

**EMPLOYMENT RELATIONS TRIBUNAL**

**AWARD**

**ERT/ RN 35/23**

**Before**

<b>Indiren Sivaramen</b>	<b>Acting President</b>
<b>Raffick Hossenbaccus</b>	<b>Member</b>
<b>Rabin Gungoo</b>	<b>Member</b>
<b>Parmeshwar Burosee</b>	<b>Member</b>

**In the matter of:-**

**Mr Rookam Jadoo (Disputant)**

**And**

**Private Secondary Education Authority (Respondent)**

The above case has 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”). Both parties were assisted by Counsel. The terms of reference of the point in dispute read as follows:

*“Whether I should be paid a monthly travel grant of Rs 7250 for period 15.12.17 to 14.06.19 and end-of-year bonus for period 01.01.19 to 14.06.19.”*

The Respondent has taken a preliminary objection in law in the present matter but Counsel for Respondent has informed the Tribunal that same was going to be taken with the merits of the case. The Tribunal has thus heard all the evidence in the present matter and the submissions of both counsel. The Tribunal proposes to deal with the preliminary objection first and it reads as follows:

*“Respondent moves that the present dispute be set aside inasmuch as it has been made outside delay.”*

The present dispute as per the referral letter from the Commission for Conciliation and Mediation (CCM) has been reported to the President of the CCM on 17 February 2021. “Labour dispute” is defined at Section 2 of the Act as follows:

*“labour dispute” –*

*(a) means a dispute between a worker, a recognised trade union of workers or a joint negotiating panel, and an employer which relates wholly or mainly to*

*–*

*(i) the wages, terms and conditions of employment of, promotion of, or allocation of work to, a worker or group of workers;*

*(ii) ...*

*(b) ...*

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

The Tribunal has to ascertain first what is the act or omission which gave rise to the present dispute. There are two disputes in the present matter and these are in relation to whether: (1) a monthly travel grant should have been paid to Disputant during the period 15.12.17 to 14.06.19; and (2) an end-of-year bonus should have been paid to Disputant for the period 1.01.19 to 14.06.19. For the end-of-year bonus, it is clear that the alleged omission to pay the end-of-year bonus in 2019 which gave rise to the dispute which escalated to the Tribunal. The present dispute was reported to the President of the Commission for Conciliation and Mediation on 17 February 2021. This is clearly well within the delay of three years as from the alleged omission to pay the end-of-year bonus, if any. The preliminary objection in relation to this limb of the dispute, that is, the end-of-year bonus is set aside. The dispute is a labour dispute and the Tribunal shall have to enquire into the dispute.

With regard to the dispute concerning the monthly travel grant, the Tribunal will refer to the Supreme Court case of **Dineshwaree Ramyeed-Banymandhub v The Employment Relations Tribunal, in the presence of:- Air Mauritius Ltd, 2018 SCJ 252**, where the same definition of “labour dispute” under section 2 of the Act was under consideration. The Supreme Court observed that the possibility that an alleged omission could have been continuous must be considered before proceeding to computations in relation to time limits. The present dispute relates to monthly travel grant over a certain period of time starting from 15 December 2017 up to 14 June 2019. The alleged omission which gave rise to the dispute was the non-payment of the monthly travel grant (on the relevant pay day) and this alleged omission was a continuous one (every month) up to 14 June

2019. The present dispute was reported to the President of the Commission for Conciliation and Mediation on 17 February 2021 (ex facie the letter of referral from the Commission for Conciliation and Mediation). Thus bearing in mind the limitation period of three years in the definition of “labour dispute” at section 2 of the Act, only the dispute concerning travel grants for December 2017 and January 2018 will be excluded from the definition of labour dispute. The Tribunal thus can still hear the dispute in relation to travel grant for the period 1 February 2018 (assuming pay day for February 2018 was on or after 18 February 2018) to 14 June 2019. Thus, apart from travel grants for December 2017 and January 2018, the preliminary objection in law as taken is set aside and the Tribunal will proceed to enquire into the merits of the dispute.

As regard the end of year bonus for the period 1 January 2019 up to 14 June 2019, Counsel for Disputant relied on the End of the Year Gratuity Act. Suffice it to say that the Tribunal has no jurisdiction under the End of the Year Gratuity Act. Indeed, section 5 of the End of the Year Gratuity Act provides as follows:

## **5. Jurisdiction**

*Notwithstanding any other enactment-*

- (a) in the Island of Mauritius, the Industrial Court;*
- (b) in Rodrigues, the Magistrate for Rodrigues;*
- (c) in the other islands under the jurisdiction of the State of Mauritius, the Magistrate visiting those islands,*

*shall have exclusive jurisdiction to hear and determine any civil or criminal proceedings under this Act. (underlining is ours)*

Section 71 of the Act further states that:

### **71. Exclusion of jurisdiction of Tribunal**

*The Tribunal shall not enquire into any labour dispute where the dispute relates to any issue –*

- (a) within the exclusive jurisdiction of the Industrial Court;*
- (b) which is the subject of pending proceedings before the Commission or any court of law.*

