M/s. Titaghur Paper Mills Co. Ltd.

Vs

Its Workmen

Civil Appeals Nos. 450 & 451 of 1957

(CJI S.R. Dass, N.H. Bhagwati, S.K. Das, P.B. Gajendragadkar, K.N. Wanchoo JJ)

05.05.1959

JUDGMENT

WANCHOO, J. :-

These are three appeals by special leave from the same decision of the Labour Appellate Tribunal of India and will be dealt with together. The first two appeals (Nos. 450 & 451) are by Messrs. Titaghur Paper Mills Co. Ltd., and the third (No. 514) by its workmen.

Titaghur Paper Mills Co. Ltd., (hereinafter called company) own two paper mills one at Titaghur (hereinafter called Mill No. 1) and the other at Kankinarah (hereinafter called Mill No. 2). It appears that there had been a dispute between the company and its workmen in 1948, which was referred to the adjudication of a tribunal. That was disposed of by the tribunal on November 5, 1949. Among the matters then referred was the question of profit bonus for the years 1945-46 and 1946-47. When that matter was under the consideration of the tribunal, the company put forward a scheme of production bonus on the basis of a minimum production of 30,000 tons of paper in a year in the two mills together. The basis of the scheme was that the workmen would get 13 days' basic wage (this being equivalent to half of one month's basic wage) by way of bonus on a production of 30,000 tons for both mills. Thereafter the workmen were to get an additional one day's basic wage for every 460 tons produced upto a maximum of 36,000 tons when the production bonus would come up to 26 days' basic wage (which would be equivalent to one month's basic wage including weekly holidays). The company in putting forward the scheme said that "as an admittedly rough basis for such a scheme something on the following lines might, we think, be equitable". It then gave the scheme mentioned above. The tribunal dealing with the question of profit bonus for the years 1945-46 and 1946-47 observed that the scheme of production bonus put forward by the company had been accepted by the union as satisfactory and for the purpose of that proceeding it accepted the scheme as a measure for awarding profit bonus for the years 1945-46 and 1946-47. The actual bonus worked out to 17 days' basic wage for 1945-46 and 19 days' basic wage for 1946-47; (see award of Sri. M. C. Banerji, in the publication of Government of West Bengal, Labour Department, 'Awards made by the Tribunals for the quarter ending December, 1949", pp. 130-150). It further appears that the detailed scheme was later communicated to the union in July 1950 and as the principle had already been accepted by the union before Sri Banerji the scheme was put in operation from April 1, 1949, and production bonus has all along been paid in accordance with it after that date.

Disputes, however, arose between the company and its workmen in 1953. The workmen of Mill No. 2 were the first to raise a dispute in August 1953, in which inter alia they demanded profit bonus for the years 1950-51 and 1951-52 and also prayed for certain changes in the production bonus scheme. The workmen of Mill No. 1 also raised a dispute and presented a charter of demands to the company

in October 1953. They also demanded profit bonus for the two years mentioned above and revision of the production bonus scheme. These disputes were referred by the Government of West Bengal to the Fifth Industrial Tribunal, West Bengal. There were two references, one relating to each mill. They were heard separately by the Industrial Tribunal which gave two separate awards rejecting all the demands made by the workmen. Consequently, two appeals were preferred by the workmen before the Labour Appellate Tribunal. There the two appeals were heard together at the request of the parties and disposed of by the Tribunal by the same judgment on July 31, 1956.

The Fifth Industrial Tribunal rejected the claim of the workmen for revision of the production bonus scheme and for grant of profit bonus for the years 1950-51 and 1951-52. It was of opinion that the claim for profit bonus for the two years was not maintainable as the workmen had been given production bonus and that met the profit bonus claim of the workmen for the two years and all claims for profit bonus for these two years must be taken to have been fully satisfied. The question of delay in making the profit bonus claim was also raised; but the Fifth Industrial Tribunal was of the view that the profit bonus claim could not be defeated merely on the ground of delay. As to the revision of production bonus scheme, it held that scheme had been accepted by the union and no reason had been shown why the rate of one day's basic wage as production bonus for every increase of 460 tons over 30,000 tons should be disturbed. It was also of the view that increased production was not due to increased efforts on the part of the workmen but was due mainly to increase in labour strength as well as installation of new machinery.

On appeal the Labour Appellate Tribunal rejected the claim for profit bonus for the year 1950-51 on the ground that it was made too late. It, however, disagreed with the view of the Fifth Industrial Tribunal that the production bonus scheme fully satisfied the claim of the workmen for profit bonus and therefore no profit bonus should be given even for the year 1951-52, with regard to which it was of opinion that the claim was not belated. It, therefore, went into the figures of profits and arrived at the available surplus in accordance with the formula known as the Full Bench Formula evolved in The Mill-Owners' Association, Bombay v. The Rashtriya Mill Mazdoor Sangh, Bombay [[1950] L.L.J. 1247]. Having arrived at the available surplus it granted one month's profit bonus in addition to what the workmen were entitled to under the production bonus scheme as revised by it. As to the production bonus scheme, it was of the view that there were reasons for revising it and therefore revised it, providing for 1 1/2 days' basic wage for each increase of 460 tons over 30,000 tons up to the limit of 36,000 tons and two days' basic wage for each increase of 460 tons in excess of 36,000 tons. It may be mentioned, however, that the change in the production bonus scheme was not made retrospective and would therefore come into force from after the judgment of the Labour Appellate Tribunal. The appeals of the workmen were therefore allowed in these two respects, which have led to the two appeals by the company before us. The workmen through their union have also filed an appeal against those portions of the decision of the Labour Appellate Tribunal which rejected their demands.

In the two appeals by the company two matters relating to (i) production bonus and (ii) profit bonus have been raised before us. We shall first take up these two matters and then come to the appeal by the workmen.

The main contentions on behalf of the company with respect of the production bonus scheme are three-fold, namely,

> (1) The Industrial Tribunal has no jurisdiction to go into the question of production bonus scheme at all, for such a scheme by its very nature can only be a matter of

agreement between the employer and the employees and cannot be imposed by a tribunal;

(2) Even where a production bonus scheme is in force, its terms cannot be varied by a tribunal and any variation can only be the outcome of an agreement between the employer and the employees, because initiation or introduction of such a scheme is what may be called a 'management function'; and

(3) Even if an industrial tribunal has the power to vary the production bonus scheme, no material was placed on the record in this case on the basis of which the tribunal could order a variation in the scheme in force in the company.

