EMPLOYMENT RELATIONS TRIBUNAL

AWARD

Before: -

Shameer Janhangeer	**-**	**Vice-President**
Marie Désirée Lily Lactive (Ms)	**-**	**Member**
Abdool Feroze Acharauz	**-**	**Member**
Parmeshwar Burosee	**-**	**Member**

In the matters of: -

ERT/RN 50/2019

Mr Mohammad Yousuf ABDOOL RAHEEM

Disputant

and

The State of Mauritius as represented by
Ministry of Health and Quality of Life

Respondent

ERT/RN 51/2019

Mr Mahesslall BEEDASSY

Disputant

and

The State of Mauritius as represented by
Ministry of Health and Quality of Life

Respondent

ERT/RN 52/2019

Mr Yesudas BEEHARRY

Disputant

and

The State of Mauritius as represented by
Ministry of Health and Quality of Life

Respondent

ERT/RN 53/2019

Mr Persan BEETUL

Disputant

and

The State of Mauritius as represented by
Ministry of Health and Quality of Life

Respondent

ERT/RN 54/2019

Mr Ajansingh BHANTOOA

Disputant

and

The State of Mauritius as represented by
Ministry of Health and Quality of Life

Respondent

ERT/RN 55/2019

Mr Heetlall Coumar BISSESSUR

Disputant

and

The State of Mauritius as represented by
Ministry of Health and Quality of Life

Respondent

ERT/RN 56/2019

Mr Rajiv Sharma CHAMILALL

Disputant

and

The State of Mauritius as represented by
Ministry of Health and Quality of Life

Respondent

ERT/RN 57/2019

Mr Jean Benjamin CHARLES

Disputant

and

The State of Mauritius as represented by
Ministry of Health and Quality of Life

Respondent

ERT/RN 58/2019

Mr Jeetendra CHUTTOO

Disputant

and

The State of Mauritius as represented by
Ministry of Health and Quality of Life

Respondent

ERT/RN 59/2019

Mr Navin Conto NAIKO

Disputant

and

The State of Mauritius as represented by
Ministry of Health and Quality of Life

Respondent

ERT/RN 60/2019

Mr Sheik Abdool Nadiim DARBARREE

Disputant

and

The State of Mauritius as represented by Ministry of Health and Quality of Life

Respondent

ERT/RN 61/2019

Mr Sangiv DINDOYAL

Disputant

and

The State of Mauritius as represented by Ministry of Health and Quality of Life

Respondent

ERT/RN 62/2019

Mr Vinaye DOMA

Disputant

and

The State of Mauritius as represented by Ministry of Health and Quality of Life

Respondent

ERT/RN 63/2019

Mr Ramesh DOOKEE

Disputant

and

The State of Mauritius as represented by Ministry of Health and Quality of Life

Respondent

ERT/RN 64/2019

Mr Mohammad Abdel Mosadek DOWLUT

Disputant

and

The State of Mauritius as represented by Ministry of Health and Quality of Life

Respondent

ERT/RN 65/2019

Mr Kosseela DUSSEE

Disputant

and

The State of Mauritius as represented by Ministry of Health and Quality of Life

Respondent

ERT/RN 66/2019

Mrs Samiirah EDUN-KAUDEER

Disputant

and

The State of Mauritius as represented by Ministry of Health and Quality of Life

Respondent

ERT/RN 67/2019

Mrs Marie-Noëlle FRANCISQUE LISEBETH

Disputant

and

The State of Mauritius as represented by Ministry of Health and Quality of Life

Respondent

ERT/RN 68/2019

Mr Kiran GOBURDHUN

Disputant

and

The State of Mauritius as represented by Ministry of Health and Quality of Life

Respondent

ERT/RN 69/2019

Miss Kovilambal GOUNDAN

Disputant

and

The State of Mauritius as represented by Ministry of Health and Quality of Life

Respondent

ERT/RN 70/2019

Mr Nashurrundin Shah I. A. IMAMDEE

Disputant

and

The State of Mauritius as represented by Ministry of Health and Quality of Life

Respondent

ERT/RN 71/2019

Mrs Usha Kiran ITTOO

Disputant

and

The State of Mauritius as represented by Ministry of Health and Quality of Life

Respondent

ERT/RN 72/2019

Mr Premduth ITTOO

Disputant

and

The State of Mauritius as represented by Ministry of Health and Quality of Life

Respondent

ERT/RN 73/2019

Mr Belall JADDOO

Disputant

and

The State of Mauritius as represented by Ministry of Health and Quality of Life

Respondent

ERT/RN 74/2019

Mr Doorkesh JEAWON

Disputant

and

The State of Mauritius as represented by Ministry of Health and Quality of Life

Respondent

ERT/RN 75/2019

Mr Baya JHUGROO

Disputant

and

The State of Mauritius as represented by Ministry of Health and Quality of Life

Respondent

ERT/RN 76/2019

Mr Suraj KHOODY

Disputant

and

The State of Mauritius as represented by Ministry of Health and Quality of Life

Respondent

ERT/RN 77/2019

Mr Muhammad Iqbal KHURWOLAH

Disputant

and

The State of Mauritius as represented by Ministry of Health and Quality of Life

Respondent

ERT/RN 78/2019

Mr Gianchand KOWLESSUR

Disputant

and

The State of Mauritius as represented by Ministry of Health and Quality of Life

Respondent

ERT/RN 79/2019

Mr Muslim KUREEMUN

Disputant

and

The State of Mauritius as represented by Ministry of Health and Quality of Life

Respondent

ERT/RN 80/2019

Mr Lallchand SEEWOOSAGAR

Disputant

and

The State of Mauritius as represented by Ministry of Health and Quality of Life

Respondent

ERT/RN 81/2019

Mr Sajid Khair LALLMAHOMED

Disputant

and

The State of Mauritius as represented by Ministry of Health and Quality of Life

Respondent

ERT/RN 82/2019

Mr Jean Oliver Geraldo LAROSEE

Disputant

and

The State of Mauritius as represented by Ministry of Health and Quality of Life

Respondent

ERT/RN 83/2019

Mr Gyandev LUCKYRAM

Disputant

and

The State of Mauritius as represented by Ministry of Health and Quality of Life

Respondent

ERT/RN 84/2019

Mr Satiaduth LUTCHUN

Disputant

and

The State of Mauritius as represented by
Ministry of Health and Quality of Life

Respondent

ERT/RN 85/2019

Mr Ranjeet MADOO

Disputant

and

The State of Mauritius as represented by
Ministry of Health and Quality of Life

Respondent

ERT/RN 86/2019

Mrs Chandanee MAUDHOO

Disputant

and

The State of Mauritius as represented by
Ministry of Health and Quality of Life

Respondent

ERT/RN 87/2019

Mr Shameem Mohammad MAYGHUN

Disputant

and

The State of Mauritius as represented by
Ministry of Health and Quality of Life

Respondent

ERT/RN 88/2019

Mr Deep Raj Mongle NAIKO

Disputant

and

The State of Mauritius as represented by Ministry of Health and Quality of Life

Respondent

ERT/RN 89/2019

Mr Hansraj MUNOOSINGH

Disputant

and

The State of Mauritius as represented by Ministry of Health and Quality of Life

Respondent

ERT/RN 90/2019

Mr Viraj NARAYYA

Disputant

and

The State of Mauritius as represented by Ministry of Health and Quality of Life

Respondent

ERT/RN 91/2019

Mr Sudevsingh PANDOHEE

Disputant

and

The State of Mauritius as represented by Ministry of Health and Quality of Life

Respondent

ERT/RN 92/2019

Mrs Anishtee PEERTY

Disputant

and

The State of Mauritius as represented by Ministry of Health and Quality of Life

Respondent

ERT/RN 93/2019

Mr Kissoonduth PERSAND

Disputant

and

The State of Mauritius as represented by Ministry of Health and Quality of Life

Respondent

ERT/RN 94/2019

Mr Soubiraj PITTEA

Disputant

and

The State of Mauritius as represented by Ministry of Health and Quality of Life

Respondent

ERT/RN 95/2019

Mr Deoprakash PURYAG

Disputant

and

The State of Mauritius as represented by Ministry of Health and Quality of Life

Respondent

ERT/RN 96/2019

Mr Rajack CASSAM

Disputant

and

The State of Mauritius as represented by Ministry of Health and Quality of Life

Respondent

ERT/RN 97/2019

Mr Rajasingh RAMBHUJUN

Disputant

and

The State of Mauritius as represented by Ministry of Health and Quality of Life

Respondent

ERT/RN 98/2019

Mr Dhroovanand RAMDHEAN

Disputant

and

The State of Mauritius as represented by Ministry of Health and Quality of Life

