EMPLOYMENT RELATIONS TRIBUNAL

ERT/RN 166/2017

AWARD

Before: -

Shameer Janhangeer - Vice-President
Vijay Kumar Mohit - Member
Karen K. Veerapen (Mrs) - Member
Ghianeswar Gokhool - Member

In the matter of: -

Mr Avikash Sharma BEEJAN

Disputant

and

IRRIGATION AUTHORITY

Respondent

The present matter has been referred to the Tribunal by the Commission for Conciliation and Mediation (the “CCM”) for arbitration pursuant to section 69 (7) of the Employment Relations Act. The Terms of Reference of the dispute read as follows:

Whether I should be reverted back to my previous posting at Plaine des Papayes substation following my transfer to Port Louis to look after projects found at St Felix, Bel Ombre, Plaisance, Belle Mare and Trou D’eau Douce or otherwise.

The Disputant appeared inops consilii nor was he assisted by a trade union representative. The Respondent was assisted by Miss A. Ombrasine, Ag. Principal State Counsel instructed by Mrs R. Camiah, Ag. Deputy Chief State Attorney. Both parties have respectively submitted a Statement of Case in the present matter.
THE DISPUTANT’S STATEMENT OF CASE

The Disputant has averred that he has been working at the Irrigation Authority since 10 May 2005 on a permanent and pensionable basis. He has been conferred the responsibilities of two irrigation projects known as Block 2 and Block 3 in the Fond Du Sac region. On 15 August 2017, he was sent a letter (attached to the Statement of Case) by the Respondent stating that a group of planters of Block 2 and Block 3 are not satisfied with his services and was given up to 24 August 2017 to answer the letter. A letter of complaint dated 18 July 2017 was also attached. The planters requested his transfer from Block 2 and Block 3.

The Disputant replied to the letter through his Attorney at Law in a letter dated 21 August 2017 (attached to the Statement of Case). On 25 August, he was informed by his two Supervising Officers, namely Mr Kong, Head of Operation and Maintenance, and Mr Dabeeah, Divisional Irrigation Operation Officer of a meeting held on the same date around 1400 hrs between four planters and the Ag. General Manager Mr Hauzaree, the Chairman of the Respondent Mr Sarju, the Deputy Permanent Secretary Mr Boodna, wherein the Ag. General Manager took the decision to transfer him with immediate effect following the request of the planters and instructed Mr Kong to take necessary action. On 29 August 2017, he received a memorandum (attached to the Statement of Case) from the Respondent stating that it has been decided to transfer him to Port Louis to look after small scale projects situated at Belle Mare, Trou D’Eau Douce, Plaisance, St Felix and Bel Ombre with immediate effect. Irrigation Operation Officer Mr Ramdhun, who was looking after these projects, was transferred to Plaines des Papayes to look after Block 2 and Block 3. The Respondent is well aware that his residence is found at Goodlands and that he has to travel to Plaisance, St Felix, Bel Ombre, Belle Mare and Trou D’Eau Douce to look after these small scale projects.

The Disputant has also averred that he holds the position of President of the Irrigation Authority Employees Union and that the Union has, in the last two years, complained on the wrongdoings of the Ag. General Manager to Government institutions. He also made a statement that an external candidate should be nominated for the post of General Manager in presence of the Minister of Agro Industry and Food Security. He has also made public the bad state of industrial relations prevailing at the Respondent and signed, with other officers of the Operation and Maintenance Department, a letter of complaint against the Ag. General Manager.
THE RESPONDENT’S STATEMENT OF REPLY

The Respondent has averred that the Disputant joined as Irrigation Operation Maintenance Officer (now restyled to Irrigation Operation Officer (“IOO”)) by the Pay Research Bureau (“PRB”) Report of 2008) on 10 May 2005; he has been posted at Stage 1, Plaine des Papayes for the past 12 years being entrusted with the responsibilities of two projects, namely Block 2 and Block 3 – Block 2 has an acreage of 360 hectares with 610 planters and Block 3 an acreage of 147 hectares with 300 planters; a copy of complaints received from a group of Block 2 and Block 3 planters was sent to Disputant on 15 August 2017 and he was requested to submit explanations; and Disputant did not submit any explanations but instead requested the Respondent, through his Attorney, to submit the names of the complaining planters.

