BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

Transferred Application No. 506/86

1. The National Railway Mazdoor Union
(Electrical Locomotive Workshop Branch)
Bhusaval
2. Mr. Kamalsingh Durgasingh Thakur
Bhusaval
3. Mr. M. Dwijendranath Mukherjee
Bhusaval

V/s.

1. Central Railway
through Mr. V.C.Narsingham
Chief Electrical Engineer
V.T. Bombay.
2. Railway Board
through the Secretary,
Ministry of Railways
Rail Bhavan
New Delhi 1

Coram: Hon'ble Member(A) J G Rajadhyaksha
Hon'ble Member(J) M B Mujumdar

Appearance:

Dr. R.S. Kulkarni
Advocate
for the Applicants

Mr. C.J. Shah
and
Mr. V.G. Rege
Counsels for the
Respondents.

JUDGMENT Dated: 17th June 87

(PER: J.G. Rajadhyaksha, Member (A))

Shri K.D. Thakur, applicant No. 2 above named filed in the High Court of Judicature at Bombay, on behalf of the applicants, Writ Petition No. 1829/85 on the 26th April, 1985. That Writ Petition has been transferred to this Tribunal by operation of section 29 of the Administrative Tribunals Act, 1985, and is numbered as Transferred Application No. 506/1986.

2. The original Writ Petition challenges a notice dated 13.4.1985 issued by the Respondents to the effect that the

working hours effective from 15.4.1985 will be as follows:

i) First General Shift 0730 to 1130 hours and 1220 to 1620 hours (Lunch 1130 to 1220 hours).

ii) Second General Shift 1625 to 2025 hours and 2055 to 0055 hours (recess 2025 to 2055 hours).

All the staff were adgised to take note of the change viz., the revised timings of the Electric Locomotive Workshop at Bhusaval.

3. The prayers in the Writ Petition were :

a) to set aside ~~&~~ and quash the impugned order/notice dated 13.4.1985;

b) stay the effect and operation of the impugned notice/order pending final hearing and disposal of the petition;

c) grant ad-interim ex-parte relief in terms of clauses (a) and (b) hereinabove, and

d) grant any other order for such further relief as may be found necessary;

e) award costs.

The orders of the High Court given on 29.4.85 were those of grant of interim relief as prayed for, with liberty to the respondents to move to vacate the interim relief after 48 hours of notice.

4. On 15.7.1985 interim relief/stay was continued further by the High Court. The Railway Board was then to be joined as a party. The matter was adjourned to two weeks. Further, on 25.9.1985 the orders of the High Court were "now returnable on 2.12.1985". Thereafter, again on 25.9.1985 the orders said -

> "heard counsel for the parties on interim relief. The undertaking filed by the petitioners' counsel taken on record and accepted. In view of the undertaking interim relief in terms of prayer (b) continued till disposal of the petition".

5. Thereafter on 22.12.86, the orders of the High Court read -

> "transferred to the Administrative Tribunal. Interim relief order to remain effective for a period of eight weeks from to-day".

Thereafter, the matter was transferred to this Tribunal and was actually received and registered on 29.11.86. The Respondents filed a caviat on 25 November, 1986 to forestall any further extension of the eight weeks interim relief orders given by the High Court on 22.12.1986 i.e., on the eve of transfer of the Writ Petition to the Tribunal. The matter was, therefore, kept for hearing on 11.12.1986. On 11.12.1986 a representative of Dr. Kulkarni, the learned advocate for the applicants, requested for an adjournment. The matter was adjourned to 17.12.1986 for hearing the question of granting further extension beyond 17.12.1986 of the interim relief granted by the High Court. On 17.12.1986 Dr. Kulkarni, the learned advocate, for the applicants and Mr. V.G. Rege, the learned counsel for the respondents, were both heard. The Tribunal held that there was no case for not continuing the interim relief simply because the matter is transferred to this Tribunal. The Tribunal directed that if the applicants furnished a fresh undertaking similar to the one that was given in the High Court, the interim relief orders passed by the High Court would continue. The applicants represented by Mr. M.D. Mukherjee, Secretary, National Railway Mazdoor Union, Electric Locomotive Branch, Bhusaval, furnished an undertaking similar to the one given in the High Court and reading -

> "In the event the petitioner not succeeding in the petition, the petitioner undertakes to refund the difference in the amounts of wages in respect of the 7½ hours and 8 hours from 15.4.1985 within the time limit stipulated by this Honourable Court in its final judgment and subject to any other directions given by this Honourable Court".

6. The hearing of the application actually started on 25.2.1987 when Dr. Kulkarni proposed to file an additional affidavit on 3.3.1987 and Mr. Shah and Mr. V.G. Rege said that they would file rejoinders on 6.3.87. The matter was kept for 9.3.87. Because of the inability of Dr.Kulkarni to attend, the regular hearing of the matter began on 17.3.87 and it was concluded on 9.4.1987.

7. In this background, we may now discuss the Transferred Application (the original Writ Petition). The applicant No. 1 is a Corporate Body being the Registered Trade Union representing the workmen of the Electric Locomotive Workshop at Bhusaval, numbering about 1200. Applicant nos. 2 and 3 are employees of the said Workshop. The Workshop commenced functioning in July, 1974 and the application says that since its inception the working hours of one shift in one day have been 7-½ hours with additional half an hour recess for lunch; that including lunch recess, the working hours per day were eight hours, with only 7½ hours of effective working. The other workshops viz., one at Lilooah in Howra District, West Bengal and the Bhusaval Workshop both had a 45 hour week. On 10.5.1984 respondents put up a notice about the change of working hours. The notice is annexed as Exhibit 'A' of the compilation. The change was alleged to have been opposed by the petitioners. There was correspondence at local level and the respondents were informed by the applicants that the change in the working hours was illegal and it was being introduced unilaterally. The representation is at Exhibit 'B' of the compilation. On 8.4.85, respondents postponed the effect of the notice to 15.4.85. This notice is at Exhibit 'C'. At Exhibit 'D'

