The present matter has been referred to the Tribunal for arbitration by the Commission for Conciliation and Mediation ("CCM") pursuant to section 69 (7) of the Employment Relations Act. It should be noted that at the time of referral, the Respondent was known as the Rights Management Society. However, with the proclamation of the Copyright (Amendment) Act 2017 (Act 13 of 2017), with effect from 14 December 2017, it is now known as the Mauritius Society of Authors ("MASA") same as it was previously known under the previous Copyright Act 1997. The Terms of Reference of the dispute read as follows:
Whether the Board of the Rights Management Society could recommend the post of Senior Officer/Lead Licensing to the PRB.

Each party was assisted by Counsel. Mr J. Moirt appeared for the Disputant. Whereas, Mr R. Daureeawo, SC appeared for the Respondent. The Co-Respondent was assisted by Mrs C. Servansingh-Bhuruth, Senior State Counsel, instructed by Mrs R. Vydelingun, Principal State Attorney. Each party has submitted their respective Statement of Case in the present matter.

THE DISPUTANT’S AMENDED STATEMENT OF CASE

The Disputant was appointed as Licensing Officer on 1 July 2003 and his employment contract was renewed on 1 July 2005 for a period of three consecutive years. On 7 August 2007, the Disputant was selected by the Respondent to lead the Licensing Department. The Pay Research Bureau (“PRB”), in its 2008 report, created a new grade of Senior Officer on the Respondent’s establishment to perform polyvalent duties and be multifunctional. On 16 June 2008, the Disputant was offered the post of Senior Officer/Lead Licensing Officer on a permanent and pensionable basis and was confirmed in a substantive capacity as same on 10 October 2009 with effect from 01 July 2009. Between 23 August 2012 to 18 January 2013, the Disputant acted as Responsible Officer looking after the Respondent’s day-to-day affairs. The Respondent, on 22 October 2012, confirmed that Disputant held the post of Senior Officer/Lead Licensing Officer on its establishment. On 25 April 2014, the Respondent confirmed that the Disputant’s salary scale had been aligned to that of the grade of Senior Officer.

It has further been averred that the Disputant, by a letter dated 11 July 2014, complained that the failure of the Respondent to submit proposals to the PRB in relation to the post of Senior Officer/Lead Licensing Officer has caused and is continuing to cause him severe prejudice. The Respondent instead embarked upon an unlawful and unilateral modification of the terms and conditions of his employment contract – letter dated 1 September 2015 from the Respondent refers. Disputant, on 31 October 2015, had no other alternative than to report a labour dispute under section 68 (1) of the Act.
In the circumstances and on the basis of his qualifications, experience, merit and seniority, the Disputant had the legitimate expectation that the post of Senior Officer/Lead Licensing Officer appears in the PRB Report 2016, which was not the case. He was instead transferred to the Distribution Section on 22 January 2016 and after appealing, the said transfer was cancelled. The Disputant considers that his long and unblemished career at the Respondent’s service has been ignored altogether and the decision not to submit any proposals to the PRB in relation to the post of Senior Officer/Lead Licensing Officer was based on irrelevant considerations, which if maintained would indefinitely affect his seniority and subsequently his pension entitlement. The Disputant therefore prays that the Tribunal awards that the Respondent be ordered to submit relevant proposals to the PRB regarding the post of Senior Officer/Lead Licensing Officer.

THE RESPONDENT’S REPLY TO THE DISPUTANT’S AMENDED STATEMENT OF CASE

The Respondent has notably averred that its Board, on 14 June 2008, approved the appointment of Disputant as Lead Licensing Officer on a permanent and pensionable basis. There is no provision in the PRB Report 2008 for this grade. The PRB recommended that officers in the grade of Licensing Officer should integrate the grade of Officer – post restyled to Management Support Officer in the PRB Report 2013. The Disputant was appointed to the grade of Senior Officer instead of Officer. The Disputant was confirmed in his post by the Board on 2 October 2009, but it is not mentioned if he was confirmed as Senior Officer/Lead Licensing Officer. It is admitted that Disputant acted as Responsible Officer, he was allocated an allowance for same and the assignment was terminated by the Board on 18 January 2013. In relation to the letter dated 22 October 2012, it is admitted that the Disputant was designated as Senior Officer/Lead Licensing Officer to overlook the day to day running of the Licensing section and no further recommendations were submitted to the PRB on the overall structure of the former MASA.

