

EMPLOYMENT RELATIONS TRIBUNAL

AWARD

ERT/ RN 26/22

Before

Indiren Sivaramen	Acting President
Marie Désirée Lily Lactive	Member
Karen K. Veerapen	Member
Kevin C. Lukeeram	Member

In the matter of:-

Rodrigues Government Employees Association (Disputant)

And

Rodrigues Regional Assembly (Respondent)

In presence of: (1) Ministry of Public Service, Administrative and Institutional Reforms (Co-Respondent)

The above case has been referred to the Tribunal by the Rodrigues Commission for Conciliation and Mediation under Section 69(9)(b) of the Employment Relations Act, as amended (hereinafter referred to as “the Act”). There was initially another co-respondent in the dispute as referred to the Tribunal but the case has been struck out against the said co-respondent. The Respondent was assisted by Counsel whereas Disputant and Co-Respondent were not assisted by Counsel. The terms of reference of the points in dispute read as follows:

- (i) Whether protective equipment should have been provided to Fisheries Cadre since 2018.*
- (ii) Whether officers of the Fisheries Cadre should have been provided with uniforms or uniform allowances should have been paid to them since 2018.*
- (iii) Whether a responsibility allowance should have been paid to Tradesman Assistant as from the date of performing higher duties at the level of Tradesman.*

- (iv) *Whether a responsibility allowance should have been paid to General Workers performing higher duties at the level of Office Auxiliary/Senior Office Auxiliary as from the date of performing higher duties.*

The Disputant and Respondent informed the Tribunal that disputes (iii) and (iv) had been settled between the parties. These disputes were therefore dropped so that the Tribunal does not have to deal with them. Also, in cross-examination, the representative of the Disputant conceded that there were no disputes as far as protective equipment are concerned. The representative of Disputant stated that protective equipment are given every two years and it was agreed between parties that protective equipment had not been issued during the years 2020 and 2021. The Tribunal will refer to paragraph 5(c) of the Statement of Reply of the Respondent which reads as follows:

5 (c) The supply of Protective Equipment for year 2020/21 and 2021/2022 are being attended to.

The Tribunal bears in mind the manner in which the terms of reference of the point in dispute (i) have been drafted including the term “Fisheries Cadre” used therein. The Tribunal will deal with this term later in its award. At this stage, suffice it to say that in the light of the stand of the Disputant and of the Respondent on this issue, the Tribunal will not intervene in relation to the point in dispute (i) as per the terms of reference. The Tribunal will simply remind parties of the statutory duty (on an employer) to provide suitable and appropriate personal protective equipment and clothing to relevant employees under section 82 of the Occupational Safety and Health Act. It is apposite to note that this piece of legislation binds the State and that a contravention of a provision of the Occupational Safety and Health Act may even amount to an offence. The thrust of a provision such as the said section 82 (supra) is to protect an employee from the risk of injury. The duty is not only to provide the protective equipment and clothing but also to ensure, inter alia, that the equipment is capable to fit the wearer correctly, and to maintain or replace the equipment when required. The duty is not and cannot be assimilated with an allowance simply. Protective equipment has to be provided to eligible employees and the Tribunal trusts that the needful as undertaken on behalf of Respondent (vide paragraph 5(c) of the Statement of Reply) will be done without further delay for the benefit of one and all. In the light of and subject to the above, the point in dispute (i) is set aside.

For the reasons given above, the disputes under limbs (iii) and (iv) of the terms of reference are struck out so that the Tribunal is left with only one point in dispute under limb (ii) of the terms of reference in relation to uniforms or uniform allowances. And the dispute, as suggested by the parties before the Tribunal, only relates to the years 2019

and 2020. There is an admission on behalf of Disputant that in 2019, there was an issue of uniforms but the representative stated that the issue was for the year 2018 and not for the then current year 2019. The representative of Disputant stated that for the year 2021, it is only in 2022 that they have received the said uniforms. And for the year 2022, provision is only now being made for the uniforms.

The representative of Disputant suggested that they always receive their uniforms one year after. He however agreed that uniforms are issued during and for the current year. He did not agree that in 2018 the uniforms were issued for the then current year 2018. He averred that he has not received uniforms yearly and that this happened in the past also. When further questioned, he however replied that he could not remember if uniforms had been provided for the year 2015, 2016 or 2017. He stated that it is for the Respondent to ensure that he receives his dues. The representative was questioned in relation to a letter emanating from the Assistant Controller, Fisheries Protection Services (Doc A which was produced without there being any objection) and he agreed that the said letter did not refer to uniforms not having been issued in 2018 and 2019. He stated that the officers who are members of the union have brought their case to the union and the issue was discussed several times with the Departmental Head and the Island Chief Executive.