As to the award of profit bonus for the year 1951-52 the attack was two-fold, namely,

(4) It was not open to a tribunal to award both production bonus and profit bonus and in any case it could not be done in the present case as the production bonus here was nothing more than profit bonus; and

(5) Even if both production bonus and profit bonus could be awarded, there was no available surplus in this case out of which profit bonus for that year could be paid.

Re. (1).

Before we go into the question of jurisdiction of a tribunal under the Industrial Disputes Act, 1947, (hereinafter called the Act), we should like to consider what production bonus essentially is. The payment of production bonus depends upon production and is in addition to wages. In effect, it is an incentive to higher production and is in the nature of an incentive wage. There are various plans prevalent in other countries for this purpose known as Incentive Wage Plans worked out on various bases, for example, Halsey Premium Plan, Bedaux Point Premium Plan, Haynes Manit System and Emerson Efficiency Bonus Plan; (see Labour Law by Smith, Second Edition, p. 723). The simplest of such plans is the straight piece-rate plan where payment is made according to each piece produced, subject in some cases to a guaranteed minimum wage for so many hours' work. But the straight piece-rate system cannot work where the finished product is the result of the co-operative effort of a large number of workers each doing a small part which contributes to the result. In such cases, production bonus by tonnage produced, as in this case, is given. There is a base or standard above which extra payment is made for extra production in addition to the basic wage. Such a plan typically guarantees time wage up to the time represented by standard performance and gives workers a share in the savings represented by superior performance. But whatever may be the nature of the plan the payment in effect is an extra emolument for extra effort put in by workmen over the standard that may be fixed. That is the reason why all these plans are known as Incentive Wage Plans and generally speaking have little to do with profits. The extra payment depends not on extra profits but on extra production. This extra payment calculated on the basis of extra production is in a case like the present where the payment is made after the annual production is known, in the nature of emoluments paid at the end of the year. Therefore generally speaking, payment of production bonus is nothing more nor less than a payment of further emoluments depending upon production as an incentive to the workmen to put in more than the standard performance. Production bonus in this case also is of this nature and is nothing more than additional emolument paid as an incentive for higher production. We shall later consider the argument whether in this case the production bonus is anything other than profit bonus. It is enough to say at this stage that the bonus under the scheme in

this case also depends essentially on production and therefore is in the nature of incentive wage.

Let us now turn to the question of jurisdiction of the tribunal under the Act to consider a production bonus scheme at all. The argument is that the introduction of a production bonus scheme is purely discretionary with the employer and no tribunal can impose such a scheme. Whether there should be increased production in a particular concern is a matter to be determined entirely by the employer and depends upon a consideration of so many complex factors, namely, the state of the market, the demand for the product, the range of prices, and so on. It is, therefore, entirely for the employer to introduce a production bonus scheme or not. There is good deal of force in the argument up to this point; but the argument goes further and it is said that even after the scheme is introduced, it is for the same reasons in the discretion of the employer whether to continue it or not. Therefore, it is urged that the tribunal cannot have jurisdiction to consider a production bonus scheme at all, for the tribunal would then be doing something which the employer can set at naught by withdrawing the scheme or by nullifying the effect of the tribunal's order by so arranging that the production does not reach the level at which production bonus becomes payable, for example, by not providing enough raw material for the purpose. It is further urged that if it is entirely in the discretion of the employer to introduce or not to introduce a production bonus scheme, the fact that the employer introduces a scheme will not give jurisdiction to the tribunal to interfere with it in any way, for otherwise the tribunal would be compelling the employer in the guise of a revision of the scheme to do something which the tribunal could not initially do. Our attention in this connection was drawn to Shalimar Rope Works Mazdoor Union, Howrah v. Messrs. Shalimar Rope Works Ltd., Shalimar, Howrah [(1957) L.A.C. 496], where it was observed that though a production bonus scheme may be desirable in the interest of harmonious relationship between the employer and employees, there is no obligation on the part of the management to give production bonus and no decision had been brought to the notice of the Labour Appellate Tribunal holding that a scheme of production bonus was obligatory on the part of the company; (see p. 504). We are, however, not called upon to decide in this case whether a demand for the introduction of a production bonus scheme where there was none before can be made a subject-matter of industrial dispute as defined in s. 2(k) of the Act or whether a scheme of production bonus can for the first time be imposed on the employer by a tribunal under the Act. The problem that is before us is whether the tribunal under the Act will have jurisdiction to deal with a production bonus scheme in a concern where it has been introduced. The answer to this question depends upon the terms of the Act and not on the consideration whether the scheme can be initiated only by the employer in the first instance. In order that the tribunal may have jurisdiction all that is necessary is that an industrial dispute within the meaning of s. 2(k) of the Act should exist or be apprehended and there should be a reference of such dispute by the appropriate government to the tribunal under s. 10. Now 'industrial dispute' has been defined in very wide terms in s. 2(k) and for our purpose it means any dispute or difference between the employers and workmen which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person. We have already held that the production bonus scheme in this case is an incentive wage plan and what is paid under the scheme over and above the basic wage is supplementary emolument depending upon annual production. A dispute arising about such an emolument clearly comes within the words "terms of employment". As soon therefore as an employer introduces a production bonus scheme and the same is put in operation and the workmen accept it, it becomes a term of employment of the workmen working under him and any dispute with respect to such a term of employment is an industrial dispute and if it is referred to a tribunal under s. 10, as has been done in this case, it has jurisdiction under s. 15 to deal with it. The argument therefore on this head must be rejected and it must be held that the tribunal had jurisdiction under the Act to deal with the scheme of production bonus which had been

introduced in this company and was in force at all material times.

Re. (2).

This brings us to the second question, namely, where a scheme of this kind is in force and there is a dispute with regard to its terms, what is the extent of the powers of a tribunal to deal with it. The argument is put in this way. The introduction and continuance of a production bonus scheme is one of the functions of management. Therefore, when a question of revision of such a scheme comes up before a tribunal, all that the tribunal should look into is whether this matter is an exclusive management function ? If it comes to the conclusion that is an exclusive management function, it should not interfere with the details of the scheme, unless it also comes to the conclusion that the employer is guilty of mala fides, victimization, fraud or unfair labour practice through the introduction or continuance of the scheme. It is said that even though the tribunal may have jurisdiction to consider such a scheme, it should refuse to interfere with it as soon as it comes to the conclusion that it is an exclusive management function and there is no question of mala fides, etc.

