IN THE FIJI COURT OF APPEAL

Civil Jurisdiction

Civil Appeal No. 60 of 1980

Between:

1. SIM QARANIVALU & 12 OTHERS
2. FEDERATED AIRLINE STAFF ASSOCIATION — Appellants

and

QANTAS AIRWAYS LIMITED — Respondent

Sahu Khan for the Appellants.
Sweetman and Ram Krishna for the Respondent.

Date of Hearing: 16th July, 1981.

Delivery of Judgment: 31 JUL 1981

JUDGMENT OF THE COURT

Gould V.P.

This is an appeal from a judgment of the Supreme Court dated the 12th September, 1980, refusing to make a declaration in a matter between certain engineers employed by Qantas Airways Ltd. and their union the Federated Airline Staff Association on the one hand and the said Qantas Airways Ltd. on the other. An action was brought in the names of thirteen engineers and of the union against Qantas but a discontinuance was filed on behalf of three of the named plaintiffs who alleged they had not authorised the action.

The proceedings, which therefore continued by ten engineers and the union (now respectively the first and second appellants) against Qantas (the respondent) sought a declaration

in the following terms:-

> " For a decloration that it is not the function and/or the duty of the Plaintiffs as Aircroft Servicing Engineers and/or Licensed Aircroft Maintenance Engineers and/or Aircraft Maintenance Engineers to operate the said vehicles namely, fox-tractors, a Douglos tractor or fox tug or any other vehicle in order to push back or push out air-planes or to position power units. "

A substontial amount of documentary ond oral evidence was produced before the learned Judge, who expressed his final conclusion in the following terms:-

> " In conclusion I would state that it has been the function ond/or duty of engineers who are for brevity colled ASEs, LAMEs ond AMEs since about 1971 to date to operate tugs or Douglas tractors, Fox Tugs and other vehicles in order to push back or push out air planes or to position power units. It is a function which is performed ot many line stations overseas by engineers. Further there is nothing anywhere in the plaintiffs' contracts of services which excuses them from performing such duties or precluding the company from directing them to perform them.
>
> I decline to moke the declaration sought and it follows that the plaintiffs hove failed in their claim for relief. "

The basis of the action as set out in the Statement of Cloim, is that the engineer plaintiffs were employed either as Licensed Aircraft Maintenonce Engineers, or Aircraft Maintenance Engineers or Aircraft Servicing Engineers. (In fact since the discontinuance abovementioned it appears that there is none of the latter category among the plaintiffs but no point has been made of that). Paragraph 5 of the Statement of Claim refers to agreements between the Association and Qantas, leading up to -

"the current agreement is the Memorandum of Agreement dated the 28th day of August, 1979 and which Agreement is entered into between Qantas and the Association and which Agreement is binding between the Plaintiffs and the Defendant under the provisions of Trade Disputes Act and the Trade Union Act (and which Agreement is hereinafter referred to as "the Memorandum of Agreement". "

Paragraph 6 pleads that paragraph 34 the Memorandum of Agreement defines the classifications and the responsibilities ond duties of the various employers and sets out those for "Engineer - Aircroft Servicing", "Licensed Aircraft Maintenonce Engineer" and "Aircraft Maintenance Engineer". The Statement of Claim goes on to allege that as from the 22nd January 1980, the plaintiffs were instructed to drive tractors, tugs and other vehicles to push back or push out the various aircraft at the Nadi International Airport, and maintained that such work was not part of their duty under the Memorandum of Agreement.

The Statement of Defence alleged that the Memorandum of Agreement dated the 28th August, 1979, incorporated:-

"(a) the defendant company's regulations os issued from time to time applicable to the plaintiffs, all of which the plaintiffs have undertaken in writing to observe; and

(b) those terms which are understood and applied by the plaintiffs ond the defendant in practice habitually and by common consent. "

As to the "Definitions of Classifications", it was pleaded:-

"(b) does not admit thot the said classificotions state the duties and responsibilities of the plaintiffs; and

(c) says that the Definitions of Classifications contained in the said Memorandum of Agreement are only a broad and general guide as to which

major elements make up a classification. "

It was further alleged that all the plaintiffs had been driving push out tractors since their appointments, and the first notification the respondent had received of the plaintiffs' objections was on the 21st January, 1980. There was also a plea of estoppel.

