

EMPLOYMENT RELATIONS TRIBUNAL

AWARD

ERT/RN 136/2020

Before: -

Shameer Janhangeer

Vice-President

Raffick Hossenbaccus

Member

Rabin Gungoo

Member

Ghianeswar Gokhool

Member

In the matter of: -

Mr Richard MAUNICK

Disputant

and

VIVA VOCE LTD

Respondent

The present matter has been referred to the Tribunal by the Commission for Conciliation and Mediation (“CCM”) for arbitration in accordance with *section 69 (9)(b)* of the *Employment Relations Act*, as amended. The Terms of Reference of the dispute read as follows:

Whether the job title of Mr. Richard Maunick be that of Rédacteur en Chef Adjoint and NOT Chef D’édition as modified unilaterally by his employer, Radio One, with adverse consequences: on his remuneration, change in his responsibilities and downgrading in the hierarchy and further on the radio market.

Both parties were assisted by Counsel. Mr R. Rault appeared for the Disputant, whereas Mr R. Ramsaha appeared for the Respondent. Both parties have submitted their respective Statement of Case in the present matter.

THE DISPUTANT'S STATEMENT OF CASE

The Disputant was, as from 2014, employed as Senior Journalist at Radio One owned by the Respondent. He was promoted to *Chef d'édition*. End 2017, he assumed the post of *Rédacteur en Chef Adjoint* (Deputy Chief of Edition) on an interim basis before being confirmed to same as from January 2018. The post entitled him to a Responsibility Allowance, further fees for specific radio programmes and a Car Allowance on top of his basic salary. He was responsible for the organisation of the *tableau de service*, which determines the allocation of various programmes aired over the channel among the journalists and *Chef d'éditions* at the radio station. Disputant thus animated the *Face à face* and *Nous la voix, nous radio* talk shows, which entitled him to a further income of Rs 12,000. He also assumed the Turf Talk sports programme for the 2019 season and drew a further income of Rs 10,000. He was forwarded a contract as *Rédacteur en Chef Adjoint* dated 3 September 2018 signed by the General Manager, Mr Nicolas Adelson.

In September 2019, the General Manager suggested that the Disputant be transferred to another department in animation, which he considered to be a demotion. The former then insisted that Disputant would be reverted to the editing team as *Chef d'édition*, which constituted another demotion. He was then forwarded another contract for the post of *Chef d'édition* (Editor), which is below the post of *Rédacteur en Chef Adjoint*. He refused to sign same. He was even told that the contract of *Rédacteur en Chef Adjoint* sent to him was erroneous. His post disappeared in the hierarchy and his appellation changed on his payslip. The General Manager also indicated that he was only interim and never confirmed to the post of *Rédacteur en Chef Adjoint*. In October 2019, he referred the matter to the Ministry of Labour and Industrial Relations.

In June 2020, the Respondent contended that, owing to a restructuring exercise, the post of *Rédacteur en Chef Adjoint* had been abolished. His subordinate, employed as *Chef d'édition*, was promoted to Editor-in-Chief above his head. As from July 2020, he referred the matter to the CCM but to no avail. The Disputant was denied any editorial airing as from 11 July 2020; he was

not solicited to animate the Turf Talk programme as from March 2020; it was signified that he would not animate the *Face à face* talk show; end August 2020, he was informed by SMS that he would no longer animate the *Nous la voix, nous radio* programme; he was put in as a simple journalist in the *tableau de service* now organised by the Editor-in-Chief; and he is systematically being ousted from covering important events, which constitutes a blow to his reputation in the industry. The Disputant prays for an equivalent post conducive with his former responsibilities and to derive equivalent revenue and/or compensation for his losses.

THE RESPONDENT'S STATEMENT OF REPLY

The Respondent has notably averred that the Disputant was re-employed on 6 October 2014 as Senior Journalist and thereafter promoted as *Chef d'édition*. In or about June 2017, the acting Chief Editor Mr Finlay Salesse made a request to management for an assistant in the day-to-day work of the radio. This was acceded to and the Disputant was assigned the responsibility to act as Assistant Chief in Editor, commonly referred to as *Rédacteur en Chef Adjoint*. He was never confirmed or appointed as same. He was entitled to a monthly salary of Rs 35,360, a monthly Responsibility Allowance of Rs 6,000 and a monthly Car Allowance of Rs 10,500. He also obtained Collaboration Fees on an *ad hoc* basis for the Turf Talk, *Face à face* and *Nous la voix, nous radio* programmes. The Collaboration Fees paid to the Disputant were not connected to his assignment to assist the then acting Chief Editor. The fees were paid to him on an *ad hoc* basis as decided by management. The fact that the Disputant was acting as *Rédacteur en Chef Adjoint* did not allow him to obtain further fees/allowances.

The Respondent has also averred that it did not deem it fit to insert the words '*acting*' or '*par interim*' on every document when referring to the Disputant's designation. Such mention in exchanges with the Disputant and on his payslip is erroneous. Disputant was responsible for organising the *tableau de service* but was never entrusted the responsibilities of allocating resources for the various radio programmes. The Disputant was wrongly designated in the proposed contract dated 3 September 2018 and same was intimated to him by letter dated 29 October 2019. The Respondent strongly denies any demotion as averred by the Disputant.

