

(1958) 11 BOM CK 0030

In the Bombay High Court

Case No : Reference (I.T.) No. 326 of 1958

Firestone Tyre and Rubber Company of India (Private) Ltd.

APPELLANT

Vs

Their Workmen (Including Clerical Staff)

RESPONDENT

Date of Decision : 24-11-1958

Acts Referred:

Industrial Disputes Act, 1947 — Section 12(5), 19, 21

Citation : (1959) 2 LLJ 124

Hon'ble Judges : M.R. Meher, J

Bench : Single Bench

Judgement

1. This is a reference by the Government of Bombay under S. 12(5) of the Industrial disputes Act, 1947, for adjudication of a dispute between the Firestone Tyre and Rubber Company of India (Private), Ltd., Bombay, and the workmen (including clerical staff), employed by it in Greater Bombay, i.e., in the factory at the head office and the Bombay district office of the company over the following demand :-

"Bonus for the year ending 31 October 1957. - All employees including temporary workmen and casual labour should be paid unconditional bonus, equivalent to three fourths of their total earnings during the financial year ending 31 October, 1957. All employees including temporary workmen and casual labour, discharged, dismissed, retired or retrenched during the said financial year or after, should be entitled to this bonus. The earnings for this purpose should include overtime and dearness allowance, comptists" machine allowance and officiating allowance."

2. In the statement of claim filed by the Firestone Tyre Employees" Union, Bombay, it is stated that the company started in 1930. It erected a factory at Sewree, Bombay, in 1939. It has a paid-up capital of Rs. 20,000, all the shares being held by the parent company in United States of America. For all practical purposes the Indian company functions as a branch of the parent company, obtaining funds for capital expenditure from the latter and remitting all surplus

profits to the parent company. The company has been making enormous profits. The wages and salaries of workmen are far from adequate and the dearness allowance does not neutralize fully the rise in the cost of living. The piece-rated workers are paid less than workers in the Hind Cycles and Indian Tools Company, though the nature of work in the Firestone company is more strenuous. The employees finding it difficult to make both ends meet have to incur debts. The income of the Firestone Employees' Co-operative Credit Society from interest on loans advanced to its members has increased by about Rs. 5,000 during the year ended 30 June, 1958. Categories, such as, saltwater boys and messengers, who are monthly paid, get a minimum basic wage of Rs. 27 and Rs. 30 respectively, and the dearness allowance for them is Rs. 60. Against this the lowest paid textile worker got in 1956-57 Rs. 30 as minimum basic wage and Rs. 72.98 as dearness allowance per month. The minimum basic wage paid by the company to a daily-rated factory worker after three months on probation is Rs. 52 for 26 days. The average dearness allowance in 1956-57 came to Rs. 72.98. The union goes on to state :

"The union submits that the two conditions laid down by the Supreme Court, namely,

- (1) that the wages fall short of the living wage standard and
- (2) that the industry makes huge profits part of which are due to the contribution, which the workmen make in increasing production."

are fully satisfied in its case."

The company has been paying inordinately large dividends. The average salary of officers in 1956-67 worked out to Rs. 4,186 per month. The workers were awarded bonus equal to six months' basic wages for the years 1954-55 and 1955-56. For the year 1956-57, the company has paid one-sixth of the basic earnings of the year (excluding all allowances) to all permanent employees, as advance against bonus for 1956-57.

3. The company has in its written statement stated that the demand for bonus equal to six months' wages plus dearness allowance and other allowances is made in a spirit of irresponsibility and recklessness, as it would come to one year's basic wages. The company has submitted that no more bonus should be awarded than the bonus of two months' basic wages already given voluntarily. The bonus formula as rigidly applied is totally inapplicable in the case of this company. In the past the formula has never been applied in regard to this company. The company has submitted that in any case the bonus awarded should be considerably less than last year for the following reasons :- At the instance of the Central Government and in pursuance of the country's industrial policy the company has undertaken a programme of expansion which will ultimately cost over rupees three crores. This sum cannot come out of the profits but must be spread over a reasonable period of years and therefore provision must be made from the profits of future years if any, against this vast item of

expense. Because of the above situation the company has been unable to declare or remit any dividends for the year in question. The company has been ploughing back its profits ultimately would give more scope for employment. The company has arranged with the Government of India for large exports of its products in pursuance of the new export drive : however, exports will naturally have to be on a competitive cost basis so as to get preference over tyres manufactured in other countries. The comparison between the various overseas Firestone plants and the plant in Bombay, of the number of manminutes required to produce a certain sized tyre shows the difficulty which the management of the company has to face in outside markets of the labour output and situation here, and this places the company at an immediate disadvantage from the point of view of all exports. In particular the manminutes required at Bombay have been found to be a great deal higher than those required at the South African Firestone plant. Even at present the products of the company made in Bombay are being underquoted in Pakistan Ceylon and other countries by the South African Firestone plant, and any increase in the present costs of this company by reason of the award in this case would considerably aggravate the situation and indirectly adversely affect the export policy and the crying needs of the nation.