Respondent

ERT/RN 99/2019

Mr Avinash Prakash RAMJUS

Disputant

and

The State of Mauritius as represented by Ministry of Health and Quality of Life

Respondent

ERT/RN 100/2019

Mrs Meenakshi Devi RAMJUS

Disputant

and

The State of Mauritius as represented by Ministry of Health and Quality of Life

Respondent

ERT/RN 101/2019

Mrs Ansuyah Devi RAMKORUN REDDI

Disputant

and

The State of Mauritius as represented by Ministry of Health and Quality of Life

Respondent

ERT/RN 102/2019

Mr Ramnochane PRAGASS

Disputant

and

The State of Mauritius as represented by Ministry of Health and Quality of Life

Respondent

ERT/RN 103/2019

Mr Vikashsingh RAMSURRUN

Disputant

and

The State of Mauritius as represented by

Ministry of Health and Quality of Life

Respondent

ERT/RN 104/2019

Mr Sanjiva REDDI

Disputant

and

The State of Mauritius as represented by
Ministry of Health and Quality of Life

Respondent

ERT/RN 105/2019

Mrs Pratima DAHOO SOOKALOO

Disputant

and

The State of Mauritius as represented by
Ministry of Health and Quality of Life

Respondent

ERT/RN 106/2019

Mr Muhammad Hussein TENGUR

Disputant

and

The State of Mauritius as represented by
Ministry of Health and Quality of Life

Respondent

ERT/RN 107/2019

Mr Goindah VEERASAWMY

Disputant

and

The State of Mauritius as represented by
Ministry of Health and Quality of Life

Respondent

ERT/RN 108/2019

Miss Moazzammah WOOZEER

Disputant

and

The State of Mauritius as represented by
Ministry of Health and Quality of Life

Respondent

ERT/RN 109/2019

Mr Kritanandsing RUGHOOBUR

Disputant

and

The State of Mauritius as represented by
Ministry of Health and Quality of Life

Respondent

ERT/RN 110/2019

Mr Manee RUNGADOO

Disputant

and

The State of Mauritius as represented by
Ministry of Health and Quality of Life

Respondent

ERT/RN 111/2019

Mr Govind SAGUM

Disputant

and

The State of Mauritius as represented by
Ministry of Health and Quality of Life

Respondent

ERT/RN 112/2019

Mr Rajess Kumar SHAMLOLL

Disputant

and

The State of Mauritius as represented by
Ministry of Health and Quality of Life

Respondent

ERT/RN 113/2019

Mr Jaynool Abedeen SOOGUND

Disputant

and

The State of Mauritius as represented by
Ministry of Health and Quality of Life

Respondent

All in the presence of: -

1. **Ministry of Civil Service and Administrative Reforms**
2. **Pay Research Bureau**

Co-Respondents

The present labour disputes have 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* (the "*Act*"). The sixty-four disputes were consolidated upon motion of the parties. The common Terms of Reference of each of the disputes read as follows:

1. *Whether the computation of hourly rate for the in-attendance allowance payable to me as Medical Imaging Technologist/Senior Medical Imaging Technologist for being in attendance after normal working hours, should*

be based on 33.75 hrs weekly or 40 hrs, as presently implemented by the Ministry of Health.

2. *Whether my job in the grade of Medical Imaging Technologist/Senior Medical Imaging Technologist should be considered as shift worker as actually implemented or otherwise.*

3. *Whether a meal time should be deducted from the computed in-attendance allowance paid to me as Medical Imaging Technologist/Senior Medical Imaging Technologist for work after normal working hours or otherwise.*

All the parties were assisted by Counsel. Mr D. Ramano appeared for the Disputants. Miss B.H. Maherally, Ag. Senior State Counsel, appeared for the Respondent instructed by Mrs E. Ramdass-Bundhun, Senior State Attorney. Mrs V. Biefun-Doorga, Senior State Counsel appeared for Co-Respondent No.1 instructed by Mrs B.G. Oogorah, State Attorney. Mr K.N. Reddy, Principal State Counsel, appeared for the remaining Co-Respondent instructed by State Attorney. All parties, save for Co-Respondent No.2, have put in a Statement of Case in the present matter. Co-Respondent No.2 intimated that it shall be abiding by the decision of the Tribunal.

THE DISPUTANTS' STATEMENT OF CASE

The sixty-four Disputants are either Medical Imaging Technologists ("MIT") or Senior Medical Imaging Technologist ("SMIT") working at the Ministry of Health and Quality of Life. As per the Pay Research Bureau ("PRB") Report 2016, MIT/SMIT, who are required to work beyond normal working hours, are paid In-attendance Allowance and are compensated at the normal hourly rate at the salary point reached in their respective salary scales for every additional hour put in. This gives rise to two issues: whether they are shift workers and that the computation of the hourly rates for the In-attendance Allowance should be based on 40 hours weekly; and whether deductions should be made for lunch and dinner times from the computed In-attendance Allowance. The Disputants disagree and aver that the computation of hourly rates should be based on 33.75 hours as the cadre's normal working has remained 33 ½ hours. Imposing a 40 hours' week to compute hourly rate for work performed beyond normal working hours is a unilateral and unwarranted change in their conditions of service. Further, meal time should not be deducted from the In-attendance Allowance paid.

It has also been averred that the number of hours of MITs (formerly known as Radiographers) since 1993, is 33 ½ hours. The PRB Report 1993 classified Radiographers as shift workers but the shift system was not implemented. The In-attendance system was proposed for service after normal working hours against payment of an In-attendance Allowance at fixed rates. In-attendance Allowance for Medical and Health Officers/Senior Medical and Health Officers is computed on the basis of 33.75 hours since the PRB Report 2016. As per a Civil Service Arbitration Tribunal ("CSAT") Award (RN 527), overtime was to be paid after the normal working week of 33 ½ hours. The shift system has never been implemented and the Award must still apply.

Since 1993, the cadre has been paid In-attendance Allowance after completion of 33 ½ hours and not 40 hours. The scheme of service of MIT does not state the requirement to work in a shift pattern and the grade does not appear as classified as shift, staggered hours and roster workers under in any PRB Report. The cadre accepted the PRB Report 2016 on the terms that they will be required to be in attendance after normal working hours and not on the shift system. It cannot be asserted that they are shift workers and thus, hourly rates should be based on 33.75 hours.

Regarding meal time, the PRB Report 1993 introduced a new pattern of work consisting of In-attendance only in order to provide a better and timely treatment of the increasing number of patients. The personnel were paid In-attendance Allowances for the number of hours they were in attendance as prescribed in the PRB Report. Lunch and dinner periods were never deducted and were part and parcel of the In-attendance periods. Overtime allowance is different and is governed by different rules. Deduction for meal time is applicable to both shift and non-shift workers who perform overtime (*vide* paragraph 3.2.9 of the Human Resources Management Manual ("HRMM")). Prior to 2016, no deduction for lunch or dinner was effected. Despite the change in the mode of computation of In-attendance Allowance into hourly rates, the pattern of In-attendance after normal working hours has been maintained. If lunch and dinner times are deducted, this will be contrary to the provisions of the PRB Report.