In the circumstances, the Tribunal can only refer to paragraph 18.1.2 (viii) of the PRB Report 2016 (Disputant has made all his claims, most of which have already been paid

to him, under provisions of the PRB Report 2016 (for example, see paragraphs 3 and 5 of the Statement of Case of Disputant)) which reads as follows:

***(viii) Advisers/Officers whose contract of employment are not renewed or who give the appropriate notice for termination of their employment are paid the end-of-year bonus provided they have served for at least six months in that calendar year in the organisation and the end-of-year bonus was not pro-rated and integrated in their emoluments. The bonus is in proportion to the period served in that organisation and is paid at the end of December of that year.***

It is clear that for the period 1 January 2019 to 14 June 2019, the Disputant had not “served for at least six months” so that the end-of-year bonus mentioned under paragraph 18.1.2(viii) of the PRB Report 2016 cannot apply in the case of Disputant.

For the reasons given above, the Disputant cannot award that an end-of-year bonus for the period 1 January 2019 to 14 June 2019 should be paid to Disputant and the case under this limb is set aside.

With regard to the dispute concerning the travel grant, the Disputant is again relying on the PRB Report 2016 and more particularly Recommendation 51 at paragraph 18.2.145 of the said Report (Volume 1) which provides as follows:

***Recommendation 51***

***18.2.145 We recommend that Advisers/Officers on contract employment not entitled to 100% duty exemption on a car, but drawing a monthly salary in the range of Rs 42325 and up to Rs 56450 would be eligible for a monthly travel grant of Rs 7250 and should use their car for official purposes whenever required.***

The offer of employment made to Disputant as per the letter of offer dated 8 December 2017 (Doc A) was accepted by the Disputant on the terms and conditions mentioned in the said letter (as per Doc G). The letter of offer of employment refers to “You will be paid an all-inclusive monthly salary of Rs 50,000/-.” “All-inclusive” connotes the idea that everything is included, and differs from “basic salary”. In the present case, an all-inclusive salary may, for instance, include all payments related to overtime.

It is apposite to note that Recommendation 25 at paragraph 18.2.68 of the same PRB Report 2016 (Volume 1) provides as follows:

***18.2.68 We recommend that the monthly travelling allowances and mileage rates payable to beneficiaries be revised as per table below:***

...

**3. Officers drawing a monthly basic salary of Rs 42325 and up to Rs 56450 and who are not eligible for 100% duty exemption but own a car.**

**A monthly travel grant of Rs 7250.**

Paragraph 18.2.70 under Recommendation 26 of the PRB Report 2016 (Volume 1) provides the following:

**18.2.70 We further recommend that the refund of travelling and mileage allowances in respect of officers in the categories specified at (No. 1) to (No. 5) at paragraph 18.2.68 should also apply to Advisers/Officers on contract employment at corresponding levels.**

Recommendation 1 at paragraph 13.8(ii) of the PRB Report 2016 (still Volume 1) reads as follows:

**Recommendation 1**

**13.8 We recommend that**

**(i) ...**

**(ii) the provisions for travelling and car benefits of officers on contract employment should be in line with what is recommended at Chapter 18.2 of this Volume.**

Counsel for Disputant argued that since for officers on contract there was only mention of “monthly salary” and not “monthly basic salary”, then for Officers on contract, it was the monthly salary which mattered and not the basic salary. The Tribunal does not agree with this submission and will refer to Recommendation 53 at paragraph 18.2.150 of the same PRB Report 2016 (Volume 1) which provides as follows:

**Other Related Provisions**

**Recommendation 53**

**18.2.150 We recommend that wherever the term “salary” is used in the Chapter (Travelling and Car Benefits) of this Volume, it is deemed to read “basic salary”.**

At the same time, it is only when the term “salary” in paragraph 18.2.145 (Recommendation 51) (see above) is deemed to read “basic salary” that the said

paragraph will be in line with what is recommended at Chapter 18.2 of the PRB Report 2016. Also, such an interpretation would ensure that there is no conflict between paragraphs 18.2.70 (Recommendation 26) (see above) and paragraph 18.2.145 (Recommendation 51) of the same PRB Report 2016.

The Disputant has the burden to show that a monthly travel grant of Rs 7250 should have been paid to him. In the light of the all the evidence on record, the Disputant has failed to show even on a balance of probabilities, the more so in the light of his letter of offer of employment (and letter of renewal - Doc B), that he was drawing a monthly basic salary of Rs 42325 and up to Rs 56450 during the relevant period. In the absence of satisfactory evidence, the Tribunal cannot make any assumptions as to what could have been the basic salary of Disputant.

For all the reasons given above, the Disputant has failed to prove his case under the second limb of the dispute and this part of the dispute is set aside. The Tribunal awards accordingly.

**SD Indiren Sivaramen**

**Acting President**

**SD Raffick Hossenbaccus**

**Member**

**SD Rabin Gungoo**

**Member**

**SD Parmeshwar Burosee**

**Member**

**21 July 2023**