4. The company maintains that it is paying a living wage, it has been found by different tribunals that the wages paid in this concern are very high and therefore the so-called "gap" between the actual and living wage is non-existent. Absenteeism throughout the plant which was always on the high side in this company remained high during 1956-57 and if the workmen are not getting a living wage it is difficult to understand how they can afford to remain absent for such a large percentage of time. Because of substantial increments the wage bill has been rising every year and in the year in question it has been even higher. The productivity of the men, on the other hand, has fallen down in the producing and servicing departments since last year. The higher rate of income tax has increased the business expenditure. The imposition of the wealth tax and the revised tax structure are factors which will seriously affect the company's financial position. In view of the taxes and the cost of expansion programme which will be over Rs. 3 crores the two months' bonus already paid is fair. As regards the contention of the union that the poundage production has increased, the company has replied that the contention that this is due to the efforts of the workmen is fallacious. In fact, the pounds produced per clock workman in the producing and working departments have decreased during the year in question in comparison with the two previous years. The company is purely a subsidiary concern of the parent American company. The parent company affords to this subsidiary company certain advantages which are not available to other companies in India and which have helped the company to maintain good profits and expand production. The company has access to the research facilities of the parent company and receives from it up-to-date information on all technical matters and day-to-day technological advice. As acknowledged by the Tariff Commission, the cost of materials constitutes approximately four-fifths of the

total factory costs of the company, while a substantial portion of the remaining one-fifth is constituted by factory overheads and only a small fraction thereof by direct labour. This is because there has been continuous research covering a wide range of problems and many of the manufacturing processes are automatic. Even in non-automatic processes the operations are simple. The fixed assets of the company increased from Rs. 53 lakhs in 1946 to Rs. 201 lakhs in 1956-57 and it was due to this increase with the help of the parent company that the company could expand its production. The company has a paid-up capital of Rs. 20,000 only. The gross block in relation to this is large. The company has been able to keep its fixed capital expenditure at a comparatively lower level because a large part of the equipment needed by the various Firestone units is manufactured jointly and is consequently obtained at a more favourable rate. The imported materials required by the company are purchased through the common purchasing organization, and although the bulk purchases arrangement results in substantial benefits to the company no buying commission is paid. The company runs a canteen where food is supplied at concessional rate, and two free cups of tea a day are supplied to employees and substantial losses on account of the canteen have to be written off every month.

5. The company has further submitted that the clerical staff is very highly paid and the earnings in a majority of cases are over Rs. 400 per month in the year in question. It has submitted in Para. 44 of the written statement that the clerical staff should be given bonus at a lesser rate than the operatives. The company has drawn attention to the remarks of the Labour Appellate Tribunal in the case of the Oil companies v. Workmen 1953 II L.L.J. 251 which are as follows :

"Care must also be taken to see that the bonus which is given is not so excessive that it creates fresh problems in the vicinity, that it upsets emoluments all round, or that it creates industrial discontent and possible emergence of a privileged class. Furthermore, we must not be unmindful of the impact of an unduly high bonus on the community as a whole."

6. With regard to the union's contention regarding the income of the Workers' Co-operative Society from interest on loans, the company has replied that in the period from November 1956 to October 1957 the workers' subscription towards the share capital went up by Rs. 11,150 as compared to the previous year. The company maintains that the vast majority of the workmen have attained a living wage.

7. The union has filed a rejoinder to the company's written statement. In it, it has stated, inter alia, that the new export drive and policy of the Government of India with regard to export has to be in harmony with the socialistic pattern of society and export drive should not be pursued at the cost of well-being of the workers. The need for export at competitive rates is not a just ground for denying the workmen their share in the prosperity of the company in the form of bonus. As regards the figures supplied by the company regarding the man-minutes required to produce a certain sized tyre, the union has stated that there

are several factors responsible for productivity such as mechanical devices, total emoluments, climatic conditions, etc. As regards the fall in poundage production, the union has submitted that the poundage produced depends on production schedules and workers have no freedom to produce what they can. The union goes on to state that what is germane to the question of determining the quantum of bonus is whether the company has enough residuary surplus. The contention that the company is paying a living wage is denied. The wage bill has gone high because the dearness allowance which is linked to the consumer price index increased and the number of workmen increased.