is a letter from the respondents stating that the Works Manager was not competent to hold any discussions on an issue which has been settled at Headquarters level. At exhibit 'E' is the notice described as the final notice dated 13.4.1985 effecting change in the working hours from 15.4.1985. The applicants alleged that the proposed changes in the working hours were contrary to the Factories Act which was applicable to the Workshop as it was registered as a Factory under the Factories Act, 1948. They further maintained that the 'day' in terms of the Factories Act being 24 hours duration from 12 mid-night to 12 mid-night, the day's working hours cannot cross over these 24 hours ending at mignight. Further, the grievance was that before introducing this change, notice of change under section 9A of the Industrial Disputes Act, 1947 was not given by the respondents. Thirdly, the applicants stated that their present pay structure was based on the present 7½ hours working day, and that the unilateral increase of half an hour without any consideration and/or compensation would also be illegal. Thus, for reasons of contravention of the Factories Act 1948, as well as contravention of the Industrial Disputes Act 1947, and contravention of the contract of employment, the said change of working hours was stated to be illegal and void, not binding on the petitioners and the employees of the respondents in Bhusaval Workshop. There is a further allegation that the Factory Inspector had objected to the changes by the letter dated 10.4.1985 (Exhibit 'F' of the compilation).

8. Thus the respondents rushing through the implementation of the change was unilateral and, therefore, illegal. It was this that had led the applicants to file the Writ Petition in the High Court of Judicature at Bombay with the prayers that the said order be quashed as being illegal and

and that pending final disposal of the application (Petition) the operation of the impugned order at Exhibit 'E' be stayed. As we have said earlier, the High Court was pleased to grant interim relief which continues even to-day.

9. The Chief Electrical Engineer in the Central Railway Administration, Mr. Narsingham, has submitted his written reply on 10.6.1985. There was an affidavit in rejoinder filed by applicant no. 2 on 26th June, 1985. There was a sur-rejoinder filed by the said Mr. Narsingham on 8th July 1985. Further, since the Railway Board was a party, one Mr. T.N. Vijh, Joint Director in the Ministry of Railways (Railway Board) submitted an affidavit in reply on the 4th September, 1985. Mr. M.D. Mukherjee applicant no.3 submitted a rejoinder thereto on 23rd September, 1985. Further, there is on record an affidavit of one Mr. V.K. Fondekar, Chief Electrical Engineer at that time, dated 29th November, 1985, affirmed at Bhusaval. There is a rejoinder dated the 4th December, 1985. One Mr. Amit Chand Gora Baral has also filed the additional affidavit, which has been mentioned earlier, on 3rd March, 1987 enclosing certain documents therewith.

10. All this material is on record and it is being mentioned only so that the course that the dispute has taken should become clearer.

11. Strictly speaking, the main point is whether the notice dated 13.4.1985, Exhibit 'E', in the compilation constitutes "a change in the conditions of service" as alleged by the applicants and whether section 9A of the Industrial Disputes Act is attracted in this case, requiring us to decide whether there is a change in the 'conditions of service' and whether there has been a failure to

to comply with provisions of section 9A of the Industrial Disputes Act.

12. We have heard Dr. R.S. Kulkarni, the Learned Advocate, for the applicants at length. We have also heard Mr. C.J. Shah and Mr. V.G. Rege, the Learned Counsels for the Respondents.

13. Dr. Kulkarni opened his arguments by stating that the applicant no. 1 was recognised Union of Railway Employees at Bhusaval. There were about 13,000 employees in Bhusaval; 1200 of them being in the Electric Locomotive Workshop and the others being in the Steam Locomotive Workshop (6000); Diesel Locoshed (1200) and the Carriage and Wagon Shed(4000). The dispute is about change in working hours of the second general shift in the Electric Locomotive Workshop. There are two general shifts. The change has been so effected as to increase the working hours of the second general shift from $7\frac{1}{2}$ hours to 8 hours. Dr. Kulkarni adds that ever since the workshop started functioning in July, 1974 the timings have been (i) first general shift 0800 to 1200 hours; lunch recess 1200 to 1300 hours, and 1300 to 1700 hours i.e., a day of eight hours excluding one hour of lunch recess. (ii) The second general shift is stated to be operating from 1600 to 2000 hours; 2030 to 2400 hours with a recess between 2000 to 2030 hours i.e., it is a $7\frac{1}{2}$ hour working day which may be said to be 8 hours including the recess.

14. Dr. Kulkarni stated that there is also a third shift from 0000 hours to 0400 hours and 0430 to 0800 hours with a recess between 0400 to 0430 hours. Mr. Rege intervenes to say that there is no third shift operating in this Workshop.

15. It is Dr. Kulkarni's contention that all the other workshops and worksheds mentioned earlier have the same working

hours in three shifts. Turning to Exhibit 'A' Dr.Kulkarni said that this was a notice dated 10.5.1984 (actually it could be a notice dated 16.3.1985) being only a proposal. He adds that any change to be effected in the working hours can be so introduced only with the prior permission of the Factory Inspector and after a notice is given under Section 9A of the Industrial Disputes Act. He pointed out that the Factory Inspector had objected to any changes by his letter dated 10.4.1985. He had fixed discussions on 19.4.85 but somehow or the other the Factory Inspector endorsed his "No Objection" on a letter dated 15.5.1985 of the local management when the Railways decided to introduce the changed working hours. Dr. Kulkarni avers that the discussions did not take place between the management and the workers, and the Factory Inspector. After the Writ Petition was filed, the respondents approached the Factory Inspector and he endorsed his "No Objection" on 15.5.1985. In that letter, the Works Manager claimed that full security arrangements had been made and the relief had been provided for workers who might be detained beyond mid-night. The applicants allege that not only has there been an illegal introduction of half an hour of increase in the working hours, but the respondents have not made any arrangements whatsoever even after their letter dated 15.5.1985. Dr.Kulkarni adds that the Factory Inspector did not have any meeting with the workers and therefore, principles of natural justice had been violated. The "No Objection" granted by the Factory Inspector had not been communicated to the applicants at all, though it was obtained during the stay granted by the High Court.