THE RESPONDENT'S STATEMENT OF REPLY

The Respondent Ministry has raised certain preliminary objections to the Terms of Reference of the dispute in its Statement of Reply. These objections shall be reproduced later.

BACKGROUND

The grades of Radiographer (Diagnostic) and Senior Radiographer (Diagnostic) were restyled to MIT and SMIT respectively in the PRB Report 2008. Prior, the PRB Report 1993, the emergency service rendered by Radiographers operated as "in attendance/on call", which was divided into two distinct parts: "in attendance" period ending 2200 hrs; and "on call" period from 2200 hrs to 0900 hrs the following morning. The PRB Report 1993 recommended that the Radiography service during nights, weekends and public holidays be carried on an "in attendance" pattern of work against payment of an In-attendance Allowance (*vide* paragraph 14.9.82 of the Report). The 1993 report also recommended that the grades be required to work on shift for 24 hours, inclusive of nights, weekends and public holidays. However, pending the introduction of the proper shift system, they were paid In-attendance Allowance for the coverage of radiography service during nights, weekends and public holidays.

The salaries of the grades of MIT and SMIT are, since the PRB Report 1993, computed on the basis of 40 hours' effective work per week, which is the standard working week of officers working on shift. They are required to provide their service on a 24-hours basis warranting, pending the implementation of the shift system, coverage during nights, weekends and public holidays. The quantum of the In-attendance Allowance has been reviewed and increased in subsequent PRB Reports to 2013. In the 2016 report, the PRB reviewed the mode of payment of the Coverage (In-attendance) Allowance to payment at normal hourly rate for the same distinct periods (*vide* paragraph 23.282 of the PRB Report 2016). Additional payment for every additional hour put in to provide 24-hours service was maintained as recommended in 1993. However, the computation for every additional hour was reviewed. The formula recommended in the PRB Report 2016 for the computation of Coverage Allowance is more favourable to the officer concerned while the distinct periods in respect of which the allowance is paid has remained unchanged.

ON THE MERITS

The Respondent has notably averred that officers in the MIT Cadre required to work beyond normal working hours to provide a 24-hours service are being paid Coverage Allowance at the normal hourly rate (*vide* paragraph 23.282 of the PRB Report 2016) computed on the basis

of 40 hours per week as per paragraph 18.5.48 of the PRB Report 2016 as shift has, since 1993, been taken into account in arriving at the recommended salary of the grade. The Coverage Allowance referred to in the 2016 report refers to the same In-attendance Allowance payable under the PRB Report 1993 to 2013. The MIT cadre posted in the Respondent's hospitals are also called upon to provide 24-hours service and officers are on shift having been so classified in the PRB Report 1993 albeit a proper shift system has not been implemented. Meal time cannot be reckoned as working hours and cannot be taken into consideration for payment of Coverage/In-attendance Allowance. Moreover, meal time is deducted from the working hours of all categories of public officers irrespective of hours of work and work patterns.

The on call system was abolished in the PRB Report 1993 and the In-attendance system was extended to the period 22 hrs to 0900 hrs. The pre-2016 PRB reports, at no time, state that normal working hours was maintained to 33 ½ hours and that In-attendance Allowance was computed on the basis of 33 ½ hours weekly. The shift system in respect of Medical Health Officers/Senior Medical Health Officers is fully operational since 1 August 2017. The CSAT Award (RN 527) related specifically to a claim for extra hours of work put in during a specific and determinate period of time for a specific purpose (cardiac surgery sessions) and does not apply to the present matter. The Disputants have opted to be governed by the recommendations of the PRB Report. Nowhere in the various PRB Reports, is it stated that Coverage/In-attendance Allowance is to be computed on the basis of 33 ½ hours per week instead of 40 hours.

The Respondent has further averred that a proper shift system has not yet been implemented for officers in the MIT cadre; however, they are presently better remunerated than officers who are working under a proper shift system. As the aforesaid officers are classified as shift workers, save for the implementation of the shift system, action to amend the scheme of service was initiated and a new scheme of service has been prescribed and is in force since 14 May 2019. There is no paragraph 16.9.124 under Recommendation 38 of the PRB Report 2008. Note has also been taken of the admission that the pattern of work of the MIT cadre has not been changed since the PRB Report 1993.

THE CO-RESPONDENT'S STATEMENT OF DEFENCE

The Co-Respondent has notably averred that prior to the PRB Report 2016, officers of the MIT cadre were paid In-attendance Allowance for working beyond normal working hours as a

proper shift system was not implemented. As they are shift workers, the hourly rate should be calculated as per paragraph 18.5.69 (a) of the PRB Report 2016 on the basis of 40 hours, which is a condition of service of general application to the whole of the civil service. The Addendum Report recommended that should the quantum of allowance recommended at paragraph 23.282 be lower than what officers of the MIT cadre in post as at 31 December 2015 are currently drawing, they should continue to draw, on a personal basis, the amount they were entitled to prior to the 2016 report. The standard working week in the public sector, as per paragraph 18.5.2 of the PRB Report 2016, is 40 hours or multiple of 40 hours where the shift covers a cycle for employees on shift. Lunch and dinner are not considered as actual working hours as per paragraph 18.5.7 of the PRB Report 2016.

It has further been averred that the PRB Report 1993 classified MITs and SMITs as shift workers. The shift system with regard to Medical and Health Officers/Senior Medical and Health Officers has no bearing to the present dispute. The Disputants have accepted the conditions of the PRB Report 2016 and are thereby governed by its recommendations. The salary grading of MITs and SMITs have been determined after taking into account the element of shift and that the incumbents are required to put 40 hours per week for the computation of the hourly rate. The Co-Respondent has taken note that the scheme of service for the post of MIT was prescribed on 14 May 2019 to reflect that MITs would be required to work on shift covering 24-hours service including Saturdays, Sundays, Public Holidays and officially declared cyclone days. As per paragraph 23.282 of the PRB Report 2016, MIT officers, who work beyond normal working hours in order to provide 24-hours service, are compensated at the normal hourly rate at the salary point reached in their respective scales for every additional hour put in.

The Co-Respondent has also averred that the recommendation at paragraph 34.264 of the PRB Report 2013 has been reviewed as per paragraph 23.282 of the PRB Report 2013 to the effect that shift workers should put in 40 hours or a multiple of 40 hours where the shift covers a cycle. As per the Human Resources Management Manual, meal time shall not be included in the computation of overtime allowance and the PRB Reports prior to 2016 made recommendations for a quantum of In-attendance Allowance for specific number of hours put in by MITs and SMITs. As a general condition of service, meal time is excluded from prescribed hours of attendance irrespective of whether the officer is working during normal hours or beyond normal working hours. Compensation is based on the actual number of hours put in. The Co-Respondent avers that the disputes have no merit.

THE EVIDENCE OF WITNESSES

Mr Deoprakash Puryag, Senior Medical Imaging Technologist, was called to depose on behalf of the Disputants. He confirmed the truth of his Statement of Case as well as that of all the other Disputants. He stated that the first dispute concerns computation for hourly rate for In-attendance Allowance payable to the MIT grade for work performed after normal working hours as described by the PRB. The normal working week has remained 33 hours; staring from 9 am to 4 pm during the week and 9 am to noon on Saturday. The CSAT Award (*RN 527*) also states that the normal working week is 33 hours and this was after the 1993 PRB Report, which classified MITs as potential shift workers. The shift system has not been implemented and the Award, being a condition of service at the time, should still apply. The PRB Report 2016 changed the mode of computation of In-attendance Allowance despite the pattern of work having remained the same. They are asking the Tribunal for the allowance to be implemented on the basis of 33 hours from the implementation of the PRB Report 2016, until a proper shift system is implemented.