8. In the year in question, the company had 1,554 workmen (including 122 clerks). The distribution is shown in Para. 19 of the company's statement as under :-

1. Head office, sales and marketing - salaried	130	2. Factory - clock	1,302	3. Factory - salaried	84	4. Bombay district office	38	-----	Total	1,554	-----
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The previous facts relating to bonus in this company are as follows :-

Year	Profits	Bonus paid	LAKHS.
1948-49	 122	 4 months"	basic wages by an award.
1949-50	 121	 5 months"	basic wages by an award.
1950-51	 151	 5 months"	basic wages but in appeal the parties came to settlement giving 5 1/2 months" basic wages.
1951-52	 213	 5 1/2 months"	basic wages.
1952-53	 136		The company gave bonus equivalent to three months" basic wages. Government refused to refer to an industrial tribunal the claim for increased bonus on the ground that the workers resorted to go-slow for some months. The workmen took the matter to the High Court which decided that this was an extraneous consideration and issued a direction to the State Government to consider afresh the question whether the dispute should be referred to adjudication. The State Government has filed an appeal to the Supreme Court.
1953-54	 170		Bonus equivalent to five months" basic wages by agreement.
1954-55	 131		Bonus equal to 5 months" basic wages awarded by me. In appeal, Labour Appellate Tribunal increased it to six months" [Bombay Government Gazette, Part I-L, dated 17 January, 1957, at p. 325 to 335].
1955-56		Profit figures	Bonus equal to confidential six months" under S. 21 basic wages of the Industrial awarded by me, Disputes Act. [Bombay Government Gazette., Part I-L, dated 13 February, 1958, at pp. 931-937].

For the year 1956-57, the gross profit is higher than for the preceding year. The claim of the union to bonus equal to nine months" wages, inclusive of dearness allowance, is very unreasonable and made, it seems, to ensure that the workmen do not get less bonus than in the two preceding years. On the other hand, the company has this year made a determined stand against a grant of six months" basic wages as bonus.

9. It might be mentioned that the bonus formula has never been applied in respect of this company. The facts about this company are peculiar and it is evident that no company with a paltry capital of Rs. 20,000 which it has, could

make such large profits without the connexion it has with the parent company. As observed by the Tariff Commission in Para. 12(5) of its Report on Fair Prices of Tyres and Tubes :

"Like Dunlop, Firestone also have access to the research facilities of the parent company and derive from them up-to-date information on all technical matters. For this service the parent company charges a royalty at the nominal rate of 1.5 cents per each 100 lb. of all products manufac-in the Indian factory."

In Para. 14(3) of the report it is stated :

"The pneumatic tyre industry is of vital importance to national economy. Technically, it is a highly advanced industry wherein constant progress is maintained through continuous research covering a wide range of problems. Each of the leading tyre companies of the world maintains elaborate organizations for research and spends vast sums of money on improvement of quality and on making available to consumers products which satisfy the exacting requirements of modern road transport. The Dunlop and Firestone factories in India have the advantage of receiving day-to-day technological advice from their respective parent organizations overseas, and being in continuous touch with the developments in regard to compositions, techniques and types."

In Para. 15(4), it is stated :

"Firestone have certain special features of their own. They are purely subsidiary concern of a foreign private limited firm. Their entire surplus is remitted to the parent firm, no general reserves being maintained in India. The parent firm consequently accords to its subsidiary certain advantages not available to the other companies in India. Firestone have a paid-up capital of only Rs. 20,000 and a gross block of Rs. 138 lakhs in 1952-53 which, in relation to their scale of operations, is much lower than that of Dunlop. Firestone have been able to keep their fixed capital expenditure at a lower level, because a large part of the equipment needed by the various Firestone units is manufactured jointly and is consequently obtained at more favourable rates and also because, unlike Dunlop, they have not found it necessary (partly because of their location) to have a labour colony of their own. The imported materials required by them are purchased through the common purchasing organization maintained at Akron for all the sister companies, and although this bulk purchase arrangement results in substantial benefit to them, no buying commission is paid. The range and diversity of their products is also less as compared with Dunlop. Further, as will be seen from the details given later, Firestone's selling and distribution expenses in relation to their turnover, are much less than those of Dunlop, Good Year or India Tyre."

In Para. 29(1) of the report, it is stated :

"In determining the fair rate of profits for this industry, account must be taken of the fact that in comparison with other industries of similar magnitude and

importance, the gross block, which is the customary basis for calculating fair profits, is small in relation to the value of output and capital employed in this industry. Calculation of profits and the rate of 8 per cent on gross block and 4 1/2 per cent on working capital will not, therefore, yield a reasonable quantum of profits for this industry. Secondly, in the case of a large and expanding industry of this kind, the basis of calculating profits should have some relation to the volume of business. In view of these considerations, we have decided to compute the fair profits due to this industry on the basis of capital employed. We consider that a gross profit (including interest on working capital) at the rate of 10 per cent on capital employed will be reasonable."

10. It is, therefore, evident that the disproportion between the profits and the nominal paid-up capital is due to the facts referred to above. At the same time, it cannot be contended that the contribution of the workmen is negligible. As was observed by the Tariff Commission on p. 50, Section 19, of its report :-

"Direct labour accounts for only a small fraction of the total factory cost, in spite of the fact that many of the processes involved in the manufacture of tyres and tubes are non-automatic and hence labour efficiency has a significant bearing on the volume of output and ultimate cost."

