that **such amendments shall be effective as from 1 July 2009.**

V. ACKNOWLEDGEMENT

The National Remuneration Board wishes to express its appreciation and thanks to all parties for their extensive submissions and cooperation for providing the required documents and sharing their useful opinion during its meetings. A special word of thanks also goes to the members of the technical staff of the Board who have dedicated long hours of work to produce this Report.

N.M.R Helene

Chairperson

16 October 2009