16. Dr. Kulkarni formulated the points on which he would develop his case mentioning that (1) Firstly, the impugned

change was illegal not being preceded by a notice of change according to Section 9A of the Industrial Disputes Act and also being in contravention of provisions of Section 52 of the Factories Act; (2) The Second point he makes is that the change affects the labour and, therefore, cannot be introduced unilaterally, (3) The Third point he advances is that there is no quid pro quo i.e., any additional compensation for the additional hours of work that had been introduced, (4) Fourthly he states that there is a violation of the contractual obligation between the management and the workers in this matter. It is Dr. Kulkarni's contention that Section 9A of the Industrial Disputes Act makes a reference to Schedule-II thereto and item No. 4 therein reads as "hours of work and rest intervals". He then proceeds to discuss section 9B of the Industrial Disputes Act and says that nobody ever claimed exemption though the Railway Board had advised the Management to claim exemption, if at all it was required. In these circumstances, it was not open to the Administration at the local level to change the hours of work and thus change the conditions of service.

17. It is Dr. Kulkarni's contention further that though admittedly the workers stand covered by the Indian Railway Establishment Manual, this Manual does not speak of change in working hours and, therefore, in the absence of any rules authorising the Railways to effect such changes, any action taken by them to change the working hours would fall within the mischief of section 9 and 9A of the Industrial Disputes Act. It is Mr. Rege's reply at this stage that the proviso (b) to section 9A makes the situation clear. Since, admittedly, the workers are covered by the Indian Railway Establishment Manual neither are rules required to be made under Articles 309 of the Constitution for prescribing the

working hours, nor could the question of management seeking exemption arise in this particular case.

18. Dr. Kulkarni very strongly contends that failure to give a notice amounts to introducing a "change in the condition of service" without following the provision of Section 9A of the Industrial Disputes Act as also Section 52 of the Factories Act. Section 9A of the Industrial Disputes Act and Section 25T thereof referred to by Dr. Kulkarni may be reproduced here with advantage :

Section 9-A

Notice of Change: No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,

a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected;or

b) within twenty one days of giving such notice.

Provided that no notice shall be required for effecting any such change -

a) where the change is effected in pursuance of any settlement, award or decision of the Appellate Tribunal constituted under the Industrial Disputes (Appellate Tribunal) Act 1950; or

b) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) (Classification Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette apply.

Section 25 T

Prohibition of unfair labour practice : No employer or workman or a trade union, whether registered under the Trade Unions Act, 1926 (16 of 1926) or not, shall commit any unfair labour practice.

19. It is Dr. Kulkarni's argument that Section 25 T defines what is an "unfair labour practice." Schedule IV to the Act also gives details regarding unfair labour

practices under Section 25T and in this particular case since the Railways have refused to bargain collectively they had followed an unfair labour practice attracting criminal action under section 25U of the Industrial Disputes Act.

20. From the Factories Act 1948 we reproduce Clauses 'e' and 'f' of Section 2 thereof, for definition of the words 'day' and 'week'. We also reproduce Section 51 prescribing 'weekly hours'; Section 57 and 58 about 'night shift' and 'prohibition of overlapping shifts'. These are reproduced as in his contentions Dr. Kulkarni has referred to them.

S.2(e) "day" means a period of twenty-four hours beginning at mid-night.

S.2(f) "week" means a period of seven days beginning at midnight on Saturday night or such other night as may be approved in writing for a particular area by the Chief Inspector of Factories;

S.51Weekly Hours - No adult worker shall be required or allowed to work in a factory for more than forty-eight hours in any week.

S.52 "Weekly holidays" - (1) No adult worker shall be required or allowed to work in a factory on the first day of the week (hereinafter referred to as the said day), unless -

a) he has or will have a holiday for a whole day on one of the three days immediately before or after the said day, and

b) the manager of the factory has, before the said day or the substituted day under Cl(a) whichever is earlier, -

i) delivered a notice at the office of the Inspector of his intention to require the worker on the said day and of the day which is to be substituted, and

ii) display a notice to that effect in the factory:

Provided that no substitution shall be made which will result in any worker working for more than ten days consecutively without a holiday for a whole day.

(2) Notices given under sub-section (1) may be cancelled by a notice delivered at the office of the Inspector and a notice displayed in the factory not later than the day before the said day or the holiday to be cancelled, whichever is earlier.

S.52(3)Where, in accordance with the provisions of sub-section(1), any worker works on the said day and has had a holiday on one of the three days immediately before it, that said day shall, for the purpose of calculating his weekly hours of work, be included in the preceding week.

S.57 "Night Shift - Where a worker in a factory works on a shift which extends beyond midnight -

a) for the purposes of Secs.52 & 53, a holiday for a whole day shall mean in his case a period of twenty-four consecutive hours beginning when his shift ends;

b) the following day for him shall be deemed to be the period of twenty-four hours beginning when such shift ends, and the hours he has worked after midnight shall be counted in the previous day.

S.58 "Prohibition of overlapping shifts" - (1) Work shall not be carried on in any factory by means of a system of shifts so arranged that more than one relay of workers is engaged in work of the same kind at the same time.

*[(2) The State~~m~~ Government or subject to the control of the State Government, the Chief Inspector, may, by written order and for the reasons specified therein, exempt on such conditions as may be deemed expedient, any factory or class or description of factories or any department or section of a factory or any category or description of workers therein from the provisions of sub-section (1)]

* Subs. by Act 25 of 1954, Sec.12.