11. The factors and considerations which should be kept in view in determining bonus have been laid down in a number of cases. In the case of *Nellimarla Jute Mills Company, Ltd., and another v. Their workmen* (1953) I.F.J. 522 : 1953 II L.L.J. 512 the Labour Appellate Tribunal observed :

"(a) Bonus is granted to workmen to fill in the gap between the wages which they are receiving and the wages which they would have received if the living wage standard had been reached. They are thus entitled to share in the prosperity of a concern.

(b) Care must be taken to see that the bonus which is given is not so excessive as to create fresh problems in the vicinity or in the industry, to upset emoluments all round, and to lead to industrial discontent and the possible emergence of a privileged class. Furthermore, we must not be unmindful of the impact of an unduly high bonus on the community as a whole.

(c) The existing scale of wages to the workmen must be taken into account, and so also the available surplus of the concern in the year under consideration.

(d) Facilities such as medical relief, education for children of the workmen, provident fund, gratuity, pension scheme and smaller facilities like free tea and provision of foodgrains at concessional rates, should also be taken into consideration.

(e) The contribution of labour in the production or income of the concern is also relevant factor."

In the case of the *Burmah-Shell and other oil companies* 1953 II L.L.J. 246 the

Labour Appellate Tribunal observed :

"There is no dispute that the concerns before us have a large "available surplus", and may be the "available surplus", is so large that it could bear the grant of a very heavy bonus ... Bonus must therefore have some relation to wages; it is intended to supplement wages and not to double or multiply it, for wages are not fixed solely on the capacity of a concern to pay. Care must also be taken to see that the bonus which is given is not so excessive that it creates fresh problems in the vicinity, that it upsets emoluments all round, or that it creates industrial discontent and the possible emergence of a privileged class.

Furthermore we must not be unmindful of the impact of an unduly high bonus on the community as a whole."

In the decision of the Supreme Court in *Muir Mills Co. Ltd. Vs. Suti Mills Mazdoor Union, Kanpur*, it was observed as follows :

"There are however two conditions which have to be satisfied before a demand for bonus can be justified and they are (1) when wages fall short of the living standard and (2) the industry makes huge profits part of which are due to the contribution which the workmen make in increasing production. The demand for bonus becomes an industrial claim when either or both these conditions are satisfied."

12. It is, therefore, well established that the wages that the workmen are getting are a factor that has to be taken into consideration, and another thing that has to be borne in mind is that bonus should not be so high as to lead to repercussions in other industries, the possible emergence of a privileged class and the impact of an unduly high bonus on the community as a whole must be considered.

13. As I shall be dealing in the context of this case with the aspect of the impact of an unduly high bonus on the community, it would be relevant also to refer here to some decisions of tribunals in Australia. In the *Electricians etc. (State) Award* case (quoted in the book Foonander's "Better Employment Relations" at p. 28), a full bench of the Industrial Commission of New South Wales observed :

"One of the primary duties of the commission and of conciliation committees is at all times to consider and safeguard the public interest, which includes the interests of the public at large as well as of employees and employers."

The Federal Arbitration Court observed in the *Basic Wage-Standard Hours Inquiry* case of 1953 (quoted in the same book on the same page) as follows :

"The interests of "the persons immediately concerned" and the "interests of society as a whole" must always both be considered by the Court."

14. I shall now come to the wages prevailing in this concern. The good wages paid by this Firestone Company have been referred to in a number of awards. In Reference (I.T.) No. 151 of 1954 [Bombay Government Gazette, Part I-L, dated

25 October, 1951, at p. 5468], in which there was a demand for an increase in the piece rates, the learned adjudicator, Sri P. S. Bakhle in his award observed :

"I have carefully examined the annexure and I do not think that the wages that this company is paying compare unfavourably with the rates with such a concern as Burmah-Shell. It may be that the company's financial position might warrant a higher wage but it has also to be borne in mind that in fixing the wage-scale care has to be taken to see that there is no great disparity in the wages prevailing in other industries in the same locality. For these reasons I do not think that there is any justification for an increase in the wages as demanded by the union."

In the appeal from that decision 1952 II L.L.J. 298, the Labour Appellate Tribunal observed :

"A dearness allowance is paid to all the workmen on the textile scale, and the total emoluments of the workmen consisting of basic earnings and dearness allowances is, in most categories, higher than is found in any concern in Bombay State and compares favourably with the wages of the oil companies."

The Labour Appellate Tribunal then considered the piece-rated system applicable and went on to observe :

"The merits of such a system are naturally to be judge by results, and it is not denied by the workmen that, in terms of money, their wages are probably the highest in all industries."