At the hearing of the action some affidavits filed in interlocutory proceedings were treated as evidence, the appellants called two witnesses, Mr. Dinsukh Lal, a plaintiff and president of the Association and Mr. Paras Ram, another of the plaintiffs; the respondent called Mr. P. Turner, at the time the respondent's Nadi Airport Maintenance Manager designate, Mr. E.B. Phillips an Aircraft Engineer employed as Maintenance Manager and Mr. Ramendra Narayan the respondent's Nadi Airport Branch Manager.

The learned Judge found, and this aspect of the matter was not in dispute, that it was not until about 1971, on the completion of the new Airport Terminal, when parking bays were provided for aircraft, that the push out of aircraft at Nadi Airport was introduced. The procedure involved hooking up a tug or tractor to push out or pull aircraft from what is called the apron. It is not a difficult job and would take about 10-15 minutes of an engineer's time.

The learned Judge's assessment of the credit worthiness of the opposing witnesses was entirely in favour of those called by the respondent: he found that no credence could be given to Mr. Dinsukh Lal's story. That story was, contrary to the clear evidence of the three witnesses for the respondent, that while he had, prior to January 1980, driven tractors to push out 'planes, he had volunteered to do it, had done it on a goodwill basis and as an "act of grace"; he did not accept push out work as part of his work and told the

respondent so. On the other hand the evidence of Messrs. Turner, Phillips and Narayan was directly to the effect that from 1971 to 1980 the work had been always done by engineers and that none, in particular Mr. Dinsukh Lal and Mr. Paras Ram had said it was not their job.

The learned Judge expressed his finding on the matter thus:-

> " I am satisfied that from about 1971 to January 1980, as part of their duty, the plaintiffs pushed out and towed planes and positioned power units without complaint. They did in 1974 seek to obtain a special allowance for such work but were not successful. I am satisfied also that it was not until 21st January, 1980 that the Company's management became aware that the dispute with the Union, whose members had been instructed to "work to rule", included a dispute as to whether engineers holding the plaintiffs qualifications were to drive tugs to push out or tow planes and position power units. "

The learned Judge, having devoted some time to the question of "work to rule" which he acknowledged was an issue he did not specifically have to consider, went on to the "real issue" which he designated as :-

> ".....whether the work of pushing out and towing of planes and positioning of power units is work which should be done by the engineers as being within the terms of their conduct of employment in which contract the terms of the collective agreement between the Company and the Union are incorporated. "

This position appears to us to be correctly formulated and the practice of the parties, post and present, in relation to such work, though it is relevant, cannot be looked at alone in deciding the issue. We will set out what appear to us to be the main reasons of the learned Judge for arriving at his decision. It will be convenient first to set out the relevant

"Definition of Classifications" from Article 34 of the present collective agreement (hereinafter called "the Agreement") including thot of Engineering Assistant. They are:-

"Engineer - Aircraft Servicing:

An Engineer - Aircraft Servicing is an employee who is an experienced motor mechanic and who under appropriate supervision carries out routine inspection/servicing of transitting aircraft, aircraft refuelling and related duties. In addition he is required to maintain ground power units and ground air supply units and in contingency situations he may carry out essential maintenance and rectification of aircraft ground support equipment to ensure on schedule aircraft departure. He is required to keep himself abreast of relevant developments and changes in aircraft/ ramp handling procedures. "

"Licensed Aircraft Maintenance Engineer:

A Licensed Aircraft Maintenance Engineer is an employee who holds a current licence/approval in any of the following categories:- Engines, Airframes, Electrical, Instrument and Radio Installations appropriate to an aircraft type operated by the Company, or other operator's aircraft maintained by the Company at the station at which he is engaged; and is engaged to undertake, supervise and certify the maintenance, repair or overhoul of any one or more of the components, systems, items of equipment and associated equipment in the above categories. He is required to maintain ground electrical power units and ground air supply units, and in contingency situations may carry out essential maintenance and rectification of ground support equipment to ensure on schedule aircraft departure. He processes associated aircraft documentation and carries out related clerical duties. "

"Aircraft Maintenance Engineer:

An Aircraft Maintenance Engineer is an employee who is the holder of formal qualifications as aircraft maintenance engineer (or such other qualifications and experience which is evaluated

by the Company to be the equivalent thereof) and is engaged in the maintenance, repair or overhaul of any one or more of the components, systems, items of equipment, and associated equipment in the airframes, engines, radio, electrical and instruments systems on aircraft.