The Respondent further avers that the Disputant was appointed as Lead Licensing Officer by a letter dated 16 June 2008 and in a second letter of the same date, he was appointed as Senior Officer/Lead Licensing Officer. Although no submissions were made for the PRB Report 2013, the PRB revised the terms and conditions of service and the basic salary scale. The Disputant, on 15 November 2011, opted for the PRB Report 2013. With the Errors,
Omissions and Classification Report 2013, the Disputant’s salary scale was adjusted taking into consideration the revised salary scale of the grade of Senior Officer.

The Respondent further averred that the Disputant’s complaint in writing dated 11 July 2014 was submitted to the PRB on 14 July 2014 and also as a collective proposal for the PRB Report 2016 on behalf of the Respondent’s employees. Respondent added the name of Disputant to allow him an opportunity to write his own job description and submit same to the PRB for consideration. It has also been averred that an internal report dated 6 August 2014 on the review of the Disputant’s title was circulated to the Human Resource Committee. The Committee noted that there has been misinformation and confusion since the beginning in his appointment – he was appointed to the post of Senior Officer/Lead Licensing Officers which does not exist on the establishment and was also given the top salary scale of the post of Senior Officer. As the post did not exist, the Committee requested that he use the designation of Senior Officer.

In relation to the Disputant’s report of the dispute, the stand of the Board as per its meeting held on 25 November 2016 is that the post of Senior Officer/Lead Licensing Officer is not under establishment and does not appear in the PRB Reports of 2008, 2013 and 2016. As the Respondent is reviewing its structure, it cannot say if the aforesaid post will appear in the PRB Report. The Respondent has also averred that there is no record of the Disputant’s qualifications in relation to the post of Licensing Officer created in the PRB Report 2003. A document labelled ‘Lead Licensing Officer (New Post)’ was submitted on 29 January 2008 to the PRB for consideration, but was not taken into account by the latter in its report. No provision was made for the post of Senior Officer/Lead Licensing Officer in the PRB Report 2008. However, the PRB recommended that Licensing Officers should integrate the grade of Officer, which was restyled to Management Support Officer in the PRB Report 2013. The Disputant was appointed as Senior Officer instead of Officer on the establishment.

THE CO-RESPONDENT’S STATEMENT OF REPLY

The Co-Respondent has notably averred that the polyvalent grades of Officer and Senior Officer were created on the establishment of the Mauritius Society of Authors with the publication of the PRB Report in May 2008. The post of ‘Senior Officer/Lead Licensing Officer’,
which the Disputant was offered on a permanent and pensionable basis, did not exist on the establishment of the Mauritius Society of Authors as per the PRB Reports of 2003 and 2008; it does not appear in subsequent PRB Reports. The Co-Respondent takes note that the Disputant was confirmed in a substantive capacity as ‘Senior Officer/Lead Licensing Officer’ and avers that the aforesaid post does not exist on the establishment of the Mauritius Society of Authors. The Co-Respondent shall otherwise abide by the decision of the Tribunal.

THE EVIDENCE OF WITNESSES

Mr Alain Gaetan Sylvio Arthur, Senior Officer at the Mauritius Society of Authors, was called to depose. He joined the MASA as a Licensing Officer on 1 July 2003. On 7 August 2007, he was designated by the Board to lead the Licensing Department. The posts of Officer and Senior Officer were created in the PRB Report 2008; the former is now called Management Support Officer. He produced a letter dated 16 June 2008 from the Respondent (Document A) whereby he was offered the post of Senior Officer/Lead Licensing Officer. Referring to paragraph 38.16 of the PRB Report 2008, he stated that he had more than four years in service and he was in 2007 asked to be the Lead Licensing in the establishment. His scheme of duties is annexed to the aforesaid letter (Annex A4 to his Statement of Case). On 10 October 2009, he was confirmed in the post of Senior Officer/Lead Licensing Officer (letter produced as Document B) with effect from 1 July 2009. From 23 August 2012 to 18 January 2013, he acted as Officer-in-Charge of the MASA having the responsibility of overseeing the affairs of the Society. He also stated that the MASA wrote a letter (dated 22 October 2012) on his behalf confirming that he holds the post of Senior Officer/Lead Licensing Officer.