In the case relating to bonus for the year ending 31 October 1950 decided on 15 July, 1952 [Bombay Government Gazette, part I-L, dated 7 August 1952, p. 2673], the Labour Appellate Tribunal observed :

"There can be no doubt, and it has not been challenged, that the emoluments of the workmen in this concern are higher than those in other industries and to that extent they approach nearer to the ideal of a living wage. There is however, a gap between the wages that the employees now receive and a living wage as we can visualize it, and in order to shorten that gap a satisfactory bonus is indicated."

The tribunal then went on to say :

"Whereas in this concern "the available surplus" is inevitably large, there is always force in the contention that the bonus should be substantial, although it must necessarily fall short of the stage where it may tend to become profit-sharing."

The system of payment of the monthly-rated workers is described in the award of the Labour Appellate Tribunal [Bombay Government Gazette, Part I-L, dated 31 July 1952, at p. 2657] as follows :-

"The hourly-rated day worker is paid according to a system of job evaluation

which provides for a fair day's pay for a fair day's work; it is not based on annual increments, it establishes a maximum rate for the job and an employee is moved towards this according to his ability, skill and general qualifications. As regards the piece-rated worker there is no limit placed on the quantity he may produce so long as his production is of a standard quality and is within the specifications, and he is paid by the unit of production which takes into account such factors as fatigue, personal allowance, lunch period and other predictable delays."

15. In my award in the bonus dispute for 1954-55, after a detailed consideration of the wage-scales of operatives and the clerical staff, I came to the following conclusions :

"These figures show that the clerical staff in this company are, on the whole, well paid. Promotions appear to be rapid, and few clerks are kept on the lowest grades ... It appears to me that the emoluments of the operatives of this concern are nearer a living wage than in many other industries in Bombay, and that in a number of categories they compare favourably with the oil companies."

16. The company has in the present case produced detailed statements of the wages and salaries actually drawn by a large number of operatives and clerks (Exs. C. 2 to 9 and C. 14). In the award relating to bonus for the year 1955-56 [Bombay Government Gazette, Part I-L, dated 13 February 1958, p. 931 at p. 934], I have observed as follows :

"The union has filed a number of statements showing how wages and salaries compare with other companies. The company has also filed a number of statements with a view to show that the wages in this company are good; the comparison of the wage-scales prevailing in this concern with certain other concerns was made by me in Paras. 7 to 9 of my award in the 1955 bonus case. Reference was also made in Paras. 10 of the award to other awards where such comparison has been made, and I do not think it is necessary every year when a bonus dispute arises to embark on a fresh detailed inquiry into the question as to how the wages and salaries compare with other concerns. It is sufficient to say that the wages and salaries paid in this concern are fair, but in the middle and lower ranges in a number of categories, they still fall below a living wage."

A number of exhibits have been filed in this case by both sides showing the present wage-scales and salaries. At Ex. C. 5, the company has shown that the average living wage of the clock workers in the year was Rs. 87 and dearness allowance Rs. 59. The average includes the earnings of pieceworkers. Exhibit C. 3 shows that during the year there were 628 pieceworkers and 651 day workers. In annexure C to the written statement the company has given the wages of certain unskilled categories to show that the wages have come up to a living wage. They are so follows :-

- Starting Dear- Number Maximum Dear- Total basic ness of years basic ness
maximum pay per allow- required pay per allow- basic pay month of ance to

reach month and 208 hours maximum dearness allowance per month Rs. Rs. Yrs. Rs. Rs. Rs. 1. Repairman 52 75 8 102 73 175 2. Tyre rackman 52 75 8 102 73 175 3. Truckers 52 75 6 95 73 168 4. Powerhouse 52 75 6 88 73 161 helpers 5. Janitors and 52 75 2 66 73 139 sweepers

But the union has urged that out of the above categories repairman, tyreman, tyre rackman and powerhouse helpers are not unskilled workers and from the description of their work given by the company at the hearing, it appears that they are not unskilled workers. At Ex. U. 3, the union has given the maximum and minimum pay of some categories of workers. They are as follows :-

Designation	Minimum per day	Maximum per day	[note : maximum brought up to this figure from 1 April, 1957]
Tinsmith ...	2	5	Electrician ... 2 7
Lathe operator (turner)	2	6	Welder ... 2 6
Fitter ...	2	5.5	Blacksmith ... 2 5.5
Painter ...	2	5	Mason ... 2 5
Carpenter ...	2	5	

The company has urged that during the last several years the minimum hiring rate for these categories has been not Rs. 2 but Rs. 3 per day and that the initial hiring rate of Rs. 2 per day has been for fitter apprentices only. The exhibits produced by the company show the actual emoluments from year to year since 1952. They show that in a number of categories the maximum wage has been increased from 1 April, 1957. Taking into consideration the wage-scales and salary scales and the actual wages and salaries drawn by the operatives and clerks, I am still of the view taken by me in the award for the year 1955-56 that while the wages and salaries paid in this concern are fair, in the middle and lower ranges in a number of categories they are still below the living wage. But I think that such a high bonus as was given in the last two years, viz., six months' basic wages, is not indicated. At C. II, the company has submitted a long note on what figure would amount to a living wage. The calculations are based on norms of a minimum wage laid down at the Fifteenth Session of the Indian Labour Conference. But the conception of a living wage is different from a minimum wage and a fair wage. For a discussion on the subject of the living wage see the observations of the Labour Appellate Tribunal in Para. 13 of the award in the bonus dispute for 1954-55 [Bombay Government Gazette, Part I-L, dated 17 January 1957, at p. 325].