He is required to maintoin ground electrical power units and ground air supply units, and in contingency situations may carry out essential maintenance and rectification of aircraft ground support equipment to ensure on schedule aircroft departure. Additionally he is required to keep himself abreast of relevant developments and changes in aircraft/ ramp handling procedures, and corry out related duties as assigned. "

"Engineering Assistant:

An Engineering Assistant is an employee who shall drive and operote ground handling equipment related to engineering ramp activities, service aircraft water and toilet systems, dispose aircraft night soil and provide general assistance to engineers as required. He shall ensure that toilet and water carts are in o serviceable condition and assist with equipment mointenance, including equipment cleoning. "

The learned Judge said that put in a nutshell the plaintiffs (appellants) say the definitions do not state that they hove to drive tugs to push out planes or position aircraft and they point to the definit ion of an engineering assistant which refer to his driving and operating ground handling equipment.

We would interpolate here that we find difficulty in appreciating that the position of the Engineering Assistant is one of any prominence in the argument before the Court. In the lower court Mr. Dinsukh Lal is recorded as soying that - "Pushing is not included in anyone's classification". In reply to o question by this Court Mr. Sahu Khan, counsel for the

appellants, expressed the opinion that the Assistant Engineers were the only ones (by their classification) who could do this work. On the other hand, Mr. Ramendra Narayan, personal manager for the respondent, gave evidence that engineering assistants were not trained to do the work and could not do it - they were not skilled. Engineers had olways done it.

However this may be, the learned Judge made no further reference to Assistant Engineers but dealt with the respondent's contention that the classifications are only a broad and general guide and all employees clearly so understood. It was impracticable to define a complete list of all the work of engineers, particularly in an era of frequent technological chonges.

The learned Judge found that by no stretch of the imagination do the definitions limit or define the duties which the respondent may ask its employees to perform. The purpose of the classifications is clear from the agreement itself and that is to determine the salary rates applicable to employees folling within the classification as defined in section 34. He quoted Article 3, which is as follows:-

> " PAYMENT OF SALARIES
>
> A. Employee will be paid salary rates applicable to the classification set out in Appendix 'A', Appendix 'B' and Appendix 'C'. "

The learned Judge referred to the definition for the following:-

> (o) The AME was required to keep himself abreast of relevant developments and changes in aircraft/ramp hondling procedure and carry out relevant duties as assigned. 'Ramp handling procedure' involves push outs and positioning of power units.

(b) The E-AS duties included 'servicing of transitting aircraft' maintenance of ground power units and he is required to keep abreast of aircraft/ramp procedure.

(c) LAME has different functians but is required to ensure 'on schedule aircraft departure'.

The learned Judge took o wide view of the overall duty to service tronsitting aircraft and ensure that they get away on schedule. The engineers could be instructed to perform duties within their capabilities to fulfil this purpose.

The learned Judge relied upon Article 11A which showed that employees could be called upon to perform "higher" duties (subject to payment of a responsibility allowance) and upon Article 27 which referred to additional responsibilities being introduced at a rate to be fixed by negotiation.

The learned Judge, however, regarded Article 32 of the Agreement as in itself o complete onswer to the appellants' arguments. It reads:-

"MANAGEMENT RIGHTS

A. The Company retains the exclusive right to manage its operations and to direct the working forces. The Company in the exercise of its rights, shall observe the provisions of this Agreement.

