

**EMPLOYMENT RELATIONS TRIBUNAL**

**AWARD**

**ERT/ RN 196/20**

**Before**

<b>Indiren Sivaramen</b>	<b>Acting President</b>
<b>Francis Supparayen</b>	<b>Member</b>
<b>Rabin Gungoo</b>	<b>Member</b>

**In the matter of:-**

**Mr Anwar Hussain Fatehmamode (Disputant)**

**And**

**Rodrigues Regional Assembly (Respondent)**

***In presence of:* (1) Ministry of Public Service, Administrative and Institutional Reforms (Co-Respondent No 1)**

**(2) Pay Research Bureau (Co-Respondent No 2)**

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"). Co-Respondent No 2 was joined as a party to the proceedings by the Tribunal following a motion made to that effect on behalf of Co-Respondent No 1 and to which there was no objection on the part of the other parties. All the parties were assisted by Counsel. The terms of reference of the point in dispute read as follows:

*"Whether in accordance with specific condition of recommendation 7 paragraph 23(d) of volume 2 part IV of PRB report 2013 Rodrigues Regional Assembly my grade as Patrol Officer (Rodrigues) should have been restyled as Aviation Security Officer and carried*

*the salary scale of Rs 12,425 to Rs 27,425 as has been the case for my colleagues in Mauritius and given that the duties in the prescribed of service (sic) are the same.”*

The hearing started before a panel consisting of three members apart from the presiding member. Whilst the matter was pending and scheduled for continuation before the Tribunal, the Tribunal was informed of the resignation of one of the members who was on the panel in the present case, as member of the Tribunal. All parties were informed accordingly and they agreed for the Tribunal to proceed with the hearing of the case with the remaining members. By virtue of section 3(2) and 3(3) of the Second Schedule to the Act, the Tribunal thus proceeded to continue and conclude the proceedings with the remaining members on the panel.

The Disputant deposed before the Tribunal and he confirmed the veracity of the contents of his statement of case. He produced copies of complaints made following the 2016 PRB Report (Docs A and B). He stated that he has been a Patrolman (now Patrol Officer (Rodrigues) since 1988. He suggested that there is no difference in the scheme of service of Aviation Security Officer and that of Patrolman in Rodrigues. He did not agree that the actual duties performed by a Patrolman in Rodrigues are different from duties performed by an Aviation Security Officer in the island of Mauritius.

In cross-examination, the Disputant stated that he based himself on the salaries as per the 2013 PRB Report when he made his representations in July 2015 to the Island Chief Executive. He conceded that he signed the option form for the 2013 PRB Report but then suggested that this was ‘under protest’. He also signed the option form for the 2016 PRB Report. He then stated that as from 2013 his grade is Patrol Officer. He stated that as from the year 2013, he noticed a difference in salary between the relevant two grades. However, he did not agree that this was because of a salary ‘upgrade’ in Mauritius with the development of the airport and civil aviation department in the island of Mauritius. He suggested that he does exactly the same work as the relevant officers do in Mauritius. He averred that even in Rodrigues there is an electronic system, which is the Land ASICs and that his colleagues from Mauritius would phone him to tell him how to proceed. They would give him instructions and he would make the relevant inputs. Also, he stated that all their “passes” (cards) are done in Mauritius and if ever there are any mistakes on these “passes”, colleagues from Mauritius would inform him how to modify the said “passes”. Later, he accepted that there is no relevant apparatus in Rodrigues up to now to modify the electronic cards and that he has to advise colleagues in Mauritius to modify the said cards. He agreed that for Rodrigues the grade of Patrolman became Patrol Officer with the 2013 PRB Report. He conceded that unlike the scheme of service for Aviation Security Officer, the scheme of service for Patrol Officer (Rodrigues) does not mention that the incumbent may be sent on assignment to Rodrigues or any Outer Islands of the Republic of Mauritius. Disputant

was not aware if the post of Aviation Security Officer was created as an upgrade to the existing post of Patrol Officer.

The representative of Respondent then deposed before the Tribunal and he maintained all the averments contained in the Statement of Reply of the Respondent. In cross-examination, he agreed that the Disputant was Patrolman since 1988 and was confirmed in 1990. From 1987 to 1998, there was only one PRB Report for Mauritius and Rodrigues. He agreed that as per annexes referred to him (extract pertaining to 1987 PRB Report), the grade of Patrolman formerly Airport Patrolman, Patrolman formerly Station Patrolman and Aeronautical Radio Operator had the same salary scale. He also accepted that even in the 2003 PRB Report, the grade of Patrolman in Rodrigues had the same salary code and scale as the grades of Aeronautical Radio Operator, Aviation Patrolman (formerly Aviation Security Officer) and Patrolman (Personal) in Mauritius. He was then confronted with alleged changes brought in the 2013 PRB Report and referred to Annexes K and M to the Statement of Reply of Respondent.

