

EMPLOYMENT RELATIONS TRIBUNAL

AWARD

ERT/ RN 69/22 to ERT/RN 81/22

Before

Indiren Sivaramen	Acting President
Francis Supparayen	Member
Karen K. Veerapen	Member
Yves Christian Fanchette	Member

In the matter of:-

Mr Ashwin Seeruttun (Disputant No 1)

And

Central Electricity Board (Respondent)

Mr Arshad Bhunnoo (Disputant No 2)

And

Central Electricity Board (Respondent)

Mr Leevraj Neermul (Disputant No 3)

And

Central Electricity Board (Respondent)

Mr Koushraj Juglall (Disputant No 4)

And

Central Electricity Board (Respondent)

Mr Diksha Ramjug (Disputant No 5)

And

Central Electricity Board (Respondent)

Mr Thakooranund Bohorun (Disputant No 6)

And

Central Electricity Board (Respondent)

Mr Shezaad Burkutally (Disputant No 7)

And

Central Electricity Board (Respondent)

Mr Dharam Seemeeran Missir (Disputant No 8)

And

Central Electricity Board (Respondent)

Mr Mohamad Wafiiq Roomaldawo (Disputant No 9)

And

Central Electricity Board (Respondent)

Mr Muhtasim Ahmad Radim (Disputant No 10)

And

Central Electricity Board (Respondent)

Mr Oumesh Kumar Munroop (Disputant No 11)

And

Central Electricity Board (Respondent)

Mr Kaviraj Ippiliappiah (Disputant No 12)

And

Central Electricity Board (Respondent)

Mr Umayr Issack Hatteea (Disputant No 13)

And

Central Electricity Board (Respondent)

The above cases have been referred to the Tribunal by the Commission for Conciliation and Mediation under Section 69(9)(b) of the Employment Relations Act, as amended (hereinafter referred to as "the Act"). The disputants and Respondent were assisted by counsel. All the cases were consolidated with the agreement of all parties and the main bone of contention in all the cases is the same.

The terms of reference are similar in all the cases and read as follows:

1. *"I was enlisted by the CEB as Cadet Engineer in 2016 (2016-2018) and following the implementation of the Collective Agreement 2017-2021 which was signed between the CEB and CEBSA on 28th June 2019, I did not perceive any increase in salary."*
2. *"I was discriminated in salary as compared to my fellow colleagues, Cadet Engineers of batch 2020, who were offered increase in salary by the Board of the CEB under the same Collective Agreement."*

Disputant No 9 deposed before the Tribunal and he stated that he was mandated by all the disputants to give evidence on their behalf. He produced a document providing the start and end dates of the cadetship periods for the disputants and their dates of appointment in the post of Engineer (Doc A). All the disputants were required to serve as Cadets for a period of two years. He also produced documents purporting to show the evolution of salaries of Cadet Engineers and Engineers (at the Respondent) under collective agreements for the periods 2009-2013, 2013-2017 and 2017-2021 (Docs B, C and D respectively). Disputant No 9 averred that under the collective agreement of 2009-2013, the salary of the Cadet Engineer was two increments below the (initial) salary of Engineer. Under the 2017-2021 period, this gap has widened to about six increments for the Cadet Engineer (batch of 2016). However, he explained that Cadet Engineers recruited in the batch 2020 (after the disputants) have had a salary increase following the collective agreement for the period 2017-2021. He produced another chart showing the 'Evolution of Salary of Cadet Engineers' (Doc E).

Disputant No 9 stated that to be appointed as an Engineer at the Respondent one has necessarily to go through the cadetship. Disputant No 9 then sought to draw a distinction between salary points and salaries. He stated that there was no reason why Respondent made a distinction between Cadet Engineers recruited in the year 2020 and those recruited in 2016. He prayed that the Tribunal gives an award with retrospective effect for each of the disputants in accordance with the prayers in the 'Disputant's Case'.