B. The right to manage its operation and to direct the working forces include the right to hire, to transfer, to promate, to loy off employees becouse of lock of work, to deduct payment for any doy or shift that an employee cannot usefully be employed becouse of strike or through breakdown or stoppage of work by any cause for which the Company cannot be reasonably held responsible; to schedule the work, control and regulate the use of all equipment and other property of the Company,

dismiss, or take disciplinary action against any employee who violates any of the Company's rules and regulations provided that such are published and made available to employees by providing a copy in the various departments. "

It was the learned Judge's view that by this Article, combined with Articles 11A and 27, the employees have agreed that the respondent can direct them to perform other duties and call upon them to accept additional responsibilities and duties.

Finally the learned Judge expressed himself, with reference to the performance of the duties in question by engineers since 1971, in terms of the passage we have already quoted in the early part of this judgment.

The grounds of appeal, as set out in the appellants' notice are as follows:-

"1. THAT the learned trial Judge erred in law and in fact in holding that it is the function and/or duty of the Appellants as Aircraft Servicing Engineers and/or Licensed Aircraft Maintenance Engineers to operate fox tractors, a Douglas tractor or fox tug or any other vehicle in order to push back or push out air planes or to position power-units.

2. THAT the learned trial Judge erred in law and in fact in adjudicating on matters not raised as issues at the trial inasmuch as the Appellants were not given an opportunity to adduce evidence on matters relevant to such issues.

3. THAT in any event the learned trial Judge erred in law and in fact in holding that the Appellants (except the Union) were obliged in law to work overtime and/or were in breach of contract of service in carrying out "work to rule".

4. THAT the learned trial Judge erred in law in criticising the citing of old English precedent by the appellant when he later accepted that the same was relevant.

5. THAT the learned trial Judge erred in law and in fact in holding that the Appellants (except the union) were obliged to carry out all instructions of the Respondent even though the same were outside the ambit of his normal duties.

6. THAT the learned trial Judge erred in law and in fact in basing his findings on oral evidence in preference to documentary evidence.

7. THAT the findings and verdict of the learned trial Judge are unreasonable and cannot be supported having regard to the evidence as a whole. "

In the event the orgument on appeal was virtually confined to Ground 1; Grounds 2 and 3 related to the learned Judge's observations and findings on "overtime" and "work to rule". The lotter was described by the learned Judge as an issue he did not specifically have to consider, and the former he "discussed" only because it was referred to in evidence. These motters ot least prima facie having no relation to the single issue before the Court, Mr. Sahu Khan said he did not propose to argue them unless Mr. Sweetman, for the respondent, sought to rely on them on the main issue. Mr. Sweetman did rely on some of the evidence on the work to rule questions as being relevant as showing the course of conduct between the porties but agreed thot matters adjudicated on, not essential to the one main issue, were not matters for appeal. No further orgument was tendered on these grounds. The way we regard the matter is that while any evidence relevant to the single motter in issue is to be considered, whether or not it also touches the questions of work to rule and/or overtime, this Court is not concerned with the actual decisions upon either of those issues ond does not need to express any opinion on them.

Grounds 4-7 were also regarded by Mr. Sahu Khan os being covered by his argument on ground 1 and we will proceed

accordingly to that ground.

Mr. Sahu Khan referred to the sequence of agreements from 1975 onwards. First Ex.1, covering the years 1975-1976, followed by Ex.14 for the next yeor. This was followed by Ex.3B for 1978. In force at the relevant period, Ex.D was what we have referred to as the agreement dated the 28th August, 1979. We will refer to it from now on as "the Agreement".

In Ex.1 there were no classification of categories though there was o scale of rates of pay, and the distinction between the three grades of engineer, aircraft servicing, aircraft maintenonce and licensed aircraft oppears. The definitions are for the purposes of pay rates.

The Agreement Ex.14 did contain "Definitions of Classification" in Article 32, including the three relevant categories, setting out lists which specify in general terms the qualifications required to be had and what they will be required or permitted to do. The 1977 agreement Ex.3B we were informed merely repeots these clossifications.

The relevant paragraphs of Article 34 of the Agreement have been set out above. It was submitted that nowhere in these cotegories is it stated that engineers have to drive. The neorest requirement is that of maintenance. There are several categories whose duties include driving vorious types of vehicles and it is so stated in the respective paragrophs. The actual category of "Driver", strangely perhaps, performs general driving duties, "other than operating aircraft ground support equipment". The porograph deoling with Engineering Assistont has been referred to above.