Regarding whether they are shift workers, Mr Puryag stated that the PRB Report does not mention MITs to be shift workers. It is an assumption that if the PRB Report 1993 has classified them as such, they remain as such. Paragraph 18.5.49 of the PRB Report 2016 Volume I, which mentions that compensation for workers operating shift/roster/staggered hours has been made in their salaries unless otherwise specified, is not applicable to their grade as they do not operate on shift. As they are only working 33.3 hours per week, they cannot be considered as shift workers.

On the third point, the witness stated that overtime and in-attendance are two different regimes. Reference was made to paragraph 14.9.83 of the PRB Report 1993 (extract produced as Document A), which states that In-attendance Allowance should on no account be discounted if the officer has been in-attendance according to the schedule. He also produced paragraph 16.9.123 of the PRB Report 1998 (Document B). They have no dinner and lunch time and there is no provision for deduction of lunch and dinner time in the PRB Report. For a proper shift system to be implemented, a hundred more MITs are needed. The scheme of service of MITs does not mention them to be shift workers. It has now been amended to state that they are shift workers despite there being nothing to this effect in the PRB Report.

The witness was thoroughly questioned by State Counsel appearing for the Respondent. He notably agreed that the salary recommended by the PRB in 1993 took into account the

element of shift, but this was not implemented. The scheduled hours of the 1993 report are still ongoing today. Being classified as a shift worker, the normal working week was 40 hours. He opted to be governed by all subsequent PRB Reports. The shift pattern of work, which started in 1993, has remained till today. He did not agree that the CSAT Award is not concerned with the shift system and took into account the element of shift in the PRB Report 1993. His dispute is not about overtime. The Award does not mention the PRB. The mode of computation of In-attendance Allowance at hourly rate is correct but it should be on a 33-hours basis, not 40-hours basis and this is since 2016.

Mr Puryag also replied that despite the PRB recommending that the mode of computation be changed, they feel that they should not be compensated on the basis of 40 hours. As the Ministry has not been able to implement the shift system, their normal working hours is 33. In the PRB Reports subsequent to 1993, the element of shift has been eroded over time as the shift system has not been implemented over the last 27 years. The subsequent reports do not mention that the shift element is contained in the salary of the grade. He agreed that with the new mode of computation, the mode of payment is now more favourable than when based on a fixed amount as they have fought for a decent pay. The part that meal time should not be discounted because it concerns In-attendance Allowance does not exist in the 2016 PRB Report. Mealtime hours are not considered actual hours in computation of overtime. The PRB has not recommended that mealtime be deducted from In-attendance Allowance and they are not performing overtime.

Mr Puryag was also questioned by Senior State Counsel appearing for the first Co-Respondent. He notably replied that MITs have never worked on a shift pattern and have never benefitted from the privileges associated with shift work. He is not aware that, in the public service, meal times are not regarded as actual working hours but not for In-attendance. To questions from Principal State Counsel for second Co-Respondent, Mr Puryag notably stated that they are agreeable to the conditions of service set by the PRB, but it has never been mentioned that lunch or dinner time would be deducted nor the element of shift. A proper shift system should cover all departments. He did not agree that they are now working on a shift system.

The witness was re-examined by his Counsel. He referred to his Statement of Case where it is stated that the MIT cadre is not among the grades being classified as shift in the PRB Report. The issue of 40-hours' work was raised in the CSAT Award. The 40-hours does not apply to him as he is not a shift worker. He is not contesting the PRB Report.

Mr Mukesh Gangaram deposed on behalf of the Respondent Ministry. He swore as to the correctness of his Statement of Reply. He stated that the normal working hours of the MIT cadre is 40-hours and their salary is determined on the basis of the shift system. The hourly rate is computed on the basis of 40-hours per week. Actual payment is computed as from 33-hours because of the present pattern of work despite the basis being 40-hours. As presently implemented, it is as from 33-hours; thus, they are overpaid for the first 7 hours.

Mr Gangaram was scrupulously questioned by Counsel for the Disputants. He notably stated that the Disputants' pattern of work is about 33 hours and not 40 hours. He could not say if it is the same people who work 16 hrs to 22 hrs and 22 hrs to 9 hrs after having worked normal working hours during the day. There are 66 MITs and 42 SMITs actually in post. He agreed that a proper shift system has yet to be implemented. In the PRB Reports from 1998 to 2016, it is not written that the two grades are shift workers. Same is also not mentioned in the two schemes of service dated 7 August 2012 annexed to the Disputants' Statement of Case. The letter of offer for the post of MIT does not mention that they shall be working on shift. As per the extracts of the PRB Reports of 2013 and 2016 at Annex 5 of the Statement of Case, it is mentioned that the element of shift work has been taken into account in the recommended salaries for the grade of Pharmacy Technicians. It is deduced that pending the implementation of a proper shift system, that the MITs/SMITs are shift. The PRB Report 1993 classified them as shift workers.

Mr Gangaram produced Paragraph 3.2.9 of the HRMM (Document C), which states that meal time shall not be included in the computation of overtime allowance. Mealtime cannot be considered as working hours. In-attendance should also exclude mealtime. It is not now called In-attendance; it is an allowance paid for covering after working hours as from 2016. He does not agree that the computation should be made on the basis of 33.3 hours nor that lunch or dinner time should not be deducted from In-attendance.

Mr Gangaram was also questioned by Principal State Counsel for the PRB. He notably stated that the system of work is not a proper shift system and in the present system, the MITs are replacing themselves. They are paid hourly rate after the normal 40 hours. The scheme of service was changed in 2019 and now mentions shift as compared to working beyond normal hours previously.

Mrs Sarespadee Sawmynaden, Assistant Manager Human Resources, deposed on behalf of the Ministry of Civil Service and Administrative Reforms. She affirmed as to the correctness of the Co-Respondent's Statement of Defence. She notably stated that MITs and SMITs are classified as shift workers as per the PRB Report of 1993. As per paragraph 18.5.69 (a) of the PRB Report 2016, to calculate the hourly rate for shift workers, one has to take the annual salary and divide it by 52 weeks and multiply by 40 hours, which is the number of hours the workers are required to put in being classified as shift workers. Mealtime is not taken into account in calculating the actual number of hours that an employee has put in.

The representative also stated that shift work is a pattern of work whereby workers are required to work 24-hours, with one worker replacing another to provide 24-hours service. A proper shift system has not yet been implemented by the Respondent Ministry. The PRB has confirmed that the element of shift has been taken into account to determine the salary of each of the two grades. The normal working hours for officers working on a 5-day basis is 33 ¾ hours and mealtime is not accounted. The Supervising Officer of the Respondent Ministry determines the hours of work of the Disputants. A letter dated 27 July 2017 from the PRB was produced (Document D), whereby it was confirmed that they are shift workers.

Upon thorough questioning by Counsel for the Disputants, Mrs Sawmynaden notably replied that she agreed that after 27 years no single step has been taken to implement the shift system. There are conditions attached to shift workers who are working on shift. She agreed that these special conditions are not attached to the Disputants, who are not putting in 40 hours of work. She agreed that the Disputants only work for about 33 hours per week instead of 40 hours. After the 33 hours, they work to cover 24-hours in an In-attendance system. The PRB Reports of 1998, 2003, 2008, 2013 and 2016 do not mention that the shift element has been taken into account in their salary. Prior to 2019, there was no mention of the shift element in their scheme of duty. As per paragraph 23.233 of the PRB Report 2013, the Disputants' cadre is not listed as shift, roster or staggered.

The representative also confirmed that paragraph 16.9.124 of the PRB Report 1998 specifies that the In-attendance Allowance should in no way be discounted as does paragraph 28.164 of the PRB Report 2003. The Disputants are now being paid hourly rate as per the PRB Report 2016 not In-attendance Allowance. She agreed that overtime is not paid on the hourly rate. The Disputants receive an allowance to cover 24-hours, not overtime. She did not agree that meal and dinner time cannot be discounted. She agreed that there was no guideline in the HRMM stating that In-attendance Allowance should be discounted. When eating, the Disputants are

physically in attendance but they are not actually working as they are having their meal. In 2016, it has not been mentioned that the In-attendance Allowance should be discounted.

