CIVIL SERVICE ARBITRATION TRIBUNAL

JUDGMENT

RN 143

Before:

Rashid HOSSEN	**-**	**Ag President**
Said HOSSENBUX	**-**	**Assessor**
Philippe Noel JEANTOU	**-**	**Assessor**

In the matter of:-

Civil Aviation Employees Union

And

Ministry of Civil Service & Administrative Reforms

This is an appeal against the decision of the Honourable Prime Minister and Minister of Civil Service and Administrative Reforms, after examination of the industrial dispute, who recommended that it be rejected in accordance with **Section 80 (1) (a) of the Industrial Relations Act**, 1973 as amended as there are no grounds for an industrial dispute.

The Appellant was represented by Mr G. Glover, Counsel and the Respondent by Mrs C. Green-Jokhoo, Ag. Principal State Counsel.

In its Statement of Case, the Appellant avers:-

The Report of the Industrial Dispute

1. By virtue of section 79 of the Industrial Relations Act (IRA) the Industrial Dispute was reported to the Minister of Civil Service and Administrative reforms by way of a letter dated 8th March 2007 on behalf of Mr J. Pareemanen, Mr P. Succaram, Mr S. Mottea, Mr N. Guness and Mr. K. Reesaul.

2. By way of a letter dated 2nd April 2007, the Appellant was informed that the Report was rejected in accordance with section 80 (1) (a) of the IRA.

3. The Appellant has therefore entered the present appeal under section 81 of the IRA.

The Facts

4. In 1993, a new recruit in the Air Traffic Service (ATS) would join in at the entry grade as an Aeronautical Radio Operator (ARO).

5. The ATS consisted of 3 subsections, namely the:

   (i) Communications Centre (COMCEN);
   (ii) Flight Information Centre (FIC), and
   (iii) Control Tower.

6. There is an organigram of the different posts associated with each subsection.

7. The PRB Report 1993 recommended that the post of Communicator be abolished on vacancy.

8. In July 2003, the posts under the FIC and the COMCEN were abolished and a new single

post was created, namely the post of Air Traffic Control Assistant (ATCA).

9. In January 1993, the following persons who held the post of ARO were assigned higher duties:

NAME	POST HELD	ASSIGNED
Pareemanen J	ARO	Communicator
Succaram P	ARO	SARO (Acting)
Mottea S.	ARO	SARO (Acting)
Guness N	ARO	SARO (Acting)

10. In October 1996, the following persons were again assigned higher duties:

NAME	POST HELD	ASSIGNED
Pareemanen J	SARO	Communicator
Succaram P	SARO	Communicator
Mottea S.	SARO	Communicator
Guness N	SARO	Communicator
Reesaul K	ARO	SARO (Acting)

11. In February 1997, Mr K. Reesaul was assigned the duties of Communicator.

12. Through a letter dated 2nd February 2001, the Director of Civil Aviation informed the Appellants that they would be granted a special allowance equivalent to one increment based on their substantive post of ARO at the salary point reached in their salary scale for performing the duties of Communicator with effect from the 26th February 1997 until the implementation of a restructuring exercise.

13. In June 2003 following the restructuring exercise, the Appellants were finally appointed as ATCA with three increments based on their substantive post of ARO.

14. Following representations made, through a letter dated 6th December 2004 from the Director of Civil Aviation, the Appellants were granted three increments with effect from the 1st July 2003.

15. It is the contention of the Appellants that had the post of Communicator not been abolished on vacancy, instead of having been assigned to the post of Communicator, they would have been promoted to the said post with full salary adjustments together with yearly increments based on the salary scale reached by each of them in the post of Communicator which would have enabled them to attain nearly the top salary in the grade of Air Traffic Control Assistant.

The respondent in reply avers:-

1. Respondent admits paragraphs 1 and 2 of Appellant's Statement of Case.

2. Respondent takes note of paragraphs 3, 4, 5 and 6 of Appellant's Statement of Case.

3. Respondent admits paragraph 7 of Appellant's Statement of Case (Extract of PRB Report 1993 is at Annex 1)

4. Respondent admits paragraph 8 of Appellant's Statement of Case.

5. As regards paragraphs 9-11 of Appellant's Statement of Case, Respondent avers that according to information submitted by the Civil Aviation Department, the posts in the existing structure of the Department were frozen since 1995 due to a reorganisation exercise of the Department and these officers were assigned higher duties to meet operational needs pending the setting up of the new structure. However, the period during

which the officers were assigned higher duties would have to be confirmed by the Civil Aviation Department.

