

# EMPLOYMENT RELATIONS TRIBUNAL

## AWARD

**ERT/RN 137/2017**

*Before: -*

<b>Shameer Janhangeer</b>	<b>Vice-President</b>
<b>Raffick Hossenbaccus</b>	<b>Member</b>
<b>Karen K. Veerapen (Mrs)</b>	<b>Member</b>
<b>Kevin C. Lukeeram</b>	<b>Member</b>

*In the matter of: -*

**Mr Deoduth FOKEERCHAND**

*Disputant*

and

**MAURITIUS POST Ltd**

*Respondent*

*In presence of: -*

- 1. Mr Rajruttun RAMTOHUL**
- 2. Mr Iswarparsadsing BANDHOA**
- 3. Mr Toomeswar CANHYE**
- 4. Mr Anand BOOJHAWON**

*Co-Respondents*

The present matter has been referred to the Tribunal for arbitration by the Commission for Conciliation and Mediation pursuant to *section 69 (7)* of the *Employment Relations Act* (prior to its recent amendment by *Act No. 21 of 2019*). The amended Terms of Reference of the dispute read as follows:

- 1) *Whether the appointment/promotion selection exercise made on 29 September 2015 by the Mauritius Post Ltd from the grade of Senior Postal Executive to that of Area Manager was fair, reasonable and non arbitrary. and*
- 2) *If the assessment in 1) above is in the negative, whether Mr Deoduth Fokeerchand should have been promoted/appointed to the post of Area Manager as from 15 October 2015 or otherwise.*

Both the Disputant and the Respondent were assisted by Counsel. Mr M. Ramano appeared together with Mr D. Ramano for the Disputant. Whereas, Mr M. Seetaram, Principal State Counsel, appeared for the Respondent instructed by Mr D. Manikaran, Senior State Attorney. The Co-Respondents were *inops consilii* and stated that they would be abiding by the decision of the Tribunal. Both the Disputant and the Respondent have submitted their respective Statement of Case in the matter.

#### *THE DISPUTANT'S STATEMENT OF CASE*

The Disputant was appointed as Postal Officer in December 1976 and reckons forty-three years of loyal service. In 1986, he was promoted to the post of Senior Postal Officer and performed duties assigned at different sections of the Parcel Post Office. From 1997 to 2002, he was posted at Mahebourg Post Office as Postal Executive. In 2002, he was appointed Senior Postal Executive, posted at the Parcel Account Section in the IB Department. The Pay Research Bureau ("PRB") Report 1993 recommended a new grade of Principal Postal Executive. In the PRB Report 1998, recommendations were made for formal training for Senior Postal Executives to enable them to compete for the post of Principal Postal Executive. Disputant thus followed a course in Public Administration and Management at the University of Technology, Mauritius and obtained a Bachelor's degree. He also holds a School Certificate, GCE "O" Level, Higher School Certificate, and GCE "A" Level. He also followed courses both locally and abroad.

The Appanna Report 2008 recommended that the grade of Principal Postal Executive be restyled as Area Manager. A review of salaries and conditions of service was carried out and the Respondent implemented a report drawn up by BCA Consultant in 2013. He opted for the revised emoluments and terms and conditions of employment in this report. The BCA Consultant Report also set out the qualifications for the post of Area Manager. The Respondent, by virtue of a Notice of Internal Vacancy (Circular Note No. 18/2015) dated 28

April 2015, invited applications for suitably qualified candidates for the post of Area Manager. Disputant applied for the post and was called for an interview on 29 September 2015. The interview lasted about 20 minutes. However, his certificates were not perused at all by the interviewing panel and no marking was carried out. He believes that every candidate was not at par in the interview as questions put to assess their skills, knowledge, ability and experience needed to fulfil the function of Area Manager differed from candidate to candidate. The Respondent, by virtue of a Staff Notification, informed that the Co-Respondents were promoted to Area Manager with effect from 15 October 2015. He, and five other candidates, protested against the promotion exercise and demanded clarifications. The Respondent replied by virtue of a letter dated 4 October 2015 (which should in fact be 4 November 2015).