It has been further averred that the Disputant is employed as *Chef d'édition* (Editor) and his contract of employment was prepared since 9 September 2018. It was proposed to the

Disputant to assume the function of assistant to the *Rédacteur en Chef*, but he was never confirmed in the function. In June 2020, management decided to restructure the organization and decided that there was no need for a *Rédacteur en Chef Adjoint*. The Disputant was formally requested to sign his contract of employment as Editor but adamantly refused. The Disputant's remuneration has in no manner been changed or varied since the time he was acting as *Rédacteur en Chef Adjoint* or as *Chef d'édition*. Upon the decision to restructure, Mr F. Salesse resigned and was replaced by Mrs G. Geoffroy.

Representations were made by Mr Jack Bizlall to the Respondent's Chairman and it was made clear to the former that the issue of whether Disputant was appointed as *Rédacteur en Chef Adjoint* is no longer a live issue. Assignment to host talk shows and editorials are made on an *ad hoc* basis and are not linked to Disputant's contractual tasks and duties. Disputant is still solicited for replacement of colleagues for the presentation of news bulletins. The action initiated by the Disputant is devoid of any merit as not an iota of his salary and remuneration have changed; management has the absolute discretion to proceed with a reviewed structure and this never affected the Disputant's earnings and conditions of work; and the Disputant is acting irrationally and voicing his frustration at not having been appointed as *Rédacteur en Chef*.

THE EVIDENCE OF WITNESSES

The Disputant, Mr Joseph William Richard Maunick, was called to depose. He notably stated that in 2014, he became a Senior Journalist at Radio One and was promoted to *Chef d'édition* in 2015. In 2017, he was offered the post of *Rédacteur en Chef Adjoint* on an interim basis at first and then confirmed in January 2018 to October 2019, when the dispute arose. He produced a letter dated 22 April 2015 from the Respondent (Document A). He produced his pay slips as *Chef d'édition* for the months of November 2015 and January 2016 (Documents B and B₁). When Mr Finlay Salesse was appointed *Rédacteur en Chef* and made a proposal for him to be interim *Rédacteur en Chef Adjoint*, he met with Mr Adelson to finalise the post and the financial package in relation to the promotion. In December 2017, Collab Allowance was added to his pay slip of December 2017 (produced as Document C). His pay slip of February 2018 (produced as Document C₁) mentions his grade as *Chef d'édition* and he also earned a Car Allowance of Rs 10,500, a Responsibility Allowance of Rs 6,000 and the Collab Allowance of Rs 6,000. Collab Allowance is earned as additional remuneration for doing talk shows. He also produced an email dated 20 December 2017 from himself to Mr Adelson (Document D).

Mr Maunick further stated that the Collab Allowance he earned depended on the number of shows he did. He animated two talk shows: *Face à face* on Mondays and *Nous la voix, nous radio* on Thursdays; and as from March 2018, he animated the Turf Talk, which earned him an additional revenue of Rs 10,000. He also alternated with Finlay Salesse on the *Polémique* program. Mrs René is the Administrative Assistant and the HR of the enterprise, working under the Director General. He produced a memo dated 28 January 2018 signed by her (Document E). He also produced an email from him addressed to Mrs René on 25 February 2018 (Document F). His salary slip of September 2018 (produced as Document G) mentions his post as *Rédacteur en Chef Adjoint* and is similar to that of February 2018. He moreover produced a contract of employment for the post of Assistant Chief in Editor dated 3 September 2018 (Document H) signed by the Director General, Mr Nicolas Adelson. He referred to the *tableau de service* of 14 to 20 September, which he prepared in 2018, showing the programs he animates. Two other *tableaux de service* were also produced (Documents J and J₁). Once a new *Rédacteur en Chef* was appointed, he ceased to prepare same.

The Disputant also stated that in 2018, he presented the morning and midday news bulletins and was also responsible for the *bouclage* on at least two occasions; whereas in the *tableau de service* of 14 – 20 September 2020, he only presented twice, did the *bouclage* only once and on the other days, he worked as a journalist. Presently, the Senior Journalist Mr Ashley Victor and the *Chef d'édition* Mr Didier Rose validate the programs he does. He produced an email dated 8 October 2018 together with a *tableau de service* (Documents K and K₁). His dispute is since October 2019 before the Ministry of Labour and the CCM thereafter. He met with MR Adelson on 8 October 2019 in presence of Mr Salesse when he was made a proposal to leave the editorial department to join that of animation. He stated that this was more than a downgrading being the *Rédacteur en Chef Adjoint*. An Animator is at the same level as a Journalist. Mr Adelson did not appreciate his refusal to become Animator, told him to return to editorial as *Chef d'édition* and he replied that his pay slips states he is *Rédacteur en Chef Adjoint*.