Mr Arthur went on to state that with the implementation of the Errors, Omissions and Classifications Report 2013, his salary was adjusted in April 2014 with that of the post of Senior Officer as no recommendations were made for the post of Senior Officer/Lead Licensing Officer by the MASA. He accepted the salary of the post of Senior Officer despite assuming the post Senior Officer/Lead Licensing. If not, he would have been on the 2008 salary. He thereafter wrote, on 11 July 2014, to the then Officer-in-Charge saying that no recommendations have been made. He was deprived of a new salary scale in the PRB Report 2013. Despite his letter, nothing was done. He was instead told, by letter dated 1 September 2015 (produced as Document C), not to use the designation of ‘Senior Officer/Lead Licensing’ but to use the
designation of ‘Senior Officer’, but this was not a decision of the Board. He objected and reported a dispute at the Labour Office.

Mr Arthur also stated that he was not informed that the MASA had submitted his complaints in July 2014 to the PRB. He confirmed having written his own job description and remitted same to the Officer-in-Charge of the MASA to make recommendations to the PRB. He was not informed if same was forwarded to the PRB. The PRB Report 2016 did not have any recommendations for the post of Senior Officer/Lead Licensing Officer. Thereafter, he was transferred to the Distribution Department as from 2 February 2016, to which he objected. The transfer was then annulled with immediate effect. He is asking for the Board of the MASA to recommend the aforesaid post to the PRB as he is assuming its duties which is bears higher responsibility than that of Senior Officer. If no recommendations are made, there will be an impact on his salary, his future and his pension. He is at the MASA since July 2002 and expected that the necessary would be done but unfortunately this was not so and he is being deprived of a progress in his career. He has been deprived of a post conferred to him which has not been published in the PRB Report.

Mr Arthur was questioned by Counsel for the Respondent. He notably stated that in 2007, he was asked to lead the Licensing Department. He agreed that no post was mentioned and received an allowance of Rs 2000 for this. He produced a letter dated 7 August 2007 (Document D) asking him to lead the Licensing Department. He agreed that the post of Lead Licensing Officer did not exist. He agreed that to become Senior Officer as per the PRB Report, one has to be an Officer. He did not have the qualifications for the post of Officer as prescribed by the PRB but he did possess the experience. He did not have the qualifications for Senior Officer but had other qualifications which the Board accepted.

Mr Arthur also produced an organigram of the MASA (Document E). He agreed that same did not refer to Lead Licensing Officer but mentions Licensing Senior Officer. He produced a letter dated 21 January 2013 (Document F) whereby his assignment as Officer-in-Charge was terminated by the Board of the MASA. The post of Senior Officer/Lead Licensing Officer does not exist on the establishment of the MASA as per the PRB. The recommendation he is seeking will have a favourable impact on his salary and indirectly he is fighting for an improvement in his salary. He is not aware that pursuant to the 2017 amendment of the law, there will be a reorganisation of the MASA’s organigram, but is aware that the Board will be newly recomposed.
In re-examination by his Counsel, Mr Arthur notably clarified that as per the organigram produced, he reports to the Director-General as do all Heads of Department. Referring to Document C, it is stated that the post of Senior Officer/Lead Licensing does not exist at the Society as, according to him, no recommendations were made to the PRB in 2013.