In cross-examination by counsel for Co-Respondent No 1, the representative of Respondent confirmed that in the year 2013 the Patrol Officer (Rodrigues) was not deriving the same salary as an Aviation Security Officer. He suggested that Recommendation 7, paragraph 23(c) of the PRB Report under the Rodrigues Regional Assembly would thus not be applicable. When questioned by counsel for Co-Respondent No 2, he agreed that the post of Patrol Officer had been removed from the establishment in the island of Mauritius. He was aware that there was an upgrading of the post of Patrol Officer in the island of Mauritius under the appellation of Aviation Security Officer.

A representative of Co-Respondent No 1 deposed at another sitting and she solemnly affirmed as to the correctness of the contents of the Statement of Reply filed on behalf of Co-Respondent No 1. She deposed in relation to the evolution in relation to the posts of Aviation Security Officer and Patrolman on the establishment of Mauritius as compared to the grade of Patrolman on the establishment of Rodrigues. She produced copies of the Scheme of Service for the post of Patrol Officer (Rodrigues) (Doc E) and for the post of Aviation Security Officer (Doc F). She stated that though the qualifications were more or less the same and the duties were the same, yet the titles of the two posts were not the same. She stated that following a letter received from the President of the Rodrigues Commission for Conciliation and Mediation, Co-Respondent No 1 wrote to Co-Respondent No 2 which advised that “the restyling and alignment of salary of the grade of Patrol Officer (Rodrigues) to Aviation Security Officer may be looked into holistically in the context of an overall review” (copies of letters produced and marked Docs G, H and I). She stated that the Co-Respondent No 1 will abide by the decision of the Tribunal.

In cross-examination, the representative of Co-Respondent No 1 stated that though the duties in the scheme of duties for the post of Patrol Officer (Rodrigues) are identical with those of the post of Aviation Security Officer, yet in the island of Mauritius, the duties are performed by the incumbents whereas in Rodrigues, one or two duties are not performed by the relevant officers in the absence of equipment. She also accepted that the responsibility to restyle a post and revise the salary rests with Co-Respondent No 2. She also agreed that before a scheme of service is approved, it is sent to Co-Respondent No 1 and there are consultations with relevant trade unions. She accepted that an officer does not need to perform all the duties mentioned in the scheme of service to receive his salary. She added that salary is determined by Co-Respondent No 2.

The representative of Co-Respondent No 1 accepted that the post of Patrolman was made "Personal" as from 2003 on the establishment of the island of Mauritius. She agreed that the post of Patrolman, that is Patrol Officer, as the post was in Rodrigues and the post of Aviation Security Officer were not in the same grade. In 2015, the scheme of service for the grade of Patrol Officer in Rodrigues was aligned with the scheme of service for the grade of Aviation Security Officer in the island of Mauritius. She however conceded that Co-Respondent No 2 was not consulted when this alignment was done. She identified a letter emanating from the Chief Commissioner's Office in Rodrigues addressed to Co-Respondent No 1, and the document was produced (Doc J).

The representative of Co-Respondent No 2 then deposed before the Tribunal and she solemnly affirmed as to the truthfulness of the contents of the affidavit filed on behalf of Co-Respondent No 2. She added that Co-Respondent No 2 will abide by the decision of the Tribunal. She produced a grid to show the evolution on appellation and salary of the grade of Aviation Security Officer and that of Patrol Officer (Rodrigues) (Doc K) and adduced evidence in relation to the grid. Whilst in 1993 and 1998 there was one common grade of Patrolman both in the islands of Mauritius and Rodrigues, around 2002 a new grade of Aviation Security Officer was created in the island of Mauritius. He produced a copy of the scheme of service for the said grade of Aviation Security Officer dated 7 October 2002 (Doc L). She stated that the new grade required certain different qualifications (from the grade of Patrolman) and there were a few duties which were different from the duties pertaining to the grade of Patrolman. The new grade of Aviation Security Officer was included in the 2003 PRB Report for the island of Mauritius. However, Co-Respondent No 2 in its report restyled the grade as Aviation Patrolman whereas the grade of Patrolman in Rodrigues remained the same. She stated that the duties of Aviation Security Officer were different from those of the Patrolman in Rodrigues but that the same salary scale applied to both grades. She averred that this was following a job evaluation for the two grades. The grade of