21. At this stage the Tribunal requested Dr. Kulkarni in the course of his contentions to enlighten it about (a) the working hours that were / have been followed in the other workshops and other sheds in Bhusaval or elsewhere and specially clarify the hours followed in other industrial establishments of the Railway; (b) whether the pay scales are uniform all over for an eight hour shift or there is any distinction in that respect and (c) whether there can be negotiations at the Headquarters level and whether those would be binding on both the local management of the Railways and the Branch of the National Railway Mazdoor Union at Bhusaval ?

22x

22. Mr. Rege pleads that the Railway Board's affidavit gives a clear indication about the working hours being followed in other workshops all over the country. He further clarifies that there is a system of rotation and, therefore, each worker who works at present by rotation in the first and second shifts works for eight hours in the first shift and 7½ hours in the second shift, whenever he is called upon to work in such shifts. Dr. Kulkarni further argues that each worker has to put in a total 15 hours and 30 minutes of work in rotation. The respondents are now seeking to make it 16 hours. The respondents are not agreeable to any additional payment. 48 hours is the maximum work that can be put in by a worker in a week; and it cannot be exceeded without giving any Over Time Allowance. There is no justification to deny the Over Time Allowance, because the hours were less than 48 and after change they would only reach the maximum of 48 hours. He cites certain Supreme Court cases in support of his arguments that there can be no additional work taken from the workers without giving them over time allowance. Dr. Kulkarni further adds that the present shift ends at 0055 hours, that is 55 minutes after mid-night and this is most inconvenient and disadvantageous because workers would have no regular trains available to take them home after this hour. Mr. Rege clarifies at this stage that the management would be willing to fix working hours in such a way that they would conclude at 2400 hours every day.

23. As for the point of collective bargaining raised by Dr. Kulkarni, Mr. Rege explained that there were discussions at the Headquarters as well as the local level at Bhusaval. Dr. Kulkarni adds that the workers would have been willing to go before the Industrial Tribunal but, unfortunately, this avenue is not open to them unless the Government agrees

~~24x~~ to conciliation and, therefore, the workers were forced to file a Writ Petition in the High Court.

24. In reply to the question about audit objection regarding less hours of work, that the Tribunal put, Mr. Rege pointed out that the audit had observed that by allowing workers to work for half an hour less every day in the second shift the Railways were incurring a loss of Rs. 60,000 per annum and, moreover, the local officers who gave this concession were not at all competent to extend it. He adds that this was not after collective bargaining that these hours, lesser than 8 hours, in the second shift were allowed, but they had been introduced by some one who was not authorised to do so, and totally against the Railway Establishment Code.

25. Dr. Kulkarni adds that such an arbitrary change cannot be sustained. In his arguments Dr. Kulkarni states that it is very clear from the minutes of the meeting held at local level on 12.3.1984, that there was no formal agreement reached and, if at all, there was some understanding which was now being acted upon. He adds that the National Railway Mazdoor Union had never agreed to the changes, but had on the contrary suggested that the second shift may start at 2200 hours and end at 0600 hours in the morning. ~~26~~

26. Further, referring to the affidavit filed by the respondents and exhibit 3 attached thereto Dr. Kulkarni said that though admittedly there is a very small number of workers in the second or round the clock shifts in the other workshops or sheds, the working hours do not indicate the half hour recess that is unavoidable. There must be a recess of half an hour and in that case the actual working in that shed could not be more than 7½ hours. He further argues that half an hour less work does not necessarily mean that there

is lesser production. There is, therefore, no National loss at all, especially when offices work a 36 hours week and the factories have to work between anything from 45 hours to 48 hours. Dr. Kulkarni argues that the 45 hour week in the workshop in which the applicants are working is not really the mistake of the administration, but it is in keeping with working hours elsewhere in Railway workshops in the country. He then says that the alternatives before the Tribunal which he can press are (a) either the application may be allowed, or (b) if the Tribunal is not convinced, it may be rejected, (c) the third alternative of course would be to give directions regarding observance of proper hours of work and payment.

27. Dr. Kulkarni pointed out that there were some proposals for fixing working hours in 1976, but they were not implemented. The Headquarters introduced revised timings. It is significant that during the pendency of the Writ Petition and behind the back of the Union the local management got the Factory Inspector to endorse "No Objection" to the proposed working hours. As for the number of workers, Dr. Kulkarni said that there were about 1100 workers in this workshop, 950 of whom work in the day shift, and the remaining 150 or so in the second general shift.

28. It is Dr. Kulkarni's contention that if for any set reason the Railway Board kept, in a particular workshop, the hours of work at less than 45 hours in the week or for any special reason they allowed a change even after the year 1949 (i.e., after the introduction of the Factories Act), though it might be a change of only five minutes per day concession given to the Integrated Coach Factory at Perambur, this only goes to show that there need be no rigidity and it is open for

Railways to accommodate the workers at Bhusaval within the 7½ hours work in the second shift.

29. Dr. Kulkarni further argues that even if a notice under Section 9A is given, a unilateral decision would be illegal and that not negotiating with the recognised Union is an unfair Labour Practice. Dr. Kulkarni then refers to the Fourth Pay Commission Report, paragraphs 26.3 and 26.13 on pages 261 onwards to make his point that even the Fourth Pay Commission agreed that there could ~~xxx~~ be no standardization of working hours as such. Then he refers to page 194 and 195 of the same report about other categories of staff and workshops.