The representative of Respondent deposed before the Tribunal and she maintained the averments contained in the Statement of Reply of the Respondent. She added that the Statement of Reply was prepared in accordance with evidence that they have on file. The representative of Respondent was not cross-examined at all on behalf of Disputant nor on behalf of Co-Respondent. The representative of Co-Respondent did not depone before the Tribunal.

The Tribunal has examined all the evidence on record including the documents produced and the Statement of Case of Disputant with the annexes thereto, the Statement of Reply of Respondent with the annexes thereto and the written views submitted on behalf of Co-Respondent. It is apposite to note that paragraph 5 of the Statement of Case of Disputant reads as follows:

“5. The disputant avers that with regards to point (ii) of the dispute, officers of the Fisheries Cadre have not been provided with uniforms or uniform allowances since 2018.”

The Respondent in his Statement of Reply has stated the following at paragraph 6:

“6. Respondent takes note of paragraph 5 of A¹[meaning the Statement of Case of Disputant] and further avers that:-

- (i) *Issue of uniform to the officers of the Fisheries Protection Cadre comprise two different sets of items and each set is issued on an alternate year basis;*
- (ii) *Items of Uniforms have been issued to officers of the Fisheries Protection Cadre for the years 2018, 2019 and 2021; (**Annexes C to E**)*
- (iii) *No uniforms have been issued for the year 2020; and*
- (iv) *Approval from the Ministry for Public Service, Administrative and Institutional Reforms has been obtained on 5 September 2022, for the payment of cash in lieu of uniform for the year 2020. Needful will be done for the payment accordingly.”*

The Tribunal has examined Annexes C to E to the Statement of Reply of Respondent. The Tribunal notes that whilst the Disputant avers that officers of the Fisheries Cadre should have been provided with uniforms or uniform allowances (in line with the terms of reference also), the Respondent, on the other hand, refers to uniforms being issued to officers of the Fisheries Protection Cadre. The Disputant had the burden to show that uniforms had to be issued to officers of the “Fisheries Cadre” as opposed to (only) officers of the Fisheries Protection Cadre.

It is apposite to note that the 2016 PRB Report (relevant report for the purposes of the years 2019 and 2020) provides as follows:

Uniform and Uniform Allowances

Present Position

18.13.1 Staff of Disciplined and Semi-Disciplined forces/organisations as well as those of some other organisations, are entitled to the free issue of items of uniforms.

18.13.2 Certain other categories of eligible officers are paid cash allowances (including cardigan every alternate year) in lieu of uniforms according to the nature of their duties.

18.13.3 Uniforms are issued or Uniform Allowances are paid to all eligible officers on a yearly basis. The quantum of allowance is adjusted every year on the basis of the changes in prices of all the relevant items of uniform as determined by Statistics Mauritius and also considering whether cardigans are due in the year or not. The Standing Committee on Uniforms, comprising representatives of the Ministry of Civil Service and Administrative Reforms, Ministry of Finance and Economic Development and PRB, determines the eligibility for the grant of uniforms to new grades; decides on the provision of boots and new items of protective clothing and equipment; and applies such regulations or principles as may be necessary to deal with the issue.

It was also recommended, inter alia, in the 2016 PRB Report that

Recommendation 3

18.13.12 We also recommend that:

- (i) the Standing Committee on Uniforms should continue to determine the eligibility for the grant of uniforms to new grades and devise such regulations or principles as may be necessary to deal with the issue of uniforms; and***
- (ii) where it is considered that officers in a new grade or in a grade other than those already eligible, should wear uniform to exercise authority or on grounds of tradition and/or international etiquette, the Responsible Officer should seek the approval from the Standing Committee on Uniforms. Thereafter, on consultation with the appropriate stakeholders, the Responsible Officer should arrange for the supply of all items of Uniform to such eligible officers in a cost-effective manner.***

In the 2021 PRB Report, fairly similar provisions exist and we may here refer to paragraph 16.14.2 of the report which provides as follows:

- 16.14.1 *Uniforms are granted to eligible officers mainly for exercising authority or identification purposes; because of tradition or international etiquette; and where the nature of duties causes a rapid wear and tear of clothing.*
- 16.14.2 *Officers of Disciplined and Semi-Disciplined forces as well as some other organisations are entitled to the free issue of items of uniforms yearly due to their specificity and the need for compliance with international norms and requirements.*
- 16.14.3 *Certain other categories of employee benefit from cash allowances (including cardigan every alternate year) for the purchase of all items of uniforms and for payment of tailoring fees due to the nature of their duties.*
- 16.14.4 *Beneficiaries of Uniform Allowances are classified under three categories based on the nature of the duties performed. The categorisation of grades currently entitled to uniforms is vested upon the Responsible Officer. The latter in consultation with parties determines which grades should fall in a particular category. The three categories are described as hereunder:*

Category

Description

I Nature of duties warrants a means of identification/authority and eligible officers are required to wear uniforms on duty.