We think it unnecessary for present purposes to embark on a discussion of what is and what is not an exclusive management function. Basically, everything connected with the management of an industrial concern is a management function, except the internal affairs of any union which may exist. The Act has made no distinction between what may be called exclusive management functions and others. It is also well settled that the tribunals under the Act have power to interfere with management functions falling within their purview in the interest of industrial peace and the Act was enacted with that object. Therefore, once it is conceded, as is the case here, that the tribunal has jurisdiction to entertain such an industrial dispute which comes within the terms of s. 2(k) we see no reason why the power of the tribunal to take into consideration an incentive wage plan like a production bonus scheme already introduced should be limited merely to the consideration of the question whether the employer's action is mala fide, etc. Where a production bonus scheme is in force and has become a term of employment, there is no reason why the tribunal should not have the power to vary its terms if circumstances justify it. Nor can the power of revision be denied to the tribunal in respect of a scheme actually introduced on the ground that the introduction of such a scheme was an exclusive management function and therefore it should be immune from being touched at all. Therefore, even assuming that the initiation of a production bonus scheme is an exclusive management function and the final decision with respect to its introduction rests initially with the management, the right of the tribunal to take into consideration such an initiated scheme (which has become a term of employment) and to revise it cannot for a moment be doubted under the Act. It is true that the tribunal will not lightly interfere with a scheme introduced by the management and accepted by the union. It is also true that the tribunal would only make a change in the rates for good and sufficient reasons. There can be no doubt, however, that the tribunal has jurisdiction under the Act to take into consideration a production bonus scheme which has been introduced and is in operation and in proper cases to revise it, and if necessary to change the rates and other conditions on which such bonus is payable. Our attention in this connection was drawn to Indian Iron & Steel Co. Ltd. v. Their Workmen [[1958] S.C.R. 667], where the limits of the power of a tribunal to interfere with an order of dismissal were considered. That case is in our opinion of no help to the appellant. It was laid down there that undoubtedly the management of a concern had power to direct its own internal administration and discipline; but the power was not unlimited and when a dispute arose, Industrial Tribunals had the power to see whether the termination of services of a workman was justified and to give appropriate relief. It was further laid down under what conditions the Industrial Tribunal will interfere with the order of dismissal. On a parity of reasoning, the Industrial Tribunal has the power under the Act to revise the production bonus

scheme once it has been initiated. It will do so only for good and cogent reasons, such as a material change in method, product, tools, material, design, or production conditions, or a saving in labour cost and the like, maintaining as far as possible the established relationship between earnings and effort and avoiding rates which will give results out of all proportion to the basic wage. We are therefore of opinion that the argument under this head must also be rejected.

Re. (3).

The main contention under this head is that there was no material before the Appellate Tribunal to justify the increase in the rate which it ordered. We have already pointed out that the scheme put forward by the company was to pay a production bonus of 13 days' basic wage on a minimum production of 30,000 tons. Thereafter one day's basic wage was to be paid for every 460 tons produced up to the maximum of 36,000 tons, the rated capacity of the mills being then said to be over 36,000 tons. The Appellate Tribunal has kept the minimum production at 30,000 tons with a bonus of 13 days' basic wage. Between 30,000 and 36,000 tons it has raised the rate to 1 1/2 days' basic wage for each increase of 460 tons over 30,000 tons to the limit of 36,000 tons, and thereafter to two days' basic wage for each increase of 460 tons in excess of 36,000 tons. It gave two reasons in support of this increase, namely, (i) that the great increase in production since the introduction of the scheme was attributable to a very considerable extent to the increase of efforts on the part of labour and therefore a reasonable proportion of the increased income on account of increased production should go to labour, and (ii) that one day's wage only as bonus for every 460 tons over 30,000 tons is not commensurate with the actual increase of income on that increased block of production. It is not clear to us what exactly the Appellate Tribunal had in mind when it talked of the increase of income as a reason for increase in the rate. The question of increase in the rate has to be considered in two stages, namely, (i) the increase between 30,000 and 36,000 tons and (ii) the increase when production goes beyond 36,000 tons. It appears from what Mr. Banerji said in his award of 1949 that the basic principle of the scheme, as it was put forward before him, was accepted by the union as satisfactory, meaning thereby that the union considered that 13 days' basic wage for a minimum production of 30,000 tons and one day's basic wage for every 460 tons beyond that upto 36,000 was fair to labour. It has been urged that there was no agreement between the workmen and the company in connection with this scheme. It does appear that all the terms, which were incorporated in the scheme communicated to labour in July 1950, were not initially evolved with the agreement of the union; but so far as the rate of bonus was concerned that was accepted by the union as satisfactory. In the company's appeals, we are concerned only with the rate. The question therefore is whether the Appellate Tribunal was justified in changing this rate which was agreed to as satisfactory by the union up to a production of 36,000 tons. We are of opinion that in view of the agreement between the parties up to a production of 36,000 tons there was no such material before the Appellate Tribunal as would justify interference with the agreed rate. The intensification of labour must have been taken into account when the union agreed to the rate up to 36,000 tons, and there is nothing to show that since then there has been any change in the conditions to call for a change in the rate. The order of the Appellate Tribunal so far as it relates to production up to 36,000 tons cannot be sustained, as no material was placed before it to warrant a change in that agreed rate.

