

**EMPLOYMENT RELATIONS TRIBUNAL**

**AWARD**

**ERT/ RN 106/20**

**Before**

<b>Indiren Sivaramen</b>	<b>Acting President</b>
<b>Raffick Hossenbaccus</b>	<b>Member</b>
<b>Jeanique Paul-Gopal</b>	<b>Member</b>
<b>Kevin C. Lukeeram</b>	<b>Member</b>

**In the matter of:-**

**Mr Jean-Marc Kevin Noel (Disputant)**

**And**

**Airports of Mauritius Co Ltd (Respondent)**

The above case has been referred to the Tribunal by the Commission for Conciliation and Mediation under Section 70(4) of the Employment Relations Act, as amended (hereinafter referred to as “the Act”). The parties were assisted by Counsel. The terms of reference of the points in dispute read as follows:

*“I, Mr. Jean-Marc Kevin Noel should be paid two incremental credit [sic] upon completion of Level 2 Diploma in Engineering – Electrical and Electronics Technology as per the Terms and Conditions of employment prevailing at the AML.”*

The Disputant deponed before the Tribunal and he stated that he embarked on a course with the School of Electronics after he ascertained that the course would be recognized by his employer. He stated that he was even given release at work for his course and completed same after some four years of part-time study. He was awarded a “Level 2 Diploma in Engineering – Electrical and Electronics Technology” by The City and Guilds of London Institute (copy of document produced and marked Doc B). The Disputant

was granted only one incremental credit for this additional qualification whereas he avers that he should have been granted two incremental credits as per his terms and conditions of employment. He identified a letter which the Mauritius Qualifications Authority (MQA) sent to him (Annex R6 to the Statement of Reply of the Respondent – Doc F) and he agreed that he gave same to the Respondent. In cross-examination, Disputant conceded that he was informed that he would be granted additional increments or an additional increment but that the employer never told him that he would be granted two incremental credits.

The representative of Respondent also deponed before the Tribunal and he explained how the Respondent proceeds to grant incremental credits to employees for additional qualifications obtained. He produced a copy of a flowchart (Doc E) from the HR Manual of the Respondent which shows the various steps involved prior to approval being granted for the incremental credits. He also referred to the National Qualifications Framework, a copy of which was attached to a letter dated 10 July 2019 from the Mauritius Qualifications Authority (MQA) (Doc G). He stated that in the present case it was the Disputant who wrote to the MQA and the MQA sent a letter to the Disputant (Doc F). As per the said letter, the Disputant was informed that the “**Level 2 Diploma in Engineering – Electrical and Electronics Technology 600/0881/7**” awarded by ‘The City and Guilds of London Institute, United Kingdom (2019)’ was recognised and that the indicative level of the aforesaid qualification is Level 3 on the National Qualifications Framework.

The Tribunal has examined all the evidence on record including the submissions of both Counsel. The crux of the submissions made on behalf of the Disputant is that the terms and conditions of employment of Disputant do not refer to the National Qualifications Framework at all whereas the Respondent is relying on the said Framework to grant only one incremental credit to the Disputant. According to Counsel for Disputant, the only relevant criterion in the present matter (other conditions not being in issue) as per the terms and conditions of employment was that additional increment(s) may be granted on the following terms:

- (i) certificate : one increment
- (ii) Diploma/Degree and above: two increments.

Counsel for Disputant would thus be suggesting that once it is written “Diploma” on a qualification document and the qualification is awarded by a recognised institution (other conditions as per the terms and conditions of employment being met), then this is the end of the matter and the qualification should be accepted as being a “Diploma” qualification by the Respondent. This is clearly unacceptable and dangerous and as hinted to, in the cross-examination of Disputant, such a document could then be used on the same basis for say promotion to a higher post. The letter from the MQA (Doc F)

is telling and the MQA goes as far as quoting the exact reference “600/0881/7” on the qualification of Disputant (as per Doc B) and mentioning not only the qualification awarded by the institution but also the year such qualification has been awarded, that is, 2019, and that this particular qualification is recognised. Though the qualification has been recognised by the MQA, the latter goes further to state that the “*indicative level of the aforesaid qualification* [that is, irrespective of whether the description/nomenclature of the award as given by the awarding body includes the word “Diploma”] *is Level 3 on the National Qualifications Framework*”. There is no evidence before us to challenge this. There is also no evidence to suggest that the MQA is not the appropriate body to recognise and evaluate a qualification like the one in the present case, that is, “Level 2 Diploma in Engineering – Electrical and Electronics Technology” awarded by The City and Guilds of London Institute, for the purpose of establishing its equivalence. The copy of the “National Qualifications Framework” produced (as Doc G) is also not being challenged. There is no evidence on record to indicate that this was not the relevant applicable “National Qualifications Framework” when establishing the equivalence of the qualification obtained by the Disputant the more so in the light of Doc F. And finally, the use of the term “indicative level” cannot be of much help to the Disputant in the absence of any evidence from Disputant to suggest that his qualification should instead be more properly described at a higher level descriptor in the National Qualifications Framework. In any event, as per the “National Qualifications Framework” (contents of which have not been challenged) a qualification at a level less than National Qualifications Framework Level 6 will not be equivalent with a ‘Diploma’ and at most can be a ‘Certificate’. It is apposite to note that as per Doc G, the “Full Technological Diploma in Electrical and Electronic Engineering (2014)” awarded by the same body, that is, The City & Guilds of London Institute, for example, is not even attributed a National Qualifications Framework level since “it is not a qualification per se”.

The Tribunal finds nothing wrong with the procedure adopted by the Respondent and in fact, the Tribunal finds that the said procedure enables the Chief Executive Officer (CEO) of Respondent to exercise his duty in a fair and enlightened manner (underlining is ours) when approving or not approving the grant of increment(s) to a staff member. The dispute as referred to the Tribunal is devoid of merit the more so in the face of the letter from the MQA addressed to the Disputant (Doc F). Any other conclusion emanating from the Tribunal could have sent the wrong signal that the Tribunal could evaluate qualifications and pitch them at relevant levels in complete disregard to the recognition and evaluation of such qualifications by the MQA, the more so in a case where there is precisely no suggestion at all that the MQA went wrong.

For all the reasons given above, the Disputant has failed to show on a balance of probabilities that he should have been paid two incremental credits and the case is purely and simply set aside.

**SD Indiren Sivaramen**

**Acting President**

**SD Raffick Hossenbaccus**

**Member**

**SD Jeanique Paul-Gopal**

**Member**

**SD Kevin C. Lukeeram**

**Member**

**25 November 2020**