The Disputant, in support of his case, avers that he has a proven track record to substantiate his performance, aptitude, ability, capability, qualification and skill for the post of Area Manager; seniority is pertinent when candidates are at par on other requirements and although he is senior most to the Co-Respondents, no consideration has been given to this criterion; the Respondent has not considered the qualifications mentioned in the BCA Consultant Report for the aforesaid post; the Co-Respondents do not hold the required qualifications for the post of Area Manager; duties of Area Manager focus on retail and delivery services at Post Officers and Senior Postal Executives, as Officer-in-Charge of Post Officers, are exposed to the duties of Area Managers in the everyday execution of their work; the Co-Respondents, by virtue of their functions, are not exposed to the job of Area Manager and do not supervise staff; the schemes of service of Area Manager and Senior Postal Officer have similarities, whereas that of Audit Executive, Quality Executive and Senior Technical Officer are incongruous; Senior Postal Executives fulfil all the requirements sought of Area Manager in terms of administrative and management skills, interpersonal and communications skills and leadership skills; he has already passed tests on his appointment as Senior Postal Executive as more or less the same criteria applies to both posts; the Co-Respondents are posted at the Headquarters, work side by side with management and have developed proximity with members of the interviewing panel. Co-Respondent No.2 regularly participates in management meetings together with members who constituted the interview panel; and the Co-Respondents are younger than the Disputant and bar his prospects prior to retirement.

The Disputant avers that the decision to appoint the Co-Respondents to his detriment is unwarranted, unreasonable manifestly harsh, arbitrary, unfair and contrary to natural justice. He believes that there has been a strong element of bias and partiality in the selection exercise and that the Co-Respondents were favoured during the interview.

Disputant is therefore praying for an award requesting the Respondent to promote/appoint him in the post of Area Manager with effect from 15 October 2015.

#### *THE RESPONDENT'S STATEMENT OF DEFENCE*

Mauritius Post Ltd ("MPL") avers that it is a company run and administered according to the provisions of the *Companies Act*. It is admitted that the Disputant was promoted to Senior Postal Officer, now restyled to Postal Executive, on 3 November 1986; that he was posted in different sections; and performed various duties in line with his scheme of service. The Disputant was appointed to Senior Postal Executive ("SPE") on 24 June 2002 and has performed various duties in line with his scheme of service of the aforesaid post. The post of Principal Postal Executive was not filled as there were no candidates in the grade of Senior Postal Executive who possessed a Diploma in Public Administration and Management as recommended by the PRB Report 1993. The PRB Report 1998 recommended that all Senior Postal Executives should follow a training programme at the Mauritius Institute of Public Administrators and Management to acquire management skills and be eligible to compete for the post of Principal Postal Executive, which has been restyled as Area Manager in 2008. The BCA Consulting proposed scheme of service for the post of Area Manager was not accepted by the Joint Negotiating Panel ("JNP") and was therefore not prescribed. Applications for the post of Area Manager on 28 April 2015 were invited in line with the scheme of service prescribed in 2008 which is still in force.

As regards the Disputant's interview, the Respondent has averred that his certificates were not verified as copies of same were available in his Personal File and were verified prior to the interview. The Respondent takes strong objections as to the Disputant's averments regarding the marking. The Respondent avers that each candidate was interviewed in accordance with the requirement of the scheme of service of the post and each were given adequate opportunity to demonstrate their competency and suitability for the post.

The Respondent further avers that according to the scheme of service of 2008, the selection exercise was open to the Audit Executive, Quality Executive, Senior Technical Officer and SPE of Returned Letter Office. Seniority was not a criteria during the selection process. The JNP had rejected the proposed schemes of service for all grades including that of Area Manager and thus the scheme of service of 2008 was still in force. The Co-Respondents were selected to the post following a selection exercise where every candidate

was given an opportunity to demonstrate his respective competency and suitability for the post. The Respondent therefore moves that the dispute be set aside.

