

**INDUSTRIAL DISPUTES TRIBUNAL**  
**Dispute No.: IDT 7/2012**

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**SETTLEMENT OF DISPUTE**

**BETWEEN**

**NORANDA BAUXITE LIMITED**

**AND**

**UNIVERSITY & ALLIED WORKERS UNION**

**AND THE**

***AWARD***

**I.D.T. DIVISION**

**MR. NORMAN WRIGHT, Q.C.     -   CHAIRMAN**  
**MR. RION HALL                     -   MEMBER**  
**MR. D. TREVOR McNISH         -   MEMBER**

**FEBRUARY 3, 2016.**

**IDT 7/2012**

**INDUSTRIAL DISPUTES TRIBUNAL**

**AWARD**

**IN RESPECT OF**

**AN INDUSTRIAL DISPUTE**

**BETWEEN**

**NORANDA BAUXITE LIMITED**

**(THE COMPANY)**

**AND**

**UNIVERSITY AND ALLIED WORKERS UNION**

**(THE UNION)**

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**REFERENCE:**

By letter dated April 25, 2012 the Honourable Minister of Labour and Social Security pursuant to Section 11A. (1) (a) of the Labour Relations and Industrial Disputes Act of 1975 (hereinafter called “the Act”), referred to the Industrial Disputes Tribunal for settlement in accordance with the following Terms of Reference, the industrial dispute described therein:-

The Terms of Reference were as follows:

**“To determine and settle the dispute between Noranda Bauxite Limited on the one hand, and the University and Allied Workers Union on the other hand over:**

- a) The Union’s request for information in relation to the Productivity Incentive Scheme for the period January 1, 2007 to December 31, 2011 and**

**b) The establishment of a Productivity incentive Scheme for workers represented by the University and Allied Workers Union.**

**DIVISION:**

The division of the Tribunal which was selected in accordance with Section 8(2) (c) of the Act and which dealt with the matter comprised:

Mr. Norman Wright, Q.C. - Chairman  
Mr. Rion Hall - Member  
Mr. D. Trevor McNish - Member

**REPRESENTATIVES OF PARTIES:**

The **Company** was represented by:

Mr. David Wong Ken - Director of Property & Legal  
Miss Marshalee White - Attorney-at-Law

The **Union Representative** was absent.

**SUBMISSIONS AND SITTINGS:**

Briefs were submitted by the parties and oral submissions made during three (3) sittings, from November 3, 2014 to December 8, 2015.

**BACKGROUND**

The Ministry of Labour and Social Security referred a dispute between Noranda Bauxite Limited (NBL) and the University and Allied Workers Union (UAWU) by letter dated April 25, 2012.

The Terms of Reference (TOR) was in two parts and hearings at the Tribunal began on June 28, 2012. At the third sitting of the Tribunal it was agreed and accepted that the parties would make submissions to the Tribunal in respect of section (a) of the TOR and that a decision would be taken by the Tribunal before submissions were made in respect to part (b).

The Tribunal after nineteen (19) sittings, handed down its Award in relation to part (a) on April 10, 2014, however, despite the efforts of the Tribunal sittings in connection to part (b) were frustrated, mainly due to the unavailability/none attendance of the Union representative and the first of three sittings was held on November 3, 2014.

In light of the Award handed down on Part (a) the Company raised the issue as to whether it was necessary to proceed with Part (b) of the TOR while the Union showed no interest in reconvening to address that part. It was finally decided by the Tribunal to advise both parties of a date to be set for the hearing and pursuant to this decision; both parties were informed of a date for this purpose.

Unfortunately, no response was received from the UAWU as to the likelihood of its attendance and on December 8, 2015; the Tribunal proceeded with the hearing and heard submissions from Mr. David Wong Ken, Director of Property and Legal for NBL with respect to Part (b) thereof.

#### **THE COMPANY'S CASE:**

The Company through its representative contends that it accepts the ruling of the Tribunal in the Award regarding Part (a). Consequently, NBL was very mindful of the Tribunal's emphasis that

- a) ***“The Tribunal’s role in settling disputes is to create a peaceful and harmonious working environment consistent with the principles enunciated in the Labour Relations Code and the preservation of harmony and co-operation among all players, as well as stability within the Bauxite Industry, is of great importance.”***

The above is consistent with the Labour Relations Code and with the objectives and rational of the 1998 Memorandum of Understanding (MOU), to wit:

- a) *....the parties wish to pursue the objectives of developing the bauxite/alumina industry and enhancing its international competitiveness;*

*and*

*b).....the parties are **fully committed** to pursue strategies designed to achieve the fundamental transformation in employment relations, **strengthening all round co-operation** in the bauxite/alumina industry and establishing a **framework for consensus** thereon: and*

*c)....the parties recognize that in order to achieve the aforesaid objectives **a mechanism must be established for collaboration and consensus building.***

The 1998 MOU is the Mechanism for collaboration and consensus building that the UAWU agreed to.