The Respondent has further averred that IOOs have to comply with the Scheme of Service for their post; may be given responsibilities in respect of any irrigation project situated in any area of the island; may be transferred from one project to another to be acquainted with the different irrigation systems; and have to work towards providing service to the planters’ community efficiently. The transfer of the Disputant was made for the purposes of administrative convenience and with a view to provide better service to the community of planters; and has no bearing on his trade union activities for which he is allowed time-off to undertake. The Respondent moves that the dispute be set aside.

THE EVIDENCE OF WITNESSES

Mr Avikash Sharma Beejan, Irrigation Operation Officer, adduced evidence in the present matter. Mr Beejan refuted the Respondent’s Statement of Reply. He referred to the award of the Tribunal in Mrs Allas and SBI (Mauritius) Ltd (ERT/RN 159/15) stating that his transfer is also a punitive one. There is no mobility clause attached to the post of IOO nor is there a collective agreement on the issue of transfer. No transfer policy exists at the Irrigation Authority. He disagreed that the Scheme of Service for the post of IOO does not provide for recruitment to be made in respect of a particular location or site. He was recruited and posted at Block 2 and Block 3, which was a new project recently implemented in 2005. He was the only person living in the North recruited by the Respondent. Referring to the duty of ‘To effect regular site visit during and outside working hours to ensure that operations are carried out as scheduled’ in his Scheme of Service, he stated that it is practically impossible to do after-hour site visits to projects far away from his residence; he comes back home at Goodlands at 5.30 pm. He cannot do site visits in the dark. When posted in the North, he could effect site visits at any time when the need arose. This
is also detrimental to paragraph 18 of the Code of Practice of the Employment Relations Act. There is no issue of constructive dismissal and his dispute is not on same. He stated that the Tribunal is the most appropriate forum for his dispute.

Mr Beejan went on to state that he is not disputing paragraph 2 (a) to (e) of the Respondent’s Statement of Reply. Regarding paragraph 3 (a) of the Statement of Reply, he has always complied with the Scheme of Service. In relation to paragraph 3 (b) and (c), he stated that it is the first time he is taking cognizance that he may be transferred from one project to another. According to his letter of appointment dated 4 May 2005 (produced as Document A), there is no mobility clause; ever since he joined, he has never been informed by the Respondent that he could be transferred at any time or may be given responsibilities of any irrigation project. He referred to paragraph 49 of the Code of Practice of the Employment Relations Act. Management should have informed him at the time of his recruitment of the main terms and conditions attached, which has never been done. No Workers’ Handbook has been published and issued to the workers. He produced a communiqué from the Respondent on a Committee of Inquiry at the Irrigation Authority (Document B), stating that it is now that the Respondent is thinking of implementing an Employee Handbook. The argument that he ‘may be transferred from one project to another to be acquainted with the different irrigation systems’ does not stand as the Respondent has not disclosed to him that his transfer is to get acquainted with different irrigation systems when he was transferred. There is no other type of irrigation system which he has not been exposed to at the Irrigation Authority. Paragraph 3 (d) of the Statement of Reply is not in issue and is already being respected.

In relation to paragraph 4 (a) of the Respondent’s Statement of Reply, that he was transferred for administrative convenience, Mr Beejan stated that the reason for his transfer has not been disclosed; he has not been treated with transparency and fairness and produced a memorandum dated 29 August 2017 (Document C) pertaining to his transfer. According to him, ‘administrative convenience’ means suitable arrangements that will cause the least difficulty needed to control the operation of an organisation. He is experiencing the drawbacks of this administrative convenience as he resides in the North and has been allocated projects in the South; additional public funds are being spent to pay for the increase in mileage and he produced a copy of his payslips for the months of November 2017 and August 2017 (Document D) in support. He also has to disburse an additional Rs 175 to Rs 200 per day for parking in Port Louis. He referred to section 6 (2) of the Occupational, Safety and Health Act, stating that management has not provided him with safety and health information, instruction and training before his transfer, as well as to paragraph 70 (b) of the Code of Practice of the Employment Relations Act, which has not been followed. Regarding paragraph 4 (b) of the Statement of Reply, the issue of time-off and trade union activities are not in dispute. He has been victimised by the former Acting
General Manager who has fostered a grudge against him. His witnesses, Messrs Dabeeah and Kong, were present in a meeting on 25 August (2017).