We were given a number of references to the scheduled duties of the Departure Engineer at the time of departure

designed to show that at leost some of them are inconsistent with the Departure Engineer being also the tractor driver. There is no need to detail them. It is quite correct, for example, that he could not position himself on the right side of the tractor with headphones to co-ordinate control cabin to tractor instructions and at same time drive the tractor. This of course does not prevent the tractor being driven by another engineer. The evidence, in Mr. Sahu Khan's submission, of Mr. Ramendra Narayan, to which we hove already referred, on the subject of engineering assistants, should be rejected as contrary to the agreement.

The argument continued that in 1977 the respondent did attempt to put in a preamble to the agreement then being negotiated, to treat the specifications as merely a general guide. This was Article 32A of Ex. 4A -

> " The definitions of classifications contained in this Article are only a general guide to the nature of each job and are not to be regarded as covering all and every function and duties of the employees concerned. The Association understands and accepts that employees may not be confined solely to the work functions described in their particular classification definition. "

The fact that this article was not incorporated into the ensuing agreement, in Mr. Sahu Khan's submission, ought to be interpreted as evidence that the respondent did accept the categories as being comprehensive. Mr. Dinsukh Lal's evidence was that the respondent asked for the same preamble in 1979 and it was again rejected. Mr. Ramendra Narayan confirmed this in his evidence, but it is to be noted that he said the reason given for the rejection of the clause by the Association was that it would enable the respondent to assign members to other duties.

Mr. Sahu Khan's submission continues that the references just discussed show that the parties in drafting the agreement did so with the functions of each class of employee in mind. The learned Judge found that the engineers did carry out the tasks in mind, but even if there was no protest at having to do so, the declaration asked, called for the resolution of the question whether the engineers were in duty bound to perform this work. The agreement must be interpreted according to its terms. The learned Judge's reference to new technological changes (which we have mentioned above) is answered by Article 27 of the Agreement, which provides:-

> "27. In the event of a new classification being created or additionol responsibilities being introduced which fall within the scope of any of the existing classifications of this Agreement, a rate shall be fixed by the Company subject to subsequent negotiations between the Company and the Association as soon as practicable within a period of 6 months. "

That article appears to us to be primarily concerned with pay. It does nothing to answer the question whether the responsibilities in issue in this case were "additional"; nor does it assist with the question whether additional responsibilities assigned must be performed in any event, subject only to negotiations about pay.

Mr. Sahu Khan's argument continued that the Agreement must be interpreted by itself and not as a matter of what happened before and after it. No question of ambiguity arises, because the Agreement does provide who is to drive the tugs - that is the Engineering Assistants. Implied terms can only come into play when no express terms are applicable. A term such as honesty of conduct might be implied but not such a term as would provide a duty outside the classifications.

It will be advantageous at this point to look at relevant provisions of the Trade Disputes Act 1973. Section 33

provides for registration of collective ogreements. Subsections (1) (2) and (7) read :-

> "33(1). A copy of every collective agreement and ony amendment thereof reguloting the terms and conditions of employment of employees of one or more descriptions or determining in relation to employees of one or more descriptions, any matters for which a procedure ogreement can provide shall be registered with the Permanent Secretary.
>
> (2) The terms of every such ogreement shall be set out in writing, shall be endorsed by or on behalf af the porties, and, where oppropriate, by the conciliator or the chairman of the conciliation committee concerned.
>
> (3) The provisions of any such agreement shall be an implied condition of contract between every employee and employer to whom the agreement applies."