### *THE EVIDENCE OF WITNESSES*

The Disputant, Mr Deoduth Fokeerchand, was called to depose. He confirmed the contents of his Statement of Case. When he was appointed SPE in 2002, the Co-Respondents were Senior Technical Officer, Audit Executive and Quality Executive. He submitted a seniority list drawn up by the Public Service Commission dated 24 June 2002 (Document A) wherein he was ranked 20<sup>th</sup>, Mr Ramtohol was 26<sup>th</sup> and Mr Bhoojawon ranked 34<sup>th</sup>. Messrs Bandhoa and Canhye were not SPEs in 2002. The main duties of SPE are listed in his Statement of Case. Referring to the Annex M of his Statement of Case (i.e. the Appanna Report), he produced an Errors & Omissions Report from BCA Consulting dated March 2014 (Document B) which is in addition thereto. He also produced a Circular Note from the Respondent's Human Resource Manager dated 24 January 2014 (Document C), wherein employees were encouraged to follow higher studies.

Mr Fokeerchand also stated that the post of Infrastructure Manager also requires similar qualifications to that of Area Manager. He produced two internal vacancy notices for the posts of Human Resources Executive (Document D) and that of Infrastructure Manager (Document E) respectively, highlighting the qualifications required. When the post of Area Manager was advertised in 2015, he was 59 years old. Retirement is now at 65 years. As he was not selected as Area Manager, he is still a SPE and his pay has remained as same.

Mr Fokeerchand was questioned by Counsel for the Respondent. He identified the notice of internal vacancy for the post of Area Manager (Annex O of the Disputant's Statement of Case) wherein he agreed that a particular profile, not qualifications, was sought. As per his Statement of Case, the post of Area Manager, according to its scheme of service, requires qualifications. He does not agree that the post of Area Manager was advertised based on the scheme of service of 2008 and not that of 2013 as the BCA Report in 2013 upgraded the post *in toto* and they were not told that the terms and conditions were not valid. He agreed to what was stated in the JNP Agreement of 2013 (Annex M1 of the Disputant's Statement of Case) at paragraphs 1 and 4. He also agreed that the scheme of service of 2008 for Area Manager (at Annex C of the Respondent's Statement of Case) is similar to the internal vacancy notice. He agreed that he applied following the internal

vacancy notice and did not protest. None of the required qualifications in the scheme of service of 2013 for Area Manager appear in the vacancy notice.

Mr Fokeerchand also replied that he was not the most senior among the fifteen candidates called for the interview, although he is senior to the four Co-Respondents. He is not aware if markings were carried out during the interview. The Infrastructure Manager is in charge of building and equipment and has nothing to do with Postal Operations. Same applies for Human Resources Executive. He agreed that MPL comprises three different departments, i.e. Human Resources; Postal Operations; and Finance, and that the two posts have nothing to do with the post of Area Manager. One does not come directly from Postal Operations to become Human Resources Executive. He did not say that the other candidates for the post of Area Manager were not qualified and agreed that he is not challenging their qualifications or that he is more qualified than them.

Under re-examination from his Counsel, Mr Fokeerchand notably referred to the Agreement between the JNP and the Respondent signed in July 2008 (Annex M1 to his Statement of Case), particularly to paragraphs 19.3 and 19.4 (4) thereof regarding appointment and promotion. He also stated that the post of Infrastructure Manager and Human Resources Executive are at the same level with Area Manager and that qualifications do matter.

Mr Biswajeet Khadun, Acting Human Resource Executive, was called to depose on behalf of MPL. He stated that as per an internal vacancy notice, the Respondent invited applications for the post of Area Manager. He referred to the eligibility criteria mentioned therein. There were fifteen candidates called for the interview by a panel of three, namely the Corporate Affairs and Administrative Manager Mr R. Dawnath, the Human Resources Manager Mr V. Gopeechand and the Operations Manager Mr M. Chen. Their posts were higher than that of Area Manager. Markings were done for all the applicants during the interview. He showed documents to the Tribunal regarding the Disputant's and the Co-Respondents' markings but did not produce same. The Disputant and Co-Respondents were called for an interview on 29 September 2015 and by virtue of a Staff Notification Circular Note No. 36 of 2015 dated 15 November 2015, it was informed that the four Co-Respondents have been Area Manager with effect from 15 October 2015.