In cross-examination, Disputant No 9 did not agree that he was undergoing training at the Respondent. He however agreed that when he entered into a new contract as Engineer with the Respondent, his previous contract as Cadet Engineer came to an end. He suggested that the only difference between the contracts of the Cadet Engineers recruited in the batch of 2020 and in his batch of 2016 was the bond amount which latter had to enter into, which is Rs 950,000 in the case of Cadet Engineers in the batch of 2020 as compared to Rs 500,000 for the Cadet Engineers in the batch of 2016. He was not aware if the HR Committee had made a recommendation to the Board to increase the salary of Cadet Engineers as an incentive to attract Cadet Engineers. He accepted that he signed a contract containing conditions that were pertaining to the period 2016-2018. He did not agree that he was not entitled to an increase in salary with retrospective effect as from 1 July 2017 (effective date of the collective agreement 2017-2021). He did not agree when it was put to him that he was not entitled to his other prayers also since his contract had by then already come to an end.

In re-examination, Disputant No 9 stated that though the bond amount was different, the Cadet Engineers in the batch of 2020 were also offered a stipend of the same amount as the disputants, that is, in a scale of Rs 39500 x 1200 - Rs 41,900 p.m (Doc F). The

starting stipend for Cadet Engineers of the batch 2020 was slightly more (at Rs 40,380 p.m all inclusive as per Doc F) when compared to the initial all inclusive stipend of Rs 40,250 for Disputant No 9 bearing in mind increases at the approved rates. Disputant No 9 confirmed that the Cadet Engineers in the batch 2020 had been enlisted under the Notice of 'Vacancies' at Annex 8-1 to the 'Disputant's Case' (in the case file of Disputant No 6). Thus, as per the Notice of 'Vacancies', even for the batch recruited in 2020, the salary scale for Cadet Engineer was the same as for the disputants, that is, Rs 39,500 x 1200 - Rs 41,900 per month plus increases at the approved rates. He agreed that the Board had decided and approved on 28 October 2020 that the stipend of Cadet Engineers enlisted in 2020 be reviewed to two increments below the initial salary of Engineer. This came after the enlistment on 6 March 2020.

Mr Appanna then deposed as a witness on behalf of the disputants. He agreed that his services (through his firm as it came out in cross-examination) had been retained by the Respondent as a Consultant in relation to the salary structure at the Respondent in 2009, 2013 and 2017. He stated that the philosophy for the relationship between Cadet Engineer and Engineer was prescribed in the 2009 Report and it was that Cadet Engineer should draw salaries two increments below the salary of the grade of Engineer. He stated that the said philosophy was maintained in the 2013 salary report. He explained that as per that philosophy, the top salary of the Cadet Engineer should be two increments lower than the initial salary of the Engineer. Mr Appanna stated that since the Cadet Engineer does the work of an engineer, then his salary should not be so far from that of an Engineer. He also explained why a third point was added for the Cadet Engineer since this was, what he called, a hypothetical salary just in case someone takes more time for appointment as Engineer and which does not materialize exactly after two years cadetship. He also stated that there is also the principle that when someone is appointed substantively, he should get something.

Mr Appanna stated that in 2017 he was the salary commissioner for the Respondent but unlike in 2009 and 2013, he was not associated with the coming up of the collective agreement. In 2017, the management and the union were not involved, and discussion was held with the Board. Following a draft submitted to the Board, the feedback received was that it would be good if cost could be lowered particularly as regard to new entrants. He stated that for Cadet Engineers, the argument was that at the prevailing rate, the Respondent could still enlist the services of Cadet Engineers as from the 1st of July. The Respondent would thus keep the rate the same, and the Respondent indeed managed to do a recruitment exercise after 2017 and paid the salary that was maintained as it was. The witness then said the following (at page 4 of the proceedings of 8 February 2023):

"I wish to draw a clarification here. In fact, when we did the report we did review the salary for Cadet Engineer and then when we obtained the feedback, we re-worked out, in other words, we remade the recommendation for new entrants Cadet Engineer. In my view,

because I was not involved with the Collective Agreement, there has been an omission both in my final report to the Board and in the Collective Agreement for people who were in post. In other words, at 30th of June 2017 they were Cadet Engineer, and they were not yet appointed Engineer and therefore, these people were there. We were unaware of that when we were drafting and when we drafted we did not mention in future, etc. So, in our view the recommendation that went to the Board was for new entrants.”

