

**EMPLOYMENT RELATIONS TRIBUNAL**

**AWARD**

**ERT/ RN 190/20**

**Before**

<b>Indiren Sivaramen</b>	<b>Acting President</b>
<b>Vijay Kumar Mohit</b>	<b>Member</b>
<b>Abdool Feroze Acharauz</b>	<b>Member</b>
<b>Ghianeswar Gokhool</b>	<b>Member</b>

**In the matter of:-**

**Mr Marie Edley Finiss (Disputant)**

**And**

**Rodrigues Regional Assembly (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 party joined as a co-respondent in the dispute referred to the Tribunal, but the latter was eventually put out of cause following a motion made on behalf of Respondent and to which there was no objection on the part of the Disputant. The Tribunal proceeded to hear the case and both parties were assisted by Counsel. The terms of reference of the point in dispute read as follows:

*“(1) Whether in accordance with recommendation EOAC 164 at sub paragraph 23.13 B of the Errors, Omissions and Anomalies Committee Report of the PRB Report 2013 Volume 2/part 1 – Civil Service, the grade of Senior Technical Assistant was restyled as Senior Agricultural Support Officer.*

*(2) Whether in accordance with recommendation 7 paragraph 23(d) of PRB Report 2013 – Volume 2 part IV of Rodrigues Regional Assembly which read as follows:- we*

*recommend that subject to the approval of the Ministry for Civil Service and Administrative Reforms, revised conditions in respect of the island of Mauritius would in principle be applicable to similar grades of the Rodrigues Regional Assembly my grade as Senior Technical Assistant should have been restyled as it had been the case for my counterparts in Mauritius since 2013.*

*(3) Whether as from the implementation of PRB Report 2016 my hours of work should have been 33¾ weekly instead of 40 hours weekly and the 6¼ extra hours put in per week should have been paid to me until 17 October 2018.*

*(4) Whether as from the implementation of PRB Report 2016 overtime performed by me as from January 2016 to December 2017 should have been calculated on a 33¾ hourly basis instead of 40 hourly basis as it has been the case as from 2018.*

*(5) Whether for period 21 January to 28 April 2019, I should have been paid overtime as per claim submitted for the work performed and certified by the Agricultural Superintendent and approved by the Manager Agricultural Research and Extension Services.”*

The Disputant deposed before the Tribunal and he swore as to the correctness of the averments made in his Statement of Case. He produced a copy of an extract of the Errors, Omissions and Anomalies Committee Report (following the Pay Research Bureau (PRB) Report 2013) (Doc A), a copy of an extract of the PRB Report 2016 (Doc B - both Docs A and B pertaining to the volume dealing with the 'Civil Service') and copies of Recommendations 7 and 5 in the PRB Report 2016 (under the volume dealing with the Rodrigues Regional assembly- Docs C and D). Disputant suggested that the 'hours of work' issue should have been addressed since 2016 with the PRB Report 2016 which took effect as from the year 2016. He averred that he has put in 40 hours of work weekly so that he worked an excess of 6¼ hours weekly between 2016 and 2018. He referred to a letter dated 11 May 2021 emanating from the Departmental Head of the Commission for Agriculture, Environment, Forestry, Fisheries and Marine Parks (copy later produced and marked Doc E). He stated that after October 2018, he was requested to put in 33¾ working hours weekly and that the contention between the parties was then resolved. He suggested that paragraph 4 of the above mentioned letter (Doc E) must have referred to the period prior to October 2018. Disputant stated that the recommendations of the PRB Report 2016 were not implemented as they should have been.

In cross-examination, the Disputant agreed that Doc E did refer to the new working hours having been implemented since 29 October 2018. He stated that as per the PRB Report 2016, he had to put in 33¾ hours of work per week but instead he worked on a 40 hours per week basis.