Mr Maunick also produced a letter dated 11 October 2019 (Document L) from Mrs René, which referred to the meeting of 8 October 2019 with the Managing Director. He also produced his pay slips of August and September 2019 (Document M) and October 2019 (Document M₁). The latter shows his post to be *Chef d'édition*. He reacted through to Mrs René's email via an email dated 18 October 2019 (produced as Document N). He also produced the contract of employment for the post of *Chef d'édition* dated 9 September 2018 (Document O), which he had

never seen before and was only asked to sign same after the meeting on 8 October 2019. A memo dated 2 October 2018 showing him to be Assistant Chief Editor (Document P) was produced. He does not agree to the letter of 29 October 2019 from Mrs René (produced as Document Q) as he never received the contract of *Chef d'édition* to sign before the dispute in October.

The Disputant further related that management was conveyed before the Ministry of Labour from October 2019 to January 2020. He produced a letter dated 30 January 2020 from the employer with a contract dated 30 January 2020 for the post of *Chef d'édition* annexed thereto (Documents R and R₁). At the Ministry, he was informed that the company is proceeding with a restructuration and as there is a new *Rédacteur en Chef*, the dispute was academic. His post of *Rédacteur en Chef Adjoint* was abolished in the restructuration and he learnt this at the meeting before the Ministry. He did not receive any memo informing him of same nor was it displayed on a notice board. The programs he presented were assigned to the new *Rédacteur en Chef* as well as the organisation of the *tableau de service*.

Mr Maunick was assisted by the trade unionist Mr Jack Bizlall before the Ministry and produced a letter dated 29 June 2020 from the latter (Document S), a reply from the Respondent dated 1 July 2020 (Document S₁) and an email dated 9 July 2020 from Mr Bizlall (Document S₂). He produced another letter dated 31 August 2020 from Mr Bizlall addressed to the CCM (Document T). A transcript of a WhatsApp message (Document U) and an email dated 27 August 2020 (Document U₁). As from March 2020, he was still drawing his salary, Car Allowance, Collab Fees and Responsibility Allowance. However, once the dispute was before the CCM, he lost all his Collab Fees, which provided him with additional remuneration. He produced his pay slips for the months of March to October 2020 (Documents V, V₁ to V₄). There was no proposal from management at the CCM. His remuneration is much less than what he was earning and the bulk emanates from Collab Fees. His media exposition has completely disappeared and is the same as a new entrant. His remuneration has decreased between Rs 10,000 to Rs 15,000 per month and he was no longer attributed the Turf Talk show. He is asking for an equivalent post corresponding to his responsibilities with adequate remuneration.

The Disputant was thoroughly questioned by Counsel for the Respondent. He notably stated that he had previously signed a contract as Journalist with the Respondent. The present contract of employment is that of 3 September 2018 signed by Mr Adelson but does not bear his signature. He did not agree to a clause whereby parties could terminate when they wished and Mrs René told him that this will be removed from the contract, but she never got back to him. He

did not dispute the figures of his earnings in the excel sheet annexed to the Respondent's Statement of Case. He agreed that the only variation is the Collab Allowance as per the annex. During negotiations, it was convened that he would be paid for the programs and the Director would choose the programs attributed to him. The Collab Fees fluctuate in money terms paid and he was paid the same for every month. He does not agree that the Collab Allowance is given on an *ad hoc* basis. It is not present in the contract as the amount is not fixed and it fluctuates. He considers same to be an acquired right as it was in the negotiations for the post of *Rédacteur en Chef Adjoint*.

Mr Maunick, moreover, replied that Mr Salesse made a proposition to him to become *adjoint* and that at first, he would be interim and confirmed in January. Mr Adelson also made the proposal. This was publicly stated by Mr Adelson, in presence of Mr Salesse, during a meeting with the editorial team in 2017. His basic salary was Rs 31,000 in 2017 and after the negotiations, it increased by Rs 5,000 in January/February 2018. He received the Responsibility Allowance as from January and the Car Allowance as from February as mentioned in the memo from HR. There is no fixed basic for employees, everyone negotiates his own salary. In June 2020, the restructuration decision was communicated to him at the Ministry. His basic salary remained the same. He earned Collab Allowance in July and August 2020 and ceased to draw same as from September. He agreed that the employer can effect a restructuration, but the dispute is since before being in September 2019. He denied that he was aiming for the post of *Rédacteur en Chef*. The post of *adjoint* has been abolished.

Mr Nicolas Adelson, Managing Director of Radio One, adduced evidence on behalf of the Respondent. He notably stated that he runs the company since 2008. Mr Maunick was employed as Journalist in 2014 and promoted to *Chef d'édition*. In June 2017, the interim *Rédacteur en Chef*, Mr Finlay Salesse, asked for a person to be appointed Assistant Chief News Editor. While Mr Salesse was Acting Chief News Editor, Mr Maunick operated as Acting Assistant Chief News Editor, i.e. *Rédacteur en Chef Adjoint*. He referred to the Disputant's salary as per the excel sheet (produced as Document W) annexed to his Statement of Case. Collaboration Allowance is when a journalist presents extra shows out the contract duties. The Disputant was paid the Collab Allowance for the *Face à face* and *Nous la voix, nous radio* programs and a turf talk show for one season. The allowance is on an *ad hoc* basis, as and when, and is not on a contractual basis. They provided the Disputant with a contract, but it was never signed. The Disputant's payslips did mention the post of *Rédacteur en Chef Adjoint*, but the contract was never signed. Mr Maunick has never been appointed as *Rédacteur en Chef Adjoint*.