Later on, at the same sitting Mr Appanna stated the following: “*As an expert, to me the Master Salary Conversion Table should apply. The Master Salary Conversion Table is being applied to 2300 staff of the CEB and not to 13 employees of the CEB. I don’t see any reason why when we are doing a Collective Agreement after 4 years, that 2300 persons obtained an increase whereas 13 persons obtained a decrease in salary.”*

In cross-examination, Mr Appanna stated that for the 2009 and 2013 reports, he was allowed to meet the union and management whereas for the 2017 report, the exercise was done with members of the Board. When asked by Counsel for Respondent if he was aware that there was no Errors and Omissions Report following his report to the Respondent, he stated that he was not asked to carry out any Errors and Omissions Report for 2017. He accepted that the collective agreement 2017-2021 had been subject to negotiations between the parties to the agreement. When questioned in relation to paragraph 1.12.1 of The Review of Pay Structure and Terms and Conditions of Employment (constituting the Collective Agreement 2017-2021 as per Doc H), the witness stated that he would not speak for the Collective Agreement but could speak for his report. He stated that the recommendation referred to him, did in fact come from his report. He then again submitted that in his report there was an omission and “*that these were the new entrants*”. When it was put to him that the disputants had been recruited against payment of a stipend in their contracts as Cadet Engineers, he stated that he was not aware of same.

The Human Resource Executive of the Respondent deposed at another sitting of the Tribunal and he was referred to paragraph 1.12.1 of The Review of Pay Structure and Terms and Conditions of Employment for the period 2017 to 2021. He stated that the salaries of Rs 39,500, Rs 40,700 and Rs 41,900 were maintained for the Cadet Engineers. He stated that there was thus no increase in salary for Cadet Engineers as mentioned under the said paragraph 1.12.1. The representative then identified an extract of a Review of Pay Structures and Terms and Conditions of Employment, Report 2, Volume 1 – Non Manual Grades dated October 2017 emanating from the consultancy of Mr Appanna and produced same (Doc G). He confirmed that Mr Appanna had also recommended therein that the salary points for Cadet Engineers be maintained. The representative stressed that the basis for the Collective Agreement was in fact the report of Mr Appanna. A copy of all the documents constituting the Collective Agreement 2017-2021 was also produced (Doc H) and reference was made to an ‘Arbitration Agreement’

entered into between Respondent and the recognised trade union, Central Electricity Board Staff Association (CEBSA). The representative explained that though there were twenty-five points in dispute (as mentioned in the Arbitration Agreement) between the above parties, both parties agreed to sign the Collective Agreement 2017-2021, whilst the matters still in dispute would be referred for arbitration before the Tribunal in line with the Arbitration Agreement. There was however nothing mentioned in relation to any issue pertaining to the salary of Cadet Engineer in the said Arbitration Agreement. Eight of the disputants however made representations to the Human Resources Department of the Respondent in August 2019 and they were informed that they were not eligible to any increase in salary during their cadetship period.

The Human Resource Executive (HRE) accepted that the collective agreement of 2010 provided that Cadet Engineers should be drawing salaries two increments below that of an Engineer. This provision however was not included in the collective agreement of 2013-2017 nor in the latest collective agreement of 2017-2021. The HRE confirmed that a batch of Cadet Engineers starting at the Respondent in March 2020 did benefit from an increase in salary as opposed to the disputants who did not benefit from such a salary increase. He explained that the Cadet Engineers in the new batch were recruited under different contracts with different conditions of service which required the Cadet Engineers (in the new batch) to enter into bonds which were of a higher amount than the bonds which had been entered into by the disputants. The HRE explained that the Respondent was not able to get enough recruits and there were complaints as regards to conditions of service. The HR Department then made a request to the Board to review the conditions including the pay structure for Cadet Engineers.

The HRE stated that the Board at its meeting of 28 October 2020 approved to increase the salary of the new batch of Cadet Engineers. The disputants then made a fresh request to the Respondent to have their own pay structure reviewed. He however added that the disputants were no longer Cadet Engineers at that time and they had already been appointed as Engineers by 2018. The then Human Resources Manager informed the disputants in writing that the Board at its meeting of 29 July 2021 had given due consideration to their request but had not approved same. The HRE stated that the period concerned for the disputants was 2016-2018 whereas the Cadet Engineers in the new batch were recruited in 2020. He did not agree that the prayers sought should be granted.