30. Dr. Kulkarni also refers to the report of the National Labour Commission, popularly known as the Gajendragadkar Commission, in which there is a suggestion that the normal working hours should be less than 48 per week in three shifts. International Labour Organization also recommended even a 40 hour week subject to economic development and production levels of a particular country. Dr. Kulkarni proceeds to cite cases in support of his contentions that the Bombay High Court, of which this Tribunal is a coordinate Bench, had given e.g., the decision in Transport and Dock Workers case as well as decisions in the case of the Food Corporation of India, which all go to suggest that the courts are reluctant to let administration take the protection of proviso (b) to section 9A(2). He strongly urges that a notice is essential. Canons of Law as commented upon by Maxwell on 'Interpretation of Statutes' are that the scope of the proviso is 'smaller' than the main provision and it has to be read with the totality of the Act, when construing a proviso. He further argues that reasonable interpretation

cannot mean nullification of the main provisions. Lastly, he argues that canons of Natural Justice will have to be applied even if there is no rule, since there was no hearing given to the workers before introducing the change. The action taken by the Railway was bad in law and bad in equity. Further, he also adds that the hours of work as introduced would encroach upon the private and personal life of an employee by detaining him beyond mid-night and when he does not have enough facilities to get home or rest in the factory premises. He urges that the labour should not be treated as 'bonded labour' and without providing a 'quid pro quo' there should be no change. The very fact that the respondents offered some concession goes to show that there are no convenient trains for these labourers to get back home.

31. It is not necessary to discuss all authorities cited by Dr. Kulkarni. Some of them are briefly mentioned herebelow:

31.1 Dr. Kulkarni referred to A.I.R. 1960, S.C. 879, in the case of M/s. North Brook Jute Co. Ltd., the head note says that conditions of service are changed when change is actually effected and not when notice of change under Section 9A is given. This is with special reference to operation of Section 33 &33-A of the Industrial Disputes Act. The suggestion is that, even if Section 9A is not applicable, consultation with the workers is essential, according to Dr. Kulkarni.

31.2 Then Dr. Kulkarni cites A.I.R. 1969, S.C. 306. Referring to the question of overtime payment Dr. Kulkarni suggests that if the hours of work are fixed at the maximum, then any extra work would invite payment of overtime wages.

But even if the total of hours of work being 39 they are increased so as not to exceed 48 hours it would amount to increasing hours of work, altering conditions of service and necessitating payment of overtime.

31.3 In AIR 1979 SC 621, the famous case of M.P. Sugar Mills V. State of Uttar Pradesh, on the question of Promissory Estoppel, Dr. Kulkarni says that it is laid down that the person affected must act upon it adversely to his own interest on a promise given by another party. Promise would be binding on the party making it and that he would not be entitled to go back upon it, if it would be inequitable to allow him to do so.

31.4 Then in AIR 1964 SC 179, Devadasan V. Union of India Dr. Kulkarni emphasises that the important part of this judgment is that the proviso on an exception cannot be so intrepreted as to nullify or to destroy the main provision.

31.5 Citing AIR 1968, Mysore 49, Dr. Kulkarni in order to convince us that our order in this application which was originally writ petition would be equivalent to an order of the High Court quashing an award of a Tribunal and substituting it by settlement arrived at by parties as prayed for. cites this case. What emerges from our order can be construed as an award is what Dr. Kulkarni emphasises.

31.6 Referring to AIR 1982, SC(L&S) 124, Dr. Kulkarni urges that what has been laid down is that any interpretation of statutes particularly Labour Laws where a word or a provision is capable of more than one possible interpretation ~~though~~ that which favours the workman must be preferred.

31.7 At this stage Mr. Shah, however, pointed out that in the case of Oil and Natural Gas Commission, AIR 1973, SC(L&S) 153 the Supreme Court held that the hours of work prescribed during construction could within the discretion

and powers of the management, be refixed within the limits prescribed by the statute. The court also held that when the change is covered by Sec.9A compliance with that section would be necessary. The Supreme Court also added that the working hours being less in some other office (establishment) would not be a cogent ground for reducing the working hours.

31.8 Mr. Shah ~~emphasises~~ relies the case of B.S. Vadera V. Union of India, AIR 1969, SC 118, which deals with Railway Establishment Code Rule 157 and it has been held that the Railway Board acting under Rule 157 can make rules with retrospective effect. The proviso to Article 309 clearly lays down that in rules so made shall have effect subject to the provisions of any such act, thus if the appropriate legislature has passed act under Article 309, the rules framed under the proviso will have effect subject to that act, but in the absence of any act of the appropriate legislature on the matter the rules ~~may~~ made by the President or by such person as he may direct ~~or~~ are to have full effect both prospectively and retrospectively. The Railway Establishment Code has been issued by the President in the exercise of his powers under proviso to Article 309, under rule 157 President has directed the Railway Board to make rules of general application to non-gazetted Railway servant under their control.

31.9 The provisions of S.9A ~~protects~~ protects the interests of the employees in that it prohibits an employer from taking any action in the specified matters without notice. When a notice is given they can take such steps as law permits before the changes proposed by the employer are brought into effect by unilateral action; this action has no application to a settlement arrived at in the course of a conciliation proceeding and argues/ Hold where S.9A is not attracted at all the question of notice would not arise.

32. Mr. Shah (with Mr. Rege) appearing for the respondents stated that Dr. Kulkarni has assailed Section 9A of the Industrial Disputes Act. He maintains that the respondents have not sought to change "the conditions of service". In fact, in their reply it has been stated that there is no change in the conditions of service. He says that the workshop at Bhusaval was established in 1974 and initially had only one shift working from 0800 hours to 1700 hours with one hour lunch recess, which system went on till 1976, when the second shift was introduced. The categories of workmen in this workshop are Khalasis, artisans, chargemen and supervisors. He produces for the perusal of the Tribunal, letters of appointment which clearly show that clauses 5(five) and 6(six) read together with some other clauses very clearly state that the artisans and trainees will have to work "according to the Railway Administration's Rules" for POH "organization". Similarly, the Khalasis' letters of appointment have clauses 4 and 5. The chargeman's letters of appointment have clauses 5 and 6. All these very clearly make the employees subject to the rules of the Railway Administration. What are these rules ? The Indian Railway Establishment Code and rules thereunder have been framed by the President under Article 309 of the Constitution. Article 309 speaks of recruitment and conditions of service that can be determined by legislation including rules. There is a proviso to this article which permits the President to nominate an authority for framing rules. The Indian Railway Establishment Code which is thus promulgated under Article 309 of the Constitution, contains further rules viz., rule 157 which gives full powers to the Railway Board to frame rules in respect of non-Gazetted servants for general application. In certain cases, the General Managers have also been given such powers for framing