17. The company has always paid bonus at the same rate in terms of monthly wages to operatives, clerks, supervisory staff and even some of the officers. In awards relating to this company bonus has been awarded at a uniform rate to all workmen including the clerical staff. Statement No. 1 attached to the written statement shows that if bonus equal to six months' basic wages is awarded the total amount payable to workmen will come to Rs. 11,15,589, and the company would have to pay bonus at the same rate to the supervisory staff whose basic wages come to an average of Rs. 266, 363 and 501 in the district office, factory and head office respectively. For bonus to supervisory staff, the bonus, would, therefore, come to Rs. 4,69,335. I leave out of account the officers, some of whom the company pays at the same rate as workmen, some at a lower rate and

the most highly paid, no bonus. The total cost to the company for bonus to workmen and supervisory staff would be Rs. 15,84,924. The company would save on the income tax about 61.5 nP. in the rupee. Being a private limited company, it would be liable to this higher rate of taxation for if it does not declare any dividend, it would have to pay super tax at a higher rate and if it does, the capital being very nominal, the dividends would attract a high rate of income tax. The actual burden to the company of six months' basic wages as bonus would be roughly over Rs. 6 lakhs. The loss to the State by way of rebate on income tax by reason of the payment of bonus of 1,538 workmen and 218 supervisors would be over Rs. 9 lakhs. In the case of the dispute between Amalgamations, Ltd., Madras v. Its workmen [Fort St. George Gazette, dated 17 February, 1954, Supplement to Part I 1954 I L.L.J. 431 the industrial tribunal, Mr. Justice Mack, observed as follows :

"An aspect which struck me forcibly as regards a flat rate of bonus, is that under S. 10(x) of the Indian Income tax Act payment of bonus or a commission for services rendered is one of several allowances made before taxable profits or gains of a business are computed. A generous grant of a flat rate of bonus to all workers therefore is one made substantially at the cost of the Union Exchequer and is a burden, really on the consumer-tax-payer."

Tribunals have, therefore, to bear in mind the economic effects of their awards on the community. From this aspect as well as other aspects also such as that the price of a commodity like tyres and tubes which, it is in the interest of the public should be reasonably low, cannot be brought down if the cost structure of the industry is unnecessarily inflated. In the book, "Introduction to the Study of Industrial Relations," p. 263, by J. Henry Richardson (Second Edition), it is stated as follows :

"Workpeople who are employed in prosperous industries will inevitably enjoy advantages over their fellows in less prosperous industries, and the advantages will include higher wages. Yet they probably do not work harder or more efficiently than workpeople in other industries, the prosperity of their industry being mainly due to favourable conditions of demand for the goods produced, invention of improved machinery, discovery of better processes, and efficient organization by management. If workers are in short supply in prosperous industries, their wages will rise, but if the rise reaches a level far out of line with wages in other industries, there is danger that the greatly increased labour costs will be passed on to consumers in higher prices to the disadvantage of workpeople in other industries. Also the high wages may, in course of time attract too many workers to the hitherto prosperous industries, which will then suffer from unemployment and a fall in wages, thus contributing to instability in the economic system. A more farsighted wage policy which avoids grabbing greedily at temporary gains and does not carry wages in highly prosperous industries far beyond those paid for work of similar quality in other industries, is in the long-term interests of workpeople in all industries."

If the impact on the community of an unduly high bonus (in cases where wages are already fair) is to be taken into consideration, there is no justification for giving a bonus as high as six months' basic wages in the present case.

18. Regarding the aspect of repercussions of a high bonus on other concerns and industries, Sri Sule has urged that the grant of a bonus equal to six months' wages in the two preceding years has not led to any repercussions in other industries. But in the case of every company which has been doing well, even when the wages are on the whole fair, the Firestone case is relied on by workmen who expect a minimum of six months' basic wages as bonus. In the case of the Stanvac Refinery [Reference (I.T.) No. 218 of 1957, Bombay Government Gazette, Part I-L, dated 6 February, 1958, at p. 744], in which the demand was for three quarters of the total earnings as bonus, great reliance was placed on the award of the Labour Appellate Tribunal raising the bonus for 1954-55 from five months' basic wages given by me to six months' basic wages. In the case of the Burmah-Shell Refineries, there was a settlement between the union representing operatives and the company in respect of bonus for the year 1956. But the clerical staff raised a dispute asking for 8 months' total earnings as bonus [see Bombay Government Gazette, Part I-L, dated 19 June, 1958 at p. 3209]. In the case of the Dunlop Rubber Company, Ltd., and its workmen [Reference (I.T.) No. 138 of 1958] which is pending before me, the workmen have made a demand for six months' total earnings as bonus, and in the statement of claim reliance is placed, inter alia, on the Firestone case. But for the precedent of the Firestone case it is not improbable that in a number of cases there would have been a settlement on a reasonable basis with regard to bonus in the case of some companies.