Mr Adelson also stated that in June 2020, the contract of the former Acting Chief News Editor came to an end and a new Chief News Editor was nominated. In the history of the radio, the post of Assistant Chief News Editor never existed. Mrs Geraldine Geoffroy was appointed and the Board also decided a restructuring to revert to how it was before, as the new Chief News Editor did not require an assistant or deputy. The *Chefs d'édition* are by default the assistants and they have the same responsibilities. Mr Maunick's remuneration or allowances were not touched. There is currently no post of *Rédacteur en Chef Adjoint*. He produced an extract of minutes from the Board of Directors (Document X) to this effect. There has been no adverse effect on Mr Maunick's remuneration, responsibilities and no downgrading in the hierarchy. Only the data input for the journalist roster has changed as this is now the sole responsibility of the Chief News Editor. It was decided that the new Chief News Editor would do the *Face à face* program and they wanted a change in programs for the second show. The programs are the responsibility of the management; they decide who can or cannot present the show. There has been no decision to prevent Mr Maunick from presenting talk shows and he can still be considered to host further talk shows in the future.

Upon questions from Counsel for the Disputant, Mr Adelson notably confirmed that the contract dated 3 September 2018 (Document H) does bear his signature. He is aware of the contents of the letter dated 28 January 2018 (Document E). The post of *Rédacteur en Chef Adjoint* was offered to Mr Maunick. The new conditions of work were discussed with the Acting Chief News Editor at the time. Being referred to an email dated 20 December 2017 (Document D), he stated that the responsibilities and package were finalized at his office. He did necessarily have to give his approval. In the payslip of February 2018, there is a change in total earnings to Rs 62,220. He did not agree that the Collab Allowance formed part of the package of incentives the Disputant was entitled to when he became *Rédacteur en Chef Adjoint*.

Mr Adelson also replied that he recommended to the Board that the post of *Rédacteur en Chef Adjoint* be abolished. They did not have to propose any alternative post since the structure does not need any deputy and they went back to what it was before. He did not have to answer whether it was a unilateral decision by management to scale the Disputant to the post of *Chef d'édition*. Presentator and *Chef d'édition* are strictly different. They are working on a new grid starting in two or three months pending the approval of the Board and the Disputant's name will be in contention, should he be required. He denied that what they decided was arbitrarily linked to the Disputant's complaint before the Ministry of Labour, the CCM and now the Tribunal.

Mr Adelson also related that there were informal discussions with the Disputant to propose a solution upon the departure of Mr Salesse. There were no proper discussions about the future of Disputant's post as they were restructuring and that he was not losing any of his advantages and remuneration package. The Collaboration Fees have nothing to do with remuneration or the contract never signed. No attributions or responsibilities have been taken away or else he would not have been paid Responsibility Allowance. The *tableau de service* has to be approved by the Acting Chief News Editor, if not by the Managing Director. The actual Chief News Editor has taken over this responsibility. Mr Maunick is not taking instructions from anyone else. The post was abolished in December, but Document X mentions that it be implemented as from June 2020. The decision was taken by the Board and he was asked to implement in June and there was no need for him to talk about it unless the Board instructed him to do so.

THE SUBMISSIONS OF COUNSEL

Learned Counsel for the Disputant notably submitted that the Disputant has been extensive regarding his promotion in December 2017 to *Rédacteur en Chef Adjoint* and his salary being adjusted. He received other benefits, such as the Responsibility Allowance, the Collab Fees and a Car Allowance as indicated in a memo from Mrs René. Reference was made to the judgment of *A.J. Maurel Construction Ltée v Froget* [2008 MR 6] and observations made therein in relation to unilateral modifications of an employment contract. The letter dated 28 January 2018 from Mrs René shows that Mr Maunick was promoted to the post of *Rédacteur en Chef Adjoint*. It is not open for the employer to modify substantially the contract and conditions of work of the employee.

Learned Counsel also submitted that as per the pay slips produced, Collab Fees were paid on a substantial basis as from the moment the Disputant was promoted. As *Chef d'édition*, he was only afforded punctual elements of these fees. The Collab Fees have to be considered in light of the discussions that took place in December 2017, prior to the promotion. Reference was also made to the case of *Ramsurrun v Floreal Knitwear Ltd* [2006 SCJ 287]. Collab Fees are accessories and its decrease has resulted in a loss of revenue and a loss of status. By removing the talk shows from the Disputant, he has been brutally cut off. The Disputant is therefore requesting to order the Respondent that an equivalent post conducive with the attributed responsibilities and that his revenue deprived be awarded as compensation.

Learned Counsel for the Respondent, on the other hand, submitted that as matters stand, the post of *Rédacteur en Chef Adjoint* no longer exists and there are no live issues left. The matter is now academic, referring to a previous ruling of the Tribunal in *Cheddy and the Ministry of Labour (ERT/RN 92/2017)* and the award of *Mooneepen and MITD (ERT/RN 35/12)*. The Terms of Reference, as couched, are defective and cannot be entertained by the Tribunal. Regarding the equivalent post being asked for, how can the Tribunal know which equivalent post the Respondent can create to suit the Disputant? This is not possible. He conceded that there was some recklessness by the Respondent on the issue of *Rédacteur en Chef Adjoint*, but this is not fatal.

