

29.12.94

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

210

CAUSE NO.

BETWEEN:	CAYMAN WATER AUTHORITY ^{Company}	PLAINTIFF
AND:	THE ATTORNEY GENERAL	1ST RESPONDENT
AND:	WATER AUTHORITY	2ND RESPONDENT

Mr. Ramon Alberga Q.C. & Mr. Bryan Ashenheim
for the Plaintiff.

Mr. Helfretch for the Attorney General and
Water Authority.

DECISION

I am satisfied that on a proper construction of Clause 6:3 of the licence, the discretion of the Water Authority to approve, modify or not approve an increase on the base price must be limited to the matter of whether an annual adjustment to provide for inflation is to be allowed. That being so, its discretion must be confined to ensuring that the proper mathematical computations of the formula in Schedule 5 or any other formula substituted for it, is applied.

It follows from this - that any dispute to be referred to the Governor-in-Council pursuant to Clause 6:3 can

only properly be a dispute involving a difference between the company and the Authority in respect of the exercise of the latter's discretion as aforesaid and only in that context would a ruling of the Governor-in-Council be an absolute ruling.

The subclause admits of no absolute or unfettered discretion in the Authority or the Governor-in-Council to disapprove the Company's application for an annual adjustment shown to be properly arising from inflation and in accordance with the formula in Schedule 5. On that construction alone the plaintiff's claim is bound to be successful.

Furthermore, I am satisfied that the absence of a ruling from the Governor-in-Council notifying the company of its decision within 30 days of receipt of notice at the Governor's Office of the Water Authority's ruling; was an event which entitled the Company to invoke the provisions of subclause 6:3 of the licence. That subclause in those circumstances deemed the approval of the increase.

Accordingly, I grant the declarations sought by the plaintiff in paragraph 15 of its statement claim subject to the following variations:

- (i) in paragraph 15 (1)(a) - the insertion of the words " to allow for inflation" after the words " adjusted annually" in line 3.

- (ii) the deletion of paragraph 15 (1) (c).

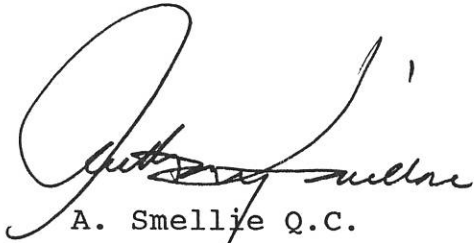
- (iii) in paragraph 15 (1)(d) - the insertion of the following in parentheses after the word "incorrect" in line 8 "(and subject to any right which either party may have under the licence to require a change of the formula)"

- (iv) in paragraph 15 (1)(e) - the insertion of the following after the words "the second defendants" in line 7 - "in accordance with Clause 7:9 of the licence".

The order for damages is in accordance with points 2 and 3 of the summary of lost revenue handed into Court and agreed by the parties, as to quantum.

The plaintiff is to have its costs as against the

defendants jointly to be taxed, if not agreed.

A handwritten signature in black ink, appearing to read 'A. Smellie', written in a cursive style.

A. Smellie Q.C.

Judge of the Grand Court

Dated this: 29th December, 1994