rules. The Indian Railway Establishment Code also indicates that the Railway Board had framed the Railway Mechanical Department (Workshop) Rules, in 1940 which have been revised in 1950 and so on from time to time. Rules 401 to 408 of these rules are in fact reproductions of sections 34 to 38 of the Factories Act. Rule 409 talks of normal working hours being 8½ hours on week days and 5½ hours on Saturdays, and therefore, a total of 48 hours in a week. Therefore, now it would be 8 hours a day because Saturdays are now full working days. It is not possible to prescribe any lesser working hours without the prior approval of the Railway Board. The local conditions can be taken into account by the local management which can then fix actual working hours and distribution of these working hours amongst days of the week. It is Mr.Shah's very strong contention that this is a statutory requirement that there will be not less than 48 hours of work in a week in the Railway's Mechanical Workshops. This statutory requirement is further strengthened by the contract of employment, copies whereof have been shown to the Tribunal earlier, which prescribes the conditions of service. In the light of these provisions, Mr. Shah argues that what is sought to be done on 13.4.1985 is not an introduction of change in the conditions of service. There is a proposal to change the hours of work, but what is sought to be done is that the provisions of the contract of employment and the statutory requirements are being enforced properly by restoring the working hours to 48 hours in a week instead of letting them be at 45 hours a week, introduced erroneously by the local management. Since the "normal" working hours are to be 48 hours and the workers were doing less than that, what the authorities are now seeking to do is to correct the distortion. He pleads that practice and that too an incorrect one cannot over-rule statute and contract conditions.

33. As for promissory estoppel which Dr. Kulkarni had urged, Mr. Shah pointed out, that if the officer making a commitment is not authorised to do so, he cannot compel the Government to accept, condone or acquiesce in a breach of law, There can, therefore, be no estoppel if the local officer has done something which is contrary to the Indian Railway Establishment Code. Referring to AIR 1969, SC 118 Vadera's case, Mr. Shah adds that it is within the power of the Railway to make rules having even retrospective effect. In this particular case, rules have been made legally effective and, therefore, they must prevail, since paragraphs 409 of the Indian Railway Code and the Rules applicable to Railway Mechanical Department (Workshops) are perfectly legal and they have to be given effect to. He points out the affidavit of Mr. K.D. Thakur and says that, admittedly the applicants have said that Indian Railway Code applies to this workshop, and there is no ground now whatsoever to infer from anything on record or outside it, that the Railway Board had allowed lesser working hours. The presumption of exemption given by Government, is therefore, wrong. Mr.Shah further argues that para 3 of the petition admits negotiations at local levels and, therefore, it is not now open to the applicants to say that there was no discussion with them or that there was no collective bargaining. Turning to section 57(b) of the Factories Act, he points out that this section has a special reference to holidays and how they can be adjusted. There seems to be nothing, therefore, to prevent the working hours going beyond mid-night i.e. 2400 hrs., if necessary. Mr. Shah argues that the contents of the application (Petition) are very general and, therefore, do not make out a case that respondents introduced any change in the

conditions of service. He maintains that there was no violation of the conditions of service. He points out to the various documents produced containing correspondence between the Union and the Management and between the Inspector of Factories and the Management. He argues that there was a proposal of some overlapping of hours in the initial stages. That overlapping was sought to be removed by adjusting the working hours in such a way that there would be no contravention of section 58 of the Factories Act. Mr. Shah explained in reply to a question from the Tribunal, that all workers in both the shifts do the same type of work viz., overhauling of locos. The first shift has 950 workers, the second shift has about 120 workers. Office staff is not counted. The total number of workers at this Electric Locomotive Workshop is about 1100 or so. On 7.12.1981, audit raised objection about the lesser hours of work and consequent loss to the Government. That was the first ever audit and it came five years after the second shift was introduced. The audit observed that para 409 of the Indian Railway Code had been violated. It is to meet these audit objections that there was a proposal for removing the anomalies. In 1983, the proposal was floated, discussions with the applicant Union and the Central Railway Mazdoor Sangh were held. The Central Railway Mazdoor Sangh having a membership of 400 out of 1100, had agreed. The National Railway Mazdoor Union having the rest of the 700 members did not agree and suggested alternate working hours. Mr. Shah also stated that there is a possibility that some workers belong to both the unions. Mr. Shah states that officers had been called to Bombay at Head Office, discussions had taken place on 22.12.1984 and on 30.1.1985 in Bombay. The applicant Union had objections even to removing the over-

lapping and stuck to its demand of 7½ hours of work in the second general shift. Respondents could not agree to the 7½ hours shift as normal working hours had to be adhered to and the Railway Board had not been moved for exemption, nor was any exemption granted even by inference. Therefore, on 16.3.1985, the Headquarters of the Railways at Bombay decided to make the changes. Applicants requested the Railways to review the decision and, therefore, introduction of revised timings was postponed from 8.4.85 to 15.4.85. Notices were issued as shown in the compilation. The Writ Petition was filed on 26.4.1985. The Factory Inspector wrote to the management asking for discussions before change. The Factory Inspector's correspondence which is now brought on record shows that he gave a clear 'No Objection' on the respondent's letter of 15.5.1985 following a meeting between the Factory Inspector and the Works Manager on 8.5.85. Therefore, even this point that there should be approval of the Factory Inspector to the change in timings has been complied with and nothing now remains to be done.

34. Mr. Shah points out that the new timings were introduced and went on till 3.5.85, when the High Court granted a stay and on 25.5.85 the stay was confirmed on an undertaking furnished by the applicant Union. The stay order was repeated and further continued by the Central Administrative Tribunal. It would thus be seen that in fact there is a contractual and a statutory obligation on the workers to work for 48 hours a week. A mistake committed by a local officer cannot bind the Government and the Railway Board and that there can be no promissory estoppel as such. It is Mr. Shah's contention that what is sought to be done is to maintain, by restoration, the 48 hours week,

and not enhancing the 45 hour week, to 48 hour week as alleged.