Then we come to the rate after 36,000 tons. There the considerations in our view are different. The scheme only provided for a production of 36,000 tons. It is true that thereafter the production has gone up beyond 36,000, and the company has been paying the same flat rate of one day's basic wage for every 460 tons for the extra production and the workmen have been accepting that payment. At the same time there was no collective acceptance by the union on behalf of the workmen of this rate being satisfactory or fair for production above 36,000 tons. Production went beyond 36,000 tons for

the first time in 1951-52 and a dispute was raised in October 1953 by the workmen of Mill No. 1 not very long after production for that year was known. There was no dispute as to the general revision of the rate by the workmen of Mill No. 2; but it was conceded on behalf of the company that the two mills must be treated on the same footing in this matter. The company therefore cannot say that the Appellate Tribunal should not have interfered with the rate above 36,000 tons, because there was a collective agreement by the union on behalf of the workmen and there was no material before it to change the rate even beyond 36,000 tons. Two reasons were given by the Appellate Tribunal for the change it ordered. Of these the second is difficult to understand as it is not clearly or happily expressed, though the first reason, (namely, increased effort on the part of labour) would certainly apply when we consider production beyond 36,000 tons. It stands to reason that where the labour force is more or less the same, production beyond the original target of 36,000 tons would mean more intensification of effort by labour, for it is not in dispute that the working hours have remained the same. Other things being equal, the greater the production by the same labour force in the same space of time, there is bound to be more intensification of labour to achieve this result. This is certainly a matter which the Appellate Tribunal could take into account in considering whether the rate after 36,000 tons should be raised. A comparison of figures of production and labour force employed between 1948 and 1952 (assuming other factors to be the same) would show that there must have been intensification of labour effort to get the increased production. In 1948, total labour force in the two mills was 5,860 (Exs. F & H). In 1952, it went up to 6,213, an increase of just over 6 per cent. Production on the other hand was 28,244 tons in 1948-49 while it was 37,738 tons in 1951-52, an increase of slightly above 33 per cent. So it is obvious that the increase in production is much more than the increase in labour force. It is true that in 1950 a new paper-making machine was substituted in one of the mills, and some bamboo-crushers and digesters were also added during this period and other large amounts spent on machinery, and that fact certainly accounts for a part of the increase. It is, however, not possible to ascertain, with anything like mathematical accuracy, as to how much of the increase in production is attributable to improved machinery and how much of it is referable to intensification of labour of the workmen. It may nevertheless be taken as fairly certain that the increase in production is referable to a great extent to intensification of the efforts of the workmen, for there has been no appreciable increase in the labour force. We have not got the figures of labour force in the later years, though production has gone on increasing, till it is said it will reach 54,000 tons mark in 1958-59. It is apparent, therefore, that there must have been progressive intensification of labour as the production rose beyond 36,000 tons, and in the premises that was a circumstance which the Appellate Tribunal was properly entitled to take into account when considering a change in the rate for production over 36,000 tons.

The second ground given by the Appellate Tribunal, as we have said above, is not quite clear to us. Learned counsel for the workmen have, however, explained that what the Tribunal means is that as the production increases more and more the labour cost per ton goes down; and thus there is a saving in labour cost to the company and the workmen are entitled to share in this progressive saving of labour cost. The principle which is inherent in this explanation is in fact the basis of progressive increase in production bonus rates as production increases. This will be clear from an illustration, which we shall give just now. This illustration is based as nearly as possible on the conditions in these two mills with this difference that we have taken round figures for facility of multiplication; the result will be more or less the same if actual figures are taken. For the purposes of this illustration, we shall assume that the labour force and other relevant factors remain constant. Let us start with a basic production of 30,000 tons with a labour force of 6,000 and an average wage of all kinds at Rs. 110/- per mensem (Ex. E). The total labour cost on this basis for 30,000 tons per year comes to 79.2 lacs, giving labour cost per ton as Rs. 264/-. Now, when production increases to

36,000 tons and a production bonus of Rs. 25/- per year (Ex. E) is added to the wage, labour cost for the extra production of 6000 tons comes to Rs. 1.5 lacs. The total labour cost, therefore, for 36,000 tons is 80.7 lacs, which works out to slightly above Rs. 224/- per ton. When production goes up to 42,000 tons, the labour cost increases by 3 lacs, giving a labour outlay of 82.2 lacs; this works out to just below Rs. 196 per ton. When production increases to 48,000 tons, the extra labour cost is 4.5 lacs, making a total of 83.7 lacs for 48,000 tons; thus the cost per ton is slightly above Rs. 174/-. When production goes up to 54,000 tons, labour cost increases by 6 lacs, giving a total cost of 85.2 lacs for 54,000 tons, which works out to just below Rs. 158/- per ton. When production reaches 60,000 tons, which is double the basic production, the additional sum paid to labour in bonus is 7.5 lacs and the total cost 86.7 lacs for 60,000 tons which works out to Rs. 144.5 per ton. This is on the basis of the production bonus above 36,000 tons being kept at the same rate at which it is provided in the scheme in this case. It will be clear, therefore, that as production increases (if other factors are the same, namely, labour force and machinery), there is a progressive increase in the saving of labour cost. This, in our opinion, makes out a clear case, where one is dealing with tonnage production bonus, for a progressive increase in the bonus. We know that in this case there has been an increase, but of a small order, in the labour force during the period of increased production; we also know that a new paper-making machine has been put in the place of an old one and new bamboo-crushers and digesters have been added; and we know that during the period from April 1, 1948, to April 1, 1959, there has been a total outlay on machinery and plant, worth 223.94 lacs including the above. There is no doubt, therefore, that when production is expected to reach the figure of 54,000 tons in 1958-59, this outlay on machinery and plant must also have contributed to it. The increase in labour force, if any, after April 1, 1952, may also have made its contribution. But it appears to us that it is still valid to say that there is saving in labour cost which increases progressively as production goes up and labour can therefore legitimately claim a progressively higher rate. Therefore, though the Appellate Tribunal's second reason does not appear to have been clearly expressed, something like what we have said above must have been at the back of its mind when it decided to change the rate above 36,000 tons. There can be no doubt that the consideration we have set out above, will be valid to support the view taken by the Appellate Tribunal that there should be a change in the rate, though it may not necessarily support the actual change ordered by it. We must not forget that there was no collective bargaining resulting in an agreement between the union and the company so far as production above 36,000 tons is concerned as was the case so far as production upto 36,000 tons went. A case has, therefore, been made out for a change in the rate when production goes above 36,000 tons.

The next question is whether the flat rate of two days' basic wage for every 460 tons allowed by the Appellate Tribunal can be supported. Usually, when tonnage production bonus is worked out, the rates progressively increase. We may in this connection refer to the illustration given in "Payment by Results" published by the International Labour Office, Geneva, at p. 102. We think, therefore, that though there is a case for increasing the rate when production goes above 36,000 tons, it should be on a progressively increasing system. The present scheme, as we have pointed out earlier, was evolved as an admittedly rough basis which was thought to be equitable. Following the same rough basis and using the same block of 6,000 tons with slabs of 460 tons, we think that on the data available at present, it would be fair to give progressive rates for production from over 36,000 tons up to 60,000 tons. We need not go beyond this for the present, and if production increases beyond 60,000 tons, the matter can be gone into again. We consider, therefore, that the rate should be changed as follows for production over 36,000 tons :-

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(i) From over 1 1/4 days' basic wage on the same

36,000 tons to scale as is provided in the scheme

42,000 tons. from 30,000 to 36,000 tons.