Patrolman in Mauritius was then made evanescent and referred to as Patrolman (Personal). This was, according to her, the post which existed “en parité” with the grade of Patrolman in Rodrigues. In 2012, in the Civil Establishment Order, the grade of Aviation Patrolman was restyled as Aviation Security Officer (Doc N). A copy of the scheme of service of Aviation Security Officer dated 14 October 2014 was also produced (Doc M) and according to the representative of Co-Respondent No 2 there were changes in relation to the qualifications and new duties were added. For the island of Rodrigues, there were no changes. In 2013, there was the new PRB Report 2013 and Co-Respondent No 2 restyled the grade of Aviation Security Officer to Aviation Permit and Patrol Officer. The representative stated that with the changes which occurred in 2012 in relation to duties and qualifications, Co-Respondent No 2 upgraded the grade of Aviation Permit and Patrol Officer so that the salary scale now started at Rs 11250- with a top salary of Rs 24000-. From then on, the salary scale of Aviation Permit and Patrol Officer in the island of Mauritius differed from the salary scale of Patrolman (restyled Patrol Officer (Rodrigues)). The Errors, Omissions, and Anomalies Committee (EOAC) Report 2013 did not bring any changes except that the name was again changed to Aviation Security Officer. There was another salary scale proposed by the 2013 EOAC Report but there was no upgrading for either of the two grades. With the 2016 and 2021 PRB Reports, there were no changes brought to these grades (except for increase in salary).

The representative stated that Co-Respondent No 2 was not aware of the 're-alignment' of the scheme of service which was carried out in 2015. A copy of the PRB Report 2021 was produced (Volume 2, Part IV, paragraph 2.4.6, page 41) and marked Doc O. Co-Respondent No 2 recommended that Respondent should review the scheme of service of the grade of Patrol Officer (Rodrigues) to reflect the actual duties being performed by the incumbents. She stated that the grade of Aviation Security Officer and the grade of Patrolman (Rodrigues) are two different grades.

In cross-examination, the representative stated that the Recommendation 7 for Rodrigues (Volume 2, Part IV, 2013 PRB Report, under the heading ‘Specific Conditions’) would not apply in this particular case since we were dealing with two different grades and not two identical/comparable grades. She did not agree that the 're-alignment' in the scheme of service brought in 2015 was in line with the said Recommendation 7 (see above). The representative stated that whenever there are amendments which are brought to a scheme of service, these have to come to Co-Respondent No 2 for the latter to advise on whether these amendments will have a bearing on the salary. She added that restyling of a post is done when there are representations to that effect.

The Tribunal has examined all the evidence on record including the submissions of all counsel. Counsel for Co-Respondents No 1 and 2 have informed the Tribunal that Co-

Respondents No 1 and 2 will be abiding by the decision of the Tribunal. The Tribunal proposes to deal with the dispute as per the terms of reference of the dispute. Indeed, any attempt to go beyond the terms of reference or not strictly in accordance with the terms of reference may result in any award of the Tribunal to be *ultra petita* and thus liable to be quashed. As per the terms of reference, the Disputant is basing himself on Recommendation 7, paragraph 23(d) of Volume 2, Part IV of the 2013 PRB Report to support his claim that his “*grade as Patrol Officer (Rodrigues) should have been restyled as Aviation Security Officer and carried the salary scale of Rs 12,425 to Rs 27,425 as has been the case for my colleagues in Mauritius and given that the duties in the prescribed (sic) of service are the same*”.

Recommendation 7, paragraph 23(d) of Volume 2, Part IV of the 2013 PRB Report reads as follows:

### **Miscellaneous**

#### **Recommendation 7**

##### **23. We recommend that:**

...

- (d) that subject to the approval of the Ministry of Civil Service and Administrative Reforms, revised conditions in respect of grades of the Island of Mauritius would, in principle, be applicable to similar grades of the Rodrigues Regional Assembly.**

The Disputant was cross-examined in relation to duties which he carried out. He stated that he works directly with the Civil Aviation Department and that all their “*pass*” is made in the island of Mauritius. Disputant averred that there was an electronic system in the airport of Rodrigues and that his colleagues from Mauritius would phone him and “*zotte dire moi couma pour faire*”. He would make entries based on instructions he received from his colleagues in the island of Mauritius. He was referred to a particular duty at item 6 in the scheme of duties for both Aviation Security Officers and Patrol Officers (Rodrigues) which read as follows: “To modify Aviation Security Identification Card templates as and when required.” He accepted that these cards are prepared in the island of Mauritius and not in Rodrigues and that even if there is a need to modify these, he would not modify the cards. He would then request colleagues in Mauritius to do the modifications since they do not have the relevant apparatus in Rodrigues up to now.