Mr Beejan was thoroughly cross-examined by Counsel for the Respondent. He notably stated that he ranks third among the IOOs in terms of seniority of service. His trade union activities are ongoing without any problems. He agreed that there is a memorandum dated 18 October 2016, wherein Mr Kong mentioned him and four other Officers for transfer in terms of posting. However, he will only accept the transfer if it is based on mutual arrangement and not forced. It is more convenient for Officers who live in the proximity of projects to do site visits when the need arises. He could not answer if it is important to have an experienced IOO to look after his sites. His new posting is at Port Louis with frequent site visits to the sites he is allocated to. He has not done any after-hour site visits as it is impossible. He has no instructions on involving other members of his team on after-hour site visits. In 2016, Mr Kong informally told him of the need for a roaster. A mutually agreed transfer is not a victimisation. He was recruited to work at Block 2 and there is no mobility clause in his Scheme of Service or in his letter of appointment. The roaster prepared by Mr Kong is only a proposal. He does not complain on informal matters but on formal issues. He agreed that the final say rests on mutual arrangement with management and the IOOs.

Mr Beejan also replied that is not mentioned in his Statement of Case that he is incurring additional parking fees since his transfer. Following the complaint from planters, he retained the services of an Attorney-at-Law, who replied to the Respondent. He was referred to a letter from the Respondent dated 14 September 2017 addressed to his Attorney-at-Law. He does not agree that he was made aware of the reason for his transfer. He maintained that IOOs should be posted to projects near to their residence; however, this is not written in the Irrigation Authority Act or his letter of appointment. He agreed that he receives mileage as per the PRB Report. The increase of his mileage from Rs 7,000 to Rs 16,000 is due to additional distance travelled. He benefits from extra mileage. He also benefits from duty free facilities. When posted in the North, he was receiving travel grant. He does not receive any other allowance apart from mileage for his travel. He did not inform Mr Kong of the failure to provide him with a manual or to give him instructions. It is important for him to have a collective agreement regarding transfer.

Mr Beejan further replied that when posted at sites, as an IOO he is in charge of a team. He did not agree that it is valid for the Respondent to transfer him from one project to another. He maintained that he was not given the reason for his transfer but did not make any complaint with Mr Kong, his higher officer. It is in the Respondent’s Statement of Reply he took cognizance that he was transferred on administrative convenience. He was not aware of a letter in September 2017 addressed to his Attorney-at-Law. He has not received a copy of the letter.
(dated 14 September 2017) which was not addressed to him. He was not present at the meeting (on 25 August 2017). There was no further disciplinary action taken against him following the *mise en demeure*. He confirmed that a letter dated 18 August 2017 (produced as Document E) was sent on his behalf by his Attorney-at-Law to the Ag. General Manager. He has not produced the *mise en demeure* as it relates to a criminal case of victimisation and is not important for the Tribunal. The *mise en demeure* dated 8 September 2017 was made on his behalf and was in relation to disciplinary action which may have been instituted against him and there was no further action taken. He agreed that his transfer has no bearing on his trade union activities. He also agreed that there would be no diminution of his ability to take time off.

Mr Preetam Raj Dabeeah, Divisional Irrigation Operation Officer, was called as a witness on behalf of the Disputant. He notably stated that he attended a meeting on 25 August 2017 at 2 pm at Head Quarters in Port Louis. Those present were the Ag. General Manager Mr Hauzaree, the Chairman, the Ag. Head of Administration, Mr Kong, himself and later Mr Boodhna, Deputy Permanent Secretary; Mr Seebarun, Head of Construction, Office Management Assistant Mr Bhoojawon and four planters were also present. During the meeting, the four planters were complaining about Mr Beejan and the Ag. General Manager informed his Head to take immediate action to transfer Mr Beejan with immediate effect. Mr Dabeeah also stated that they receive several complaints at their office at Plaine des Papayes. The complaints are dealt at their own level and not in meetings. He has never received any complaint against Mr Beejan from planters.

Mr Dabeeah was questioned by Counsel for the Respondent. He notably stated that not all complaints received from planters go through his office. He was not aware of any complaint against Mr Beejan prior to attending the meeting. The letter dated 18 July 2017 is regarding a complaint made at the General Manager’s office. Complaints are one of the aspects of the work of the Irrigation Authority. Complaints made by Mr Beejan have not come to his office. Transfers at the Irrigation Authority are not scheduled nor is there a planned transfer roster. It is important for IOOs to become aware of various types of projects and systems. Mr Kong Thoo Lin is his Head and has been working longer than him at the Irrigation Authority. He is not aware of a memorandum dated 8 December 2016 signed by Mr Kong Thoo Lin.