(ii) From over 1 1/2 days' basic wage on the same

42,000 tons to conditions as above.

48,000 tons.

(iii) From over 1 3/4 days' basic wage - do -

48,000 tons to

54,000 tons.

(iv) From over 2 days' basic wage - do -

54,000 tons to

60,000 tons.

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We therefore modify the change in the rate ordered by the Appellate Tribunal as above.

Re. (4).

The contention under this head is that though this scheme is called a production bonus scheme; in reality it is no more than a profit bonus scheme; and therefore, the workmen are not entitled to any profit bonus worked out on the Full Bench formula referred to above in addition to what they get under this production bonus scheme. In this connection reliance is placed particularly on clauses (14) and (18) of the scheme. Let us therefore determine the true nature of the scheme. The scheme is headed "Tonnage Production Bonus Scheme" and not a scheme for profit bonus based on the Full Bench formula. It is true that this nomenclature is not decisive but is nevertheless a factor which may properly be taken into consideration. The primary and basic object of the scheme, as given in cl. (2), is to stimulate the interests and endeavours of the clerks and workers of the company in increasing the production of saleable paper and to ensure that the workers will get by way of incentive an increased return for their labour contributing to the benefits which would accrue from such increased productivity. This again shows that this is a production bonus scheme and nothing else. Then comes cl. (4), which lays down that upto a minimum of 30,000 tons the bonus would be 13 days' basic wage; thereafter there is increase of one day's basic wage for every 460 tons till the figure of 26 days' basic wage is reached for a total production of 36,000 tons. Here again there is no connection between profits and bonus that accrues under this clause. If, for example, production falls below the minimum of 30,000 tons, there will be no bonus at all under the scheme whatever may be the profits. This one circumstance clearly brings out the true nature of this scheme, namely, that it is a scheme of production bonus and not of profit bonus under the Full Bench formula. That formula had nothing to do with production. Bonus under that formula depended entirely on the

available surplus of profits worked out in the manner provided therein. Then we come to clause (14). That clause lays down that the scheme will be subject to one most important general exception, namely, that the profit earning capacity of the company, irrespective of the volume of production of saleable paper, remains satisfactory during the financial year. Accordingly the clause prescribes that the directors may at their sole discretion either cancel altogether or reduce in scale of monetary payments the bonus in any one or more financial years in which the gross profit earned by the company over the whole financial year is not sufficient to meet fixed dividends and interest, depreciation charges and taxation and thereafter pay for the whole year dividend not less than 10 per cent. to the ordinary shareholders of the company. It is said that this makes the scheme a profit bonus scheme. We are unable to agree with this contention. It is true that the scale of payment is likely to go down or there may even be no payment of bonus at all in the circumstances mentioned in cl. (14). But the circumstances mentioned there are admittedly not the same which have to be taken into account in arriving at the available surplus according to the Full Bench Formula. Clause (14) appears to us to be just one condition upon which the payment of production bonus would depend, like some other clauses in the scheme. For example, cl. (5) seems to provide that workers who work for less than half the total number of working days in the financial year for which bonus is being paid, shall not get any bonus, for it only makes those workers who work for more than half the total number of working days, worked out according to other rules, entitled to bonus. Clause (6) says that certain kinds of workers will not be entitled to bonus, namely, Bungalow servants, Budli clerks or workers, temporary clerks or workers, casual workers or clerks. It also provides that any person guilty of any major misdemeanour may at the sole discretion of the Mill Manager or the Cost Accountant not be given this bonus either in part or in whole as a punishment, and that this would be done after taking proceedings in writing for the purpose. Clause (7) provides another condition as to what service will count towards earning bonus and what will not; for example, leave on full or part pay shall count as bonus service while leave without pay will not count as qualifying service towards bonus. Again cl. (8) lays down that a worker will be entitled to the maximum bonus if he works for all the working days during the financial years, for which the bonus is declared. Clause (9) then provides how the maximum bonus can be reduced, if a worker does not work for all the working days. Clause (14) therefore is also another clause which may either lead to no payment of bonus or less payment than prescribed under cl. (4). Further the fact that this is not a profit bonus scheme but a production bonus scheme will also be clear from what cl. (14) actually provides. It says that if the conditions mentioned in it are not fulfilled, the workers would not be entitled to bonus or may get less. This means that if the conditions are fulfilled, workers would be entitled to bonus. Now, suppose, that the gross profit in a year is sufficient to meet fixed dividends and interest, depreciation charges and taxation and 10 per cent. dividend to the ordinary shareholders. Thereafter the balance of profit left is only (let us say) Rs. 5/-. But as the conditions of cl. (14) are fulfilled, the workers would be entitled to production bonus, though the amount of Rs. 5/- which remains, cannot possibly meet the claim of bonus. It is clear therefore that this bonus scheme is not the same as the profit bonus worked out under the Full Bench formula and it cannot be called a profit bonus scheme even otherwise. This is nothing more nor less than a pure production bonus scheme based on tonnage, depending on certain conditions one of which is related to profits also. The nature of this bonus, therefore, in our opinion, is entirely different from the nature of profit bonus under the Full Bench formula and we do not see why if there is an available surplus of profits according to the Full Bench formula, the workmen should not get profit bonus in accordance with that formula. The two things, in our opinion, are different. Under the scheme what the workers get is a supplementary emolument worked out on certain basis. Under the Full Bench formula, what they get is something out of the profits, if there is an available surplus on the ground that both capital and labour contribute to the accrual of profits and it is only fair that labour should get a part of it.

In this connection our attention was drawn to Mathuradas Kanji v. Labour Appellate Tribunal [A.I.R. 1958 S.C. 899], where it was observed that "one of the categories of bonus is described as "incentive bonus". The name indicates that it is given as a cash incentive to greater effort on the part of the labour. But the essential condition for the payment of incentive bonus just like any other kind of bonus, is that the industry concerned must earn profits part of which is due to the contribution which the workmen made in increasing production." That was not a case of production bonus at all. The bonus dealt with there was included in an agreement between the government and its contractors in a contract relating to clearing and transporting of imported foodgrains. It was provided that if the rate of discharge from a ship exceeded 1,500 tons per 24 hours and no shed demurrage was incurred, the government would pay to the contractors remuneration at the prescribed rates plus a bonus of annas four per ton. The workmen employed by the contractors claimed that this bonus should be given to them. That claim was negatived on the ground that the workers could not claim, on the terms of the contract, that the bonus of annas four per ton was payable to them. These observations made in a different setting have therefore no relevance in the context of the production bonus scheme with which we are dealing here and which has become a term of employment of the workmen.