19. The union has in its statement of claim in support of the claim for a higher bonus relied on the circumstance that there was an increase in production in the year. According to the company, there has been a decrease in productivity. Normally in a company like this where the high annual bonuses with the fair wages make up altogether satisfactory emoluments, it might be expected that there would be an increase in productivity. As was observed by Adam Smith in his "Wealth of Nations" :

"The wages of labour are the encouragement of industry, which like every other human quality, improves in proportion to the encouragement it receives. A plentiful subsistence increases the bodily strength of the laborer, and the comfortable hope of bettering his condition, and of ending his days perhaps in ease and plenty, animates him to exert that strength to the utmost. Where wages are high accordingly, we shall always find the workmen more active, diligent, and expeditious, than where they are low."

Now let us see whether the company's contention that the productivity of labour in the company has been decreasing is justified. In the written statement it is stated that though the actual poundage warehoused increased, the pounds per clock man-hour in the producing and servicing departments decreased from 12.8

in 1954-55 to 11.8 in 1955-56 and 10.5 in 1956-57 showing a gradual fall in productivity. At Ex. C. 1 the company has given the following figures :

"Statement showing shortfall in production in 1956-57 over 1955-56 Year Average Total (Taken from Factory number poundage operations Report of clock warehoused No. 34.") workmen Pounds per clock manhours - producing and servicing departments. 1955-56 1,227 31,863,510 11.8 1956-57 1,302 32,913,326 10.5 1. Actual increase in average number of clock workmen in 1956-57 75 2. Man-hours a new clock workman expected to work during the year 2,222 26 days x 8 208 hours per day ---- 208 x 12 2,496 months Less : 3 paid holidays 24 10 per cent. absenteeism 250 ----- 274 ----- 2,222 3. Additional annual man-hours for 75 additional workmen : 2,222 x 75 = 1,66,650 4. Expected increase in production in pounds 1,66,650 x 118 = 19,66,470 5. Actual increase in production in pounds = 10,49,816 6. Actual shortfall in production in pounds = 9,16,654

In my opinion, the contention of the company and the inferences sought to be drawn by it from Ex. C. 1 are fallacious and ignore elementary principles of economics. They rest on the assumption that with the increase in the labour force from 1,227 to 1,302 the percentage of increase in production should be the same. The total poundage warehoused has increased from 31,863,510 to 32,913,326. Now, it has to be borne in mind that with a given quantity of capital equipment, after a certain point each increase in the number of workers leads to smaller and smaller additions to the output. And on this indisputable fact is based the theory of the marginal productivity of labour which, to put it very shortly, is that the marginal labourer determines the wages of the group, or in other words, the wages of any class of workers are equal to the increased product which results from last worker hired. Capital, labour, production technique, business enterprise, all contribute to the final product, and it is practically impossible to measure a separate product assignable to any factor in production dissociated from the other factors. To give an illustration, supposing that, without any expansion of equipment, the Firestone company were to increase the labour force from 1,302 to one and a half times, viz., 1,953, it would be absurd to expect that the poundage of production should go up in the same arithmetical proportion from poundage 32,913,326 to 49,369,989. It has to be borne in mind in considering whether there is increase or decrease in productivity during two periods, other factors in production, viz., whether the capital equipment and production technique, supply of raw materials and the organization of production, the pattern of production, etc., have remained more or less the same or have altered. Now in the case of the Firestone company, labour forms a small proportion of the total costs, and it is, therefore, idle to expect that poundage production should increase in the same arithmetical proportion as the increase in the labour force. Now in this case it appears that the increase in production in the year 1956-57 by a poundage of 10,49,816 has brought to the company more profit than the additional expenditure in respect of 75 operatives, after making allowance for the additional expenditure on raw

materials consumed, etc. So far, therefore, as any inferences can be drawn from the scanty data produced before me, they point to an increase in productivity rather than decrease in productivity.

20. The company has urged that absenteeism (or unauthorized absenteeism as distinguished from leave of all kinds) throughout the plant remained high in 1956-57, viz., 10 per cent, and that if the workmen are not getting a living wage it is difficult to understand how they can afford to remain absent for a large percentage of the time. The union has in its written statement replied that absenteeism is an indication of the arduous working conditions, and that

"Workers absent themselves not because they are paid a living wage, but because they are paid a living wage, but because, in the main they do not want to have their health completely shattered in the service of the company. Apart from this, tribunal may kindly note that during the year under reference, there was a long spell of the flu" epidemic, which is responsible for a part of the absenteeism at least."

