

EMPLOYMENT RELATIONS TRIBUNAL

AWARD

R.N1034

Before:

Rashid Hossen	President
Geeanduth Gangaram	Member
Jeenarainsing Soobagrah	Member
Hurryjeet Sooreea	Member

In the matter of:-

Mr Deoduth (Amar) Nabobsing
and
Beach Casinos Ltd

The point in dispute is:-

“Whether Mr Deoduth (Amar) Nabobsing should be appointed to the post of Customer Relations & Marketing Coordinator (Gaming & Slot) with effect from 21 July 2006 or otherwise.”

The present dispute was referred for compulsory arbitration by the Minister of Labour, Industrial Relations & Employment in accordance with Section 82 1(f) of the then Industrial Relations Act 1973.

The newly enacted Employment Relations Act 2008 that came into force this year makes provision for such dispute to be heard before the present Tribunal:

“108. Transitional Provisions -

Any proceedings pending immediately before the commencement of this Act before the Permanent Arbitration Tribunal and the Civil Service Arbitration Tribunal shall be deemed to be proceedings pending before this Act and may be proceeded with before the Tribunal.”

Statement of case of the applicant

1. He joined the company in 1991 and was lately holding the post of Gaming Cashier after 17 years of service.
2. There existed a collective agreement dated 20/11/2002 signed between the company and the applicant's union which provided that when there are appointments to be made for promotional posts, they should be advertised internally on all notice boards, and once the selection list is set down, candidates should be interviewed by order of seniority to ascertain whether they can perform the duties of the higher post.
3. He applied for the post of Customer Relations & Marketing Coordinator but following the selection exercise his junior colleague Mr. Pathak Balgobin, ex Slot Cashier, was appointed to the post. A Slot Cashier is classified at the 7th grade in the Job Classification whereas a Gaming Cashier at 11th grade
4. He complained to the respondent company that the decision to appoint his junior was unfair and unjust because he was more senior to Mr. Pathak Balgobin and secondly he held better qualifications. The fields of study which he had covered for his academic qualification were relevant to the post of Customer Relations & Marketing Coordinator. Respondent's attitude was not conducive to a healthy work environment and was prejudicial to his reputation.
5. He should not lose his seniority vis a vis a junior colleague and should be promoted to the same post and from the same date as Mr. Pathak Balgobin.

Statement of case of the respondent

1. Respondent admitted that the applicant applied for the relevant post and the selection exercise took into account all the relevant factors before deciding

on the most suitable candidate for the post. That exercise was carried in full transparency and in good faith.

2. The issue of 50% success mark should not be interpreted as a factor leading to automatic promotion. It should not be read in isolation but must be considered as forming part and parcel of various other factors. Number of vacancies for the post was one of such factors.

3. The selection exercise selected the best candidate basing itself on all relevant factors. It was carried out in all fairness and transparency. The respondent contended that applicant's case be set aside.

During the sitting of 13th April 2009 where only the respondent was assisted by Counsel, the applicant stood by what he had stated in his statement of case. Under cross examination he testified that:

(a) he did not remember the requirement for the post which was advertised but he could say that someone should be in service for five years to be able to apply for the post;

(b) he did not remember as to when the post was advertised but such information was in his statement of case;

(c) he denied that he was not qualified for the post in question;

(d) he admitted that he was called for interview but could not know the total number of persons called for that interview nor the date of the interview;

(e) he did not receive any written communication from the respondent. He was not selected for the post but he took notice that another person was promoted instead;

(f) he wrote to management to ask for explanations but did not get any reply;

(g) he agreed that it was for the management to decide on the best candidate for the post;

(h) only one person was appointed to the post;

(i) he was not sure that there was a number of things that management has to take into consideration before appointing someone;

(j) the collective agreement provided that seniority was one of the most important criteria for promotion; as he was senior to the person who was actually promoted, seniority ought to prevail;

(k) apart from seniority, another reason justifying his appointment as Customer Relations & Marketing Coordinator was that he had sufficient background to assume that responsibility.

After the cross examination, he added that he held a degree and a post graduate qualification inclusive of marketing modules to enable him to assume the duties of the post.

Mr. Rajesh Seegobin, Human Resource Representative of the respondent testified that:-

- (a) He was aware of the dispute of the applicant.
- (b) The respondent had replied to the dispute of the applicant and filed its statement of case.
- (c) He stood by what was in the statement of case.

There was no cross examination nor any submission by Counsel. The latter left the matter in the hands of the Tribunal.

After careful consideration of the evidence, the Tribunal notes and comments as follows:-

1. There existed a collective agreement signed between parties according to which the internal vacancy was advertised.
2. The applicant applied for the post along with other candidates.
3. A selection exercise was carried out and applicant's junior colleague was appointed to the post.
4. None of the parties revealed to the Tribunal the criteria used for the selection of the candidate.
5. The applicant did not establish that he was more deserving than the candidate selected for the post.
6. The applicant averred that the respondent's attitude was not conducive to a healthy work environment and that the injustice caused to him (by promoting his junior in his stead) was a tremendous prejudice to him in terms of reputation. We stress that it is not enough to aver prejudice, without adducing sufficient evidence to substantiate it. This he failed to do.

7. He also wished that his seniority be established vis a vis his junior colleague and that he should be promoted to the same post and from the same date as his colleague. The Tribunal cannot impose on management in these circumstances to create another post of Customer Relations & Marketing Coordinator and appoint applicant to that post with retrospective effect. The Tribunal holds that, subject to an abuse of power on the part of management (Mrs. D.C.Y.P. and Sun Casinos RN 202 of 1988), matters regarding appointment and promotion of employees are essentially within the province of management. (M. Pottier and Ireland Blyth Ltd RN 279 of 1994, A. Ayrga and Tea Board RN 575 of 1998).

In the light of the above, the Tribunal is of the considered view that the case of applicant has not been made out. The dispute is accordingly set aside.

.....
(sd) Rashid Hossen
President

.....
(sd) Jeenarainsing Soobagrah
Member

.....
(sd) Geeanduth Gangaram
Member

.....

**(sd) Hurryjeet Sooreea
Member**

Date: 17 August 2009