Mr Kong Chong Siew Kong Thoo Lin, Head of Operation and Maintenance, was also called as a witness on behalf of the Disputant. Mr Kong Thoo Lin notably stated that he attended a meeting on 25 August 2017 at the Head Office of the Respondent at 2 pm. The Ag. General Manager, the Chairman, the representative of the Ministry of Argo-Industry Mr Boodhna, four planters – one of whom is an employee of the Respondent – and Mr Dabeeah were present at the meeting. The four planters were complaining of the attitude of Mr Beejan towards them, that he does not go on site and is not doing his work properly. After the meeting, he was instructed
by the Ag. General Manager to transfer Mr Beejan with immediate effect. It is the Ag. General Manager who decided to transfer Mr Beejan where he is now working. He sent a memo to the Head of Administration to effect the transfer. He does not agree to the transfer of Mr Beejan as the residence of the Officer and the project’s distance has to be considered. Mr Kong Thoo Lin produced a memorandum dated 28 August 2017 (Document F) signed by himself.

Mr Kong Thoo Lin also stated that there are other projects in the North the Disputant could have been transferred to. He has not received any complaints from planters against Mr Beejan. He is not aware if management made any inquiry into the allegations of the planters. It is not possible to effect after-hour site visits in projects far from Mr Beejan’s residence in Goodlands. There are many complaints received per day from planters. When a planter makes a complaint, it is looked after by the IOO and if it cannot be resolved by him, the IOO discusses same with the Divisional Irrigation Officer. Complaints do not normally come at his level. Meetings like the one referred to are not normally conveyed. There is no mobility clause in Mr Beejan’s Scheme of Service. There should be some sort of co-operation from Officers regarding transfer; the Officers should come to an agreement as there is shortage of staff.

Mr Kong Thoo Lin was comprehensively questioned by Counsel for the Respondent. Mr Kong Thoo Lin notably stated that throughout his career, he did not stay in one region, but moved as and when the post required. He was unaware of the complaints prior to the meeting. It could be that Mr Achumbit was not present at the meeting. He is not aware of any steps the Respondent has taken in relation to the complaints. There were five IOOs, now there are only four. IOO Mr Kundhai is based at Head Office looking after projects of Palma, Cressonville, Rempart and Cottage and lives in the region of Plaines Wilhems. Another IOO Mr Ramdhun also lives in a different District to where is he posted to work at. The difference in the various schemes is in the system of irrigation. Mr Beejan may be third in terms of seniority among IOOs. Mr Beejan verbally complained to him about lack of a Code of Practice or Circular regarding transfer within the organisation. He does not find the transfer to be good as Mr Ramdhun was looking after the projects very well and the transfer was done abruptly.

Mr Kong Thoo Lin also stated that complaints may be received by other Officers of the Respondent. The planters’ complaints should have been made in the Occurrence Book and then the Officers will deal with same. The law provides that the General Manager is responsible for administration. He was not happy with Mr Beejan’s transfer, but was instructed to make same. He agreed that he may recommend but ultimately it’s for management and the Board to decide of the transfers. Not all his recommendations are approved; but when things go wrong, he should not be blamed. Mr Beejan may be required to effect after-hour site visits, it is not something that has to be done every day but it depends on the circumstances. Mr Beejan as IOO works in a team
and it is up to the IOO to work on the schedule. IOOs are provided with duty-free facilities and Mr Beejan has availed himself of same. He agreed that the PRB provides for the payment of mileage. The Irrigation Authority may be required to work in new irrigation areas declared.

Mr Kong Thoo Lin went on to state that he agreed that the Scheme of Service for IOO provides for the Officers to plan, organise and manage irrigation operations at various schemes. According to the scheme of duties, IOOs may be transferred. Transfers can be effected when there are enough Officers. There are 686.66 hectares at Plaisance, Belle Mare, Palmar, Trou d’Eau Douce and Bel Ombre and their number of planters is 797. In a memorandum dated 8 December 2016 (produced as Document G), he mentioned that ‘Transfer of officers/workers is a normal practice within our organization’. He agrees with this principle but it can only be done if there is enough staff. Paragraph 2 of the memo concerns him. He wrote the memorandum at the request of the Ag. General Manager. He also produced a memorandum dated 18 October 2016 (Document H), wherein he discussed moving the IOOs. He proposed same at the request of the Ag. General Manager. Mr Ramdhun, who lives in Plaines Wilhems, was proposed for posting at Souvenir. He discussed but there was no agreement. Despite no consensus among the staff, a decision needs to be taken nevertheless and there has to be some sort of compromise. The transfers were not done because of shortage of staff.