The representative of Respondent deponed before the Tribunal and she produced a copy of a letter dated 14 June 2021 emanating from the Departmental Head of the Commission for Agriculture, Environment, Forestry, Fisheries and Marine Parks (Doc F). She stated that the PRB Report 2016 has restyled the grade of 'Senior Technical Assistant' to 'Senior Agricultural Support Officer'. She explained the steps which had to be followed to implement the above-mentioned recommendation. The process started with the representations which Disputant made in March 2017 in relation to his hours of work. The matter was referred to the office of the Island Chief Executive which then referred the matter to the relevant Ministry. She stated that after they received confirmation that officers in the grade of Agricultural Support Officer/Senior Agricultural Support Officer in the island of Mauritius were putting in 33¾ hours of work per week, there were several correspondences issued, consultations and meetings held with a view to ensure continuity of service. The Departmental Head only then recommended the implementation of the new hours of work, that is, 33¾ hours of work per week instead of 40 hours. The Island Chief Executive (as Responsible Officer) then gave approval to implement the new hours of work which were implemented at the relevant Commission as from 29 October 2018.

The representative of Respondent added that there were several officers involved in the two grades of Agricultural Support Officer and Senior Agricultural Support Officer in Rodrigues. There were also different production units, each with its own specificity. Thus, there had to be several consultations in the light of the operational requirements of each unit to ensure that there was continuity in the delivery of the services provided. There was also the need to ensure that there are officers who work even on Saturdays and Sundays, and a system had to be designed accordingly.

In cross-examination, the representative of Respondent stated that where there is a restyling of a grade, the existing scheme of service is used, for practical reasons, pending the prescription of a new scheme of service. She did not agree that as from the advent of the PRB Report 2016, the working hours of the Senior Agricultural Support Officer (on the Rodrigues establishment) should have been aligned with those of his 'counterparts' in the island of Mauritius (under the merged grade of Agricultural Support Officer/Senior Agricultural Support Officer). She stated that this was not automatic and that they had to ensure that there would be continuity of service. She was referred to the letter dated 14 June 2021 emanating from the Departmental Head (marked Doc F). She did not agree that the letter was referring to the need to pay overtime to Disputant as from 2016. She stated that as soon as they received the representations of Disputant, they did all that had to be done to be able to implement the new working hours.

The Tribunal has examined all the evidence on record including the submissions of both counsel. As rightly conceded by counsel for Disputant himself, the PRB Report 2016

recommended that the grades of Agricultural Support Officer and Senior Agricultural Support Officer be merged and restyled Agricultural Support Officer/Senior Agricultural Support Officer (volume dealing with the Civil Service under the heading 'Ministry of Agro-Industry and Food Security') whereas under the volume dealing with the Rodrigues Regional Assembly, there were different recommendations in relation to the grades of Technical Assistant and Agricultural Assistant (personal) which were merged and restyled as Agricultural Support Officer. The grade of Senior Technical Assistant was restyled Senior Agricultural Support Officer in relation to the Rodrigues Regional Assembly (paragraph 2.12.19(ii) of the PRB Report 2016 (Volume 2, Part IV) – Doc D). In that respect, the Tribunal agrees with the averments made on behalf of Respondent at paragraph 5(b) of its Statement of Case and which reads as follows:

*“it is therefore clear that the PRB was alive to the different grades existing on the Mauritian and Rodriguan establishments and deemed it appropriate, instead of aligning them, to make separate and distinct recommendations for each establishment (Mauritian and Rodriguan) with different salary scales, which are as follows:*

*.....”*

The Respondent then averred the following at paragraph 5(c) of ‘Respondent’s Statement of Case’:

*c) owing to the specificity of Rodrigues island and its operational requirements for agricultural services, the duties performed by the Senior Agricultural Support Officer and Agricultural Support Officer on the establishment of Rodrigues are different from those performed by the Agricultural Support Officer/Senior Agricultural Support Officer on the Mauritian establishment. (...)*

The representative of Respondent stressed on the specificity of the different work stations in Rodrigues and referred, for example, to stations where animals have to be fed or stations where milk and other products are sold. She stated that to implement the new hours of work, there had to be several consultations with stakeholders so that there would be no discontinuity in the provision of the relevant services. The Respondent had to ensure that there were officers who work even on Saturdays and Sundays. Also, she mentioned that there were many officers concerned in relation to the grades of Senior Agricultural Support Officers and Agricultural Support Officers on the Rodrigues establishment.