As for cl. (18), it provides that if during the currency of three years for which the scheme was to remain in force in the first instance, the government enforced by legislation any scheme or provision for bonus or profit sharing, the company may decide to cancel or modify the scheme in its entirety. It is urged that this shows that the scheme was one for profit sharing or profit bonus, because it was likely to be cancelled or modified if legislation was introduced with respect to these. It may be that the scheme might have been cancelled or modified if such legislation was passed. But that does not mean that the scheme itself provided for profit sharing or profit bonus. It is one thing to cancel or modify a scheme because the legislature steps in to provide for extra payment for workmen. But the nature of the provision of law, which was then expected, cannot be imposed on this scheme, which must be judged on its own terms; these leave no doubt that it is not a profit bonus scheme but an incentive wage plan depending upon production in the main. The contention therefore that the bonus under the scheme is a profit bonus and therefore the workmen are not entitled to the profit bonus under the Full Bench formula must fail.

Re. (5).

The contention under this head is that even if profit bonus is payable in addition to production bonus, there was no available surplus of profits to justify the Appellate Tribunal in granting one month's bonus. The workmen had asked for two month's bonus; but the Appellate Tribunal after working out the available surplus on the basis of the Full Bench formula granted them one month's bonus. The Full Bench formula was evolved in 1950 in connection with a case relating to the textile industry and has been since then generally applied to many other industries. The necessity for evolving that formula arose in this way : When prices are stable or falling, there is no necessity of making further provision for rehabilitation for the usual depreciation, provided for the purposes of the Income-tax Act, is sufficient to build up a fund for replacement of plant and machinery when they are worn out; but when prices are rising the usual depreciation fund is not enough to replace plant and machinery which become useless. This was particularly so after the end of the last war, when the question of replacing machinery purchased before the war, i.e., before 1939, came up before the Full Bench of the Labour Appellate Tribunal in 1950. In order, therefore, to meet this particular situation arising out of a steep rise in prices, the Full Bench formula was evolved to provide for a further sum for rehabilitation out of the profits besides the statutory depreciation. This was on a notional basis and depended upon a multiplier which was used to find out the current

prices of machinery to be replaced and a divisor based on the useful life of the machinery to find out what sum should be provided each year for what was called rehabilitation. In order, however, that this sum notionally provided for rehabilitation each year has a realistic connection with the amount in fact necessary for the purpose, it is, in our opinion, necessary that what is known as the total block of a concern including land, buildings, plant and machinery, should be properly sub-divided, as otherwise a flat multiplier at the same rate for the total block might not give an accurate amount to be provided for rehabilitation. It is, therefore, necessary in order to arrive at an approximately realistic figure for rehabilitation that the total block should be divided into three heads, namely, (i) land, (ii) buildings, railway sidings and things of that nature which have a much longer life and where imports are not needed, and (iii) machinery. In the case of land, no replacement is necessary and therefore nothing need be provided for rehabilitation under this head. Even where land is leasehold and the lease is expiring, any payment for renewal of lease will be an expense and need not enter into calculations for rehabilitation. Further if there are buildings belonging to the concern on leasehold land, their rehabilitation charge be will allowable under the head buildings. In the case of buildings, railway sidings etc., the multiplier will be smaller while the divisor will be larger. As for machinery, there is again the necessity of further sub-division, according to when the machinery was purchased. The machinery purchased before the last war stands on one footing and thus there will be a block of machinery which may be know as pre-1939. The second block of machinery may well be that purchased during the war and the last block that purchased after the war. The last two are not rigid divisions; but they indicate that machinery has to be divided into blocks according to years to purchase to arrive at a correct multiplier and a correct divisor.

Bearing these principles in mind, let us see how the Full Bench formula works in this case. We may mention that there is no dispute in this case as to the components of the formula, the only dispute being confined to its actual application. The company claimed a multiplier of 4.5 and a divisor of 10, and on that basis gave a chart showing a deficit of 112 lacs in the amount required for rehabilitation for 1951-52. Another chart was also filed by the company in which the multiplier was taken as 3.5 and the divisor as 10, and the deficit was worked out at 65 lacs. What the company did was to take the total block consisting of land, buildings, railway sidings and machinery, valued at 468 lacs and multiply it by 4.5 or 3.5, making no distinction between land, buildings and railway sidings, and machinery. The divisor was also taken as 10, making no distinction again between these three categories, and further making no distinction between the machinery purchased before 1939, during the last war and after the last war. This, in our opinion, was a completely unrealistic way of working out the amount required for rehabilitation, and that is why the company was able to show in its charts such a large deficit.

The Appellate Tribunal did not accept these charts. It left out of account land altogether, and rightly so. As for buildings, it applied a different multiplier and a different divisor, and so far as that is a concerned no dispute has been raised before us. As for machinery, consisting of plant, machinery, bamboo forest block, furniture, flotilla and vehicles, it divided the block for this purpose into two parts, namely, the block as it existed on April 1, 1947, and the additions made between April 1, 1947, to March 31, 1951. It applied a multiplier of 3 so far as the block upto April 1, 1947, was concerned and took the block of additions after 1-4-1947 at cost price, thus using one as multiplier. It is not clear why the Appellate Tribunal did not include the additions made in 1951-52. The Appellate Tribunal also accepted the divisor 10 for all this plant, machinery, etc., and made no difference between the useful life of the machinery purchased at different times. Eventually, after making the relevant calculations, it came to the conclusion that there was an available surplus of profits amounting to 22 lacs. It, therefore, awarded one month's profit bonus on basic normal wage.

It is contended on behalf of the company that evidence had been produced on its behalf to show that the prices of machinery had appreciated 4 1/2 times as compared to the prices in 1939, and therefore, the multiplier of 4.5 should have been allowed at least on the block of machinery up to 1939. Thereafter it is claimed that some multiplier above one should be given for the block 1939-1947 and also for the block 1947-51. It is further contended that the additions made in 1951-52 should also have been taken into account.