Mr Kong Thoo Lin also stated that he has a grievance against the Respondent currently pending before the CCM. The Ag. General Manager wanted him to take leave and was pressing and even harassed him; he had to report a case to the Police. He has nothing against the Authority but only against one person, the Ag. General Manager. His objective is to serve the planters, who are the clients. He agreed that there is need to ensure capacity building among Officers and that they are exposed to the various sites and methods of work.

Mr Arun Achumbit, Administrative Assistant at the Irrigation Authority, was called to depose on behalf of the Respondent. Referring to the Scheme of Service for IOO, he confirmed that duty (i) provides for an IOO to plan and manage the operations at various irrigation schemes. The mission of the Respondent is to provide quality service to the planters’ community in an effective and efficient way. The object of the Authority is to implement and manage irrigation projects in every area and to do all other acts incidental thereto as per section 4 of the Irrigation Authority Act. A Minister can declare an area to be an irrigation area and the Authority shall prepare projects for irrigation of land in every irrigation area. He confirmed that the Respondent’s Statement of Reply is correct. In the present matter, the Authority received complaints from some planters in relation to Mr Beejan and he produced a letter dated 18 July 2017 (Document J) addressed to the General Manger from a group of planters of Block 2 and Block 3. He also produced a printout from the portal of the Irrigation Authority, which sets out
its aims, objectives and incentives to the planters’ community (Document K). The Disputant’s transfer was made purely on administrative convenience. Mr Ramdhun who lives in Plaines Wilhems is working at Stage 1 and has not made any complaint. IOOs benefit from duty-free and mileage in order to go and come back from their sites. Mr Beejan avails of mileage and there is no problem with his claims. Mr Beejan’s trade union activities have no bearing on his transfer which was only an administrative procedure. Mr Beejan receives time-off and all the facilities he requires for trade union activities. Mr Beejan has not complained on same.

Mr Achumbit also produced an extract of the PRB Report 2016 pertaining to paragraph 18.2.69 (iii) (Document L). Mr Beejan is third in terms of seniority among the IOOs. He produced a document showing a table setting out the various differences between the sites (Document M). There are differences in terms of extent, complexity, number of planters between the various schemes. As per his letter of appointment, there is no legal obligation for Mr Beejan to remain in one place throughout his employment. As per the Scheme of Service, an IOO needs to work on different irrigation schemes. Not all IOOs have been transferred during their work and they are working in Districts other to where they are residing. Different projects have different irrigation systems and crops also differ. To become Head of the Department, an IOO has to get the necessary experience of the various schemes to enable him to manage. There have been no complaints regarding the memorandums dated 8 December 2016 and 18 October 2016 produced by Mr Kong Thoo Lin. No amendment has been made to these documents. There has been no complaint from Mr Kong Thoo Lin or Mr Beejan regarding transfer policy according to records. Mr Kong can make recommendations regarding transfer of Officers but it is the Authority which decides.

Mr Achumbit also confirmed that the Respondent has a separate case with Mr Kong Thoo Lin at the CCM in relation to the payment of an increment. He is not aware of any Police enquiry in relation to a complaint made by Kong Thoo Lin. Mr Hauzaree was the Ag. General Manager and it is now Mrs Nowbuth who is Officer-in-Charge since January 2018. He confirmed that the memorandum dated 28 August 2017 (produced as Document F) is similar to the original document. Document F is a confidential document for the Respondent. He cannot say how Mr Beejan obtained this document. Following an exchange of correspondence with Disputant’s Attorney-at-Law, there was a letter dated 14 September 2017 from Mrs Dulthummon sent to the Attorney-at-Law (produced as Document N). The transfer was only for administrative convenience and no disciplinary action was taken further to the exchange of correspondences. All the five IOOs have been transferred.

Mr Achumbit replied to questions put by the Disputant. He notably stated that by administrative convenience, he referred to the mission of the Respondent to provide quality
service to the planters’ community in an effective and efficient way; an IOO should be able to cater for the different needs and requirements of planters; there are different regions over the island and different climatic conditions which give rise to different needs from planters. An IOO need to be acquainted with different types of irrigation to cater for different planters. In relation to transfer, the representative referred to the duty of ‘plan, organize and manage irrigation operations for irrigation schemes’ in Mr Beejan’s letter of appointment. An IOO needs to cater for all the irrigation schemes.