6. As regards paragraph 12 of Appellant's Statement of Case, Respondent avers that on the 21 December 2000, the Director of Civil Aviation made a case to the Ministry of Civil Service and Administrative Reforms for the payment of an allowance to Messrs Mottea, Guness and Reesaul for performing higher duties. On 16 January 2001, the Ministry of Civil Service and Administrative Reforms conveyed its approval for the payment of a special allowance equivalent to one increment worth at the salary point reached in their salary scale for performing the duties of Communicator with effect from 26 February 1997 until the implementation of the Corporate Plan.

7. As regards paragraph 13 of Appellant's Statement of Case, Respondent avers that according to information submitted by the Director of Civil Aviation, the Appellant were appointed as Air Traffic Control Assistants with effect from 9 June 2003.

8. As regards paragraph 14, representations were received from 10 officers of the Civil Aviation Department to the effect that they had been performing higher duties since 1993 and could not be appointed in the higher grades in view of the reorganisation of the Department. Their contention was that, in joining the new structure, the period of actingship had not been taken into consideration for' determining their salaries. They requested a compensation for "loss of salary and obstruction in their career progression" due to the delay in the restructure exercise. It is to be noted that the reorganisation exercise started in 1995 and it had taken seven years to be finalised and the schemes of service for the posts in the new structure were prescribed in October 2002. After having examined the case, the Respondent approved, exceptionally and on humanitarian grounds, the grant of three incremental credits with effect from 01 July 2003 to the Appellant.

9. Salary Scales:

Communicator:

Rs 8970x300 - 11,370x400 - 12,170

Air Traffic Control Assistant:

Rs 7,025xl00- 7,325x175 - 8,200x200 - 9000x250
10,000x300 -10,600x400 - 15,000x500 - 17,000x600 - 17,600

As regards paragraph 15 of Appellant's Statement of Case, Respondent avers that according to information submitted by the Civil Aviation Department, it is noted that upon conversion of the hypothetical salaries of the Appellants, they do not reach the top salary of the post of Air Traffic Control Assistant.

In view of the fact that:-

(i) the Appellant concerned had been paid an allowance for shouldering higher responsibilities,

(ii) they had, on humanitarian grounds, further been paid 3 increments to compensate them,

(ii) upon conversion of the hypothetical salaries, they do not reach the top salary of Air Traffic Control Assistant, the Respondent considers that the case should be set aside.

The Tribunal reproduces here the relevant extract from PRB Report l993 which reads as follows:

"***Communicator***

Chief Communicator

14.3.23 *The Communicator cadre is presently responsible for communicating with aircraft and other stations, and for providing flight information service. With developments in mode of communication these duties would eventually be taken over by officers of the Air Traffic Controller Cadre.*

Recommendation 11

14.3.24 *We recommend that all the posts in the grade of Communicator be abolished on vacancy.*

Rent Allowance

14.3.25 *Presently rent allowance is being paid on a personal basis to certain officers of the patrol cadre, residing within a radius of 15 miles from the Airport. Those living beyond that radius or posted to outstations are not in receipt of rent allowance. There is need to review these conditions.*

Recommendation 12

14.3.26 *We recommend that all officers of the patrol cadre residing within a distance of 15 miles from either the airport or any outstation, irrespective of posting, be paid the rent allowance.*

Recommendation 13

14.3.27 *The rent allowance payable to Patrolman and Senior Patrolman is revised to Rs 400 monthly and that payable to Principal Patrolman is revised to Rs 450 monthly."*