Learned Counsel also submitted that there is no contract although the employment relationship with the Disputant is not being denied. He left it to the appreciation of the Tribunal on whether Mr Maunick was made *Rédacteur en Chef Adjoint*. Collab Fees are paid on a strictly *ad hoc* basis and is not an acquired right. The Disputant was performing as *Rédacteur en Chef Adjoint*. But can management be prevented to proceed with a restructuring exercise? The Disputant's basic salary, Responsibility Allowance and Car Allowance have not been touched. The only variation is the Collaboration Allowance. Counsel agreed that there was no correspondence from the employer informing Mr Maunick of the abolition of his post or whether he would be referred to as *Chef d'édition*.

THE MERITS OF THE DISPUTE

The Terms of Reference of the present dispute is asking the Tribunal to enquire into whether the Disputant's job title must be that of *Rédacteur en Chef Adjoint* and not that of *Chef d'édition* as modified unilaterally by the Respondent. This presumed unilateral modification has had adverse consequences on the Disputant, notably with regard to his remuneration, job responsibilities, and rank in the hierarchy and on the radio market.

The Disputant re-joined the Respondent as a Senior Journalist in 2014 and was promoted to *Chef d'édition* in 2017. The Respondent operates a national radio station known as Radio One. He was thereafter offered the post of *Rédacteur en Chef Adjoint* (i.e. Assistant Chief in Editor) on

an interim basis around the end of 2017. It has not been disputed by the Respondent that while Mr Finlay Salesse was the Acting Chief News Editor, Mr Maunick operated as *Rédacteur en Chef Adjoint*. The Respondent recognised that a contract of employment for the aforesaid post was offered to Mr Maunick, although this was never signed. However, it is denied that the Disputant was ever appointed in the post of *Rédacteur en Chef Adjoint*.

The Disputant contended that, in October 2019, the Managing Director proposed him the job of Animator, which he refused. Mr Adelson then told him to return to the post of *Chef d'édition*. His payslip of October 2019 (Document M₁) reflects the change in his job title to *Chef d'édition*. According to the Respondent, with the appointment of a new *Rédacteur en Chef* (i.e. Chief in Editor) in June 2020, following the end of Mr Salesse's contract, they decided to revert to the previous organisational structure, which did not include the post of *Rédacteur en Chef Adjoint*.

Mr Maunick, as from October 2019, reported a dispute to the Ministry of Labour. At the Ministry, he was eventually informed, in June 2020, that his post of *Rédacteur en Chef Adjoint* has been abolished in a restructuration exercise. He never received a memo informing him of same nor was this displayed on the notice board. Mr Maunick eventually reported a dispute at the CCM on 27 July 2020. The reported dispute has now been referred to the Tribunal.

The Tribunal shall proceed to examine the Respondent's contention that the present dispute is academic inasmuch as the post of *Rédacteur en Chef Adjoint* having been abolished, there are no live issues. Counsel for the Respondent has notably relied on decisions of the Tribunal in *Cheddy and The Ministry of Labour (supra)* and *Mooneepen and MITD (supra)* in support of his submissions. Counsel for the Respondent has also contended that the Tribunal does not make declaratory awards.

Although the propositions enunciated in the aforementioned decisions are not being questioned, it is trite law that the Tribunal, under *section 70 (1)* of the *Act*, is required to enquire into the substance of the dispute that is referred to it and to make an award thereon (*vide Air Mauritius v Employment Relations Tribunal [2016 SCJ 103]*). The Tribunal is, however, not precluded from enquiring into whether it has jurisdiction to arbitrate on a particular matter before it. In this vein, the Tribunal has noted that there has been no objection raised by the Respondent regarding the Tribunal's jurisdiction to enquire into the present matter.

It should, moreover, be noted that in *Mooneepen (supra)*, the Tribunal was not precluded from awarding in the Disputant's favour despite the fact that it did duly consider that it was being asked to give a declaratory award and referred to the well-reasoned ratio from the case of *Planche v The PSC & Anor. [1993 SCJ 128]* in support. However, the Tribunal was not precluded from awarding in Mr Mooneepen's favour as may be gleaned from the following from the aforesaid award:

However, the Tribunal is entertaining the present matter in view of the spelling out of the relief sought by the Disputant in his Statement of Case, which relief we find to be reasonable. It is not the wish of the Tribunal to look only at the tree and leave the dispute unaddressed and unresolved and the Disputant's claim will remain a sorry tale. (Margaret Toumany & Another V. Mardaynaiken Veerasamy UKPC 13 of 2012).

The Respondent, in submissions, has also cited the cases of *Johar and Cargo Handling Corporation Ltd (ERT/RN 93/12)* and *Cheddy and the Ministry of Labour, Industrial Relations, Employment and Training (ERT/RN 120/15)* in support of its contention in relation to declaratory awards. The Tribunal, in *Cheddy*, notably stated that '*The Tribunal has on numerous occasions highlighted that it does not generally give declaratory awards*' citing the decisions of *Mooneepen (supra)* and *Johar* in support.