Mr Achumbit also replied that regarding a letter sent to Disputant by himself dated 15 August 2017 there was a complaint, Mr Beejan was asked for explanations and no other action was taken. No explanation was received from Mr Beejan. The signatory planters were not disclosed to Mr Beejan and the letter was not anonymous. Regarding complaints, they are dealt by the General Manager when received at Head Office and by the Divisional Irrigation Officer when received at Stage 1. The complaints regarding Disputant were not referred to Mr Dabeeah or Mr Kong Thoo Lin as they were made against the Disputant. He is aware of the meeting of 25 August 2017 but does not know the contents discussed and was not present. It depends on the Ag. General Manager if a meeting is convened to deal with planters’ problems. There is no written policy of transfer and the Respondent is governed by the PRB and the Human Resource Manual. He agreed that the Disputant’s Union and other Unions did write letters complaining of the wrong doings of the Ag. General Manager during the last three years. It has not been communicated for how long Mr Beejan has been transferred for.

THE MERITS OF THE DISPUTE

The Disputant in the present matter is asking the Tribunal to inquire into whether he should be reverted to his previous posting at Plaine des Papayes substation following his transfer to Port Louis to look after projects found at St Felix, Bel Ombre, Plaisance, Belle Mare and Trou D’Eau Douce or otherwise.

The Disputant works as an IOO at the Irrigation Authority having joined the organisation on 10 May 2005. He was posted at Plaine des Papayes for 12 years being entrusted with the responsibilities of two irrigation projects, namely Block 2 and Block 3. It should be noted that the Respondent is a body corporate established pursuant to the Irrigation Authority Act (Act 39 of 1978) (the “Act”).
Following complaints received from a group of planters in Block 2 and Block 3, the Disputant was requested to submit his explanations via a memorandum dated 15 August 2017 from the Respondent. The Disputant did not submit any explanations but instead, through his Attorney-at-Law, requested the Respondent to submit the names of the complaining planters.

The Disputant thereafter received a memorandum dated 29 August 2017 from the Respondent’s Ag. Head of Administration *inter alia* informing him that ‘*it has been decided to transfer you in Small Scale Irrigation Projects with immediate effect*’. The Disputant is since posted at the Head Quarters in Port Louis looking after irrigation projects in Belle Mare, Trou D’Eau Douce, Plaisance, St Felix and Bel Ombre.

The Disputant, as per the Terms of Reference of the present dispute, is seeking to be reverted to his previous posting at Plaine des Papayes substation. In support of his case, the Disputant has over the course of the hearing put forward certain reasons as to why he should be reverted to his previous posting within the Irrigation Authority.

The main contention of the Disputant is that there is no mobility clause in his Scheme of Service nor in his letter of appointment. He has also stated that there is no collective agreement on the issue of transfer and that no transfer policy exists at the Irrigation Authority. The Disputant also mentioned having been recruited and posted to work in the North at Block 2 and Block 3, being the only person residing in the North when recruited.

A perusal of the Scheme of Service for the post of IOO notably reveals that the IOO is tasked with the duty of ‘*To plan, organize and manage irrigation operations for irrigation schemes*’. It should be noted that the same duty is also reproduced at paragraph 3 (i) of the Disputant’s letter of appointment dated 4 May 2005.

It must also be considered that the Respondent has the statutory object of implementing and managing irrigation projects. Same may be gleaned from section 4 of the Act:

4. **Objects of Authority**

   *The objects of the Authority shall be to—*
implement and manage irrigation projects in every irrigation area
and do all other acts incidental thereto; and

It should be noted that the Act, in conferring the mandate of doing ‘all other acts incidental thereto’, has bestowed wide powers on the Respondent in the furtherance of its objective of implementing and managing irrigation projects. It therefore cannot be excluded that the Respondent has the power to transfer its employees, in particular its IOOs, from one irrigation project to another in undertaking this particular statutory object.

It cannot also be excluded that an IOO, having the duty of planning, organising and managing irrigation operations for irrigation schemes, will be posted at a particular irrigation scheme/project in the execution of the object of the Irrigation Authority. In view of the number of irrigation schemes managed by the Respondent, one cannot expect an IOO to be posted to all the schemes at once nor would it be practical to do so. In this optic, it should be noted that the irrigation schemes/projects are divided among the IOOs working at the Authority.

Although the Disputant has denied that he may be transferred, it must be noted from his letter of appointment that it is not stated that he would be posted or be working at any particular region, site, project or scheme. The letter of appointment has however set out the duties attached to the post of Irrigation Operation & Maintenance Officer, which has now been restyled as IOO by the PRB Report 2008. If it were to be the case that the Disputant was recruited by the Respondent to work exclusively at Block 2 and Block 3, his letter of appointment should have at the very least stated so.