The definition of "collective agreement" in section 2 is:-

> '"Collective agreement" means any agreement which -
>
> (a) is mode by or on behalf of one or more orgonisotions of employees and one or more employers or organisations of employers; and
>
> (b) prescribes (wholly or in part) the terms and conditions of employment of employees of one or more descriptions, or o procedure agreement, or both; '

While subsection (7) of section 33 makes the provisions of such agreements an implied condition of the contract of employment the definition just quoted makes it clear that the agreement may, or may not, contain all the terms of the personal contracts of employment between employer and employees. Mr. Sahu Khan submitted that in the present case the whole contract was contained in the Agreement. He quoted Roakes v. Barnard /1962/ 2 All E.R. 579, which does not in fact provide

relevant assistance. At p. 595, Donovan L.J. said:-

> "so that the terms of the 1949 agreement, which deal among other things with hours of work, pay, holidays, and discipline (and here I quote the learned judge, 'thus became part of the terms of each individual contract of employment between the corporation and members of A.E.S.D.' "

The point is contested by Mr. Sweetman, to whose argument we will shortly come, and each case must depend on its own facts.

On the question of subsequent conduct of the parties reliance was placed on F.L. Schuler v. Wickman Machine Tools Sales Ltd. /1974/ A.C. 235 in which it was held that in generol an ogreement could not be construed in the light of the subsequent actions of the porties. Another case relied upon generally on the duties of employers was Price v. Mowet (1862) 11 C.B. (N.S.) 508; 142 E.R. 895 which was mentioned in the judgment under appeal. A person employed as a loce buyer refused to obey an order to fold lace on cards. It was neld that it was properly left to the jury to say whether or not the orders were such that a person in the employee's position was bound to obey. That was left as a question of fact; the present positin is onologous though not co-incident, for in addition to the question whether the duty relied on was imposed on a proper construction of the Agreement, it poses the alternative question whether the duty was the subject of an express or implied term outside those reduced to writing.

We will say at once that we accept fully the learned Judge's findings based on the credibility of the witnesses who gave evidence before him. It follows that we accept that the appellants concerned, from about 1971 to 1980 pushed out and towed planes and power units without complaint, and that the respondent was not aware of a dispute over this work until the

their duty", in the passage we have quoted on this subject, in our opinian he meant that the work was done to all intents and purposes as part of their duty, without protest or complaint; this we also accept. It was a case in which the advantage which the learned Judge enjoyed of seeing and hearing the witnesses, was paramount, and no argument of any merit to the contrary has been addressed to us.

Mr. Sweetman's submissions on the other issues in the case moy be summarised.

(a) As to the argument that the respondent had wished to insert a preamble (set out above) to the effect that the definition of classifications were only a general guide he said that as this was not made part of the agreement the agreement had to be construed as it stood, without it. We are inclined to think, though it has not been put this way in argument, that this matter is in the realm of negotiations, which generally would not be admissible.

(b) A list of thirty items of work of various kinds was prepared by the Maintenance Manager Nadi, as normal duties carried out for many years by the aircraft engineers on the Nadi station. They were examples of such duties though not entered in the appropriate classification in the Agreement. These were put to Mr. Dinsukh Lal in cross-examination and he admitted that the engineers performed a substantial number of them, though in some cases he added "Not part of our duty". He admitted that to marshall aircraft was their duty, to position and remove chocks, to maintain and service towbars, to connect towbars. Tasks associated with driving were, to drive and service small tugs for general transport and towing, and to drive and operate the large (Cherry Picker) truck. These last mentioned tasks were admittedly done, "but not our duty".

(c) What is in the Agreement is only part of the terms and conditions. There ore work rules ond instructions incorporoted. The Agreement is not between the respondent and its employees but between the Association and the respondent; its terms are imported into the personol employment agreements as implied terms by section 33(7).

(d) As to implied terms, Mr. Sweetman put forword two passoges from Introduction to the Law of Employment by Szakats (1975). At page 97 -

> "Can common low implied terms co-exist with the detailed provisions of statutes and collective arrongements? It depends on the express terms of the employment controct and on the clouses of the relevant industrial instrument, but it is primarily a question of low. Some common law duties of the servont moy be accepted as so well established and bosic thot the implicdion is obvious. "

ond at page 98 -

> "Work rules, without incorporotion by signature on the form of acknowledgement cannot be regarded as incorporated but merely as implied terms. If work rules have been adequately brought to the notice of workers either by supplying them with a booklet or by exhibiting copies on conspicuous ploces regularly used by the employees, such rules can be considered to have been accepted as contractual terms by implication. The difference between work rules signed and unsigned is merely that the latter have been imported into the contract not by express reference or ocknowledgement but by the porties' continuous observance. It may also be asserted that the provisions of the work rules with a legal significance as distinct from those with a pure odvisory character, if they regularly have been observed during a reasonoble period develop into a custom, what may be called codified custom. "

The outhority for this proposition is Marshall v. English Electric Co. Ltd. /1945/ 1 All E.R. 653.