However, this should not be regarded as a hard and fast rule, nor has the Tribunal formulated the aforementioned proposition in absolute terms. Moreover, in *Johar (supra)*, the Tribunal had only made an observation regarding the Terms of Reference after having considered the matter on its merits. Besides, as previously noted, the duty of the Tribunal to enquire into a matter duly referred before it cannot be overlooked.

The present dispute relates to the unilateral modification of the Disputant's contract of employment. The Disputant, as per the present Terms of Reference, has averred that his job title has been unilaterally modified by his employer, entailing adverse consequences. The Tribunal is, thus, in presence of a dispute concerning an individual employee's legal rights under his contract of employment *vis-à-vis* his employer. Any unilateral modification of a worker's contract of employment is a serious matter and it is within the employee's rights to raise a dispute thereon.

The Tribunal cannot therefore deem the present dispute to be academic inasmuch as there is no live issue between the parties.

It has not been disputed that Mr Maunick was offered the post of *Rédacteur en Chef Adjoint* by the Respondent in 2017 and performed as such. This is moreover evident from the various documents that have been produced by the Disputant over the course of the hearing. In particular, a memo dated 28 January 2018 (Document E) signed by the Respondent's Administrative Assistant surmises the conditions attached to the Disputant's new post:

This is to certify that Mr Richard Maunick is employed as Editor by Viva Voce Ltee (Radio 1) since 06th October 2014 on a permanent basis. He has recently been promoted to Deputy Chief in Editor and he earns a monthly salary of Rs █/- along with a Responsibility allowance of Rs █ (█ ████ ███).

He is also entitled to a Collab's fee of Rs █ (█ ████ ███).

Furthermore, he will be entitled to a car allowance of Rs █/- as from February 2018.

At first, it was convened that he would perform in the aforesaid post on an interim basis. There is however a divergence of opinion as to whether Mr Maunick was confirmed as *Rédacteur en Chef Adjoint*. Mr Maunick contends that he was confirmed in the post of *Rédacteur en Chef Adjoint* as from January 2018 to October 2019, when the dispute arose. The Respondent's Managing Director, on the other hand, denied that the Disputant was ever appointed in the post.

The Respondent's stand on this issue is moreover evident from a letter dated 11 October 2019 (Document L) signed by Mrs Nadine René as HR Officer of Radio One. The salient aspects of this letter may be noted as follows:

That in October 2017, you have been performing as acting Assistant News Chief Editor.

That at no point in time you have been confirmed to such post.

That mention is made on your payslip 'Rédacteur en Chef Adjoint'.

Please note that such inscription is an erroneous inscription and which should be amended.

The Disputant's payslip for the month of September 2018 (Document G) shows his post to be that of *Rédacteur en Chef Adjoint*. Same is also evident from his payslips of August and September 2019 (Document M). It should be noted that the word '*interim*' or '*acting*' does not appear on the aforesaid payslips in relation to the post or otherwise. Moreover, Mr Maunick was sent a contract of employment dated 3 September 2018 (Document H) for the post of Assistant Chief in Editor (i.e. *Rédacteur en Chef Adjoint*).

This has not been disputed by the Respondent during the course of the hearing of the present matter, with Mr Adelson recognising that a contract of employment was provided to the Disputant, although this was never signed by the latter. It is pertinent to note there is no mention therein of whether the holder of the post was to be on an acting or interim basis for an initial period or otherwise. It should be also noted that a memo dated 2 October 2018 (Document P) signed by Mrs Rene on behalf of Mr Nicolas Adelson, refers to Mr Maunick's position as Assistant Chief in Editor with no mention of the words '*acting*' or '*interim*'.

As per the documents adduced and the evidence of the parties, it is clear that Mr Maunick did hold the post of *Rédacteur en Chef Adjoint* at the Respondent. Moreover, the Respondent did not dispute that he was performing as such. The aforementioned payslips, the memos dated 28 January 2018 and 2 October 2018 as well as the contents of unsigned contract of employment dated 3 September 2018 moreover support the Disputant's contention that he was confirmed in the post.

Although the Respondent has denied that Mr Maunick was ever confirmed as *Rédacteur en Chef Adjoint*, it should be noted that it is only after he was told to return to the post of *Chef d'édition* in a meeting with Mr Adelson on 8 October 2019 that he was informed in writing, via the letter dated 11 October 2019 (as reproduced above), that he was never confirmed in the post. Moreover, it should be noted that Mr Adelson, in his testimony, never mentioned that it was through error that the Disputant was referred solely as *Rédacteur en Chef Adjoint* on his payslips or otherwise.

Furthermore, it has not been disputed that Mr Maunick was also asked to sign a contract of employment dated 9 September 2018 (Document O) for the post of *Chef d'édition* in the

meeting with Mr Adelson on 8 October 2019. It thus appears that whether Mr Maunick was confirmed as *Rédacteur en Chef Adjoint* became an issue between himself and the Respondent after the start of the events which has led to the present dispute. In view of the evidence on record, the Tribunal can only give preference to Mr Maunick's version on the issue of whether he was confirmed or not.