It cannot also be overlooked that the Disputant’s own witness, namely the Head of Operation and Maintenance Mr Kong Thoo Lin, has recognised that according to their duties in the Scheme of Service, IOOs may be transferred. However, he has also emphasized that transfers can be effected when there are enough Officers. It must also be noted that the Disputant is not the only IOO who has been transferred. In this vein, the following should be noted from what has been stated by Mr Kong Thoo Lin in a memorandum dated 8 December 2016:

1. Transfer of officers/workers is a normal practice within our organization. The main objective of any transfer is to allow the officers/workers to get acquainted with different sites.
Although there is no express mobility clause in the Disputant’s Scheme of Service or in his letter of appointment, the Tribunal cannot be satisfied that the Disputant, being an IOO, cannot be transferred from one irrigation scheme/project to another in light of his Scheme of Service and the Respondent’s statutory objects or that he was recruited by the Respondent to work at only one particular irrigation scheme.

The Disputant has also laid emphasis on a meeting held on 25 August 2017 which his two witnesses, Messrs Dabeeah and Kong Thoo Lin, apparently informed him of. In fact, both witnesses called by the Disputant stated that a meeting was held on 25 August 2017 at 2 pm at the Head Quarters in Port Louis whereby four planters present complained about the Disputant; and after the meeting, the Ag. General Manager instructed Mr Kong Thoo Lin to transfer the Disputant with immediate effect.

Moreover, a memorandum dated 28 August 2017, which refers to the meeting, was produced by Mr Kong Thoo Lin. This has notably stated:

*Following complaints against IOO Beejan by planters at a meeting held on 25/08/17 at HQ in the presence of Chairman, Ag GM, Ag HOA, Mr Bhoojawon, DIOO (D), HOM and 4 planters, it was decided to transfer IOO Beejan in small scale irrigation projects with immediate effect.*

With the support of this memorandum from Mr Kong Thoo Lin, the Tribunal has noted that the Disputant has endeavored to uncover the reason for which he believes he was transferred. Although, it has not been disputed that the Ag. General Manager instructed Mr Kong Thoo Lin to transfer Mr Beejan with immediate effect after the meeting, it has not been sufficiently established that this was due to the complaints of the four planters present at the meeting. The more so, there are no notes of meeting to demonstrate same.

If it were to be the case that it is due to the planters’ complaints that Mr Beejan was transferred, the Tribunal would need to be in presence of evidence from the Ag. General Manager himself on this issue. It should be noted that neither Mr Dabeeah nor Mr Kong Thoo Lin have stated that it is due to the planters’ complaints that the Ag. General Manager gave instructions to transfer the Disputant with immediate effect. Thus, it cannot be safely concluded
nor inferred that owing to the complaints made during the aforesaid meeting that the Disputant was transferred from Plaine des Papayes substation.

The Disputant has also stated that he was not given any reasons for the transfer relying on the memorandum dated 29 August 2017, wherein it was notably stated that ‘it has been decided to transfer you in Small Scale Irrigation Projects with immediate effect’. The Disputant has also stated he became aware that his transfer was made for the purposes of administrative convenience from the Respondent’s Statement of Reply submitted before the Tribunal.

The Tribunal has however noted during the hearing of the present matter that the Respondent did write to the Disputant’s Attorney-at-Law on 14 September 2017 informing of the reason of the Disputant’s transfer. The relevant aspect of this letter reads as follows:

*b. The transfer was never a calculated one as a transfer is an administrative procedure which may happen at any time during the employment of your client at the IA. Moreover, the Scheme of Service of Irrigation Operation Officer at the IA is clear to the effect that an Irrigation Operation Officer shall be under the directive of the Responsible Officer and he shall comply with the exigencies of service.*

Although the Disputant has contended that he has not received this letter, it has been clearly addressed to his Attorney-at-law. It would thus be unreasonable to impute any blame on the Respondent due to the Disputant having failed to liaise with his Attorney-at-Law regarding correspondences received from the former. The more so that the aforesaid letter is in reply to a *mise en demeure* which the Disputant acknowledged was sent on his behalf.