In cross-examination, the HRE agreed that despite the higher bonds which the Cadet Engineers in the new batch of 2020 had to subscribe to, yet they were paid according to the same salary scale as the disputants were paid in 2016. It was only later that the Board decided that the salary scale should be revised. The revised salary scale was applied to the Cadet Engineers who had been recruited in 2020. However, the revised salary scale was not made to apply to the disputants. The HRE agreed that prior to 2013 the gap between the salary of Cadet Engineer and that of Engineer (initial salary) was

only two runs. He also agreed that this gap widened in 2013 and that the decision of the Board in 2020 was to pitch the salary scale of Cadet Engineer two runs below that of Engineer. When it was put to the HRE that the disputants also ought to have benefitted from a salary increase on the same principle as their colleagues, the latter stated that he would not be able to answer same and that Mr Appanna would be in a better position to answer that question since the latter has the whole philosophy behind his recommendations.

The Tribunal has examined all the evidence on record including the documents produced and the written submissions of both counsel. The written submissions on behalf of the thirteen disputants include the following:

1. *These are 13 individual connected and consolidated disputes of interest (not disputes of right), individually reported by the 13 disputants and separately referred to the Tribunal for compulsory arbitration in accordance with identical terms of reference.*
2. *These being disputes of interest, as opposed to disputes of right, the disputants need not rely on their legal rights. See, in particular, Articles 7(6), 9(b) and 10(1) to the Seventh Schedule to the Employment Relations Act, 2008, as to the meaning of a dispute of interest.*
13. *Given that on 1 July 2017 the disputants' salaries were not converted and stagnated at their 30 June 2017 level, upon their appointment as Engineers, after their 2-year cadetship, the disputants' respective salaries suddenly jumped from its 30 June 2017 level of **41,900** rupees as Cadet Engineers to the 1 July 2017 level of **52,725** rupees for Engineers when it should have progressed from **49,600** to **52,725** rupees that is by 2 increments of 1425 and 1700 rupees, respectively, which was the relativity which should have been maintained between the salary scale of a Cadet Engineer and of an Engineer i.e. Rs 49600 x 1425 – 51025 x 1700 – 52,725.*

The disputants are relying on “the relativity of 2 increments between the two germane grades of Cadet Engineer and Engineer” which should have been restored within the context of the general revision of salaries effective as from 1 July 2017 instead of the Respondent having thereafter to resort to a Board decision, on Management’s recommendation, after the disputants had already been appointed as Engineers after their two years (or slightly more in the case of one disputant) of cadetship. The disputants are also stressing that as Cadet Engineers, they are the only employees who did not benefit from any salary increase on the occasion of the 1 July 2017 increase. According to them, this was so for no apparent reason.

On the other hand, the Collective Agreement for the period 1 July 2017 to 30 June 2021 (more particularly ‘The Review of Pay Structure and Terms and Conditions of Employment’) was clear and provided at paragraph 1.12 the following:

1.12 Other Pay Recommendations

1.12.1 Salary of Cadet Engineer

The salary points for Cadet Engineer are Rs 39,500, Rs 40,700 and Rs 41,900 for the three year Cadetship.

The salary points are being maintained. (printed in bold in the said document – vide Doc H)

The 'collective agreement' (first document in Doc H mentioned as constituting the Collective Agreement 2017-2021) was signed on behalf of CEBSA and the Respondent on 28 June 2019. At paragraph 4.3 of that 'collective agreement', one can read:

The revised terms and conditions of employment applicable to CEB employees in post effective as from 01st July 2017 shall be as provided in this Collective Agreement. Any subsequent agreement reached pursuant to an Errors and Omissions Report, if any, shall be appended to the Collective Agreement, subject to the Board's approval.

Paragraph 4.6 of the same document then provides as follows:

Where an agreement has been reached in this Collective Agreement which purports to change the content of the relevant terms and conditions of employment embodied in the Collective Agreement 2013-2017, these should in future apply but subject to paragraph 16 of this agreement on Errors and Omissions. Where no change has been made, the existing provisions as at 30 June 2017 shall continue to apply

And finally at paragraph 16.0 of the 'collective agreement', it is provided that:

Errors and Omissions

The Association shall, within three months of the date of implementation of the Collective Agreement make written submissions on any genuine errors and omissions, if warranted, for resolution by the Board. The Board shall submit an "Errors and Omissions Report", within one month of the date of the Association's written submissions for negotiations and agreement by the parties. The agreement reached on the Errors and Omissions Report shall be appended to this Collective Agreement.

In case such issues cannot be resolved at the level of the Board, same shall, in accordance with the Memorandum of Understanding signed on 14 March 2018 & 28 June 2019 be dealt as a "labour dispute" under Part VI of the Employment Relations Act.