35. As for the legal point, he strongly urges that the Railways squarely fall under Clause-B of the proviso to section 9A(2). There is a Railway Establishment Code and the Mechanical Workshop Rules have been framed under that code and, therefore, it is within the powers of the Railways to make such rules and, therefore, there can be nothing wrong with the Railways restoring the hours of work even without giving a notice under section 9A of the Industrial Disputes Act.

36. He further argues that assuming section 9A is applicable in this matter, he pointed out that there were several meetings and consultations in the prescribed manner. He argues that the proviso is substantially complied with, though Dr. Kulkarni says, at this stage, that there has got to be a notice in the prescribed form given to the office bearers of the Union i.e., Form E under rule 34 of the Industrial Disputes Act. Mr. Shah admits that there was no formal notice given, But since both the recognised Unions had been in meeting with the management on 12.3.1984; 21.3.1984; 17.7.1984 and that they were made aware of the audit objections and the provisions regarding normal hours and since the Central Railway Mazdoor Sangh had agreed to the change it will have to be held that this part of the law has been substantially complied with.

37. Mr. Shah's further argument is that settlement is not a prerequisite to introduction of any change under section 9A. Section 9A seeks to safeguard the interests of the workers. The workers can take such steps as they desire if they do not agree to changes. In other words,

after due consultation, even a unilateral introduction of changes is possible under the law and, therefore, there is nothing wrong in what the Railways have done. He urges, therefore, personal hearing is not essential as long as the views of the Union and the workers and their representatives have been taken into account.

38. Turning to some of the facts Mr. Shah says that in the second general shift, the number of workers has been a minimum of 40 and a maximum of 120. It is the first general shift which has, on an average, 950 workers attending every day. Of this total 1090 workers, 485 have railway quarters, 460 reside in Bhusaval in their own houses and only 105 stay in nearby villages, within a radius of 6 to 8 kms, from the workshop. Only 40 stay at Jalgaon or some other places. They are invariably accommodated by adjustment in the shift whenever there is some request on grounds of inconvenience. It is not, therefore, as if a very large percentage of workers is being adversely affected by an unilateral action of the respondents. Turning to the various authorities cited by Dr. Kulkarni, Mr. Shah takes stock of these and shows how they are not applicable in the instant case. For example in 1960(1) LLJ, 580 a change pending "reference" was struck down, there is no such case here. The Sunday off was changed to Wednesday off in 1972(2) LLJ, 259 the case of Tata Iron and Steel. The Court said that the schedule must be liberally construed. There is no such case here. In other words none of the cases cited by Dr. Kulkarni apply in the present case. In 1982(1) LLJ, 33 it is said that where two interpretations are possible benefit of reasonable doubt must be given to the workers. There is no such case here in the present matter. Mr. Shah, therefore, argues that viewed from

any angle whatsoever, the applicants have no case. They have actually launched this frivolous and vexatious litigation, out of an issue which in fact is 'non est'.

39. Dr. Kulkarni in reply pointed out that even withdrawal of customary concessions requires a notice under section 9A. He doubts whether the Indian Railway Code is part and parcel of the Railway Establishment Code which would be covered by Clause-b of the proviso to section 9A(2). He wants this Tribunal to put a liberal construction in favour of the workers. He maintains that there was no negotiation in good faith and, therefore, an unfair labour practice was followed by Railway. In conclusion, he requests that the stay be continued for a further period of two months, if the judgment goes against the workers, to enable the workers to adjust themselves to the changed circumstances. In conclusion Dr. Kulkarni replies to a question of the Tribunal that the undertaking given to the High Court and to the Central Administrative Tribunal should be enforced in proper spirit and not very rigidly.

40. Mr. Shah and Mr. Rege both said that in the event of the undertaking having to be enforced, it is the petitioner Union (Applicant No.1) which will have to refund the excess wages collected by the workers.

41. After having heard the learned advocates for both the sides, studying the record of the case including the additional documents produced by the applicants as well as respondents (with copies exchanged with the consent of the learned advocates) and the various authorities cited by both by Dr. Kulkarni and Mr. Shah we come to the conclusion that this is not a case in which the Tribunal must decide in favour of the applicants. Our reasons are as follows:

42. First of all on the point of Law, we agree with Mr. Shah that sections 9 and 9A of the Industrial Disputes Act are not attracted in this case. Clause b of the proviso to Section 9A(2) makes it very clear that where there are special rules which include the rules made by the Railways, Section 9A will not apply. In the case before us, as amply demonstrated, the Railway Establishment Code and rules thereunder are in fact promulgated under Article 309 of the Constitution. Since the Railway Establishment Code itself permits the Railway Board to wield full powers with respect to non-Gazetted servants, and since there also is a separate set of rules viz., the Railway Mechanical Department (Workshops) Rules, of 1940 framed under the said Indian Railway Code, we hold that these codes and Manuals have legal force and, therefore, they are not falling within the mischief of clause(b) of the proviso to section 9A(2). Having settled this point, we would now turn to what has been done by the local management. Here again, it is very clear that if any changes, meaning prescription of hours less than the normal hours of work which is a 48 hour week, are to be introduced the prior approval of the Railway Board is a sine qua non. It is very clear that there is no such prior approval of the Railway Board. If at all, therefore, the local officer has acceeded the demands and introduced a wrong schedule of work inasmuch as they prescribe only 7½ hours of work in the second general shift at this particular workshop. It is, therefore, perfectly legal for the respondents viz., the Railway Board and the General Manager of the Railways or his representative the Chief Electrical Engineer, to set the matter right by restoring appropriate working hours. We cannot, therefore, find fault with

Exhibit 'E', the notice given by the local authorities of the Electric Locomotive Workshop, Bhusaval, prescribing the hours of work which would be 8 hours of effective work in each of the two shifts viz., the first general shift and the second general shift.