Mr Khadun also stated that the four Co-Respondents joined the MPL as Post Officers, were promoted to Postal Executive and thereafter selected as SPE. At the time of interview, Mr Ramtohum held the post of Audit Executive; Mr Bandhoa held that of Quality Executive;

Mr Canhye held that of SPE; and Mr Boojhawon that of Senior Technical Officer. All four had more than four years' experience as SPE. Mr Fokeerchand was more senior to the Co-Respondents, although he was not the most senior among the fifteen applicants. The most senior was not selected for the post of Area Manager. At the time of the interview, the scheme of service of 2008 for the post of Area Manager was in operation. The scheme of service of 2013 was not prescribed as the unions did not agree on same. He identified the 2013 Agreement (at Annex M1 of the Disputant's Statement of Case) wherein at paragraphs 1 and 4, '*job descriptions (existing 2008)*' are mentioned. The scheme of service for the post of Area Manager (at Annex C of the Respondent's Statement of Case) tallies with internal vacancy notice of Area Manager.

Mr Khadun also explained that at the MPL there are different departments: Operations, Human Resources and Finance. Qualifications are needed for the posts of Human Resource Executive and Infrastructure Manager, which are distinct from the post of Area Manager. He confirmed that the qualifications of the applicants were contained in their personal file. Thus, the panellists in the interview already had information about their qualifications. Document A produced by the Disputant is not a seniority list and is only a staff notification mentioning who have been appointed as SPE. Co-Respondent No.3 has now retired from service.

Mr Khadun was thoroughly cross-examined by Counsel for the Disputant. He notably stated that he agreed with paragraphs 19.3 and 19.4 (4) of the Appanna Report 2008. He agreed that the PRB Report 1993 stated that the post of SPE requires a Diploma in Public Administration and the Disputant has a degree in Public Administration and Management. There is a general trend for more qualifications for staff. Referring to Document C produced, he agreed that MPL is promoting culture of learning and qualification among its staff. In reply as to whether the scheme of service of Area Manager is in contradiction with the BCA Report of 2013, he stated that the scheme of service of 2013 was not prescribed at the time. Regarding any document to show that the 2013 scheme of service was rejected, he referred to 2013 JNP Agreement (Annex M1 of the Disputant's Statement of Case). According to the Errors & Omissions Report (Document B), the union did agree to more training for staff. The aforesaid report came out in March 2014 after the 2013 JNP Agreement in January 2013.

Mr Khadun also replied that he did not agree that as there were no qualifications required for the post of Area Manager, this favoured the four Co-Respondents. He could not answer that if the 2013 scheme of service were applied, it would favour the Disputant. He elaborated on the qualifications of the Co-Respondents. Co-Respondent Nos. 1 and 4 were SPEs on 24 June 2002 up to 30 June 2008; whereas Co-Respondent Nos. 2 and 3 were

appointed as such on 24 October 2002 and 27 June 2003 respectively, both up to 2008. The Disputant was SPE from 2002 to 2015. The positions of Audit Executive, Quality Executive and Senior Technical Officer do support the Area Managers whenever there is a need. Out of fifty-nine SPEs, only one supports the Area Manager. The Disputant has managed a Post Office, managing a team where he has worked. The posts of Audit Executive, Quality Executive and Senior Technical Officer also involve managing a team. These posts are at the same level as SPE. It cannot be said that Mr Fokeerchand has more experience as SPE (thirteen years) than the Co-Respondents as they are all at the same level as SPE.

Mr Khadun further stated that the Disputant is more qualified, in his opinion, than the four Co-Respondents. At the interview, the applicants submitted their qualifications and these were checked with their personal file. Qualifications are not an important element in the interview process. Although the Co-Respondents were based at the headquarters, as were the Panellists, they were not in the same office but only in the same building. They were in different departments from the panel of interviewers. The Disputant was also working in the same building at the time. The Co-Respondents report to their respective Managers, who in turn attend meetings with the panel members. The posts of Human Resource Executive and Infrastructure Manager are, in terms of salary scale, almost similar to Area Manager. He could not answer why the position of Area Manager did not require any qualifications.

The Respondent's witness was also briefly questioned by Co-Respondent No.1. He stated that Mr Fokeerchand has worked at MPL Headquarters in the Audit Department and International Department and has worked in the same building as those on the interview panel.