II Nature of duties requires eligible officers to wear uniforms, as and when the need arises.

III Nature of duties causes excessive wear and tear of clothing. Officers under this category are eligible for a rapid wear and tear allowance.

The Co-Respondent has provided its written 'views' in the present matter (in the absence of a statement of case) and stated at paragraph 2(i)(b) thereof that:

"In view of the above and as the Fisheries Protection Service is the enforcement arm of the Department of Fisheries, the officers of the Fisheries Protection cadre are being provided with uniforms for identification purposes and as a sign of authority. These officers are provided with the items of uniforms on a yearly basis and they are not entitled to uniform allowance."

For the year 2020, where we can take notice that there was the Covid-19 pandemic, it is agreed by the parties that uniforms were not issued to the eligible officers concerned in the present matter. However, for that year 2020, there is no longer any dispute since a cash allowance will 'on an exceptional basis' be paid to the relevant officers. Indeed, the Co-Respondent states in its written 'views' at paragraphs 2(ii)(c) and 2(ii)(d) that:

"2(ii)(c) Subsequently, the RRA has sought the approval of the Standing Committee on Uniforms for the payment of a cash allowance of Rs 4,865 in lieu of items of uniforms/ personal protective equipment to the officers of the Fisheries Protection Cadre.

2(ii)(d) On 02 September 2022, the Standing Committee on Uniforms approved on an exceptional basis the payment of a cash allowance of Rs 4,865 in lieu of uniforms – to officers of the Fisheries Protection Cadre of RRA. The cash allowance of Rs 4,865 represents the quantum approved by the Standing Committee on Uniforms for payment to officers entitled to uniforms under Category 1 (that is for identification purposes) for the year 2020."

Also, the Tribunal understands, as referred to above, that for the year 2022 provision has been made (or is being made) in relation to the issue of uniforms. The Tribunal is thus left with only the dispute in relation to the issue of uniforms for the year 2019. The representative of Respondent deposed under oath before the Tribunal and she maintained what was averred in the Statement of Reply of Respondent and which was signed by herself. She stated that the averments therein were as per records they had

in the file. In the Statement of Reply, it is averred that items of uniforms have been issued to officers of the Fisheries Protection Cadre for the years 2018, 2019 and 2021. She was not cross-examined at all on behalf of Disputant. Though the annexes to the Statement of Reply of Respondent are not conclusive, the Tribunal bears in mind the unchallenged evidence of the representative of Respondent. Also, there is Annex 2 to the written 'views' or comments of Co-Respondent which is a copy of a letter emanating from the Island Chief Executive dated 27 June 2022 where in relation to representations received that officers of the Fisheries Protection Cadre have not been issued uniforms since 2018, he wrote that after investigation, the Commission for Fisheries had indicated that effectively the staff had not been provided with uniform for year 2020 (underlines are ours).

There is also no evidence as to which set of items of uniforms (uniforms comprising of two different sets of items, each one of which, as averred on behalf of the Respondent, is issued on an alternate year basis) was allegedly not provided for, for the said year 2019. The Tribunal finds that there is insufficient evidence on record to show on a balance of probabilities that uniforms were (also) not provided for the year 2019.

In any event, in the light of the manner in which the terms of reference under point in dispute (ii) has been drafted, the Tribunal certainly cannot award that uniforms or uniform allowances should be granted to officers of the Fisheries Cadre for the year 2019 for the simple reason that there is no evidence on record in the present case that officers apart from the Fisheries Protection Service are also eligible for uniforms or uniforms allowances. Indeed, the Tribunal notes that the 2016 PRB Report (and the 2021 PRB Report) refers to the activities of the Fisheries Division under the relevant Commission of the Respondent to be organised under two distinct (underlining is ours) arms namely the Fisheries Protection Service and the Fisheries Research and Training Unit.

For all the reasons given above, but subject to any undertaking given or made in relation to any allowances or issue of uniform/protective equipment which is going to be paid or made and since only point in dispute (ii) in relation to the year 2019 was pressed before us, the Tribunal sets aside the point in dispute (ii) of the terms of reference.

SD Indiren Sivaramen

Acting President

SD Karen K. Veerapen

Member

SD Marie Désirée Lily Lactive

Member

SD Kevin C. Lukeeram

Member

27 December 2022