But it has to be borne in mind that the workmen are covered by the Employees' State Insurance Scheme, and in addition to the contributions that the company makes towards that scheme it spends same amount on medical facilities. The figures of absenteeism in the Firestone Company are undoubtedly high, but it seems to me, no particular inference can be drawn from the figures of absenteeism without a scientific investigation into the circumstances and causes of absenteeism.

21. Reference was made by the union at the hearing to the fabulous salaries of the directors in this company and the very high salaries of officers. In the statement of claim it is stated that the monthly salary bill for 41 officers in the year in question was Rs. 1,71,652, which works out to Rs. 4,186 per officer. Statement No. 1 attached to the written statement of the company shows that the salary bill for officers in the year came to Rs. 1,83,094 so that the average is even higher. But it has to be borne in mind that that leveller, the income tax, would lop off a large portion of such high salaries. Annexure D to the statement of claim shows that out of the 20 executive officers, 17 were Americans and 3 Indians. If Americans have to be brought, they have to be paid salaries high enough to induce them to come to this country. It is true that the pace of Indianization of the officers' grade is slow, but the remedy is for Government to bring pressure on such companies to accelerate the pace of Indianization and I do not think that principles in regard to bonus to workmen should be jettisoned and an unduly high bonus should be awarded to workmen because very high salaries are paid to officials hailing from the United States.

22. The company has urged as a ground for awarding lower bonus the fact that it has not declared any dividend for the year. This point has been dealt with the Para. 5 of my award in the bonus case for 1955-56 and I see no reason to differ from the view taken in that case. The argument that the net profits have been

reduced by reason of the "high rate of income tax" is again advanced this year and on this point also I see no reason to alter the view taken by me in that case.

23. The company has in its written statement pointed out that it gives various facilities to its employees and spends money on medical aid, recreation equipment, safety awards, lockers, showers, etc., that food at its canteen is supplied at concessional rates, two free cups of tea a day are given and losses on account of the canteen have to be written off every month. This very point was raised before the Appellate Tribunal in the dispute relating to bonus for 1954-55 and that Tribunal observed :

"However, it has been argued on behalf of the company that it spends money on service and safety awards, welfare, medical aid, employees' State insurance contribution, lockers, showers, etc., and that appendix J is a statement of the company's expenses on these items. A number of facilities referred to above are statutory obligations and they cannot be taken as negating the argument on behalf of the workmen for extra bonus. The same remarks apply to the contention that the company runs a canteen where food is supplied at concessional rates. On the other hand, this company has no labour colony of its own as the Dunlop factory has, and the explanation is given that this is due to the peculiar circumstances of the Dunlop factory which are different from this company's factory." [Bombay Government Gazette, Part I-L, dated 17 January 1957, Para 19, pp. 333-334.]

24. Giving careful consideration to the contentions of both sides and having regard to all the facts of the case, I have come to the conclusion that bonus equal to five-twelfths of the basic wages to workmen would be quite adequate. As observed above, a higher bonus than this is certainly not indicated. On the other hand, taking into consideration the previous decisions in the case of the Firestone Company referred to above, the fact that on two previous occasions bonus equal to 5 1/2 and 5 months' basic wages was given by agreement, and that the profits have been larger than those of last year, I do not think that a lower bonus than five months' basic wages should be awarded.

25. As regards the conditions to be attached to the bonus. I am laying down the same conditions as in the awards for the two preceding years. The contention that over-time should be included in the earnings in bonus calculations, raised in the statement of claim, was not pressed at the hearing. The contention was set at rest in Para. 13 of my award in the bonus dispute for the year 1954-55 (cited above). At the hearing, both sides expressed that the condition in the previous award that casual workmen will not be entitled to bonus unless they have worked for 30 days in the year should be retained.

26. I direct the company to pay to the workmen concerned in this reference five-twelfths of the basic earnings (excluding overtime and dearness and other allowances but including comptists' allowance) for the year ending 31 October, 1957, less the bonus already paid. The payment should be made within a period

of six weeks from the date this award becomes enforceable subject to the following conditions :-

(a) Any employee who has been dismissed for misconduct resulting in financial loss to the company shall not be entitled to bonus to the extent of the loss caused.

(b) Casual workmen will not be entitled to bonus unless they have worked for 30 days in the year.

(c) Persons who are eligible for bonus but who are no longer in the service of the company on the date of payment shall be paid the same provided that they make a written application for the same within three months of publication of this award. Such bonus shall be paid within one month of receipt of application provided that no claim can be enforced before six weeks from the date this award becomes enforceable.