#### *THE SUBMISSIONS OF COUNSEL*

Learned Counsel for the Disputant has notably submitted that the Tribunal should bear in mind the wider context in relation to the appointment exercise. There is the PRB Reports 1993 and 1998, the Appanna Report of 2008 and the BCA Report of 2013, which have all made recommendations pointing to qualifications, training and education for staff. It was also said that appointment and promotion would be done on the basis of experience, qualification and seniority where applicable. The recommendations of the 2013 report are reflected in the schemes of service for Area Managers, Executives, Senior Technical Officer, etc. It is the Respondent's case whether the scheme of service of Area Manager was



prescribed or not. There is no document pointing to an outright rejection of the scheme of service of 2013. The lack of an outright rejection would point to the 2013 being indeed prescribed.

Counsel for the Disputant further submitted that Mr Fokeerchand is more qualified than the four Co-Respondents and has thirteen years of experience as SPE. The Co-Respondents were not working as SPE prior to their appointment and the post of Area Manager required the support of a SPE. Counsel stated that the whole interview process was flawed in that the Disputant was being asked for qualifications and to bring his educational certificates, which was not given any attention to. The interview panel was composed of people who worked in close proximity with the Co-Respondents and this in itself should raise concern as to bias and unfairness of the whole process.

It was Counsel for the Disputant's humble submission that the appointment exercise was unfair, unreasonable and arbitrary and that the Disputant should be appointed to the post of Area Manager as from 2015. When questioned by the Tribunal, Counsel did admit that the Terms of Reference of the dispute was not questioning the scheme of service of Area Manager.

Learned Principal State Counsel for the Respondent notably submitted that the three criteria in the internal vacancy notice tallied with the scheme of service of 2008 not 2013. At no point in time did Mr Fokeerchand challenge the selection exercise on the ground that it should have been based on the scheme of service of 2013. He applied and attended the interview. Mr Khadun has been clear that the scheme of service of 2013 was not in force because of the JNP Agreement of 2013. It would have been different under the scheme of service of 2013, which does specify qualifications. There were fifteen applicants and the Disputant was not the most senior.

#### *THE MERITS OF THE DISPUTE*

The Terms of Reference, in the present matter, is asking the Tribunal to determine whether the appointment/promotion exercise of 29 September 2015 for the post of Area Manager was fair, reasonable and non-arbitrary. If the Tribunal does not find this to be so, it has to determine whether Mr Fokeerchand should have been promoted/appointed to the post of Area Manager as from 15 October 2015 or otherwise.

The Disputant, Mr D. Fokeerchand, joined the MPL in 1976 being appointed Postal Officer when the postal services were a Government department. In 1996, he was promoted to Senior Postal Officer and performed duties as such. From 1997 to 2002, he worked as Postal Executive. In 2002, he was appointed SPE. It should also be noted that by virtue of the *Post Office (Transfer of Undertaking) Act (Act No. 31 of 2002)*, the Post Office Department was vested in MPL (the Respondent in the matter).

It has not been disputed that MPL invited applications from suitably qualified candidates to the post of Area Manager pursuant to an internal vacancy notice dated 28 April 2015. The relevant aspect of this notice may be gleaned as follows:

***Applications are invited from suitably qualified candidates for the following post:***

**1. AREA MANAGER**

**A. Qualifications & Desired Profile.**

*By selection from among officers in the grade of Senior Postal Executive reckoning at least four years' service in a substantive capacity in the grade and who:*

- (a) possess administrative skills and managerial capability; and*
- (b) have strong interpersonal skills and communication skills.*
- (c) Leadership skills.*

***Note: Officers in the grade of Senior Technical Officer, Audit Executive, Human Resources Officer, Administrative Officer, Quality Executive, Finance Officer grade I appointed in the post on or before 1 July 2008 may also be considered for the post provided they have 4 years' experience in the grade of Senior Postal Executive.***

The Disputant, along with other candidates, applied for the post of Area Manager. He was thereafter called for an interview on 29 September 2015 along with fourteen other applicants. The interview was conducted by three management cadres of the Respondent. The Respondent thereafter informed Postmasters and staff, pursuant to a staff notification dated 15 October 2015, that the four Co-Respondents have been promoted Area Manager with effect from 15 October 2015. The Disputant is hence aggrieved by the decision to promote the Co-Respondents as Area Manager to his detriment.