Mr Maunick, following the eventful meeting in the beginning of October 2019, was reverted to the post of *Chef d'édition* in the editorial section. This is furthermore apparent from his payslips of October 2019 onwards. As per the Terms of Reference of the present dispute, the Disputant contends that his job title has been unilaterally modified by his employer from *Rédacteur en Chef Adjoint* to *Chef d'édition*.

In *Vacoas Transport Co. Ltd. v Pointu* [1970 MR 35], the employee, a ticket examiner, was reverted to the post of bus conductor, which he considered to be a demotion. The Supreme Court held that '*a reduction in rank unilaterally imposed by an employer upon a worker who is bound, to his service by a contract of undetermined duration is equivalent to dismissing him.*'. In the aforesaid case, the following may be noted from what was quoted from *Planiol et Ripert, Traité Pratique de Droit Civil Français, T.xi para 840*:

L'employeur peut décider une modification dans les conditions matérielles du travail, pourvu qu'il n'y ait pas une atteinte aux éléments essentiels du contrat, notamment en ce qui concerne la rémunération et la situation morale de l'employé. Dans le cas contraire, il y aurait une rétrogradation qui ne peut se justifier que pour une cause disciplinaire.

The case of *Vacoas Transport Co. Ltd.* (*supra*) was subsequently affirmed in the case of *Periag v International Beverages Ltd.* [1983 MR 108], where the appellant was demoted from the post of Chief Salesman Driver to Salesman Driver along with a lesser remuneration. It is apposite to note what was held by the Supreme Court therein:

..., first, the essential terms of a contract legally entered into by the parties cannot properly be revoked except by the mutual consent of the parties and, secondly, where a revocation takes place without the consent of the other party, the latter is entitled to treat the employment agreement as at an end.

Does the act of the Respondent in reverting Mr Maunick to the post of *Chef d'édition* amount to a modification of an essential condition of his contract of employment? *Dr. D. Fokkan* in *Introduction au Droit du Travail Mauricien 1/ Les Relations Individuelles de Travail, 2ème édition, p. 306, 307*, has listed what amounts to essential conditions of the contract of employment as follows:

En jurisprudence mauricienne il a pu être décidé que fait partie des conditions essentielles de l'accord des parties la voiture de fonction, le lieu de travail, la durée quotidienne du travail, le poste occupé, "the conditions in which (the employee) was made to work", "transport from and to work".

(The underlining is ours.)

Moreover, the following may be noted from *Dr D. Fokkan (supra), p.312*, on the issue of consent with regard to the substantial modification of a contract of employment:

La modification substantielle requiert impérativement le consentement de l'employé. Celui-ci ne peut toutefois tirer les conséquences de la modification que dans la mesure où l'employeur a non seulement pris la décision, mais le lui a également communiquée et imposée ;

In the present matter, it is clear that the Disputant did not consent to the change in job title as is evident from the existence of the present labour dispute with his employer. Moreover, at the meeting of 8 October 2019, Mr Maunick told the Managing Director that his payslips state that he is *Rédacteur en Chef Adjoint* when being told to return to the post of *Chef d'édition*. The fact that there has been no change in Mr Maunick's remuneration, responsibilities and that he may have not been downgraded in the hierarchy as contended by the Respondent does not allude to the fact that the Disputant's post was changed from *Rédacteur en Chef Adjoint* to *Chef d'édition* in October 2019. The Respondent, in reverting Mr Maunick to the post of *Chef d'édition* without his consent, cannot therefore be said to have acted legitimately as per established precepts of our law of contract.

The Respondent has contended that it has effected a restructuration to its organisation in abolishing the post of *Rédacteur en Chef Adjoint*, effective as from 1 June 2020. This is evidenced by an extract of the notes of the Board meeting of 9 December 2020 produced by Mr Adelson. There is no doubt that the employer has the right to organise its business for the

efficient running of the enterprise. However, the employer's *pouvoir de direction* is not absolute and must not interfere with the acquired rights of its employees.

It is pertinent to note what the Supreme Court held in *Cayeux Ltd. v De Maroussem* [1974 MR 166] in relation to the powers of the employer to manage his business:

Counsel for appellants laid stress on the right of the employer (a right which has been consistently upheld by those courts) in the discharge of his responsibility to ensure the efficient running of the undertaking, to modify the organization of his services and the functions of his employees. The correctness of that proposition cannot be doubted. But the principle which it involved is not absolute and must be balanced with the countervailing principle stated just before. Here again the success of an employer's contention founded on his right to reorganise will depend on the circumstances; the Court being called upon to decide whether the employer's action comes within the legitimate exercise of that right or amounts to such a modification of the employee's contract as to constitute a termination of that contract.

(The underlining is ours.)