Mr Glover submitted that when one looks at the Respondent's Statement of Case it seems that all the facts averred in the Statement of Case of the Appellants are admitted. There is no quarrel as to what really happened for the last 10 years with regard to the present case. The two points which are in issue are first of all the question of the Option Forms which have been put in by the Respondent. It is not contested that the persons concerned with this appeal have in June 2003 signed the Option Form. The case for the Appellant is that by a letter of the 6th December 2004, the then Acting Director of Civil Aviation Department considered representations made by

the Officers of the Department of Civil Aviation, which complaints were made on the 27th of June. It is submitted that in the letter of the 6th of December, it is seen that after the signing of the Option Forms, four days later i.e. the 27th June 2003, the Appellants did make certain representations notwithstanding the Option Form and the Ministry of Civil Service and Administrative Reforms stated in its letter emanating from the acting Director of Civil Aviation Department the following:-

> *"The Ministry of Civil Service Affairs and Administrative Reforms has informed us that after examination and careful consideration of your case, it has been noted that you have already been compensated for shouldering higher responsibilities by way of allowance and that there are no regulations in force which entitles you to one incremental credit for each year served in an acting capacity.*
>
> *However keeping in view the fact that you could not be appointed earlier due to no fault of yours, the Ministry for Civil Service Affairs & Administrative Reforms has exceptionally and on humanitarian ground approved the grant to you of three incremental credits with effect from 01 July 2003."*

Counsel submitted that the Option Forms were signed on the 23rd, 25th and 26th of June and the letter referred to by the Director of Civil Aviation dated the 6th December 2004 speaks of the letter of the 27th June 2003 after having signed the Option Forms. The Appellant therefore made certain representations, which representations were acted upon and this is the case for the Appellant. The letter of the 6th December 2004, according to Counsel clearly shows that the Respondent had decided notwithstanding the Option Form to consider the representations of the Appellant so that as far as this issue of increments is concerned, which had been frozen by virtue of the fact that it took 7 to 8 years in order to get to the new structure at the Civil Aviation Department set up, the employer did take a decision. The recommendation is annexed to the Statement of Case of the Respondent to act upon it and to give effect to some of the demands of the Appellant and it is the contention of the Appellant that the signature on the Option Form should not be a bar to come before this Tribunal and appealed against a decision of the Ministry. When the restructuring exercise followed by the PRB Report came into effect, the Appellant's

representatives were prevented from being able to benefit from the increments that they would have had by virtue of their posting during that time. The claim those representatives are making and which was rejected and is being appealed against is that –

> *"Had the post of Communicator not been abolished on vacancy, instead of having been assigned to the post of Communicator, they would have been promoted to the said post with full salary adjustments together with yearly increments based on the salary scale reached by each of them in the post of Communicator which would have enabled them to attain nearly the top salary in the grade of Air Traffic Control Assistant."*

In a succinct address to the Tribunal, Mrs Green-Jokhoo submitted that the dispute was rejected by the Minister in accordance with **Section 80(1)(a)** of the Industrial Relations Act as there was no ground for an industrial dispute. She referred to **Section 80(1)(a)** which reads: that the Minister may reject if it appears to him that the report relates in whole or in part to a dispute which is not an industrial dispute.

As regards the definition of 'industrial dispute' in the Industrial Relations Act, it reads:

> *"Industrial dispute means a dispute between an employee or a trade union of employees and an employer or a trade union of employers which relates wholly or mainly to a contract of employment or a procedure agreement except notwithstanding any other enactment, those provisions of the contract or agreement which –*
>
> *(i) Concern remuneration or allowance of any kind;*
>
> *and*
>
> *(ii) Apply to the employee as a result of the exercise by him of an option to be governed by the corresponding recommendations made in a report of the Pay Research Bureau."*

Counsel submitted that the Tribunal is aware that all the employees have signed the Option Form. What the Appellant is contesting according to the Statement of Case is that had the post not been abolished then they would have had another salary. The PRB recommended

the post to be abolished. The employees signed the Option Form and went along with the PRB recommendations. Furthermore, as per the facts, what the employees are saying is that there was a restructuring in the Department of the Civil Aviation. This restructuring was frozen for a certain time. However these employees were given higher duties but were paid an allowance. This allowance was given to them on an exceptional and humanitarian ground. It is confirmed in a letter dated 6th December 2004. Counsel stressed that this letter cannot supersede the Option Forms signed by the employees and when we look at the facts of both statements of case, we are concerned with an allowance or an abolition of post. The present matter according to her is not an industrial dispute.