During the hearing of the present matter, it has been contended that the scheme of service applicable for the post of Area Manager was that of 2008 instead of 2013. Despite the Disputant's argument that the latter scheme of service for the post of Area Manager should have applied, the Respondent was adamant that, pursuant to the JNP Agreement signed on 31 January 2013, the scheme of service of 2008 was applicable. Moreover, it is clear that the scheme of service annexed to the Respondent's Statement of Case bore an identical desired profile to the internal vacancy notice of 28 April 2015.

However, bearing in mind the Terms of Reference of the present dispute, it would not be within the Tribunal's mandate to enquire into what scheme of service should have applied to the post of Area Manager when same was advertised on 28 April 2015. It is pertinent to note that the first limb of the Terms of Reference is asking the Tribunal to assess the selection exercise for the post of Area Manager from the grade of Senior Postal Executive and not to determine whether the aforesaid post was advertised in accordance with its proper scheme of service. It should also be noted that Learned Counsel for the Disputant did, in submissions, agree that the Terms of Reference does not question the scheme of service.

It would thus be appropriate to note what was stated by the Supreme Court in *Air Mauritius Ltd v Employment Relations Tribunal* [2016 SCJ 103] in this regard:

*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 Tribunal shall therefore endeavour to uncover any unfairness, unreasonableness or arbitrariness in the selection process as the Terms of Reference is asking it to do. Mr Fokeerchand, in evidence before the Tribunal, has notably produced what he termed a seniority list (Document A) showing that he was more senior to Co-Respondent Nos. 1 and 4 in 2002 when appointed as SPE. However, a perusal of the aforesaid document reveals that it is a staff notification notifying staff of the postal services of the officers who have been appointed Temporary SPE with effect from 24 June 2002. Nowhere in the aforesaid document is it mentioned that the names of the officers listed therein are in order of seniority. Same was also confirmed by the Respondent's representative in his evidence.

In the same breath, if it is the contention of the Disputant that he should have been promoted/appointed to Area Manager by virtue of his seniority, it should be noted that, on

his own admission, he was not the most senior among the fifteen conveyed to the interview on 29 September 2015. Moreover, as per Mr Khadun, the most senior applicant was not selected for the post of Area Manager. Furthermore, as per the internal vacancy notice, it has not been expressly mentioned that seniority is a desired profile for the post of Area Manager.

It is also important to bear in mind that in an exercise for promotion, seniority is not the sole criteria that ought to be considered. There are other factors to consider as may be clearly gathered from *section 7* of the recently enacted *Workers' Rights Act 2019 (Act No. 20 of 2019)*:

## **7. Promotion**

*(1) Where a vacancy arises in a higher grade, an employer shall, in the case of higher grade promotion among monthly-paid workers, give consideration, as far as practicable, to qualifications, merit and seniority.*

In his Statement of Case, the Disputant has mentioned that seniority is pertinent when candidates are at par on other requirements. However, the Disputant has not demonstrated how the candidates were at par with each other for the element of seniority to gain any alleged significance. Nor has the Disputant showed that it is the practice at MPL to confer appointments or promotions on the basis of seniority. The argument that the Disputant should have been appointed or promoted to the post of Area Manager on the basis of his seniority over the Co-Respondents is not therefore tenable.

The Disputant, in his Statement of Case, has also contended that the Co-Respondents do not hold the required qualifications for the post of Area Manager being given they hold the posts of Audit Executive (Co-Respondent No.1), Quality Executive (Co-Respondent No.2), Senior Postal Executive in charge of Return Letter Officer (Co-Respondent No.3) and Senior Technical Officer (Co-Respondent No.4). It should, however, be noted that the internal vacancy notice for the post of Area Manager did not expressly specify any required qualifications to be eligible for the post. Moreover, as per the note contained in the notice, consideration would also be given to officers in the grades of, *inter alia*, Senior Technical Officer, Audit Executive and Quality Executive provided that they have four years' experience in the grade of SPE. Furthermore, the Disputant agreed, in cross-examination, that he was not challenging the qualifications of the other applicants to the post of Area Manager. It was not disputed that the Co-Respondents did have at least four years' experience as SPE and were thus eligible to apply for the post of Area Manager.