The Tribunal takes note of the two Memoranda of Understanding (MOUs) signed between the Respondent and CEBSA and the Arbitration Agreement (all included in Doc H). It is

apposite to note that paragraph 6 of the MOU drawn up on 14 March 2018 provides as follows:

6. In spite of the existence of any controverted issues on which the parties are unable to agree, subject to the High Powered Committee's approval, a collective agreement may nevertheless be executed by both parties within the aforesaid 1 month period in relation to such issues on which agreement has been reached, provided that it should not be directly linked to any outstanding issues on which parties may disagree.

The Arbitration Agreement signed on 28 June 2019 and the minutes of proceedings of the meeting held on 21 May 2019 between CEBSA and management (both contained in Doc H and where express mention is made that they form part of the documents constituting the Collective Agreement) do not refer at all to the salary of Cadet Engineers as being an issue on which there was no agreement or a dispute between the parties. Reference has been made to Report 2 of BCA Consulting (Doc G) which contained a provision for the salary of Cadet Engineer which was similar to paragraph 1.12.1 of The Review of Pay Structure and Terms and Conditions of Employment (constituting the 'Collective Agreement' 2017-2021). The Tribunal takes note that the relevant report of the BCA Consulting was not imposed on the union but that there was collective bargaining between the parties after that a copy of the report had been submitted to the union. Also, there was no suggestion that there was no agreement in relation to paragraph 1.12.2 of the same Review of Pay Structure and Terms and Conditions of Employment whereby the monthly stipend payable to Trainees in Engineering was maintained at Rs 25,700. On the other hand, paragraphs following immediately after paragraph 1.12.2, that is paragraphs 1.13, 1.14, 1.15 and 1.16 of the same document all expressly referred to the Arbitration Agreement where these items were included in the terms of reference of live disputes to be referred for voluntary arbitration.

There is also no evidence on record as to any written submissions made by the union under paragraph 16 of the 'collective agreement' (see above) of genuine error or omission in relation to paragraph 1.12.1 of The Review of Pay Structure and Terms and Conditions of Employment (constituting the 'Collective Agreement' 2017-2021), though the Tribunal bears in mind the points raised in relation to the 'Case of Cadet Engineers' at the Joint Negotiating Committee as from 21 January 2020. From the evidence of Mr Appanna, it is clear that the intention of the Respondent was to maintain the salary or stipend of Cadet Engineer (as was the case for stipend to be paid to Trainees in Engineering) as the Respondent was of the view that it could still attract Cadet Engineers without providing for any increase in salary. The Tribunal will at this stage simply observe that the relevant advert for enlistment as Cadet Engineer dated 26 October 2015 (as per Annex 8 to the 'Disputant's Case' (for Disputant No 6)) refers to salary and salary scale (and not stipend). Also, the advert clearly provides that for Cadet Engineers, be it Electrical/Electronics or

Mechanical, the qualification requirement is that the candidate must be registered with the Council of Registered Professional Engineers (Mauritius). Mr Appanna thus stated that a Cadet Engineer does the work of an engineer and that the salary of the Cadet Engineer should not be far from that of an Engineer. Though, the Cadet Engineer has to undergo presumably extensive training, as per the own requirement of Respondent, it is clear that Cadet Engineers are registered engineers.

Now, paragraph 1.12.1 of The Review of Pay Structure and Terms and Conditions of Employment is clear and emphasis is laid on “The salary points are being maintained” which has been highlighted in bold in the collective agreement. The evidence of Mr Appanna is to the effect that the intention was to maintain the salary of the Cadet Engineer as it was, and this was reflected in his report. He however stated that he was not aware that there were at the relevant time existing Cadet Engineers. Though the report from BCA Consulting served as a basis for collective bargaining, the Tribunal notes that there was actual collective bargaining between the recognised trade union and the Respondent. Indeed, paragraph 1 of the MOU between the union and the Respondent dated 28 June 2019 provides as follows:

- 1. Within the context of a new Collective Agreement which shall govern salaries and conditions of service for the 4-year period from 01 July 2017 to 30 June 2021 for CEB employees within the CEBSA bargaining unit the parties have made proposals and counter proposals in the course of eight collective bargaining meetings held between 10 May and 05 July 2018.*