An examination of the scheme of service for Aviation Security Officer (dated 14 October 2014 - Doc F) and that for Patrol Officer (Rodrigues) (dated 25 September 2015 – Doc D or even the one dated 10 June 2019 – Doc E) showed that the duties mentioned were

basically the same. However, it is worthwhile to refer to an apparently similar 'Note' which appears in both schemes of service:

*Patrol Officers (Rodrigues) will be required to work on shift covering a 24-hour service including Saturdays, Sundays and Public Holidays, officially declared cyclone days and during emergencies. (referred to under "Note" in Doc E, and under Note 1 in Doc F where mention is made in the said Note 1 of "Aviation Security Officers" instead of "Patrol Officers (Rodrigues)" as in Doc E).*

The Tribunal will refer to a letter emanating from the then Island Chief Executive bearing the heading "Labour dispute in the case of Mr Anwar Hussain Fathemamode, Patrol Officer v/s Rodrigues Regional Assembly" dated 16 November 2020 (Doc J). Besides mentioning that duties stated at SN 5 and 6 (on the scheme of service for Patrol Officers (Rodrigues)) are not being performed by the officers at present as the devices are not available at Plaine Corail Airport, he added that "*Since the Plaine Corail Airport is not operational on a 24-hour basis, there is no established full shift system for Patrol Officers (Rodrigues). Hence the two officers in post work on a roster basis on alternate days to cover daily operations...*".

It is also apposite to observe that Note 2 in the scheme of service for Aviation Security Officers (which does not (underlining is ours) exist in the scheme of service for Patrol Officer (Rodrigues)) (Doc F) provides as follows:

*2. Aviation Security Officers may be sent on assignment to Rodrigues or any Outer Islands of the Republic of Mauritius.*

The Tribunal has examined carefully all the evidence on record including the evidence adduced in relation to the evolution on appellation and salary of the grade of Aviation Security Officer and of the grade of Patrol Officer (Rodrigues). The Disputant is relying on a particular recommendation (Recommendation 7, paragraph 23(d) of Volume 2, Part IV of the 2013 PRB Report) of Co-Respondent No 2 in its 2013 Report (which recommendation was repeated in the 2016 PRB Report). This is a recommendation which applies 'in principle' and must be considered in the light of the specific (underlining is ours) recommendations made by Co-Respondent No 2 in, for example, the same 2016 PRB Report in relation to the salary scale for Aviation Security Officer (Annex 9 to the Statement of Case of Disputant) and the different salary scale for Patrol Officer (Rodrigues) (Annex 8 to the Statement of Case of Disputant).

The Disputant bears the burden of proving that his grade as Patrol Officer (Rodrigues) should have been restyled as Aviation Security Officer. However, the representative of Co-Respondent No 2 has maintained before the Tribunal that the grades of Aviation Security Officer (on the establishment of the island of Mauritius) and Patrol Officer (Rodrigues) were two different grades. This averment is correct as is clear from a

perusal of the extracts from the 2003 PRB Report (Annexes G and H to Respondent's Statement of Reply). Indeed, whilst for Rodrigues there was the grade of Patrolman, in the part dealing with the island of Mauritius, the 'corresponding' grade of Patrolman was made 'Personal'. A new grade of Aviation Security Officer created in or around 2002 in the island of Mauritius (with different duties and qualification requirements) was restyled Aviation Patrolman. This was a separate grade from the existing grade of Patrolman (Personal) in the island of Mauritius and Patrolman in Rodrigues. The representative of Co-Respondent No 2 went further and stated in cross-examination that the incumbents in the grade of Patrol Officer (Rodrigues) were not performing all the duties mentioned. She thus did not agree that the realignment of the scheme of service (of Patrol Officers (Rodrigues)) carried out in 2015 was in line with the said recommendation 7, paragraph 23 of volume 2 part IV of 2013 PRB Report, Rodrigues Regional Assembly (which recommendation was repeated in the 2016 PRB Report). She laid emphasis on the fact that salary is determined based on a job evaluation of a particular grade. The Tribunal has examined carefully the evidence of Disputant himself as to what he does and the contribution of colleagues from the island of Mauritius. There is also the unchallenged evidence in the form of the letter from the then Island Chief Executive (Doc J). In the light of all the evidence on record and without any evidence from a proper job evaluation exercise, the Tribunal cannot make any assumptions and find that the grade of Patrol Officer (Rodrigues) should have been restyled as Aviation Security Officer (which was a different grade) and thus carry the same salary scale as Aviation Security Officer.