Mrs Sawmynaden was also questioned by Counsel for the Respondent. She notably stated that schemes of service are made pursuant to regulation 15 of the Public Service Commission Regulations by her Ministry, who prescribed same upon recommendation from the Respondent Ministry. It has to undergo the process of consultations with union and management and is then prescribed. The procedure has been followed in this case. She produced the scheme of service for the post of MIT dated 14 May 2019 (Document E), wherein there is a note stating that the workers are '*required to work on shift covering a 24-hour service …*'. The endnote of the scheme of service of SMIT dated 7 August 2012 states that they have to provide 24-hour coverage. She confirmed that the shift system is also a 24-hour coverage system.

Mrs Sawmynaden also stated that the Dispenser cadre are not paid In-attendance Allowance but a Night Duty Allowance and they also perform 24-hour service. Paragraph 34.136 of the PRB Report 2013 was produced to this effect (Document F). An extract of the PRB Report 2003 regarding Pharmacy Dispensers was also produced (Document G) as was an extract of the PRB Report 2008 regarding Pharmacy Technicians (Document H), confirming that they work 24-hours. Deduction of mealtime from normal hours of work is a general principle obtainable in the civil service.

Mrs Sawmynaden, upon questions from Counsel for the second Co-Respondent, notably stated that there were several discussions before the scheme of service was finalised in 2019 and that it was a long process. It would not be fair to say that just because the case was at the door of the Tribunal that the scheme was changed.

Mr Jayrai Ganoo, Principal Job Analyst, deposed on behalf of the second Co-Respondent. He notably stated that in 1993, Radiographers were classified as shift workers; meaning that they work in a shift system providing 24-hours service and their normal working week is 40 hours. In 1993, the element of shift was taken into account in arriving at the recommended salary for their grade. At Recommendation 32 of the 1998 report, it is stated that all officers in the Radiographer cadre are classified as shift employees. In 2008, it was 24-hours coverage with revised In-attendance Allowance. An extract of the Errors, Omissions and Anomalies Committee Report 2013 was produced (Document J). Shift, roster and staggered hours are different and are not paid at the same rate.

Mr Ganoo went on to refer to paragraph 12.5.28 of the PRB Report 1998 Volume I whereby it is stated '*Compensation for the shift work, roster, staggered hours elements are presently integrated in the salaries of the workers*' (produced as Document K). The same thing is stated at paragraph 15.5.32 of the PRB Report 2003 Volume I (produced as Document L). Same is repeated in the reports of 2008 (extract produced as Document M), 2013 (extract produced as Document N) and at paragraph 18.5.49 in 2016 (extract produced as Document O). It can happen that workers are not performing in a shift system but their salary is based on shift. The shift system for MITs is presently not a proper system. When saying that the In-attendance Allowance should not be discounted, it is not written '*to take into account meal*' but it should not be discounted as it is a fixed quantum. Hourly rate is different from In-attendance. The PRB has provided a new mode of computation at hourly rate. Once the Option Form is signed it becomes a binding contract.

Mr Ganoo, upon questions from Counsel for the Disputants, notably stated that there is no proper shift system as the Ministry does not have adequate staff in order to work on a shift system. This situation dates back to 1993 and no shift system in connection with this cadre has been implemented. The PRB has never mentioned that the element of shift has not been considered. Although it may have been omitted in successive reports from 1998, this does not mean that the Disputants are not shift workers. The element of shift is integrated in their salary.

Mr Ganoo further stated that in the cadre's scheme of service, it is clear that they have to provide 24-hours service. Implicitly, this means that they are shift workers. For staggered and roster workers, the 24-hours requirement is not there. A shift system means a system where the worker has to provide 24-hours service. He agreed that practically there is no pattern of shift for the cadre. The Disputants are shift workers in whatever pattern they have been made to work and earn the salary of a shift worker.

Mr Ganoo, to questions from Counsel for the remaining parties, stated that for the computation of the hourly rate, the denominator is 40 (hours). Mr Ganoo also read out the letter dated 27 July 2017 (Document D) from the PRB and confirmed that clarifications on the interpretation of the PRB Reports should be directed to his office. In re-examination, Mr Ganoo stated that once there is adequate number of staff establishment size, the cycle of shift system can be implemented and then it would be considered a proper shift system.

THE RESPONDENT'S PRELIMINARY OBJECTIONS

The Respondent, in its Statement of Reply, has moved that the present matter be set aside on the following grounds: –

(a) It is not a labour dispute within the definition of a labour dispute in section 2 of the Employment Relations Act as the Disputants have opted to be governed by the recommendations of the Pay Research Bureau (PRB) Report 2016;

(b) It is time barred;

(c) The Disputants are seeking an award which is of a declaratory nature;

(d) The PRB which is an interested party has not been put into cause;

(e) The Tribunal is not the proper forum to consider the points in dispute; and

(f) The Disputants are challenging an administrative decision.

In relation to the preliminary objections, Ag. Senior State Counsel for the Respondent stated at the outset that she would not be insisting on sub-points (d) and (f). With regard to point (a), it was contended that the Disputants have opted to be governed by the recommendations of the PRB Report 2016 and paragraph (b) of the definition of a labour dispute in the *Act* was referred to. The PRB Report has changed the mode of computation for the payment of In-attendance Allowance. The first limb of the Terms of Reference of the dispute relates to reviewing the mode of computation as per paragraph 23.282 of the PRB Report 2016. The Disputants are therefore directly contesting their remuneration. The Respondent and both Co-Respondents have stated that the denomination of 40 hours is the correct, whereas the Disputants contend that it should be 33.75 hours. Thus, the first Term of Reference does not fall within the ambit of the definition a labour dispute.

Ag. Senior State Counsel also relied on the award of the Tribunal in *Rose & Ors. and MCIA* (*ERT/RN 52/17 to 55/17*) in support of her submissions as well as the Supreme Court judgment in *Federation of Civil Service and Other Unions v The State of Mauritius* [*2009 SCJ 214*]. Counsel further contended that the same argument should also apply to the third limb of the Terms of

Reference in relation to whether meal time should be deducted from the computed In-attendance Allowance paid to the Disputants.

In relation to the second limb of the Terms of Reference, Ag. Senior State Counsel notably submitted that the pattern of work of the Disputants has been introduced in 1993 and they have been working according to this pattern since. Same has been admitted at paragraph 24 of the Disputants' Statement of Case. The words 'actually implemented' in the Terms of Reference is the same since 1993. Thus, it is time barred as the Disputants are contesting something that arose as far back as 1993.

Ag. Senior State Counsel, on the third limb of her objections, submitted that the Disputants are asking the Tribunal to make a declaration and not to deliver an award binding on the parties. On the last point, she submitted that as the disputes emanate from the PRB Report, the Disputants should have made representations to the PRB.

Counsel for the Disputants has, on the other hand, notably submitted that the Disputants are not challenging the recommendations of the PRB and the dispute is not concerned with *section 2* of the *Act*. It is a matter of interpretation and application of the relevant provisions of the PRB Report 2016. Regarding the issue of time bar, the Disputants have not been working as shift workers and are not considered as such. Counsel referred to letters from the Co-Respondent Ministry dated 13 June 2016 (at Annex 3 to the Disputants' Statement of Case) and from the Respondent Ministry dated 7 September 2016 (Annex 1 of the same Statement of Case) to state that this is as from when the act or omission arose.

Counsel moreover submitted that the Respondent, contrary to the Disputants, contend that they are shift workers. With the PRB Report 2016, the shift pattern is in issue. The present disputes were reported to the CCM on 3 December 2018. Counsel did not agree that an award in relation to the disputes would be of a declaratory nature. The disputes relate to the interpretation of the computation of hourly rate, on whether it should be 33.75 hours or 40 hours. It would not be declaratory as it would have a practical impact on the pay packet of the Disputants, if the award were to be in favour of the Disputants.