Miss Kisbin Taucoory, Management Support Officer, was called to depose on behalf of the Respondent. She stated that she is familiar with the file of the Disputant. The Disputant was confirmed in a substantive capacity on 10 October 2009. The qualifications for the post of Officer are School Certificate with five credits and Higher School Certificate with two ‘A’-Levels and IC3. The Disputant has four subjects at ‘O’-Level and no Higher School Certificate according to records. In 2008, the Disputant did not have the qualifications to become a Licensing Officer. The Board of the Respondent appointed the Disputant as Senior Officer/Lead Licensing Officer on 16 June 2008 for which there was no vacancy advertised and no interview held. The PRB Report 2008 and 2013 does not make mention of the post of Senior Officer/Lead Licensing Officer. The Disputant made representations to the Respondent in a letter dated 11 July 2014 and this was transmitted to the PRB by the representative of the union. Mr G. Louise, a Director of the Respondent who is under interdiction, had sent a list of duties to the PRB. However, the post of Lead Licensing Officer was not recommended in the PRB Report 2008.

Miss Taucoory was questioned by Counsel for the Disputant. She notably stated that she was assigned with the responsibilities and duties of human resource. Mr Arthur’s four years of service since joining the Respondent in July 2003 was on a contractual basis. It is not recommended at paragraph 38.16 of the PRB Report 2008 that the four years of service in the post of Officer must be on a permanent and pensionable basis. The MASA also sent the letter dated 11 June 2014 from the Disputant to the PRB as a collective proposal for the PRB Report 2016. Once the job description questionnaire is filled by the employee, it should be left with the Administration Section who will then send it to the PRB. The section to be completed by the Supervisor on Mr Arthur’s job questionnaire form was incomplete as he did not submit the questionnaire to the Administration Section but sent it directly to the PRB. The post of Senior Officer/Lead Licensing Officer does not exist, but she accepted that Mr Arthur received a letter of appointment from the Board. She could not say if it is the duty of the MASA to make recommendations with regard to the post of the Disputant but stated that it is the Board which decides.
Miss Taucoory was also questioned by State Counsel for the Co-Respondent. She agreed that the MASA could not have offered the post of Senior Officer/Lead Licensing Officer, which does not exist under the PRB Report 2008, on a permanent and pensionable basis. The PRB Report 2008 recommended that the grade of Licensing Officer be phased out and that incumbents integrate the grade of Officer. There is no scheme of service on record for the post of Senior Officer at the MASA. She agreed that there needs to be a scheme of service before an appointment is made to any post.

Mr Jean Yves Hansley Antoine, Senior Officer at the MASA, was also called to depose by Counsel for the Respondent. He referred to a letter dated 21 July 2014 signed by himself and one Mr Patrick Ballard entitled ‘Proposals for the PRB Report 2016’ addressed to the Director of the PRB (produced as Document G). He also produced a letter dated 16 January 2015 from the Respondent (Document H) addressed to the PRB submitting the job description questionnaire of employees. The Disputant’s job description questionnaire was submitted directly to the PRB. The PRB had requested the Respondent by way of letter dated 9 September 2014 (produced as Document J) to make arrangements for the distribution of the job description questionnaire and guidelines to a list of ten officers. The name of the Disputant did not appear and it was Dr Boodhun, the then Officer-in-Charge, who requested him to add the name of Mr Arthur.

Mr Antoine was questioned by Counsel for the Respondent. Referring to the letter dated 16 January 2015, he confirmed that Mr Arthur had sent his job description questionnaire directly to the PRB. He therefore did not send any job description questionnaire for the Disputant to the PRB as it was not made available to the Administration Section for onward transmission to the PRB. The request of the PRB as per the letter dated 9 September 2014 was addressed to the Officer-in-Charge. The letter dated 21 July 2014 signed by himself and Mr Ballard are proposals sent on behalf of employees on their own initiative and he agreed that decisions rest with the Board.

Mrs Sanyukta Nobutsing-Shibloll, Job Analyst, was called to depose on behalf of the Co-Respondent. She stated that representations come from unions, management and individuals in preparing a PRB Report. From records, there were no representations received for the job of Lead Licensing Officer at the PRB. Recommendations made by the PRB are applicable for grades on the pensionable and permanent establishment and not for contract officers. Job description questionnaires are forms filled by officers sampled, is used for re-assessing jobs and does not
amount to representations for the creation of a post. Representations are used to make recommendations in the report but the job description questionnaire is used more as a process in their work towards the publication of the report. They did receive the job description questionnaire of Mr Arthur and as it was not signed by the Supervisor, it was not valid for the PRB. As per records, no representations nor complaints were received from the Disputant by the PRB. A scheme of service is the legal document to be used for appointment of an officer.