A job evaluation exercise involves more than a mere analysis of duties and responsibilities of a particular grade (which *stricto sensu* would be a job analysis exercise). The Tribunal bears in mind the principle of equal remuneration for work of equal value under section 26 of the Workers' Rights Act. In the absence of a job evaluation exercise and in the light of the evidence on record including Doc J and evidence that some duties are not being performed and that there is no provision for Patrol Officers (Rodrigues) to be sent on assignment to Outer Islands of the Republic of Mauritius (as opposed to Aviation Security Officers), the Tribunal cannot find on a balance of probabilities that the work of the Patrol Officer (Rodrigues) is of equal value as that of Aviation Security Officer.

It is apposite to refer to the 2021 PRB Report where Co-Respondent No 2 provided the following (at Volume 2, Part IV, under the heading "Civil Aviation"):

***Patrol Officer (Rodrigues)***

*2.4.5 For this review exercise, the staff side has apprised the Bureau that the qualifications requirement and duties of the grade of Patrol Officer (Rodrigues) are similar to the grade of Aviation Security Officer in Mauritius. However, the salary scales of both grades are different. They have, therefore, requested for a restyling and*



*alignment of the grade of Patrol Officer (Rodrigues) to their counterparts in Mauritius. They further informed that a case has been lodged at the Employment Relations Tribunal (ERT) to decide on this issue.*

*2.4.6 Upon perusal of the schemes of service of the grades of Patrol Officer (Rodrigues) and that of Aviation Security Officer, the Bureau noted that the duties prescribed therein are in fact the same. However, upon obtention of additional information from the Management of RRA, they confirmed that some of the duties listed in the scheme of service of the grade of Patrol Officer (Rodrigues) are not being performed by the incumbents in Rodrigues. **Therefore, the Bureau recommends that the RRA should review the scheme of service of the grade of Patrol Officer (Rodrigues) to reflect the actual duties being performed by the incumbents.***

Co-Respondent No 2 proceeded in the same report, that is, the 2021 PRB Report to give different salary scales to the Patrol Officer (Rodrigues) and the Aviation Security Officer. In the light of all the evidence on record and in the absence of any evidence of a proper and thorough job evaluation exercise, the Tribunal finds that it will not be proper for the Tribunal to intervene and award for the restyling of the grade of Patrol Officer (Rodrigues) to that of Aviation Security Officer with the corresponding salary scale.

The Tribunal cannot accept the suggestion of Disputant that the 'alignment' of the scheme of service for Patrol Officers (Rodrigues) carried out in 2015 was in line with Recommendation 7, paragraph 23 of volume 2 part IV of 2013 PRB Report (or corresponding provision in the 2016 PRB Report). Indeed, this was not a case where the salary of Patrol Officer (Rodrigues) had been aligned with the salary of Aviation Security Officer, assuming here that these were identical/comparable grades (and which the Tribunal in the light of the evidence on record finds has not been proved on a balance of probabilities). The Tribunal does not propose to deal further with the amendment brought to the scheme of service of Patrol Officers (Rodrigues) in 2015 except than to refer to paragraphs 2.4.5 and 2.4.6 of the 2021 PRB Report (Volume 2, Part IV, under the heading "Civil Aviation") mentioned above.

On a final note, the Tribunal leaves open the issue (which was not raised before us) as to whether the present dispute was within the jurisdiction of the Tribunal given that the essence of the dispute seems to be the different salary scales pertaining to Patrol Officer (Rodrigues) and Aviation Security Officer whereas Disputant conceded that he opted for both the 2013 PRB Report and the 2016 PRB Report.

For all the reasons given above, the Tribunal finds that the Disputant has failed to prove his case on a balance of probabilities and the dispute is purely and simply set aside.

**SD Indiren Sivaramen**

**Acting President**

**SD Francis Supparayen**

**Member**

**SD Rabin Gungoo**

**Member**

**19 April 2023**