RULING ON THE PRELIMINARY OBJECTIONS

The present disputes were reported to the CCM on 3 December 2018 and referred to the Tribunal on 23 May 2019. It should be noted that as from 27 August 2019, the *Act* stood amended by the *Employment Relations (Amendment) Act 2019* (*Act No. 21 of 2019*). However, as per the transitional provisions (*vide section 108 (9)* of the *Act*), a labour dispute pending before the Tribunal before the commencement of the *Amendment Act 2019* shall be dealt as if the definition of a labour dispute and *inter alia sections 69* and *70* have not been amended, repealed or replaced.

The Respondent has, in relation to the first limb of the Terms of Reference, argued that the dispute does not fall within the definition of a labour dispute inasmuch as the Disputants have opted to be governed by the recommendations of the PRB Report 2016 and that the dispute relates directly to their remuneration.

The Respondent is, in fact, invoking *sub-paragraph (b)* of the definition of a labour dispute under *section 2* of the *Act*. This reads as follows:

> *"labour dispute" –*
>
> *…*
>
> *(b) does not, notwithstanding any other enactment, include a dispute by a worker made as a result of the exercise by him of an option to be governed by the recommendations made in a report of the Pay Research Bureau or a salary commission, by whatever name called, in relation to remuneration or allowances of any kind;*

The following may be noted from what was stated by the Supreme Court in *Federation of Civil Service and Other Unions and others v The State of Mauritius and anor*. [*2009 SCJ 214*] in relation to the aforementioned exclusion expressed in the definition of a labour dispute:

> *Should he of his own free will, however, opt to be governed by the recommendations in the new report, he is presumed like any citizen to know the law, including the new provisions, and cannot declare a dispute in relation to his remuneration or allowances.*

A careful reading of the first limb of the Terms of Reference of the present dispute illustrates that the Disputants are asking the Tribunal to determine whether the computation of hourly rate for In-attendance Allowance payable to them for being in attendance after normal working hours should be based on 33.75 hours or 40 hours weekly. In essence, the dispute relates to the mode of computation of the hourly rate.

It would be pertinent to note that *ex-facie* the terms of the dispute do not specifically nor directly refer to the issue of remuneration or allowances. However, the evidence has revealed that the mode of computation would have an effect on the remuneration of the disputants. If the hourly rate were to be based on 33.75 hours weekly rather than 40 hours, it would be more favourable to the cadre of MIT/SMIT.

The Tribunal would wish to refer to what was previously stated in *Government Services Employees Association and The State of Mauritius* (*ERT/RN 65/17*), where the matter was considered on its merits in spite of the objection raised under the definition of a labour dispute:

> *Anyone challenging issues in relation to remuneration and/or allowance of any kind is debarred from doing so if he has opted for such remuneration and/or allowance of any kind. The Terms of Reference in the present matter deals specifically and only with the issue of implementation. The labour dispute relates to the implementation which incidentally has a bearing on the allowance but not directly related to it.*

The following passage from the ruling in the case of *Rose & ors. and Mauritius Cane Industry Authority* (*supra*) may also be considered:

> *The Tribunal has however on a few occasions entertained cases where the dispute is not directly in relation to remuneration or allowances of any kind but more in relation to issues of qualification or responsibility which would incidentally have a bearing on remuneration or allowances* ***(vide Government General Services Union (GGSU) And Government of Mauritius, RN 975)****.*

Having regard to the first limb of the Terms of Reference of the dispute in the present matter, it cannot be asserted that the Tribunal is being asked to directly decide on the remuneration of the Disputants inasmuch as it has to determine whether the mode of computation for hourly rate of the Disputants should be based on 33.75 hours or 40 hours weekly. It is also apposite to note that although the Disputants have not contested that they have

opted for the PRB Report 2016, it has not been shown that the dispute reported was made as a result of the exercise by them of having opted for the aforesaid report.

In the circumstances, given that the dispute is in regard to the mode of computation of the hourly rate, the Tribunal cannot find that the first limb of the Terms of Reference of the dispute does not amount to a labour dispute pursuant to *sub-paragraph (b)* of the definition of a labour dispute under *section 2* of the *Act*. Point (a) of the preliminary objections is therefore set aside.

Counsel also submitted that the argument on whether the dispute amounts to a labour dispute under *sub-paragraph (b)* of the definition would also apply to the third limb of the Terms of Reference. Under this particular limb, the Tribunal is being asked to determine whether meal time should be deducted from the computed In-attendance Allowance paid to MIT/SMIT for work after normal working hours.

Bearing in mind that under *sub-paragraph (b)* of the definition of a labour dispute, a labour dispute does not '*include a dispute by a worker made as a result of the exercise by him of an option to be governed by the recommendations made in a report of the Pay Research Bureau … in relation to remuneration or allowances of any kind',* the third limb of the Terms of Reference relates to the computed In-attendance Allowance paid to the MIT/SMIT cadre and whether meal time should be deducted therefrom.

Although, it may be that this would be a matter of interpretation as is being contended by Counsel for the Disputants, it cannot be denied that in interpreting whether meal time should be deducted from the MIT cadre's In-attendance Allowance paid to them or not, there would be a direct bearing on the allowance paid to the Disputants.

It has not been denied that the Disputants have opted to be governed by the recommendations of the PRB Report 2016. Moreover, ample evidence has been adduced to show that the In-attendance Allowance paid to the Disputants is pursuant to paragraphs 23.281 and 23.282 of the PRB Report 2016 Volume 2 Part I and thus emanates from the recommendations of the aforesaid PRB Report. Whether meal time should be deducted or not from the In-attendance Allowance would have a direct effect on the amount of the aforesaid Allowance paid to the MIT/SMIT cadre for their work after normal hours.

The term '*computed in-attendance allowance*' in the third limb of the Terms of Reference would therefore directly equate to the terms '*allowances of any kind*' as is envisaged by paragraph (b) of the definition of a labour dispute under *section 2* of the *Act*.

The Tribunal cannot therefore find that the point-in-dispute under the third limb of the Terms of Reference to be a labour dispute within the meaning of a labour dispute pursuant to *sub-paragraph (b)* of its definition under *section 2* of the *Act*. The dispute under the third limb of the Terms of Reference is thus set aside.

In relation to the second limb of the Terms of Reference, Counsel for the Respondent has argued that same is time-barred. As per paragraph 24 of the Disputants' Statement of Case, it has been admitted that the pattern of In-attendance after normal working hours has been maintained despite the change in the mode of computation of In-attendance Allowance into hourly rates. Thus, the pattern of work, which has been implemented since 1993, has remained the same. As this has arisen as far back as 1993, the dispute is time barred.

A labour dispute does not include a dispute that is reported more than three years after the act or omission that gave rise to the dispute. The relevant provision in relation to this particular objection is *paragraph (c)* of the definition of a labour dispute under *section 2* of the *Act*. This provides as follows:

> *"labour dispute"* –
>
> *…*
>
> *(c) does not include a dispute that is reported more than 3 years after the act or omission that gave rise to the dispute;*

In this vein, the following can be noted from what was stated by the Supreme Court in *D. Ramyead-Banymandhub v The Employment Relations Tribunal* [*2018 SCJ 252*]:

> *Whilst considering the nature of the objections raised by the co-respondent, the Tribunal was therefore first called upon to spell out the act or omission which triggered the applicant's labour dispute and to then determine at what point in time such act or omission took place. This is in line with the provisions of article 2271 of the Code Civil which provides as follows:*

"Le délai de prescription court à compter du jour ou le droit d'action a pris naissance."

The second limb of the Terms of Reference of the dispute is asking the Tribunal to decide whether the job of the Disputants in the MIT/SMIT grade should be considered as shift worker as actually implemented or otherwise. It would thus be incumbent on the Tribunal to determine the actual act or omission which gave rise to the present point in dispute and to determine when did same occur.