It should also be noted that the Respondent has also put forward ‘*with a view to provide a better service to the community of planters*’ in its Statement of Reply as a reason why the Disputant was transferred. This is moreover consistent with the mission of the Respondent, which is to provide quality service to the planters’ community in an efficient and effective way. Furthermore, the Disputant himself has stated that this is not in issue and is already being respected. The mission of the Respondent has also been recognised by Mr Kong Thoo Lin, who stated that his objective is to serve the planters.
The Disputant has also complained that with his new posting, it is impossible to effect after-hour site visits as is required under his Scheme of Service. This has also been confirmed by Mr Kong Thoo Lin in his evidence. The Tribunal has, on this issue, noted that the Disputant works in a team and that it is possible to involve other members of his team to effect same. The Tribunal has also noted that the need to effect after-hour site visits has not arisen as per the Disputant’s own evidence. Furthermore, as per the evidence of Mr Kong Thoo Lin in cross-examination as well as that of the Respondent’s representative, not all IOOs are posted to irrigation schemes within the District where they reside.

The Disputant has also referred to his trade union activities and, in particular, stated being victimised by the former Ag. General Manager. The Tribunal has however noted that the Disputant has not contested that he receives time-off and that his transfer had no bearing on his trade union activities. Despite the sayings of the Disputant on victimisation, the Tribunal cannot be satisfied of same in the absence of any actual or material evidence. Although the Disputant is President of the Irrigation Authority Employees Union, his mere sayings cannot suffice. The more so, the Respondent has maintained that Mr Beejan’s trade union activities have no bearing on his transfer.

The Disputant has also complained that management has not provided him with safety and health information, instruction and training prior to his transfer contrary to provisions of the Occupational, Safety and Health Act. It must be noted that this is a matter which the Tribunal cannot be involved with as it relates to the jurisdiction of the Industrial Court. In any event, the Disputant may seek remedies available to him under the aforementioned enactment itself for any redress. Furthermore, the Disputant has complained of the lack of a Worker’s Handbook at the Authority. The Tribunal however notes that same is within the Terms of Reference of the Committee of Inquiry set up to look at issues at the Irrigation Authority.

The Tribunal has also noted that despite the fact that the Head of Operation and Maintenance Mr Kong Thoo Lin does not agree with the Disputant’s transfer to small scale irrigation projects, the power of the employer to organise its business cannot be overlooked. In this vein, the following may be noted from what the Supreme Court stated in Dyers and Finishers Ltd. v Permanent Arbitration Tribunal & Ors. [2010 SCJ 176]:

*It is settled law in France, from which country we inspire ourselves in matters of labour law, and in Mauritius, that the employer is at liberty to organise his enterprise in the*
best interests of that enterprise. But he must also comply with the law of the country with respect to the rights of the employees.

Moreover, it should be noted that Mr Kong Thoo Lin has not disputed that the responsibility of administration rests with the General Manager. He agreed that he can recommend but that it is for management and the Board to decide. Indeed, the Act has placed the responsibility for the control and management of the Authority’s day-to-day business as well as the administrative control of staff on the General Manager. Same may be gleaned from the following sections:

8. **General Manager**

... 

(2) The General Manager shall—

(a) attend every meeting of the Board;

(b) be responsible for the execution of the policy of the Board and for the control and management of the Authority’s day-to-day business.

...

10. **Appointment of staff**

(1) The Board may employ, on such terms and conditions as it may determine, such staff as may be necessary for the proper discharge of its functions under this Act.

(2) All staff of the Authority shall be under the administrative control of the General Manager.

The aforementioned provisions of the Act make it clear that there is no obligation on the General Manager to follow the recommendations of the Head of Operation and Maintenance. The Act has expressly placed the responsibility for the running of the organisation and the administrative control of its staff upon the shoulders of the General Manager.

It should also be noted that the Respondent has emphasized that IOOs should be acquainted with different irrigation projects and systems. Same has not been disputed by the Disputant’s two witnesses. Mr Kong Thoo Lin, in particular, recognised that there is a need to
ensure capacity building among Officers and that they are exposed to the various sites and methods of work. Moreover, the Disputant has himself stated that there is no other type of irrigation system he has not been exposed to at the Irrigation Authority.

In the circumstances, having considered the grounds which the Disputant is relying upon in seeking to revert to Plaine des Papayes substation and, in particular, the statutory powers conferred upon the General Manager of the Irrigation Authority, the Tribunal cannot find that the Disputant should be reverted back to his previous posting following his transfer to Port Louis to look after projects found at St Felix, Bel Ombre, Plaisance, Belle Mare and Trou D’Eau Douce.

The dispute is therefore set aside.
SD Shameer Janhangeer (Vice-President)

SD Vijay Kumar Mohit (Member)

SD Karen K. Veerapen (Mrs) (Member)

SD Ghianeswar Gokhool (Member)

Date: 17th May 2018