Paragraphs 4 and 5 of the same MOU provide that all matters still in dispute (underlining is ours) would be jointly referred by both parties under joint Terms of Reference for voluntary arbitration. The joint Terms of Reference shall set out all the matters still in dispute between the parties and as per the Arbitration Agreement (forming part of the Collective Agreement between the union and Respondent) the salary of Cadet Engineers was not a matter in dispute between the union and the Respondent. However, we note that in the Minutes of Meeting of 21 May 2019 (which is also a constituting document of the Collective Agreement (as per Doc H), it was provided that “*The CEBSA explained that there are a few other issues that might be added during the Arbitration exercise as they are not clear in the offer of the CEB and/or are to the detriment of existing beneficiaries.*”

The disputants fall within the CEBSA bargaining unit, and it is the Collective Agreement (as constituted of several documents, and not the Report drawn by BCA Consulting) which shall govern salaries and conditions of service for the period 1 July 2017 to 30 June 2021 for the disputants. The Tribunal will refer specifically to the terms of reference of the points in dispute before it. Under both points in dispute, the disputants refer to the Collective Agreement 2017-2021 or the implementation thereof. As per the terms of

reference of the first point in dispute, the disputants did not perceive any increase in salary following the implementation of the Collective Agreement 2017-2021.

The Tribunal finds that as per the evidence on record including Doc A, all the disputants had been appointed as Engineers with effective date at latest by 8 December 2018. Though the Tribunal is aware that the Collective Agreement 2017-2021 applies for the period 1 July 2017 to 30 June 2021 (as per Doc H), the Tribunal notes that when the Collective Agreement was signed in June 2019 (as per paragraph 2 of the 'Disputant's Case' and paragraph 2 of the Statement of Reply of the Respondent), none of the disputants were in post as Cadet Engineers but were all Engineers as from a period ranging from 2 August 2018 up to 8 December 2018. Whilst the disputants may not have perceived any increase in salary when compared to the salary as per their contracts as Cadet Engineers, there is nothing on record which suggests that as Engineers eventually, they did not obtain revised salaries as per the Collective Agreement 2017-2021. Paragraph 13 of the written submissions filed on behalf of disputants is in fact in line with them having been pitched at revised salaries for Engineers on their appointment as Engineers. The first dispute as worded is in the form of a mere statement and as observed above, the disputants did benefit as Engineers from the revised salary scale for Engineers under the Collective Agreement 2017-2021. The Tribunal thus cannot make any award as per the first point in dispute as drafted, and the first point in dispute is simply set aside.

As regards the second point in dispute, the Tribunal notes the manner in which the terms of reference have been drafted, more particularly, the reference to an alleged discrimination in salary as compared to my fellow colleagues, Cadet Engineers of batch 2020, who were offered increase in salary by the Board of the CEB under the same Collective Agreement. Despite how unpalatable it might be (given the circumstances where there were existing Cadet Engineers during the relevant time period and more particularly on 1 July 2017), the Collective Agreement 2017-2021 including section 1.12.1 of The Review of Pay structure and Terms and Conditions of Employment is clear. The only reasonable interpretation of the above section is that the salary scale for Cadet Engineers was being maintained. The difficulty that the Tribunal has is that this provision was no longer a mere recommendation of BCA Consulting but was a clear provision in a Collective Agreement arrived at presumably after several rounds of collective bargaining (as per the Memorandum of Understanding dated 14 March 2018 (constituting also the Collective Agreement and included in Doc H)). The Tribunal bears in mind an important statement made by Mr Appanna when deponing when he stated that he cannot speak for the Collective Agreement but can speak for his report. He nevertheless confirmed that the Collective Agreement was based on his report. The Collective Agreement is a binding document signed between CEBSA and the Respondent.

In the case of **State Bank of Mauritius Limited v A.Jagessur 2008 SCJ 8**, the Supreme Court stated the following:

...

Consequently, another finding of the learned Magistrate that “the employer was dictating to the worker that in lieu of remuneration, he will get time off, leaving the latter with no option” is again too loosely expressed in that it does not take into perspective the fact that the question of time-off was canvassed, resolved and agreed upon following a collective agreement which was subscribed by the trade union. The Third Schedule to the Industrial Relation Act sets out a Code of Practice which provides practical guidance for the promotion of good industrial relations and for the grant of negotiating rights. It also assists employers and trade unions of employees to make effective collective agreements. Article 8 of the Code of Practice states that the principal aim of trade unions of employees is to promote their members’ interests but that they also share with management the responsibility for good industrial relations. Article 14 provides that “the individual employee has obligations to his employer, to his trade union if he belongs to one, and to his fellow employees...”