It would be apposite to note that Mr Puryag, who deposed on behalf of the Disputants, did admit that the shift pattern of work, which started in 1993, has remained the same till today, when questioned by Ag. Senior State Counsel for the Respondent. Upon questions from Counsel for the first Co-Respondent, Mr Puryag agreed that the PRB Report 1993 classified their grade as shift workers and that he agreed to same.

On the other hand, the representative of the PRB clearly stated that Radiographers, who are now styled as MIT/SMIT, were classified as shift workers and this element was taken into account in arriving at their recommended salary. When cross-examined, the representative maintained that although subsequent PRB Reports since 1998 have not expressly mentioned that the element of shift has been considered, it does not mean that the Disputants are not shift workers. The cadre's scheme of service also mentions that they have to provide 24-hour service, which implies that they are shift workers as opposed to staggered and roster workers who do not have this requirement.

Counsel for the Disputants has, in relation to the objection on time-bar, notably alluded to a letter from the first Co-Respondent dated 13 June 2016 and from the Respondent dated 7 September 2016 in asserting that this is as from when the dispute arose. A perusal of the first letter reveals it to be in relation to dinner and resting time not being considered as actual working hours for the purpose of the In-attendance Allowance for shift and non-shift workers. The second letter is with regard to the computation of the hourly rate for work performed beyond normal working hours and the applicability thereof for *inter alia* the MIT/SMIT cadre. The aforesaid letters are clearly not in relation to the issue of whether the grade of MIT/SMIT should be considered as shift worker as per the second limb of the Terms of Reference of the dispute.

Having notably considered the evidence of the PRB representative as well as the admission of the Disputant that the pattern in which the MIT/SMIT work is shift since 1993 as well as of the Disputants' classification as shift workers since 1993, the Tribunal can only find that the act which has given rise to the second limb of the Terms of Reference would be the classification of Radiographers (now styled as MIT and SMIT since the PRB Report of 2008) as shift workers in the PRB Report of 1993 (*vide* Recommendation 28 paragraph 14.9.81 of same). This would be as from the coming into effect of the recommendations of the PRB Report 1993.

The effective date of the coming into effect of the aforesaid report would be as from 1 July 1993 (*vide* paragraph 1.14 of the PRB Report 1993 Volume 1). The disputes having been reported to the CCM on 3 December 2018, the Tribunal can only find that same have been reported more than three years after the act that has given rise to the dispute.

The Tribunal cannot therefore find that the point in dispute under the second limb of the Terms of Reference to amount to a labour dispute as per paragraph (c) of the definition of a labour dispute under *section 2* of the *Act*. Hence, the second limb of the Terms of Reference of the dispute is also set aside.

Ag. Senior State Counsel for the Respondent has also submitted that any eventual Award in the present matter would not be binding on the parties and would be of a declaratory nature. The Tribunal cannot agree to this proposition inasmuch as the Disputants, under first point of the Terms of Reference, wish to know whether the computation of the hourly rate for In-attendance Allowance for working after normal hours should be based on 33.75 hours weekly or 40 hours.

The issue to be determined by the Tribunal is very relevant and pertinent to the Disputants and directly relates to their terms and conditions of employment. The point in dispute is not of a hypothetical or academic nature and nor is it leading the Tribunal towards such a path. The Tribunal cannot therefore find that the Disputants are seeking an Award of a declaratory nature. This particular aspect of the preliminary objections is thus set aside.

The Respondent has also argued that the Tribunal is not the proper forum to consider the points in dispute. The disputes emanate from the PRB Report and representations should have been made to the PRB. The Tribunal has noted that the points in dispute have been duly referred

to it by the CCM under the *Act*. The disputes were, beforehand, reported to the Commission and a requisite of reporting a dispute is for the parties to have held meaningful negotiations between themselves and a stage of deadlock has been reached (*vide section 64 (2)* of the *Act*).

Moreover, once a labour dispute has been referred, the Tribunal has the duty to inquire into same and give an Award thereupon (*vide Air Mauritius v Employment Relations Tribunal* [*2016 SCJ 103*]). The Tribunal cannot therefore find any merit in relation to this limb of the preliminary objections. This aspect of the preliminary objections is also set aside.

THE SUBMISSIONS OF COUNSEL ON THE MERITS OF THE DISPUTE

Learned Counsel for the Disputants, in relation to the merits of the first limb of the dispute, notably submitted that the PRB Report 2016 has reviewed the mode of computation of Coverage Allowance as per paragraph 23.281 although the Allowance itself has not been reviewed. The normal hours of work of the Disputants is 33.75 hours per week. The 40 hours is non-existent as they cannot be labelled as shift workers. The CSAT Award (*RN 527*) has stated that the grade is potential shift but not actually shift. The shift system has not been implemented and it cannot be said that they are shift workers. The normal working week is 33.75 hours as per the PRB Report. The computation of the In-attendance Allowance should therefore be based on 33.75 hours.

In relation to the first point in dispute, Learned Ag. Senior State Counsel for the Respondent, on the other hand, has notably submitted that the CSAT Award is in relation to cardiac surgery sessions specifically and should not apply in general. The Award was delivered in 1998 and was governed by the provisions of the *Industrial Relations Act*. As per *section 85* thereof, the effect of the Award is limited to a period of two years and has therefore lapsed.

Written submissions were put in on behalf of Co-Respondent No.1. It was notably stated that as per paragraph 18.5.2 of the PRB Report 2016, the standard working week in the public sector is 40 hours per week and it cannot be otherwise for the Disputants. The Disputants have opted and chosen to be governed by the provisions of the PRB Report. The scheme of service of Medical Health Officers is different and has no bearing on the present dispute. Reference has

also been made to the letter dated 27 July 2017 (Document D) from the PRB on the classification of the Disputants.

Learned Principal State Counsel for the second Co-Respondent has notably submitted that the crux of the dispute is whether there is a shift system or not. In fact, the Respondent Ministry has not recruited the required number of staff to implement a proper shift system. This is stated in the PRB Report. It is for the PRB to interpret its report and not for others to give a meaning they wish to give. Otherwise, the PRB is abiding by the decision of the Tribunal.

THE MERITS OF THE DISPUTE

The Tribunal, having considered the preliminary objections raised by the Respondent Ministry and ruled that the second and third limb of the Terms of Reference be set aside, shall now proceed to consider the first limb of the Terms of Reference on its merits. The Tribunal is being asked, under the point-in-dispute, to determine whether the computation of hourly rate for In-attendance Allowance payable to them for being in attendance after normal working hours should be based on 33.75 hours or 40 hours weekly.

The evidence in the present matter has revealed that the PRB, in its 2016 report, changed the mode of computation for In-attendance Allowance to that of hourly rate. Same may be noted from paragraphs 23.281 and 23.282 of the PRB Report 2016 Volume 2 Part I:

> ***Service during Nights, Weekends and Public Holidays***
>
> *23.281 Officers in the grades of Medical Imaging Technologist and Senior Medical Imaging Technologist who are required to work beyond their normal working hours in order to provide 24-hours coverage during nights, weekends and public holidays are presently paid "In-Attendance" Allowances, as hereunder:*
>
> *[…]*
>
> *We are in this Report, reviewing the mode of computation of this coverage allowance.*
>
> ***Recommendation 86***

23.282 We recommend that, pending the implementation of proper shift system, officers in the Medical Imaging Technologist cadre, who are effectively required to work beyond their normal working week in order to provide 24 hour service during nights, weekends and public holidays should be compensated at the normal hourly rate at the salary point reached in their respective salary scales, for every additional hour put in.

It has not been disputed that the In-attendance Allowance system was introduced by the PRB Report 1993 Volume 1 as may be noted from Recommendation 28 of the aforesaid report:

<u>Recommendation 28</u>

14.9.81 We recommend that Radiographers and Senior Radiographers should be required to work on shift for 24 hours coverage, inclusive of nights, weekends and public holidays. This element has been taken into account in arriving at the recommended salaries of the grades.

