PERMANENT ARBITRATION TRIBUNAL

AWARD

R.N.230

In the matter of:

Mr. Serge Ah Fa

Mr. Gowreesunkur Seegobin

and

The Mauritius Marine Authority

1. The Tribunal composed of:

   Mr. Harris Balgobin - President
   Mr. Ravin Bunwaree - Member
   Mr. Max Serret - Member

proceeded to enquire into the following industrial dispute referred to it by the Minister in charge of Industrial Relations under Section 82(1)(f) of the Industrial Relations Act, 1973, viz:

"Whether Mr. Serge Ah Fat, Mercantile Marine Superintendent and Mr. Gowreesunkur Seegobin, Assistant Mercantile Marine Superintendent should with effect from 1st October, 1987 be remunerated in respect of overtime work performed by them or otherwise, and if so at what rate".

2. Mr. K. Bhayat, of Counsel, appeared for the Applicants whereas Mr. K. Matadeen, Q.C., Solicitor-General, then Principal Crown Counsel, and Mr. D. Dabee, Principal Crown Counsel, assisted alternately at their convenience the Mauritius Marine Authority, hereinafter referred to as the Authority.
3. Written Statements of Case were presented to the Tribunal by both parties to the dispute and were duly filed; evidence was also adduced.

4. Mr. Ravin Bunwaree, Member, has resigned from Tribunal.

5. The parties have no objection that the dispute be heard by the President and one Member only.

**MAIN SUBMISSIONS OF APPLICANTS**

6. The above dispute has arisen as a result of the deprivation of the acquired rights of Mr. Serge Ah Fat, Mercantile Marine Superintendent and Mr. Gowreesunkur Seegobin, Assistant Mercantile Marine Superintendent by the Mauritius Marine Authority for the payment of overtime when performed.

7. According to the Scheme of Service of above officers, they have to discharge certain statutory duties imposed on them by law and to issue Port Clearance to vessels sailing from Port Louis, among other duties.

8. These duties are not restricted to normal office hours.

   Before 1.10.87 when these were performed normal office hours by the Superintendent

   Outside or his Assistant, they were paid at overtime rates, same as were other officers such as Skippers, Pilots, etc.

9. After opting for the P.R.B., the two abovementioned officers continued to perform their duties which have not been changed and were paid overtime until 30th September, 1987, when they received a letter dated 30.9.87 from the Director General, Mauritius Marine Authority, to the effect from that 1st October 1987, whenever their services would be required after and before normal office hours, they would have to request a junior staff to replace them in the discharge of their duties, although the ultimate responsibility for the proper performance of the work would rest on them.
10. This instruction was duly complied with. However, the attention of the Director General was drawn on several occasions to the irregularities that were committed in preventing the Superintendent (in his absence his Assistant) from the proper performance of his duties.

11. The Director General being made fully aware of the in that the proper consequences of his instruction administration of the Mercantile Marine Office was not being carried out outside normal office hours, another instruction to the Superintendent issued Minute (12) dated 12.11.1987 in File 10/13 Vol. 2 refers. In the circumstances, the Superintendent and overtime for such extra work and have so far not been paid.

12. It is fitting to point out that other officers who are required to attend duties on account of the nature of such duties outside their normal hours of work, continue to be paid overtime, though they all opted these is for the P.R.B./Chesworth. A list of attached.

13. It is also pertinent to mention that issue of Port Clearance is among the duties of the Superintendent and his Assistant and in accordance with Section 16 of the Port Operations Regulations 1987 (G.N. 17/87), a Port Clearance has to be issued immediately prior to a vessel's departure. When vessels leave Port outside office hours, there is a statutory duty on the Superintendent (in his absence his Assistant) to attend work.

A comparative table of the salary drawn by each of the two officers Pre-P.R.B./Chesworth and Post-P.R.B./Chesworth is attached.

15. Annexe J is a letter dated 7.1.89 addressed to the Assistant Mercantile Marine Superintendent is self-explanatory in that it is glaringly contradictory - it is recognised that the officer has to perform duties outside normal office hours and is paid his travelling but is not paid for the extra work performed.

16. Annexe K is another self-explanatory letter dated as far back as 27th January, 1983
in which it is recognized that the Mercantile Marine Superintendent has to work at irregular hours in connection with arrivals and departures of vessels.

**MAIN SUBMISSIONS OF MAURITIUS MARINE AUTHORITY**

17. The Mauritius Marine Authority avers Mercantile Marine Office headed by the Mercantile Marine Superintendent is responsible for the enforcement of the provisions of the Merchant Shipping Act and of the U.K. Acts as applicable to Mauritius Merchant Shipping, and the issue of Port Clearance Certificate.

18. In general, these duties (manning of vessels, survey of safety certification, carriage of passengers and approving the contracts of employment of Mauritius nationals on local and foreign vessels, etc., etc.) are performed within official working hours.

19. There are cases when these duties have to be effected after normal working hours, on Sundays and Public Holidays. Prior to the implementation of the Chesworth Report, the overtime involved was being shared among all officers of the Mercantile Marine Office (the Superintendent, his Assistant and Clerical Officers).

20. The only duty which may require the physical presence of the Mercantile Marine Superintendent or his Assistant is the signing on and off of seamen. Since the Chesworth Report provides that only officers drawing less than Rs 5,000 per month are eligible for overtime, any attendance by the Mercantile Marine Superintendent or his Assistant outside normal working hours should be compensated by appropriate time off.

It must be pointed out that the Superintendent and his Assistant have been informed that whenever the services of the Mercantile Office would be required outside normal hours, they should, as far as practically possible, make appropriate arrangements for a junior officer of the Office to be in attendance.

21. Both Messrs. Ah Fat and Seegobin submitted their cases to the Salaries Commissioner, Mr. D. Chesworth. (Copies of their letters addressed to the
Commissioner are herewith enclosed).

22. The Mauritius Marine Authority believes that the Salaries Commissioner has taken into consideration that both the Superintendent and his Assistant may be required to be in attendance after official hours has accordingly recommended substantive increase their salaries.

23. It is obvious from a consideration of the evidence before the Tribunal that the Applicants have, in the manner in which Chesworth has been implemented, been disadvantaged in view of their Pre-PRB conditions of service has disadvantaged in view of their Pre-P.R.B conditions of service.

24. The Tribunal finds that this cannot have been intended by Chesworth. The Tribunal also has to take into account the particular nature of Port work and the duties, statutory and otherwise assigned to Applicants.

25. The Tribunal finds that the Applicants should with effect from the 1st October, 1987, be remunerated in respect of overtime work performed by them. The Tribunal nevertheless finds that a different situation had occurred when in 1989 the post of Mercantile Marine Superintendent became vacant and that consequently the present holders of the posts of Mercantile Marine Superintendent and Assistant Mercantile Marine Superintendent are not concerned with this Award since they were not at the appropriate time "in the saddle"

26. The Tribunal therefore awards that the Applicants should with effect from the 1st October, 1987 and until the date on which the post of Mercantile Marine Superintendent became vacant be remunerated in respect of overtime work performed by them.

27. The Tribunal wishes to make it clear that this Award is made in connection with the special circumstances of this dispute and the particular duties assigned to Applicants and is not meant to be a precedent; and should not be cited as such in any other industrial dispute.

28. The Tribunal nevertheless recommends that the Authority should in the light of this Award and in view of the special responsibilities attached to the posts of
Mercantile Marine Superintendent and Assistant Mercantile Marine Superintendent reconsider the conditions of above-mentioned service relating to the posts.

(H. Balgobin)
President

(M. Serret)
Member

2\textsuperscript{nd} November. 1992