Upon questions from Counsel for the Disputant, Mrs Nobutsing-Shibloll notably stated that between one report and the next, there could be changes made to the job description of a post and this is the purpose of the questionnaire. The job description questionnaire of Mr Arthur was not considered as the Supervisor’s signature was missing. Their records were not updated for the post of the Disputant. Recommendations cannot be made to posts that do not exist. Referring to the letter dated 9 September 2016 (Document J) from the PRB to the Officer-in-Charge of the MASA, it is the latter’s responsibility to return the duly filled job description questionnaires to the Bureau.

In reply to questions from Counsel for the Respondent, Mrs Nobutsing-Shibloll notably stated that the PRB studies all representations and the final decision rests with the Director of the PRB. It is not necessary that all requests are acceded to. The option form does not concern the PRB, they just recommend and implementation is left to the Ministry of Civil Service. Under re-examination, Mrs Nobutsing-Shibloll notably stated that they analyse the job description questionnaire to see whether there has been an evolution in the job between two reports. It is used for job evaluation and as a technique for salary determination by the PRB.

THE SUBMISSIONS OF COUNSEL

Learned Counsel for the Disputant submitted that the Terms of Reference is asking whether the Board of the Respondent could recommend the post of Senior Officer/Lead Licensing Officer to the PRB. If not, there will be no recommendation from the PRB. It has not been disputed that the aforesaid post was offered to the Disputant and he was confirmed in same. The Board is the supreme authority at the Respondent. The Disputant is performing the job of Senior Officer/Lead Licensing Officer but is only paid as a Senior Officer. He has even acted as responsible officer of the Respondent organisation and has the qualities and
experience to act as such. Counsel concluded by stating that the Terms of Reference is within the jurisdiction of the Tribunal and that an award should be made for the Respondent to make the appropriate representations to the PRB.

Learned Senior Counsel for the Respondent submitted that it is admitted that the Disputant was offered the post of Senior Officer/Lead Licensing Officer in 2008 and was confirmed thereafter. Letters have been regrettably issued giving high hopes to a person who is not qualified to be. The Disputant is in a position to which he is ineligible. The Respondent cannot recommend somebody to hold the post of Senior Officer/Lead Licensing Officer, which does not exist, without having been legitimately an Officer. The Disputant does not hold the required qualifications and this is why the MASA is resisting the issue of recommending his post to the PRB. Senior Counsel submitted that this is not a fit and proper case to make the recommendation.

Learned Senior State Counsel for the Co-Respondent notably submitted that the PRB is abiding by the decision of the Tribunal. She stated that although the Board is supreme, the MASA has chosen to be governed by the PRB Report and must be in line with same. If representations are to be made, then the PRB will consider whether it is proper to create the post or not.

THE MERITS OF THE DISPUTE

The Terms of Reference of the present matter is asking the Tribunal to determine whether the Board of the Respondent could recommend the post of Senior Officer/Lead Licensing Officer to the PRB.

The Disputant Mr Arthur has been working at the Respondent since July 2003. Initially on contract as Licensing Officer, the Board of the Respondent designated him to lead the Licensing Department in August 2007. By way of letter dated 16 June 2008 from the MASA, Mr Arthur was offered the post of Senior Officer/Lead Licensing Officer. This offer can be sufficiently gleaned from the aforesaid letter as follows:
Mr Alain Arthur

Dear Colleague

Following your contribution and personal effort and investment in terms of time in the success of the Society and upon my recommendation to the Committee, it is with pleasure that I am informing you that the Board has decided to offer you the post of Senior Officer / Lead Licensing Officer on a permanent and pensionable basis with a monthly salary of twenty three thousand and two hundred rupees Rs 23,200 plus travelling allowance.