This proposition was, furthermore, appropriately expressed by the Supreme Court in *A.J. Maurel Construction Ltee v Froget* [2008 MR 6] as follows:

*In any case, as has been stated in **Dalloz, Camerlynck, Droit du Travail (ibid.)**, the law does not interfere with the power of the employer to do so except that when he does so he does not interfere with the acquired rights of the employees:*

« L'employeur, maître selon la jurisprudence de l'organisation et du bon fonctionnement de ses services, peut librement, et sans engager sa responsabilité, apporter « dans les limites de son pouvoir de direction » des changements dans la structure de son entreprise et des aménagements dans l'exécution de la prestation de travail, ... »

However, when he does so, he should ensure that he does not interfere with the acquired rights of the employees. The exercise of the power of the employer to manage his business as he thinks fit is permissible:

« dès l'instant où il ne porte pas atteinte pour autant aux « éléments substantiels du contrat » (4) ou ne lui apporte pas de « modification essentielle (5) – concernant la qualification, les attributions principales, les conditions de travail ou la rémunération. »

Having notably considered that the Disputant was employed as *Rédacteur en Chef Adjoint* and that in October 2019, his post was unilaterally modified to that of *Chef d'édition*, the Tribunal can only reasonably find that the job title of the Disputant must be that of *Rédacteur en Chef Adjoint*. If the Respondent were keen on changing the job title of the Disputant, it should have legitimately done so within the ambits of our labour and contractual laws.

The Tribunal has however noted that the Disputant has stated that he wishes to have an equivalent post corresponding to his responsibilities with adequate remuneration. The Disputant's prayer set in his Statement of Case is a reflection of the remedy he seeks. It must be reminded that the Tribunal can only arbitrate within the limits of the Terms of Reference of the dispute. Indeed, in *Air Mauritius Ltd v Employment Relations Tribunal (supra)*, it was amply stated, following *S. Baccus & Ors v The Permanent Arbitration Tribunal [1986 SCJ 388]*, that:

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.

Moreover, during the course of the present hearing, other issues such as the Disputant's remuneration, responsibilities, Collab Fees as well as his position on the radio market have been invoked. The Tribunal notes that the issue of Collab Allowance being an acquired right or not could be the subject of a dispute on its own. However, when considering the specific wordings of the Terms of Reference, it is clear that the Tribunal is not being asked to decide on the adverse consequences the Disputant may have suffered following the Respondent's unilateral modification to his job title or what is the Disputant's entitlement to Collab Fees. As previously noted, the Terms of Reference is asking the Tribunal to enquire into what the Disputant's job title should be. The Tribunal does not therefore deem it to be within its mandate to decide on these individual issues.

Moreover, the remedy of the Disputant seeking an equivalent post is not within the ambit of the Terms of Reference of the present dispute. It would therefore be *ultra vires* for the Tribunal to award for the Respondent to offer him an equivalent post to that of *Rédacteur en Chef Adjoint*. The aforesaid post having been abolished in June 2020 and the Disputant having reported the present dispute to the CCM on 27 July 2020, the Terms of Reference could have been more

appropriately formulated so as to reflect the non-existence of the Disputant's post on the Respondent's organisational structure.

Same would also be applicable regarding the Disputant's prayer, averred in his Statement of Case and pressed upon by Counsel in submissions, for compensation suffered for losses. This is clearly not within the limits of the Terms of Reference of the present dispute. Moreover, it should be noted that the Tribunal does not normally award damages as was affirmed in the matter of *Mr S.P. Mootosamy and The Bank of Baroda (RN 155 of 1984)*:

This Tribunal is not here to award damages, it must only see how, by using whatever wisdom and experience it may have, an employee who has had every reason of feeling frustrated, who, in this case, even had to put up a very courageous but trying and tiring battle, may relinquish his frustration, feel safe and relaxed in his employment, recover his dignity and at the same time recover also even if it is only part of what could have been payable to him over a certain period, had in this case been given a consideration similar to that given to others.

In view of the above, the Tribunal can only award that the job title of the Disputant must be that of *Rédacteur en Chef Adjoint* and not that of *Chef d'édition* in accordance with the Terms of Reference of the present dispute.

The Tribunal does realise that the post of *Rédacteur en Chef Adjoint* has been abolished within the Respondent's organigram since June 2020. However, the Tribunal has also *inter alia* noted and found that the Respondent did not legitimately effect the change in the Disputant's job title to the post of *Chef d'édition* and has eventually awarded in the Disputant's favour. The Tribunal can only make an award *intra petita* the Terms of Reference and it is for the Respondent to determine how it should implement the present award in the Disputant's favour within its organisational structure.

Although the present dispute may be deemed to be a certain cause of friction between the two parties, the Tribunal would wish to remind them of the necessity of having a cordial *entente* in their mutual interests. Not only is this crucial to the success of the enterprise, but is also conducive to good and harmonious employment relations. The following may thus be noted from what was stated in *G. Rousseau & Ors and Le Warehouse Ltd (RN 1013 of 2010)*:

On the principles of good practices of good industrial relations as provided for in section 97 of the Employment Relations Act, it is essential that there should be an 'entente' between the Employers and the Employees. Good human relations between Employers and Employees are essential to good industrial relations. [...]. One should not lose sight of the fact that both Employers and Employees have a common interest in the success of the undertaking.

The Tribunal therefore awards accordingly.

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SD Shameer Janhangeer
(Vice-President)

.....
SD Raffick Hossenbaccus
(Member)

.....
SD Rabin Gungoo
(Member)

.....
SD Ghianeswar Gokhool
(Member)

Date: 5th May 2021