The Company also contends that, by signing the 1998 MOU the UAWU agreed, at page 7 Article 3(v), that it would in good faith:-

***v. Refrain from engaging in rivalry which is detrimental to the stability of the industry.***

As has been established when Part (a) was argued, a Productivity Incentive Scheme with well- regulated rules in which the UAWU participated already exists. The Tribunal stated it most eloquently that, *the Productivity Incentive Scheme is a creature of the 1998 Memorandum of Understanding.*

What is more, the Productivity Incentive Scheme is approved by the Ministry of Finance under the Income Tax Act, which carries other ramifications.

Implicit in the establishment of a separate Productivity Incentive Scheme for the members of the UAWU, would be their withdrawal from the scheme established by the 1998 MOU. This would introduce a different treatment for one category of workers over another and would create a rivalry that would have in it the potential seed of disharmony that could take root and spring up at the work place.

The Company further submits, that an aggrieved party to the MOU is under a duty and an obligation to consult with all the parties to the MOU whereon all parties shall in good faith examine, deliberate and assess the situation and determine a suitable course of action.

There is no evidence before the Tribunal that the UAWU has made any attempt to satisfy the duty that it undertook when it signed the 1998 MOU.

If it is that the UAWU wishes to abandon the 1998 MOU as the Mechanism for collaboration and consensus and to insist on a Productivity Incentive Scheme for its members, it must do so by way of a Claim for negotiation when next they negotiate their Collective Labour Agreement with the Company. Consequently the Company respectfully submits that it is not within the authority of the Tribunal to force the Company to enter into a separate Productivity Incentive Scheme with any of the Bargaining Groups.

The Productivity Incentive Scheme at Noranda is recognized by law and approved by the Minister of Finance. The Income Tax Act provides at Section 12 (ae):

*There shall be exempt from tax –*

*(ae) income received pursuant to a productivity incentive scheme which is-*

- (i) Established in relation to such categories of employment as may be specified by the Minister by order for the purposes of this paragraph; and*
- (ii) Approved for the purposes of this paragraph by the Minister by order, subject to such terms and conditions as may be specified in the Order.*

The Productivity Incentive Scheme at Noranda Bauxite Limited is approved by the Minister under the Income Tax (Income from Approved Productivity Incentive Schemes) (Bauxite Companies) (Exemption) Order 2006. The Income Tax Exemption Order not only specially recognizes the bauxite/alumina industry but also contemplates the existence of one scheme at Noranda that has been approved by the Minister and none other.

For the above reasons the Company urges the Tribunal to dismiss the UAWU's claim under Part (b) of the Terms of Reference.

**THE TRIBUNAL'S RESPONSE:**

It will be recalled that Part (b) was requested by the Union and is stated as set out below:

**b) The establishment of a Productivity Incentive Scheme for workers represented by the University and Allied Workers Union.**

The Tribunal having considered the submissions of NBL, is of the view that its conclusion with respect to Part (a) of the TOR, applies equally to Part (b) as set out below:

- i. *the productivity Incentive Scheme is a creature of the 1998 Memorandum of Understanding; and*
- ii. *'since the operation of the Scheme is determined by a representative body of all stakeholders, then those said stakeholders are the best and most appropriate representatives to set and regulate the rules.*

The Tribunal is further guided by the fact that the Productivity Incentive Scheme being a creature of the 1998 Memorandum of Understanding among the Unions, the Government and the Bauxite Companies, are bound by its stipulations and on page 8 of said Understanding it is stated at item 7, as follows:

*“In the event that there is a dispute or difference between any or all of the parties to the terms of this Memorandum or any undertaking arising there from, no party shall withdraw from the undertakings arrived at, but shall be under a duty and an obligation to consult with all the parties hereto whereupon all parties shall in good faith examine, deliberate and assess the situation and determine a suitable course of action.”*

In light of the above, the application by the UAWU could not be entertained as this would be contrary to the above conclusions arrived at with respect to Part (a).

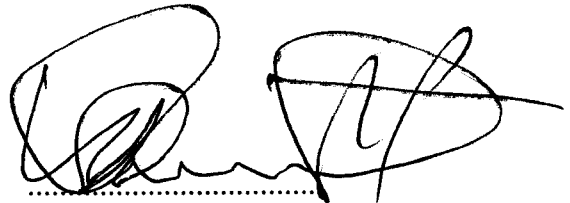
The Tribunal further accepted the submissions on behalf of NBL, that it does not have jurisdiction to impose an Incentive Scheme on the company and that the Income Tax Act does not contemplate the existence of more than one Scheme at NBL.

In the above regard therefore, the application by the UAWU with respect to Part (b) is refused and consequently the Tribunal makes no Award.

**THE AWARD:**

The Tribunal accordingly refuses the application and or request of the UAWU for the establishment of a Productivity Incentive Scheme for workers represented by the said University and Allied Workers Union and therefore makes no award.

**DATED THIS 3<sup>rd</sup> DAY OF FEBRUARY 2016.**



Mr. Norman Wright, Q. C.

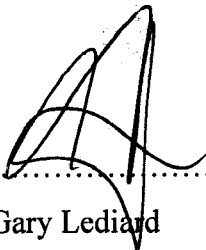
Chairman



Mr. Rion Hall

Member

Witness:



Gary Lediard

Secretary to the Division



Mr. D. Trevor McNish

Member