43. As for the question of quid pro quo raised by Dr. Kulkarni, also we feel that as we have already ascertained, the pay scales are uniform all over, irrespective of the hours of work. It is not clear if in certain workshops where the hours of work are less than 45 hours in a week the pay structure is different. But for a 48 hour week the pay scales seem to be uniform. If, therefore, people have been working for less than 8 hours a day or 48 hours a week and have been adhering to the 7½ hours a day working, then they have not earned their wages which they have been getting according to the uniform pay scales. In fact, they will be getting more pay for less work which is unjust and inequitable. In the circumstances, by restoration of working hours to 48 hours per week the Railways have not rendered themselves liable to the sanction of any quid pro quo in favour of the applicants and their workers.

43. The result of these discussions would be that the Railways are held to be fully justified in prescribing an 8 hour shift in the second general shift in the Electric Locomotive Workshop at Bhusaval. Thus our decision with reference to important points raised by Dr. Kulkarni is that:

a) In fact there is no change in the conditions of service and, therefore, in any case section 9, 9A and 9B of the Industrial Disputes Act are not attracted; nor are Sections 25T and 25 U thereof.

b) Further, in any case, since it has been established that the conditions of service are governed in the case of these employees by the Indian Railway Establishment Code and the Railway Engineering Mechanical (Workshop) Rules, which are according to us statutory in nature, Clause(b) of the proviso to section 9A(2) clearly excludes these workers from the operation of section 9A, and, therefore, there is no question of giving a notice of change as such.

c) Further, we find from the records that in their letters of appointment the workers have agreed to a contractual obligation to work according to the rules prescribed by the Railways. They cannot get out of it now by pleading that the conditions of service are sought to be changed unilaterally without giving them notice. In fact there is no unilateral change as such, since we have seen that though perhaps section 34 of the Factories Act has not been fully compiled with by giving a formal notice to the office bearers of the union, there have been ample opportunities to the office bearers of the Unions to discuss the matters with the Railway Administration at Bhusaval and also at the Head Office level. We notice from this correspondence that there is no attitude of cooperation from this particular Union at all, whereas the other Union (Central Railway Mazdoor Sangh) which has more than 25% of the workers as its members has agreed to the changes proposed by the local management. It

It would not, therefore, be correct to say that the entire labour force is against the change and, therefore, taking into account the consultations that have been held from time to time and the attitude of the National Railway Mazdoor Union, we have no hesitation in holding that there was enough consultation and the action taken by the Railway Administration is not unilateral, and is fully legal and proper.

d) We conclude that there has been no violation either of the provisions of the Industrial Disputes Act, or the provisions of the Factories Act in this particular case. We need not go into the minute details of the correspondence between the Railway Management on the one hand and the Factory Inspector, or the Railway Management and the Unions on the other, because after taking a collective view we feel that the action taken by the local administration to restore the working hours to eight hours per day in the second general shift is perfectly justified and legal.

e) The Fourth Pay Commission recommendations and the report of the National Labour Commission do not seem to have any direct bearing on the instant case and, therefore, we need not go deeper into those aspects either. In fact the observations and recommendations in both these documents help the respondents if they are properly read and understood. None of these suggest lesser working hours at the cost of the Nation, particularly one which is economically developing.

44. Considering all the aspects, therefore, we decide that the applicants have not made out a case which can be granted. The application is liable to be dismissed. We, therefore, pass the following orders:

ORDERS

1) The Transferred Application No. 506/86 (Original Writ Petition No.1829/85) is hereby dismissed.

2) Since we hold that the notice at Exhibit 'E' is legal and binding, we vacate the stay granted by the High Court and further continued by this Tribunal, and allow the Railway Administration to introduce the effect of that notice at Exhibit 'E' dated 13.4.1985 with immediate effect.

3) We leave it to the good sense of the local management to allow the workers to adjust themselves to the changes without prescribing any time limit, as such, for implementation of Exhibit 'E' notice prescribing hours of work. But it should be possible for them to achieve adjustments within a fortnight from now.

4) As for the undertaking given in the High Court and repeated before this Tribunal, we feel that the undertaking deserves to be strictly enforced. The undertaking which has been reproduced at the outset says that "in the event of the petitioners not succeeding in the petition they undertake to refund the amount of wages in respect of the difference between 7½ hours and 8 hours from 15.4.1985 within the time stipulated by this Honourable Court in its final judgment and

subject to any other directions by this Honourable Court". We, therefore, direct that the undertaking should be enforced against applicant No. 1 only which is the Union and it need not be enforced against the individual applicants Nos. 2 & 3 or against other workers individually, as those belonging to Central Railway Mazdoor Sangh had agreed to the change but had to fall in line with others without active acquiescence. Even all members of the National Railway Mazdoor Union could not be against these reasonable changes.

5) We further direct that the Accounts Officers of the Railway should work out the dues of wages between 8 hours and 7½ hours i.e., they should calculate the excess of wages which has been obtained by the employees of the Electric Locomotive Workshop at Bhusaval, and in enforcing the undertaking recover the said amount from the Applicant No. 1 i.e., the National Railway Mazdoor Union.

6) Since the amount is likely to be quite large, if the figure given by the audit viz., Rs. 60,000 per annum is accepted as correct, we further direct that the payment of this amount to the Railway Administration by Applicant No. 1 should be effected within a period of four months from the date of this order.

7) Normally, we would have ordered the parties to bear their own costs. But in the particular matter we also feel inclined to observe that the litigation was uncalled for and misconceived,

and, therefore, we would order that the applicant i.e., Applicant No. 1 do pay to the respondents a sum of Rs. 1,000 by way of nominal costs of the litigation, which has been pending for over two years now. The payment of Rs. 1,000 as costs should be made within 15 days of the date of this order.

17/6/87

(J G Rajadhyaksha)
Member (A)

17-6-1987

(M B Mujumdar)
Member (J)