It may be mentioned that the Labour Appellate Tribunal which evolved the Full Bench formula in 1950 had used the multiplier 2.7 in that case for pre-war block and that multiplier has been used since then in many other cases. It is, however, contended on behalf of the company that multiplier is not sacrosanct, and if in fact there has been a greater rise in price, there is no reason why a higher multiplier should not be used. It may be accepted that if an employer is able to prove that in fact there has been a greater rise in price, he should be given a higher multiplier. But there has to be good proof tendered by the employer for the multiplier which he claims.

Let us see, therefore, what proof the company has tendered in this case for a multiplier of 4.5 for the block upto April 1, 1939. In its written-statement the company said that it was a known fact that the price of plant and machinery had increased by 300 per cent. to 400 per cent. since before the war. At that stage there was no claim that the price had increased 4 1/2 times after April 1, 1939. The company's claim, therefore, as put in the written-statement, was for a maximum multiplier of 4 for the block upto April 1, 1939. In the evidence of Mr. Taylor, who appeared as a witness for the company, however, claim was made that prices had gone up by 4 1/2 times. This was based on Ex. D produced by the company which was complied on the basis of inquiries about certain machinery from certain firms and copies of the correspondence with the firms were also produced. Nineteen items were mentioned in Ex. D and the average multiplier was worked out as 4.56. Among the items listed in Ex. D were motors, beaters, machine drive, paper-making machine, turbo-alternator, couch roll, bamboo-crushers, bamboo-digesters, boiler, circular tanks and three roaster smelter units. The total price of these items was 19 lacs, (we have converted pounds into rupees for this purpose). Besides these, there are other items, like steam piping, steam tee, galvanized bend and steam bends, which are probably required in large quantities and the price per foot or per piece has been mentioned. The correspondence which was attached to Ex. D consists of four letters, one of September 1954 and three of June 1955, relating to one paper-making machine similar to one installed in Mill No. 2, a turbo-alternator similar to one installed in Mill No. 1, a machine drive similar to one installed in Mill No. 1 and a boiler similar to one installed in Mill No. 1. Now, the cost of machinery block as at April 1, 1939, was of the order of 153 lacs while Ex. D only deals with machinery of the value of 19 lacs as mentioned above. Mr. Taylor did not say in his evidence that Ex. D was a sample and that other machines were of the same type as mentioned in Ex. D or that the prices of other machinery had gone up similarly or to the same extent. Exs. D-1 to D-4 indicate that the price of one out of ten paper-making machines was ascertained and nothing was ascertained about nine others. Similarly prices of one turbo-alternator, one machine drive and one boiler of Mill No. 1 were ascertained. We do not know how many more such machines are in the two mills; nor do we know that the increase in prices of these types of machines is also four and a half times. In the circumstances, we feel that the company has failed to provide sufficient material on the basis of which it can claim 4.5 as the multiplier. It is the company which is claiming that a certain multiplier be used for calculating rehabilitation reserve, and it was its duty to produce good and sufficient evidence as to the correct multiplier if it wants that multiplier to be used. We cannot also forget that in its written-statement the company only claimed a rise of 300 per cent. to 400 per cent. on pre-war price. In the circumstances, the tribunal was not unjustified in not giving the multiplier of 4.5. We also feel that in these circumstances we shall not be justified in giving the

company a multiplier higher than 4, for that was the maximum claim it had put forward in its written-statement. We should, however, like to make it clear that though we are using the multiplier 4 for the block as at April 1, 1939, this should not be taken to be a precedent for future years, even for this company, and it will be open to either party to adduce proper evidence to show what the exact multiplier should be for this block, whether more than 4 or less.

Then we come to the block from April 1, 1939 to March 31, 1947. The Tribunal gave the multiplier 3 for this block also. But that was because it gave the same multiplier for the entire block as at 1947, including the pre-war block. As, however, we are giving a multiplier of 4 for the pre-war block, the multiplier 3 for the block April 1, 1939 to March 31, 1947, can only be justified, if the company has proved that that was the rise in the prices after 1939. So far as that is concerned, the company did not produce any evidence before the Industrial Tribunal. It seems, however, that certain documents were produced before the Appellate Tribunal on June 12, 1956, when the appeals were ready for argument. The order-sheet of June 12, 1956, shows that the Appellate Tribunal allowed four statements regarding certain machines given by different firms to be admitted into evidence. Learned counsel for the workmen object to our looking into these statements on the ground that they never knew that any such statements had been filed at the last moment before the Appellate Tribunal and nobody seems to have relied on these statements before the Appellate Tribunal and the judgment also makes no mention of them. There seems to be a good deal of force in these contentions. However, looking at these statements, which have been taken on record, we find that they relate to ten items. Four of them are of the years 1945-48 and the increase of price varies from 60 per cent. to 75 per cent. Two are of 1950 and the increase varies from 15 per cent. to 50 per cent. to 50 per cent., three are of 1951 and the increase varies from 99.5 per cent. to 116 per cent., and one is of 1954 and the increase is 60 per cent. The increased price is as of 1956. Even taking these documents into account, we feel that the company cannot ask for a multiplier higher than 2 for the block between 1939-1947. But even this will not be taken as a precedent for future and it will be open to either party to give better evidence in order to vary this multiplier one way or the other.

As for the block after 1947, it appears that the company added machinery to the tune of 87 lacs between April 1, 1949 and March 31, 1952, while the prices quoted for the years 1950 and 1951 in these documents were only of machines worth 5 lacs. We do not know whether this machinery is of the same kind as that mentioned in these documents. They cannot, therefore, be a guide for arriving at any multiplier higher than one for this period relating to this block of 87 lacs. Here again we should like to make it clear that if in future years better evidence is produced, the question of giving a multiplier higher than 1 for this block can be considered.

This disposes of the multipliers on the blocks of machines divided into three periods. We now come to the divisor. Both the Tribunals have accepted 10 as the divisor on the evidence of Mr. Taylor. We must say that it looks odd to us that there should be the same divisor for pre-1939 machinery, and post-1939-but-pre-1947 machinery, and post-1947-but-pre-1952 machinery. It stands to reason that newer the machinery the larger must be the divisor for the newer machinery would have a longer useful life. However, as both the Tribunals have accepted 10 as the divisor for the entire machinery in this case, we shall also have to accept it; but we should like to make it clear that this should also not be taken as a precedent for future years and it will be open to either party to show that the divisor should be different, whether more or less than 10, for various blocks of machinery relating to the three periods.