...

*A collective agreement reached by the employer and the trade union which complements the statutory rights of the employees, cannot therefore be considered as being **per se** in derogation of those rights and the terms of the agreement must generally be adhered to. (...)*

*We consider that whether an agreement is beneficial to an employee or not is a matter of subjective appreciation. Overtime which is convertible into time-off afforded to an employee, instead of being paid monetary compensation, would not necessarily be considered as less advantageous to an employee. But where a collective agreement acknowledging such conversion is reached by a trade union such an agreement should normally prevail over individual preference based on a subjective appreciation. In his work, *Introduction to Mauritius Labour Law, 2/The Law of Industrial Relations*, Dr David Fokkan examines the issue of enforceability of collective agreements in Mauritius. After considering French and English decisions on the point he opines that it would be safe to conclude that the issue of whether collective agreements are legally enforceable or not is to be decided on the basis of the intention of the parties. Adopting this common sense approach he anticipates that a Mauritian Court would probably arrive at the conclusion that the intention of the parties is to make the collective agreement binding. The learned author, we have to say, anticipated correctly. We take the view that any collective agreement which does not go against the spirit of the law must be adhered to by the parties. (...)*

It is important to note that contract negotiation and conclusion has remained a matter of individual choice. However, where there is a collective agreement, it creates a “régime

de travail” where individual choices are relegated to collective choice. As Répertoire Travail Dalloz, Conventions et Accords (Régime Juridique), paragraph 97 states:

«Définissant un régime de travail, la Convention ou l'accord collectif du travail a, notamment, pour objet de fixer les conditions auxquelles doivent répondre les contrats individuels de travail.»

A collective agreement signed between an employer and a recognised trade union must be given effect. In the present case, there would have been nothing wrong with section 1.12.1 of The Review of Pay structure and Terms and Conditions of Employment if there were no Cadet Engineers at the Respondent at the relevant time. However, since there were existing Cadet Engineers (that is the disputants), the situation is more complex. The evidence of Mr Appanna is telling and he concedes that he was not aware of the existing Cadet Engineers when he made his recommendations. He was adamant that then there was an anomaly for those existing Cadet Engineers.

Counsel for Respondent has in his written submissions after the hearing of all the evidence for the first time referred to Article 1341 of the Code Civil Mauricien to suggest that no oral evidence could have been admitted from witnesses “*contre et outre le contenu aux actes, ni sur ce qui serait allégué avoir été dit avant, lors ou depuis les actes, encore qu’il s’agisse d’une somme ou valeur moindre de cinq mille roupies.*” Suffice it to say that the prohibition under Article 1341 of the Code Civil Mauricien is not *d’ordre public*, and that no objection whatsoever was taken when Counsel for disputants moved for a postponement of the matter to enable him to call Mr Appanna to depone (at another sitting of the Tribunal) as a witness for the disputants. No objection was also taken when Mr Appanna had already (underlining is ours) explained the following before the Tribunal: the argument put forward for keeping the scale the same for Cadet Engineers, that there was an omission in his final report to the Board and in the Collective Agreement for people who were in post, that he was not aware that Cadet Engineers were there when he drafted his recommendation which was meant for new entrants or even that he had reviewed the salary for Cadet Engineer but when feedback was received from the board of directors of Respondent, the recommendation for Cadet Engineers, who, according to him, would be for new entrants, was re-worked out. It was only later during the proceedings that Counsel for Respondent stated that he will be objecting to the witness deponing on this line that he was embarking upon. He however still made no reference to Article 1341 of the Civil Code. The Respondent cannot, in his written submissions (after the cases for disputants and Respondent were closed) raise an objection under Article 1341 of the Civil Code. Thus, the Tribunal does not even have to consider whether Respondent is “*un commerçant*” since Article 1341 of the Code Civile, in any event, does not apply in relation to “*un commerçant*”.