Recommendation 11 at para. 14.3.24 of the PRB report l993 reads:-

"We recommend that all posts in the grade of Communicator be abolished on vacancy."

The Tribunal finds that it is not disputed that those employees whom Applicant represents signed an Option Form whereby they confirmed having taken cognizance of the Ministry of Civil service Affairs and Administrative Reforms Circular No. 7 of 2003 and the Pay Research Bureau Report 2003 in the review of pay and grading structures and conditions of service in the Public Sector (Vol I and II). They further confirmed that acceptance of the revised emoluments also constitutes acceptance of all the revised terms and conditions of service and the recommendations approved for implementation. Any acceptance made subject to a reservation/qualification, as was made aware to them, shall be treated as a rejection of the revised emoluments and terms and conditions and the recommendation approved for implementation. They opted, in conformity with the Circular Note, to accept the revised emoluments and terms and conditions of service as set out in the Report. They signed the form to confirm that they understand the option to be irrevocable.

It has not been successfully challenged and rebutted that these employees concerned had their case examined by the Respondent and exceptionally and on humanitarian grounds, were granted 3 increments credits with effect from 01 July 2003.

That the Respondent considered their case on humanitarian ground cannot prevent the former from raising the issue of Option Form. The Tribunal considers this gesture, if not generosity, cannot supersede the Option Forms signed. In a Ruling delivered on 24.4.08 in **Telecom Engineers & Os. and Mauritius Telecom (RN 622/PAT)**," the PAT held:- *" we need first to refer to what we stated in a Ruling delivered in* ***Telecommunications Workers Union and Mauritius Telecom (RN 754)*** *dated 12th January 2005. "We need to address our mind on the issue of Option Form first. True it is that in a few past Awards, the Tribunal held that a dispute may be delivered notwithstanding the signing on an Option Form agreeing on new Terms and Conditions of employment.*

This present Tribunal respectfully disagrees with that Obiter Dictum. Adopting such a course would in our view allow employees to having it both ways. The very fact of putting their signatures on the new Terms and Conditions of Employment is an act of finality. To come and say that they disagree over what they agreed can only lead to some sort of absurdity and thus rendering 'caduc' the contract they signed. We are further comforted in our stand by the amendment introduced by the legislature in July 2003 regarding Option Form.

We also held in ***University of Mauritius Academic Staff Association and University of Mauritius*** *(RN 890) dated 27th May 2005:-*

……..

In other words, one has to look from the angle of the contractual relationship existing at the relevant time. It is a question of contract. La Convention fait la loi des parties et c'est un lien de contrat de travail régit par le Labour Act.

……

Academics who sign contract that includes such a term have clearly and manifestly surrendered their right voluntarily to participate in active politics. They have knowingly exercised an option to which they are bound. We cannot at any moment think that at the level of

Lecturers, although layman, they cannot understand such basic knowledge that a contract is a binding document".

We fully endorse Counsel for the Respondent's stand that having entered into an agreement in the morning, only to disagree over it in the afternoon is simply unacceptable and the Tribunal is not to condone such flouting attitude. A contract is a binding document and we are not here to enter into conspiracy to any breach of signed agreement. Certainly, the matter would have been different if the disputed issues are in fact issues that are foreign and/or independent of what had been agreed. But here, those employees had already reached an agreement on the salary and grading issues. We have gone through all the authorities cited to us by Counsel and we find nothing to add except that it is trite law that one cannot go "contre et outre" le contenu de l'acte."

In the present case, it is not disputed that a representation was made where the issue was the abolition of post of Communicator on 27/06/03, a day after the last Option Form of the employees was signed.

The point raised by Applicant's Counsel that representations made and acted upon after signing of the Option Forms falls outside the issue of those Option Forms simply does not hold water.

The Tribunal holds that the decision reached by the Honourable Prime Minister and Minister of Civil Service and Administrative Reforms to conclude that there are no grounds for an industrial dispute to be perfectly in order.

The appeal is accordingly dismissed.

Rashid HOSSEN
Ag. President

Said HOSSSENBUX
Assessor

Philippe Noel JEANTOU
Assessor

Date: 10th June, 2008