Thereafter, the Disputant, in October 2009, was confirmed in the post of Senior Officer/Lead Licensing Officer with effect from 1 July 2009. This may be noted from a letter dated 10 October 2009 from the MASA under the hand of the Director General:

Dear Mr. Arthur

Re: Confirmation for the post of Senior Officer / Lead Licensing Officer

I am directed by the Board of Management of the Mauritius Society of Authors (MASA) to inform you that you have been confirmed on a substantive capacity for the post of Senior Officer / Lead Licensing Officer with effect as from 1st July 2009.

The Disputant has not denied that the post of Senior Officer/Lead Licensing Officer does not exist on the establishment of the Rights Management Society, now MASA, nor has it been mentioned in the various PRB Reports. In fact, on 1 September 2015, the Disputant was even informed, on behalf of the Director, not to use the designation of the aforesaid post but to use that of Senior Officer. However, he did not agree to same and reported a labour dispute thereon.

The PRB Report 2013 did not contain any recommendations in relation to the post of Senior Officer/Lead Licensing Officer and the Disputant wrote to the then Officer-in-Charge of the Respondent highlighting this issue. Furthermore, the Respondent’s representative confirmed that a letter dated 11 June 2014 was sent to the PRB as a collective proposal for the upcoming PRB Report in 2016.
Mr Hansley Antoine, a Senior Officer at the Respondent, also confirmed that the Disputant was given a job description questionnaire to fill, that same was forwarded directly to the PRB and was not made available to the Administration Section for onward transmission. It was not disputed that Mr Arthur’s job description questionnaire was unsigned by his Supervisor as is required in the form.

Notwithstanding the endeavours of the Disputant, the post of Senior Officer/Lead Licensing Officer was not recommended in the PRB Report of 2016. The Disputant has therefore reported the present labour dispute asking that the aforesaid post be recommended to the PRB by the Respondent’s Board. It should be noted that the Board is entrusted with the administration of the MASA under the Copyright Act 2014 (Act 2 of 2014).

Although the post of Senior Officer/Lead Licensing Officer does not exist on the Respondent’s establishment nor was it ever recommended in the PRB Reports, it has not been in doubt that the Disputant was offered the aforesaid post on a permanent and pensionable basis and was even confirmed in same with effect from 1 July 2009 by the Board of the MASA.

Would it therefore have been in order for the Board of the MASA to have offered the post of Senior Officer/Lead Licensing Officer to Mr Arthur and have thereafter confirmed him in same when the post is non-existent on its own establishment? The powers of the Board in the appointment of its staff, as per section 44 of the Copyright Act 2014, notably provides as follows:

44. **Appointment of staff**

   (1) The Board shall appoint on such terms and conditions as appropriate —

   "..."

   (b) such other staff as may be necessary for the proper discharge of the functions of the Society.

   (2) The staff referred to in subsection (1)(b) shall be under the administrative control of the Director.
It may be noted that this provision is not significantly different from section 33 of the previous Copyright Act 1997 (repealed by the Copyright Act 2014 on 31 July 2014) which dealt with appointment of staff by the Board. The powers of the Board enable it to appoint staff as may be necessary for the proper discharge of the functions of the MASA on terms and conditions as appropriate. Thus, if the Board has deemed it fit to appoint and confirm the Disputant to the post of Senior Officer/Lead Licensing Officer, it would be well within its powers.

The qualifications of the Disputant have also been made an issue in relation to this dispute by the Respondent. Although, the Disputant did not deny that he did not possess the qualifications for the post of Officer as recommended by the PRB Report or even for the post of Senior Officer, he has relied mainly on his experience acquired. The Disputant has also highlighted the fact that he was designated as Officer-in-Charge of the MASA from 23 August 2012 to 18 January 2018.

Counsel for the Respondent has strongly contended that the post of Senior Officer/Lead Licensing Officer cannot be recommended by the Respondent’s Board in as much as the Disputant is not even qualified to be an Officer, let alone a Senior Officer. Despite the stand of the Respondent, it cannot at this stage be said what the requisite qualifications for the post of Senior Officer/Lead Licensing Officer would be if ever the post were to be recommended by the PRB. This exercise would be for the PRB to undertake if ever it were to draw up recommendations for the aforesaid post.