Let us now work out the figures on the basis of the above considerations. We have taken the basic figures as supplied to us by the learned counsel for the company :

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REHABILITATION COST

In lacs of Rs. In lacs of Rs.

(a) Plant & machinery as at 1-4-1939 : 153.43 x 4 = 613.72

Machinery added between 1-4-1939

and 31-3-1947 : 22.41 x 2 = 44.82

Additions between 1-4-1947 and

31-3-1952 : 87.27 x 1 = 87.27

Total..... 745.81

Less 5% breakdown value ... 13.15

Balance..... 732.66

Less depreciation upto 31-3-1951 176.03

Balance..... 556.63

Less Reserves -

General Reserve..... 25.49

Plant Replacement..... 67.98 93.47

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Balance..... 463.16

Dividing by 10..... 46.31

(b) Buildings :

Value of building as at 31-3-47 : 42.85 x 2.5 = 96.41

Additions between 1-4-47 and 31-3-52 : 21.19 = 21.19

Total..... 117.60

Less 5% breakdown 3.20

Balance..... 114.40

Less depreciation upto 31-3-1951 : 47.21

Balance..... 67.19

Dividing by 27..... 2.48

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Rehabilitation for -

(a) Plant & Machinery 46.31

(b) Building 2.48

Total..... 48.79

Less depreciation for 1951-52..... 16.50

Balance..... 32.29

Rehabilitation Amount for 1951-52 : 32.29

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Rehabilitation amount for 1951-52 thus comes to 32.29 lacs. In the charts supplied by the company the net profits after deducting prior charges other than rehabilitation cost were worked out at 36.09 lacs. We find, however, that there is one mistake in this calculation inasmuch as 76.3 lacs have been included in working capital, though this was merely a book entry and there was no cash corresponding to it, 4 per cent. interest was allowed on working capital and this would mean that the net profits should increase by 3.05 lacs as that interest was allowed extra in the company's chart before the Appellate Tribunal. Thus the amount of net profits available, before the allowance of rehabilitation charges, comes to 39.14 lacs (36.09 + 3.05). Deducting 32.29 lacs we arrive at the available surplus of profits amounting to 6.85 lacs (39.14 - 32.29), which is to be distributed equitably between the three sharers mentioned in the very decision of the Labour Appellate Tribunal which evolved the formula. The total cost of one month's bonus on basic wages allowed by the Appellate Tribunal is about 3 lacs. Taking all the circumstances of this case into consideration we do not think that any case has been made out for interference with this order of the Appellate Tribunal.

We may point out that we have not taken into account bamboo-mills and grass-block for reasons given by the Appellate Tribunal, which commend themselves to us.

This brings us to the appeal by the workmen. Only three points have been urged before us out of the many taken in the grounds of appeal, and we shall deal only with these three. They are -

(i) The minimum basic wage should have been raised from Rs. 30 to Rs. 35;

(ii) Clerical staff as well as Budli and temporary workers should have been included in the attendance bonus scheme; and

(iii) Profit bonus should have been allowed at two months' basic wages for 1951-52 instead of one month's.

Re. (i).

Both the Tribunals have rejected the claim for raising the basic wage on the principle of "Industry-cum-Region Rate of Basic Wages". The workmen relied on the wages paid in the Bengal Paper Mills Ltd. at Raniganj, which is also a paper-making concern. The minimum basic wage there is Rs. 38-3, dearness allowance Rs. 35 and the incentive wage is said to work out to Rs. 7-5-6 per mensem, making the total Rs. 80-8-6. In the present company, minimum basic wage is Rs. 30; dearness allowance is Rs. 35; house allowance is Rs. 2; attendance bonus works out to Rs. 8 and production bonus is about Rs. 3, making a total of Rs. 78. It will thus be seen that the difference is not great. Further, if the production bonus and incentive wage are not taken into account, the present company pays Rs. 75 per mensem while the Raniganj company pays Rs. 73-3. In the circumstances, we see no reason for interfering with the concurrent order of the two Tribunals.

Re. (ii).

The Tribunals rejected the claim for extending the attendance bonus scheme to clerical staff, budli workers and temporary workers. They were of the view that these workmen stand on a different footing. For the clerical staff the reason given was that they enjoyed the advantage of the incremental scales which were till then denied to other categories of mill hands for whose benefit the attendance bonus scheme was introduced. As for the budli and temporary workers, the Tribunals said that the scheme could not be applied to them on account of uncertainty of the tenure of their service. So far as the budli and temporary workers are concerned, the reason given by the Tribunals for treating them differently appears to us to justify their being excluded. As to clerical staff, it appears from the correspondence which ensued between the union and the company on the introduction of attendance bonus scheme that the scheme was introduced primarily in connection with the installation of a time keeping office. The clerks are obviously in a different category from the workmen engaged in actual production. In the circumstances, apart from the considerations which were considered by the two Tribunals, there is, in our opinion, justification for treating clerks in a different way from other workmen. The company also told the union that so far as they knew no scheme of attendance bonus had ever been applied to clerks, probably because absenteeism among clerks is not so great as among other workmen. We see no reason, therefore, to disturb the concurrent finding of the two Tribunals in this matter.

Re. (iii).

We have already worked out above the available surplus of profits, from which profit bonus can be

given. The amount of available surplus comes to 8.85 lacs and one month's basic wages, which have been allowed as profit bonus, come to about 3 lacs. The percentage therefore is already sufficiently high and if profit bonus is allowed at the rate of two months' basic wages it will come to about 6 lacs and would be more or less equal to the entire available surplus. It is well settled that the available surplus has to be divided in a fair manner between the industry, the shareholders and the workmen. We cannot forget that the workmen have also got production bonus for this year. In the circumstances, there is no scope for grant of any further profit bonus beyond that allowed by the Appellate Tribunal.

We, therefore, partly allow the appeals of the company and vary the production bonus rate in the manner indicated above. We dismiss the appeals of the company with respect to profit bonus. We also dismiss the appeal of the workmen. In view of the fact that the parties have partly succeeded and partly failed, we order them to bear their own costs of this court in all the appeals.

Appeals Nos. 450 and 451 allowed in part.

Appeal No. 514 dismissed.

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