In relation to the terms of dispute (1), it is clear and not disputed that in the light of the ‘Recommendation EOAC 164’ at paragraph 23.13B of the Errors, Omissions and Anomalies Committee (EOAC) Report following the 2013 PRB Report (vide Doc A), the Committee recommended that the grade of Senior Technical Assistant be restyled

Senior Agricultural Support Officer. This recommendation was made in relation to Chapter 23 of the 2013 PRB Report (Volume 2, Part I- Civil Service) dealing with the Ministry of Agro Industry and Food Security. The said paragraph 23.13B of the EOAC Report was to be inserted after paragraph 23.13 of the 2013 PRB Report (Volume 2, Part I- Civil Service) and after another paragraph mentioned in the same EOAC Report (following the 2013 PRB Report) which read as follows:

*23.13A Management has submitted that the grades of Technical Assistant and Senior Technical Assistant provide support services in the Technical Cadre and has requested that the grades be restyled Agricultural Support Officer and Senior Agricultural Support Officer respectively.*

Thus, the Tribunal awards that as per the 'Recommendation EOAC 164' at paragraph 23.13B of the EOAC Report following the 2013 PRB Report, under the Chapter dealing with the Ministry of Agro Industry and Food Security, the grade of Senior Technical Assistant was restyled as Senior Agricultural Support Officer.

As regards terms of dispute (2), Recommendation 7, paragraph 23(d) of the 2013 PRB Report (Volume 2, Part IV – Rodrigues Regional Assembly) provides as follows:

*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.*

Paragraph 23(d) of the 2013 PRB Report (Volume 2, Part IV) has been drafted in clear terms and there is no mention that revised conditions in respect of grades of the Island of Mauritius would be applicable to similar grades of the Rodrigues Regional Assembly. The PRB instead uses words which make it clear that revised conditions of grades of the Island of Mauritius would not automatically apply to similar grades of the Rodrigues Regional Assembly. The PRB in this way recognizes the specificity of each of the two islands. Not only is there use of words such as "would, in principle, be applicable", but there is also a requirement that this is subject to the approval of the Ministry of Civil Service and Administrative Reforms (now Ministry of Public Service, Administrative and Institutional Reforms). There is, for example, no evidence before us that the approval of the said Ministry was obtained since 2013 for the grade of Senior Technical Assistant under the Rodrigues Regional Assembly (under the Chief Commissioner's Office) to be restyled as Senior Agricultural Support Officer. Also, the publication of the 2016 PRB

Report confirms that there was no restyling of the grade of Senior Technical Assistant under the Rodrigues Regional Assembly until then. The PRB in its 2016 report only then specifically provided for the restyling of the grade of Senior Technical Assistant under the Rodrigues Regional Assembly to Senior Agricultural Support Officer (Recommendation 5 paragraph 2.12.19(ii) in 2016 PRB Report (Volume 2, Part IV) – Doc D). In the light of all the evidence on record and for the reasons given above, the Tribunal finds that the Disputant has failed to show on a balance of probabilities that his grade should have been restyled since 2013, and the point in dispute (2) is set aside.

As regards the point in dispute (3), the PRB Report 2016 does not provide specifically for the hours of work of the grade of Senior Agricultural Support Officer under the Rodrigues Regional Assembly. The PRB in its 2016 report recommended that for all other officers (apart from employees of the Workmen’s Group and other manual grades, Watchmen, employees working on shift, on roster and staggered hours and officers belonging to disciplined forces), the standard working week shall be between 33¾ hours and 40 hours as specified by the Responsible Officer (Recommendation 1, paragraph 18.5.5 (coupled with paragraph 18.5.2) of the PRB Report 2016 (Volume 1)). At paragraph 18.5.8 of the PRB Report 2016 (Volume 1), it is provided that:

*Recommendation 2*

*18.5.8 We maintain that Responsible Officers of Ministries/Departments/ Organisations should continue to specify the working hours of officers working under their supervision taking into consideration the operational needs of their organisations.*

As is apparent from the PRB Report 2016, the PRB is all along conscious of the specificity of the island of Rodrigues and refers, for instance, to having considered the importance of the agricultural sector in Rodrigues (paragraph 2.12.16 of the PRB Report 2016 (Volume 2, Part IV)). The Responsible Officer of the Senior Agricultural Support Officer falling under the Rodrigues Regional Assembly is not the representative of the Ministry of Agro Industry and Food Security in Mauritius. The Responsible Officer for the Rodrigues Regional Assembly, according to the unchallenged evidence before us is the Island Chief Executive. It is apposite to note that the Rodrigues Regional Assembly Act provides as follows:

*66. Island Chief Executive*

*(1) There shall be an Island Chief Executive who- (a) shall be a public officer for the purposes of section 112 of the Constitution; and (b) shall be responsible for the efficient administration of all the functions of the Executive Council.*

2)...