The Tribunal, in relation to the issue of qualification, would also wish to point out that the dispute at hand is not asking it to assess the qualifications of the Disputant nor is it asking the Tribunal to determine whether the Disputant is qualified to be in his actual appointment at the MASA.

Indeed, the Tribunal must pay heed to what was stated in by the Supreme Court in the matter of Air Mauritius Ltd v Employment Relations Tribunal [2016 SCJ 103]:

Under section 70 (1) the Tribunal is required to enquire into the substance of the dispute that is referred to it and to make an award thereon and it is not empowered to enquire into any new matter that is not within the terms of reference of the dispute.
The facts in the present matter have also revealed that following a letter dated 9 September 2014 from the PRB, the Disputant was given a job description questionnaire to fill. He did so and submitted same directly to the PRB instead of the Respondent’s Administration Section without having had his Supervisor sign same. As per the evidence of the representative of the PRB, the aforesaid questionnaire was invalid for lack of the Supervisor’s signature.

Despite the PRB not having considered the Disputant’s job description questionnaire, the representative of the PRB has clearly explained that same is used for re-assessing jobs and does not amount to representations for the creation of a post. The questionnaire also helps in noticing changes in the job description of a particular post. It cannot therefore be said the post of Senior Officer/Lead Licensing Officer was not recommended in the PRB Report of 2016 due to the PRB deeming the Disputant’s questionnaire to be invalid.

The Disputant, in the present matter, contends that the Board of the Respondent should recommend the post of Senior Officer/Lead Licensing Officer to the PRB as he is assuming duties which are higher to that of Senior Officer. He is being deprived of a post to which he was appointed and does not exist in the PRB Reports.

The Disputant has also stated that recommending the post will have an impact on his salary, his future and pension. However, the Tribunal notes that it would be speculative to state what the impact of the aforesaid post would be in being recommended. As per the Terms of Reference, the Tribunal is not being asked to determine whether the post of the Disputant should be recommended by the Board to the PRB, but to simply determine whether the Board could recommend the aforesaid post itself to the PRB. A distinction should be made between the Disputant and the post in lite. Moreover, this does not necessarily imply that it would be the Disputant who would be occupying the aforesaid post, depending on its conditions and requirements, if same is recommended by the PRB.

Regarding Learned Senior Counsel for the Respondent’s contention that what the Disputant is asking for is in relation to his remuneration and salary, the Tribunal notes that the Disputant agreed that this would have an indirect impact on his salary and that Learned Senior Counsel has conceded that it is indirect. As previously noted, we are not in a position to say
what the recommendations, if any, in relation to the post would be. Moreover, the Tribunal has already ruled on a plea *in limine litis* raised by the Respondent on this very issue.

It has been seen that the Board of the Respondent, in their wisdom, did clearly offer the post of Senior Officer/Lead Licensing Officer to Mr Arthur on 16 June 2008 and subsequently confirmed him as same on 10 October 2009. If it were the stand of the Board that the Disputant is not qualified to hold the aforesaid post or even the post of Senior Officer, to which he is being paid, it would have been open for the Board to seek appropriate remedies to have Mr Arthur removed from the post he occupies. However, no such demarches have been borne out in the present matter.

The Tribunal cannot also see what prejudice will be caused to the Respondent if the post of Senior Officer/Lead Licensing Officer were to be recommended to the PRB nor has the Respondent adduced any evidence to this effect, save for the issue of the Disputant’s qualifications. On the contrary, recommending the post would demonstrate its importance in the Respondent’s organisation, if the Board does so consider.

In having offered and confirmed the post of Senior Officer/Lead Licensing Officer to the Disputant, the Board should abide to its responsibilities and make this post a reality on its establishment by, at the very least, recommending the post to the PRB. The Tribunal can only therefore find that the Board of the Rights Management Society, now MASA, can recommend the post of Senior Officer/Lead Licensing Officer to the PRB.

The Tribunal awards accordingly.
SD  Shameer Janhangeer  
  (Vice-President)

SD  Raffick Hossenbaccus  
  (Member)

SD  Karen K. Veerapen (Mrs)  
  (Member)

SD  Yves Christian Fanchette  
  (Member)

Date:  14th May 2019