On the issue of qualifications, it should also be noted that it has not been disputed that the scheme of service of Area Manager of 2013 did expressly require qualifications. However, the scheme of service of 2008, which was applicable to the vacancy notice for the aforesaid post, did not expressly require any qualifications. Counsel for the Disputant notably emphasised on the PRB Reports of 1993 and 1998, the Appanna Report of 2008 and the BCA Report of 2013, wherein recommendations have been made pointing to more training, education and qualifications for staff. However, as the issue of qualifications for the post of Area Manager is directly related to the issue of which scheme of service would be applicable, the Tribunal shall not delve into this as it would be going beyond the Terms of Reference of the present dispute as previously noted.

The Disputant has also highlighted that appointments and promotion at MPL should be done on the basis of experience, seniority and merit relying on paragraphs 19.3 and 19.4 (4) of the JNP Agreement signed in July 2008. These particular paragraphs provide as follows:

**19.3 Appointment**

1) *The Company shall recruit the best candidates to fill vacant posts and shall select candidates on the basis of qualifications, experience and ability to perform that particular job. Seniority shall prevail where applicable.*

2) *In exercising its power to recruit, the Company may give to each candidate meeting all requirements for the post, a fair interview.*

...

**19.4 Promotion**

...

4) *The following shall, inter-alia, be taken into account: ability to perform the duties, additional qualifications, past experience in doing the same or similar work, past records of the Employee, and past years of service.*

It must be noted that the above-quoted provisions of the JNP Agreement are of a general nature and do not specifically apply to any particular post, not least that of Area Manager. Each post has their own specific eligibility requirements as is reflected in their respective scheme of service. Moreover, it must be underlined that seniority only prevails where is applicable. Nevertheless, it has not been shown how the interview panel has failed to select candidates for the post of Area Manager on the basis of qualifications, experience

and ability having regard to the requirements of the internal vacancy notice for the aforesaid post and its applicable scheme of service.

Mr Fokeerchand also relied upon the internal vacancy notice for the posts of Human Resource Executive and Infrastructure Manager (Documents D and E). It was contended that the two aforesaid posts are at the same level as Area Manager and do require qualifications. Whereas, the latter post did not. The Disputant did, however, agree that MPL comprised three different departments, that the aforesaid posts are not related to Postal Operations and have nothing to do with the post of Area Manager. In any event, it cannot be said that the posts of Human Resources Executive and Infrastructure Manager are similar to that of Area Manager simply because of the salary scale attached inasmuch as the three posts carry distinct duties from one another and are not related to each other.

It has also been stated that the Co-Respondents work in the same building as the interview panel members and suggestions have been made of potential connivance between them. It has been borne out that although they all work in the same building, the Co-Respondents do not directly report to the interview panellists, who are management cadres, and are not in the same office as them. It has, moreover, been revealed that the Disputant himself has worked in the same building as the panellists, having been posted in the Audit Department and International Department. It has not also been shown how there was any close proximity between the Co-Respondents and the panellists. There is therefore nothing of substance to suggest any bias or unfairness in the selection exercise because of the Co-Respondents' place of work.

The Disputant has also averred that he was not aware if there were markings made during the interview process held on the 29 September 2015. The representative of the Respondent has however clearly demonstrated to the Tribunal that markings were made of the applicants interviewed, notably the Disputant and the Co-Respondents. Similarly, the Disputant has averred that his educational certificates were not pursued by the interview panel. To this, Mr Khadun satisfactorily replied that the qualifications of all the applicants were contained in their personal file, that the interview panel members were in presence of this information and that their qualifications were checked against their personal file at the interview.

The Disputant has also contended, in his Statement of Case, that the Co-Respondents, in their previous posts, were not exposed to the job of Area Manager and that they had no staff to supervise. Although the Disputant has not substantiated on this point in

his evidence, it has not been disputed that the Co-Respondents did meet the eligibility criteria as per the internal vacancy notice for the post of Area Manager, which included four years' experience as SPE. If the Disputant were to make believe that as an SPE, he has been exposed to the job of Area Manager, it cannot be excluded that same would apply to the Co-Respondents, who have also worked as SPE in their own right. Mr Khadun, on the other hand, has asserted that the Co-Respondents, in their respective posts, were at the same level as SPE when it was put to him that the Disputant has more years of experience as SPE. Moreover, he was adamant that the posts of Audit Executive, Quality Executive and Senior Technical Officer do involve managing a team.