The terms of reference of the second point in dispute refers to Cadet Engineers of the batch of 2020 having been offered increase in salary by the Board of the CEB under the same Collective Agreement. True it is that the same Collective Agreement prevailed when the other batch of Cadet Engineers was recruited on or around March 2020 but it is clear from Annex 9 to the 'Disputant's Case' (filed in the case of Mr Bohorun) that the basic monthly stipend was revised with effect from 28 October 2020 and not earlier. It was not strictly the Collective Agreement which provided for this increase as we have already seen above at section 1.12.1 of The Review of Pay Structure and Terms and Conditions of Employment. It was following a Board decision taken at a meeting held on 28 October 2020. Thus, from the evidence it would appear that even for the batch of 2020, the Cadet Engineers did not benefit from the revised salary at the beginning of their enlistment as Cadet Engineers. From the evidence adduced on behalf of the disputants and because the Cadet Engineers in the batch 2020 also worked for some time for basically the same salary as Cadet Engineers in the previous batch, the suggestion that there was some sort of breach of the principle of equal pay for work of equal value or that there was some sort of discrimination in the salary drawn by the two batches of Cadet Engineers cannot hold. Moreover, as at 28 October 2020, that is, the cut-off date as from when the new salary came into play, none of the disputants were still Cadet Engineers.

The disputants cannot base their claims for an increase in salary as former Cadet Engineers based on the revised salary which may have been decided by the board of directors of Respondent at a meeting held on 28 October 2020 and which decision was to take effect as from 28 October 2020. On the facts of the present matter and the basis upon which the disputants are seeking to have an increase in salary as former Cadet Engineers as specified in the terms of reference of the second point in dispute, the Tribunal finds that the disputants have not shown that because of the board decision of 28 October 2020 they too should benefit from an increase in salary when it was decided that the increase in salary was to apply only as from 28 October 2020.

The Tribunal also wishes to highlight the manner in which the terms of reference of the second point in dispute have been drafted. Indeed, the terms of reference have here again been drafted in the form of a statement whereby no award which can be enforced is being sought. As per section 72 of the Act, an award of the Tribunal shall be published in the Gazette and shall be binding on all the parties to whom the award applies. At section 72(1)(e) of the Act, it is further provided that an award of the Tribunal shall "*in respect of an award under sections 56(5) and 70(1), (3) and (4) be an implied term of every contract of employment between workers and employers to whom the award applies*". The present award is being made under section 70(1) of the Act. The present terms of reference do not enable the Tribunal to make a binding award which will be an implied term of the contract of employment of each of the disputants.

Also, the Tribunal will be very cautious to intervene in a matter involving a collective agreement entered into by a recognised trade union behind the back of the said trade union and following a dispute reported by an individual worker or a group of individual workers.

For all the reasons given above and because of the wrong basis for the case of the disputants, the Tribunal finds that the disputants have failed to show on a balance of probabilities that an award should be granted in their favour as per the terms of reference under the second point in dispute.

Bearing in mind the principles laid down in section 97 of the Act, including the principles of natural justice, the principles and best practices of good employment relations and the interests of the persons immediately concerned, the Tribunal cannot ignore the evidence which is on record and which has remained unattended. The Tribunal will urge the Respondent and the recognised trade union in this case to address their minds urgently to the anomaly referred to during the course of the present proceedings. Whilst reference was made to the attractiveness of the then current salary provided by Respondent for Cadet Engineers so that recruiting from the market was not an issue, nothing was mentioned about why current Cadet Engineers who were employees of Respondent and qualified engineers had been deprived of a salary increase which other employees of the Respondent had benefitted. The Tribunal takes note of the evidence of Mr Appanna who even suggested that the salaries of only thirteen employees had decreased with the Collective Agreement 2017-2021. This could indeed have happened if one was to apply section 1.2 of the 'collective agreement' signed on 28 June 2019 between CEBSA and the Respondent strictly (there is no evidence on record however that this is the case). Also, it is immaterial in the present matter whether the disputants were contractual employees or full time employees. The Tribunal trusts that the Respondent which is no doubt an 'equal opportunity employer' will see to it that this anomaly is corrected with celerity so that good employment relations continue to prevail at the Respondent more specially in relation to invaluable staff who have been trained with dedication and passion by the Respondent itself to ensure the image, service excellence and sustainability of the Respondent.

For all the reasons given above, the second point in dispute is otherwise set aside.

SD Indiren Sivaramen

Acting President

SD Francis Supparayen

Member

SD Karen K. Veerapen

Member

SD Yves Christian Fanchette

Member

11 July 2023