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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 10th March 2008

No. 2918—li/1(SS) -22/2002(Pt.) -L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 20th February 2008 in I. D. Case No.11 of 2003 of the Presiding Officer, Industrial Tribunal, Rourkela to whom the industrial dispute between the Management of M/s I.T.W. Signode (India) Ltd., H.S.M. Department, Rourkela Steel Plant, Rourkela and Shri A.K. Samal, K.C. Behera, Shri K.K. Boity and 3 others, C/o The General Secretary, Rourkela Thika Shramik Sabha, Bisra Road, Rourkela-11 was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF PRESIDING OFFICER, INDUSTRIAL TRIBUNAL
ROURKELA

INDUSTRIAL DISPUTE CASE No.11 OF 2003

Dated the 20th February 2008

Present :

Shri Srikant Nayak,
Presiding Officer, Industrial Tribunal,
Rourkela.

Between :

M/s I. T. W. Signode (India) Ltd.,
H. S. M. Department, Rourkela
Steel Plant , Rourkela. . . 1st Party—Management

And

Shri A. K. Samal, K. C. Behera, . . 2nd Party—Workman

Shri K. K. Boity & 3 others,
C/o. The General Secretary,
Rourkela Thika Shramik Sabha,
Bisra Road, Rourkala-11.

Appearances :

Shri G. Pujhari, General Secretary . . . For the 1st Party—Management
Shri D. Mohanty, Joint Secretary . . . For the 2nd Party—Workman

AWARD

This order is out of a reference made by the Government of Orissa in exercise of powers conferred by sub-section (5) of Section 12, read with clause (d) of sub-section (1) of Section 10 of I. D. Act, 1947 to the effect that :

“ Whether the action of the management of M/s I.T.W. Signode (India) Ltd., Rourkela employing new labourers from the outside and not reinstating the retrenched workmen Shri A. K. Samal , K.C. Behera, K.K. Boity and 3 others in service is legal and/or justified ? If not, to what relief they are entitled ? ”

2. The case of the workman is that (hereinafter referred as the 2nd Party) is that they were employed in the year 1994 by the management and they were working at Hot Strip Mill coil binding and they were working till the 31st March 1998 and on that date they refused employment. The management to deprive them took the plea that they were the employees of sub-contractor A. K. Behera. Shri A.K. Behera is only used to supply labourers. But he is not a contractor. The Officers of the Company used to supervise their work and the management used to pay money from the Rourkela Steel Plant when they retrenched, they entered to the Union and resort to hunger strike. So there was an agreement in which the management agreed to re-employ them in the case of need. When the management started working with the R.S. P. He employed other persons and refused employment to the workman. So they raised the dispute. On failure of conciliation, the matter was referred to this tribunal.

3. The case of the management (hereinafter referred as 1st Party) is that the workmen were the employees of A.K. Behera who used to employ the labourers to do the binding job. After A. K. Behera left the service M/s Raj Engineering did the same work. After completion of work the management left Rourkela. But again on the 23rd March 2001 packing on H.R. coil was entrusted to the management and this work requires skill employee. So M/s Raj Engineering was doing the same. The management is not aware of any hunger strike nor there was any conciliation proceeding. There was no employer employee relationship between the 1st party and 2nd party and claim is not maintainable.

4. On the aforesaid pleadings of the parties, the following issues were framed:—

ISSUES

I. Whether the reference is maintainable ?

II. Whether the action of the management employing new labourers from the outside and not reinstating the retrenched workmen Shri A.K. Samal, Shri K. C. Behera, K.K. Boity and 3 others in service is legal and/or justified ?

III. If not, to what relief they are entitled ?

5. The management examined one witness and the workman examined one witness in support of their case.

6. *Issue No. II* :— M. W. 1 deposed that he was working as Executive in I.T. W. Signode India and in the year 1995 he was working in Rourkela. The management was entrusted the work to the manufacturer of Auto Strapping Machine and the contract was valid till the 31st March 1998. The job requires manual power and that was entrusted to A. K. Behera. Then A.K. Behera left the job the same was entrusted to Raj Engineering. The workman were working under A.K. Behera and he had not seen them working with Raj Engineering, and so with them and there was no employer and employee relationship between the management and the workmen.

7. On the other hand W.W.1 deposed that he was working as coil binder in hot Strip Mill in R.S.P. through contractor I.T.W. Signode India Ltd. He was working since the 8th October 2001 and worked till the 31st March 1998 and thereafter he was removed from service. So he brought to the notice of the Union and there was a tripartite settlement in which the management agreed to reemploy them in case of requirement and Ext.1 is the settlement and Ext. 2 is the letter writing by the Labour Officer.

8. Since the workmen claimed that they were the employe of the management, the initial burden is rest on them to prove the same. Except examining himself the workmen had not filed any documents to show that they were employed by the management but not by the contractor. No material evidence was adduced to show that they are directly paid by the management or the management used to supervise their work. In the decision report in 2004-101-FLR -Supreme Court at page 137 (workmen of Neelagiri of Co-op. Society Vrs State of Tamilnadu) their Lordships held that " the court is required to consider several factor which would have bearing on the result who is the appointing authority, who is the pay master, who can dismiss, how long alternative service last , the extent of control and supervising the nature of job i.e. whether it is professional or skilled work, nature of establishment, the right to reject.

9. In the case in hand the W.W.1 had not produced any appointment letter nor any document to show that he was paid by the management and management used to supervise the work. So no document was filed to show that the workmen were directly under the control of management. On the other hand the evidence of M.W. 1 that the workmen worked under sub-contractor A.K. Behera receives corroboration from Ext. 1, the Memorandum of Settlement filed by the workmen. Ext. 1 reveals that they are the employees of sub-contractor A.K. Behera who raised industrial dispute. So. Ext. 1 makes it clear that the present workmen were the employees of A. K. Behera but not the employee of management. So there was no employer and employee relationship between the management and the workmen. So. it cannot be said that the workmen are the employees of management. As such their claim is not proper.

10. *Issue Nos. I & III*:— In view of the above finding the workmen are not entitled to any relief and the reference is answered accordingly.

Dictated and corrected by me.

SRIKANT NAYAK

20-2-2008

Presiding Officer

Industrial Tribunal, Rourkela

SRIKANT NAYAK

20-2-2008

Presiding Officer

Industrial Tribunal, Rourkela

By order of the Governor

K. TRIPATHY

Under-Secretary to Government