14.9.82 Pending the introduction of the shift system (which should cover a working week of 40 hours or a multiple of 40 hours where the shift covers a cycle), the coverage of Radiography service during nights, weekends and public holidays should be carried out in a pattern of work comprising of 'in attendance' only. When required to work during nights, weekends and public holidays over and above their <u>present working week</u> they would be paid an 'in attendance' as follows: -

…

With the change of computation introduced by the PRB Report 2016, the Disputants contend that the computation of the hourly rate should be based on 33.75 hours weekly instead of 40 hours until the implementation of a proper shift system.

The evidence of the Disputants has revealed that their normal working week is 33 hours, from 9 am to 4 pm during weekdays and 9 am to noon on Saturdays. Reliance has also been placed on the CSAT Award (*RN 527*), which, according to Mr Puryag, states that their normal working week is 33 hours and the Award, being a condition of service, should still apply.

It has not been disputed that workers in the MIT/SMIT cadre have been classified as shift in the 1993 PRB Report. Mr Puryag has moreover admitted that as a shift worker, the normal working week is 40 hours. Same may also be gleaned from the definition of shift work at paragraph 18.5.39 of the PRB Report 2016 Volume 1:

> *18.5.39* ***Shift work*** *is a flexible working arrangement for a 24-hour coverage where one employee replaces another or where different group of workers do the same job one after another and whereby workers normally work 40 hours weekly, or an average of 40 hours weekly in a cycle. These workers work in relays on a 24- hour basis including invariably night duty and work on Sundays and public holidays.*

It should also be noted that the formula for the calculation of hourly rate in relation to shift workers is reproduced at paragraphs 18.5.48 I and 18.5.69 (a) of the PRB Report 2016 Volume 1 as follows:

$$\text{Hourly rate} = \frac{\text{Annual salary for the financial year}}{52 \times 40}$$

The main argument that has been put forward by the Disputants is that as they are not working on shift, inasmuch as a proper shift system has yet to be implemented, their normal working hours is 33 hours. They should not therefore be compensated on the basis of 40 hours for the hourly rate for working after normal working hours as they do not operate on shift.

Although, it has been contended that a proper shift system has not been implemented, the Disputants are required to provide 24-hours coverage during nights, weekends and public holidays beyond their normal working week (*vide* paragraph 23.282 of the PRB Report 2016 Volume 2 Part I). The requirement to provide 24-hours coverage is specific to the shift pattern of work as may be gleaned from the definition of shift in the PRB Report 2016 Volume 1 (*vide* paragraph 18.9.39 – as reproduced above). The 24-hours coverage requirement is not a characteristic of roster or staggered workers (*vide* paragraphs 18.5.40 and 18.5.41 of the PRB Report 2016 Volume 1).

Despite the term '*shift*' not being expressly mentioned in the PRB Reports subsequent to 1993, the PRB Reports of 1998, 2003, 2008 and 2013 have all recommended that MIT/SMIT are

required to work beyond their normal week in order to provide 24-hour coverage during nights, weekends and public holidays and would be paid an In-attendance allowance. Same can be noted from paragraph 16.9.123 of the PRB Report 1998 Volume 2 Part I; paragraph 28.181 of the PRB Report 2003 Volume 2 Part I; paragraph 30.321 of the PRB Report 2008 Volume 2 Part I; and paragraph 34.264 of the PRB Report 2013 Volume 2 Part I. The requirement of 24-hour coverage is, moreover, consistent with the definition of shift work in each of the volumes of the PRB Reports on Conditions of Service in the Public Sector for 1998, 2003, 2008 and 2013.

The Disputants are therefore deemed to be shift workers as per the recommendations of the PRB Report 2016, as well as according to the prior reports since 1993, despite working a normal week of 33.75 hours in practice. It cannot also be overlooked that the element of shift has been taken into account in arriving at their recommended salary as per paragraph 18.5.49 of the PRB Report 2016 Volume 1:

Compensation for Shift Work/Roster/Staggered Hours

18.5.49 *The compensation for workers operating on shift/roster/staggered hours has been made in their respective salaries, unless otherwise specified.*

Same has also been stated in the PRB Report 2013 Volume 1 (*vide* paragraph 18.5.46), the PRB Report 2008 Volume 1 (*vide* paragraph 18.5.56), the PRB Report 2003 Volume 1 (*vide* paragraph 15.5.32) and the PRB Report 1998 (*vide* paragraph 12.5.32).

Although, it may have been argued that the Disputants do not operate on shift within the meaning of the abovementioned recommendation, it should not be discarded that they have to provide 24-hours coverage during nights, weekends and public holidays, as is stipulated in the PRB Report 2016. As the pattern of work presently stands, the cadre is still meant to provide 24-hours coverage, despite a proper shift system not having been implemented by the Respondent Ministry.

This state of affairs has also been reflected in the following extract of a letter dated 14 July 2017 from the PRB addressed to the Respondent Ministry's Senior Chief Executive:

The Bureau confirms that the salary gradings of the grades of Medical Imaging Technologist and Senior Medical Imaging Technologist have been

determined after taking into consideration the element of shift and that incumbent should imperatively be required to put in 40 hours per week as well as the computation of the hourly rate be based on the same weekly number of hours.

Moreover, the aforementioned recommendations of the PRB Report 2016 are consistent with the scheme of service of the respective grades of MIT and SMIT. The schemes of service of each grade (both dated 7 August 2012) particularly state that the MIT/SMIT '*will be required to be in attendance after normal working hours on weekdays, at night, during weekends and on Public Holidays in order to provide 24-hour coverage*'. The recently amended scheme of service dated 14 May 2019 for the post of MIT now specifically mentions that MITs '*will be required to work on shift covering a 24-hour service*'.

The Disputants have also alluded to the CSAT Award in *GSA (Radiographers' Branch) and The Ministry of Health* (*RN 527*), whereby it was awarded on 2 March 1998 that '*applicants should be paid overtime after what has been normal working week i.e. 33 ½ hours provided they completed the number of hour of work during each of the weeks concerned to qualify for overtime pay'*. It should be noted that the Award of the CSAT itself is on the issue of payment of overtime to Radiographers (as MIT/SMIT were known prior to the PRB Report 2008) and it is not in relation to In-attendance Allowance paid to the cadre after normal working hours.

Furthermore, as per *section 85* of the *Industrial Relations Act* (now repealed by the *Act* since 2009), an Award shall be binding on the parties for a period not exceeding two years and shall be an implied term of the contract of employment to whom the Award applies until it ceases to have effect. It has not been disputed that the CSAT Award *in lite* was made under then *Industrial Relations Act*. Thus, given that more than two years have elapsed since the CSAT Award in *GSA (Radiographers' Branch) and The Ministry of Health* (*supra*) was delivered, it cannot find its application in the present dispute.

The Tribunal, having notably considered relevant provisions of various PRB Reports, in particular that of 2016 (which was opted to by the Disputants), as well as the CSAT Award (*RN 527*) and the evidence adduced before it, cannot therefore find that the Disputants should not be classified as shift workers.

As it has been examined why the Disputants are considered as shift workers as is contended by the Respondent Ministry and the two Co-Respondents, it should reasonably be inferred that as shift workers their normal working week would be 40 hours or an average of 40 hours weekly in a cycle (*vide* paragraph 18.5.39 of the PRB Report 2016 Volume 1 as reproduced above). Thus, the computation of the hourly rate for their In-attendance Allowance for being in attendance after normal working hours should be based on 40 hours weekly.

The dispute under the first limb of the Terms of Reference is therefore set aside.

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SD Shameer Janhangeer
(Vice-President)

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SD Marie Désirée Lily Lactive (Ms)
(Member)

.....
SD Abdool Feroze Acharauz
(Member)

.....
SD Parmeshwar Burosee
(Member)

Date: 28th September 2020