*(3)The Staff of the Regional Assembly shall be under the administrative control of the Island Chief Executive.*

*(4)...*

#### *68. Supervision of Departments*

*Each Department of the Executive Council shall be under the supervision of a public officer who shall be the Accounting Officer of the Department or Departments under his supervision.*

There is undisputed evidence that the office of the Island Chief Executive approved the implementation of the new hours of work in January 2018. Emphasis has been laid by the representative of Respondent on the number of officers involved in the grades of Agricultural Support Officers and Senior Agricultural Support Officers at the Respondent and the need to ensure that the delivery of services was not affected. These have not been seriously challenged before us. Thus, the new standard week for Senior Agricultural Support Officers (Rodrigues establishment) simply could not have been implemented before the year 2018 in Rodrigues. The standard week for these officers could only be specified by their Responsible Officer (as per the PRB Report 2016 – Recommendation 2, paragraph 18.5.8 Volume 1). The Tribunal however wishes to make one observation in that since the new hours of work were already recommended by the Departmental Head and that the Island Chief Executive finally gave his approval for the implementation of the new hours of work in January 2018, the Respondent should have ensured that the new hours of work were from then on put in place within the shortest delay. Having said that, the Tribunal is bound by the terms of reference as laid down under this dispute, and the Tribunal will only award as per these terms, that is, as to whether as from the implementation of the PRB Report 2016 the hours of work of Disputant should have been 33¾ weekly instead of 40 hours weekly. Clearly, as from the date of implementation of the PRB Report 2016, the standard week of the Senior Agricultural Support Officer (Rodrigues establishment) was still 40 hours as it has been previously. The PRB Report 2016 did not in any manner provide for any automatic or mandatory change in the hours of work of the Disputant so that the answer to the latter part of the terms of reference must also be in the negative.

The Disputant has relied on Doc E emanating from the Departmental Head of the Commission for Agriculture, Food Production, Plant & Animal Quarantine to support his case that his overtime should have been calculated on a standard week basis of 33¾ hours instead of 40 hours as from the implementation of the 2016 PRB Report. The Tribunal has examined carefully Docs E and F. The Tribunal notes that neither Doc E nor Doc F refers to excess hours put in by Senior Agricultural Support Officers as from the date of implementation of the PRB Report 2016. Both letters were issued in 2021

and refer specifically to the new working hours having been implemented since 29 October 2018. The letters include the following:

*Therefore any excess hours put in by officers in the abovementioned grade for having worked beyond the allowed threshold per week is being considered as overtime.*

The allowed threshold per week became 33¾ hours instead of 40 hours only since 29 October 2018.

Also, the Tribunal wishes to highlight that Counsel for Disputant submitted, and rightly so, that the Disputant was not relying on alleged discrimination in the present case. Indeed, there is no discrimination averred by the Disputant or any discrimination in the present case. Since the new standard working week was implemented only as from 29 October 2018 (from 40 hours to 33¾ hours), the Disputant has failed to prove on a balance of probabilities that his hours of work should have been 33¾ hours weekly instead of 40 hours weekly as from the implementation of the PRB Report 2016. The point in dispute (3) is thus set aside.

As regards point in dispute (4), in the light of the award of the Tribunal under the point in dispute (3) above and for the reasons given above, this point of dispute also cannot stand and is set aside.

As regards point in dispute (5), the Disputant whilst deponing referred specifically to paragraph 6(c) of his Statement of Case (which is in fact his second amended Statement of Case) where this issue was raised and he stated that he was not insisting on that issue. Counsel for Disputant then informed the Tribunal that the Disputant would not go ahead with that part of the Statement of Case. In the circumstances, the Tribunal will not proceed to enquire into point in dispute (5) and simply dismisses that dispute in accordance with section 6(2)(b) of the Second Schedule to the Act.

For all the reasons given above, the Tribunal awards accordingly.

**SD Indiren Sivaramen**

**Acting President**

**SD Vijay Kumar Mohit**

**Member**

**SD Abdool Feroze Acharauz**

**Member**

**SD Ghianeswar Gokhool**

**Member**

**2 February 2023**