Furthermore, although the Disputant contends that the scheme of service of SPE and that of Area Manager have similarities whereas that of Audit Executive, Quality Executive and Senior Technical Officer are incongruous, it should be borne in mind that holders of the latter posts were not excluded from applying for the post of Area Manager provided they possess four years' experience in the grade of SPE as per the note contained in the internal vacancy notice of Area Manager. The evidence of the Respondent's representative to the effect that the latter posts were at the same level as SPE cannot be discarded in this regard.

Disputant's Counsel also relied on a circular note dated 5 March 2013 from MPL with subject matter '*Re-allocation of responsibilities of Area Managers*' wherein it is stated that the three Area Managers would be assisted by the SPE Operations – Retail and SPE Postal Operations – Delivery posted at Headquarters. Although this issue was not substantiated by the Disputant in his evidence, it can be noted that Mr Khadun satisfactorily explained that it is only one SPE posted at Headquarters, out of fifty-nine SPEs, who supports the Area Managers.

It cannot be overlooked that matters of appointment and promotion are normally within the realm of the employer. Indeed, the following may be noted from what was stated by the then Permanent Arbitration Tribunal in *Mrs D.C.Y.P and The Sun Casino Ltd (RN 202 of 1988)* in relation to the powers of the employer:

*There is no doubt that employers do have a discretion and powers in matters of appointment and promotion.*

It would be also pertinent to note what was held by the then Permanent Arbitration Tribunal in *E. Cesar and C.W.A. (RN 785 of 2005)*:

*The Tribunal holds that, subject to an abuse of powers on the part of management (Mrs D.C.Y.P. and Sun Casinos RN 202 of 1988), matters regarding appointment and promotion of employees are essentially within the province of management (M. Pottier and Ireland Blyth Ltd RN 279 of 1994, A. Ayrga and Tea Board RN 575 of 1998).*

Likewise, the following may be also noted from *Dalloz, Répertoire de Droit du Travail, Tome III, Entreprise, 30 avril 1991*, on the powers of the employer:

*SECT. 1<sup>re</sup>. – Pouvoirs du chef d'entreprise.*

*ART. 2 – FORMES DU POUVOIR PATRONAL*

*§ 1<sup>er</sup>. – Pouvoir de direction*

*...*

**103.** *Pour se limiter aux prérogatives sociales affectant la situation du personnel, on peut en relever deux séries de manifestations. D'abord, le pouvoir de direction comporte la maîtrise de l'emploi salarial ; en principe, c'est l'employeur qui choisit la personne du salarié et le Conseil constitutionnelle a reconnu que « ... l'employeur..., responsable de l'entreprise, doit pouvoir, en conséquence, choisir ses collaborateurs... » (Décis. n°88-244 DC du 20 juill. 1988, D.1989. 269, note F. Luchaire) ; il embauche le salarié, l'affecte à un emploi qu'il peut modifier, gère la carrière du salarié par des promotions, des déclassements, des déplacements, se sépare de lui par le licenciement, qui est l'expression la plus forte et la plus grave du pouvoir de direction.*

Having examined the arguments put forward by the Disputant to assert that the selection exercise of 29 September 2015 for the post of Area Manager was unfair, unreasonable or arbitrary, the Tribunal has not uncovered any evidence to suggest that these particular undesirable elements were present in the selection exercise. Nor has it found any substantive evidence of bias and partiality in the selection exercise in favour of the Co-Respondents during the interview.

The Tribunal thus cannot award that the appointment/promotion selection exercise made on 29 September 2015 was not fair, reasonable and non-arbitrary as per the first limb of the Terms of Reference. Not having found the first limb of the dispute to be in the negative, the Tribunal need not pronounce itself on the second limb of the Terms of Reference of the dispute.



The dispute is therefore set aside.

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**SD Shameer Janhangeer**  
**(Vice-President)**

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**SD Raffick Hossenbaccus**  
**(Member)**

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**SD Karen K. Veerapen (Mrs)**  
**(Member)**

.....  
**SD Kevin C. Lukeeram**  
**(Member)**

**Date: 13<sup>th</sup> January 2020**