(e) The final argument for the respondent was based on a comparison of Article 2(c) of the Agreement with sections of the Employment Act (1 of 1975). With respect we do not think it takes the matter any further.

Having considered all these various submissions with care we have arrived at the conclusion that the learned Judge was justified in refusing to make the declaration asked. We concur with him in attaching importance to Article 32 of the Agreement (supra) though we are not of opinion that it is only necessary for the respondent to give an order, to make obedience to that order a duty of the employee.

The second sentence of the Article shows that the respondent is required to observe the provision of the Agreement. It could not in the guise of management create duties which were contrary to those laid down in the actual specifications, though those that are merely new or additional are apparently within the powers of the respondent to impose under Article 27. Article 27 however is not in point here except as a possible guide to the question of construction. The duties relied upon by the respondent are not being put forward as new or additional duties but duties existing under the conditions of employment of the engineers.

In our view Article 32A must be given a wide interpretation. It is not restricted by B (which uses the word "include") and must be interpreted as an overall power of management and direction - if it were restricted to the ipsissima verba of the definitions of classifications, no useful purpose would be served by the Article. In our judgment the Article is intended to assist the respondent in the effective attainment of its main purpose, the operation and control of aircraft, including their arrivals and departures.

To this end it is open to the respondent to give the

engineers such directions, which are not contrary to their functians as spelt aut in the definitions of specification, but are reasonably incidental thereto. That the particular duties are incidental to the "spelt out" duties, is fully demonstrated by the foct that they have been performed without protest (as has been found) over a number of years, ever since the necessity for them arose. Even without this assistonce we would be of opinion that it is manifest that such duties are reosonably incidental to the engineers' functions as specified, in the light of the overoll purpose of the respondent's operations.

Mr. Sahu Khon's answer to this would be that the driving duties are allotted to Engineering Assistants by the definitions and are therefore impliedly excluded from those of the Engineers. The ottitude of the oppellants, as indicoted by the evidence of Mr. Dinsukh Lal, to the interpretotion of this definition appears to hove been somewhat inconsistent, and we are not of opinion that, if it does enoble Assistant Engineers to drive for the purposes in question, it is intended to impose that duty upon them exclusively. On the evidence of the status of the Engineering Assistont it appears more likely to be designed to confer a possible function which they would otherwise not have. We do not think it justifioble, without a much clearer indicotion thon is provided by this submission, to limit or regulote the functions of the engineers as the senior officers, by reference to those of the ossistants.

If we are wrang in deciding that as a matter of construction of the Agreement the duties in question are reasonably incidental to those detailed in the Agreement for engineers, and therefore may be assigned to the engineers by the respondent, we would be of opinion thot the evidence clearly shows an implied term that the engineers shall do such work. We would reject the suggestion that the Agreement contains the whole of the agreement for service between t he respondent and its employees. It was admitted by Mr. Dinsukh Lal thot a number of tasks properly assigned to engineers were not referred to in the definitions of specification. A substantial amount of material has been included in the Agreement but it would be obviously most difficult to include every detoil. The finding of the learned Judge is thot the engineers from about 1971 to January, 1980, pushed out and towed planes and positioned power units without complaint. Though they tried to obtain a speciol allowance for the work in 1974, they continued for further years to perform the duties, though the allowance was refused. We are satisfied that there was such continuous observance and performonce of this work as part of normal duties as to constitute such observance and performance an implied term of the contract of employment between the parties, binding on the appellants.

For these reasons we agree with the judgment in the court below, ond the appeal is dismissed with costs.

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Vice President

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Judge of Appeol

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Judge of Appeal