

EMPLOYMENT RELATIONS TRIBUNAL

AWARD

RN 1048

Before:

Rashid HOSSEN	-	President
Geeanduth GANGARAM	-	Member
Jheenarain SOOBAGRAH	-	Member
Harryjeet SOOREEA	-	Member

In the matter of:-

Mr Shamshuddin Durgauhee

And

Sun Casinos Ltd

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

The point in dispute is:-

“Mr. Shamshuddin Durgauhee should be promoted to the post of Administrative and Human Resources Manager, or otherwise.”

The newly enacted **Employment Relations Act 2008** that came into force last 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 under this Act and may be proceeded with before the Tribunal.”

STATEMENT OF CASE OF Mr. Shamshuddin Durgauhee. Mr. Durgauhee who stood *inops consilii*, averred the following:

- He was employed as Trainee Dealer in January 1989 and was subsequently appointed as Dealer.
- In 1991, he was appointed as Trainee Gaming Cashier and was subsequently confirmed as Gaming cashier.
- Following an industrial dispute dated 20th January 1997 in relation to the post of cage controller and a recommendation of the Industrial Relations Commission dated 27th November 1998, he was appointed as an interim measure as Head Gaming Cashier.
- On the 4th of May 2005, Mr. Sadek Futloo (an external person) was appointed Administrative and Human Resources Manager.
- The applicant declared a dispute to the Ministry of Labour, Industrial Relations and Employment on 16 June 2005. The point in dispute was “whether Mr. Durgauhee should be promoted to the post of Administrative and HR Manager or otherwise.
- About 10 meetings were held between 21st June to 29th December 2005 at the Conciliation and Mediation Division of the said Ministry.
- Meanwhile Mr. Futloo was dismissed and the post was vacant.
- On 7th December 2005, Mr. Raj Ghura (an external person) was appointed as Deputy General Manager in charge of Human Resource and Administration, and Mr. Baboo Gowreesunkur

(another external person) was appointed as Support Services Coordinator.

- On 23rd January 2006, the dispute was referred to the Industrial Relations Commission. There was a proposal to appoint applicant as senior Human Resource Officer but the latter turned it down.
- At a meeting held on 14 June 2006, Mr. Durgauhee informed the Commission that the dispute may be settled if he would be appointed as Training and Customer Service Manager.
- Sometimes after Mr. Ghura was dismissed from the casino and Mr. Durgauhee requested the Commission to reconsider his original claim.
- An expatriate namely Mr. Van Rooyen was appointed as General Manager (GM) of the Casino.
- Mr. Woodun (an external person) has been appointed as Administrative and Support Services Manager and Mr. Gowreesunkur has been promoted as Assistant Administrative and Support Services Manager.
- On 29th of November 2006, in a letter to the IRC, management informed that as the posts of Administrative and Support Services Manager and Assistant Administrative and Support Services Manager being already filled, no conciliation is possible in respect of the dispute as reported.
- On the 24th of August 2007, the post of Gaming Cage Controller was advertised. Mr. Durgauhee in a letter dated 3rd September 2007, drew the attention of the Chairman of the SICMS Co. Ltd that the qualifications required for this post has been unilaterally amended by the company and that the notice of vacancy should be amended in order to be in line with the agreed conditions of service. Even though no amendment was effected yet Mr. Durgauhee applied for this position and was called for an interview on the 3rd of October 2007. He informed the panel that

there is a recommendation in his favour of the IRC since 27th November 1998 and that he was the first Gaming Cashier that had been properly appointed as Head Gaming Cashier.

- In February or March 2008, Mr. Gowreesungkur was further promoted to the post of Human Resources Manager.

Applicant claims that the procedures for the filling of the vacancies for the post of Administrative and Human Resources Manager were irregular, unfair, bias, and/or discriminatory and did not observe transparency or meritocracy for the following reasons:-

- (a) The prevailing conditions of service (Collective Agreement See 5(iv)(b) dated 20th November 2002) had been ignored and no vacancy had been advertised.
- (b) There was bias against Mr. Durgauhee right from the outset especially when the post of Administrative and Human Resources Manager was vacant on 3 different occasions and Mr. Durgauhee's industrial dispute for that post was still on going but management never deemed it fit to consider Mr. Durgauhee's interest for the said post.
- (c) Also this is clearly spelt out when the notice of vacancy for the post of Cage Controller fell short of requirements and when less qualified and experienced persons were being promoted; and that even for lower level post such as Cage Controller, Management has never considered him fit for the said post and this was of utter bad faith from the Management.
- (d) The Employer appointed less qualified/experienced person/s and or person/s who were not qualified and experienced for filling the post of Administrative and Human Resources Manager.
- (e) The Employer has up to now ignored the qualifications and experiences of Mr. Durgauhee.

- (f) That Management has failed to fulfill its contractual and moral obligations in respect of Mr. Durgauhee.
- (g) That the appointment/promotion should take effect as from 16th of June 2005 (the date when the dispute was declared) in order to somehow compensate for the injustices and suffering caused to Mr. Durgauhee and his family.

The Respondent averred in its **Statement of Case:-**

- There has been a change in the distribution of responsibilities as regards to the post of Administrative and Human Resource Manager.
- As at date the post of Administrative Manager and Human Resources Manager has been separated and thus are presently two distinct positions.
- Up to a certain level of management positions, particularly those mentioned above, the posts for appointment are not necessarily advertised as it is left to management to decide the course to follow.
- As regards to the post of Cage Controller, the outcome of any appointment is decided by a selection exercise which is predominant in the appointment.
- Respondent avers that due consideration has been given at all material times concerning appointment in the relevant posts mentioned in the Statement of Case of the Applicant and these criteria which are mentioned in paragraphs 1,2,3 and 4 were always respected and applicant was not the best candidate to be selected.

Mr. R. Seegobin, representative of Sun Casinos Ltd was present.

Applicant testified to the effect that:-

- He had written a letter to the Chairman of S.I.C. Management Services regarding the post of Cage Controller.
- The Collective Agreement was unilaterally modified.
- The post began to be advertised with only three years of service in lieu of five years.
- Management had been biased.
- Favouritism was shown for higher post as well as for lower post as Cage Controller.
- There had been a change in the distribution of responsibility with regard to the post of Administrative and Human Resource.
- Different appointments were made in 3 years : Mr. Sadek Futloo in 2005, six months after Mr. Raj Ghura and then Mr. Woodun.
- There was no change of distribution but a reshuffling in management.
- Procedures for vacancy notice and conditions of employment were not respected.
- Promotion was not effected in accordance with procedures and Collective Agreement.
- He declared dispute when Mr. Futloo was appointed. Mr. Areff Salauroo was appointed when the post was advertised. After that management stopped advertising the post.
- With regard to Post of Cage Controller, the Collective Agreement was not respected. Someone having nearly 3 years of service as Head Gaming Cashier was appointed as Cage Controller. Applicant's 20 years of service, recommendations, qualifications, performance bonus with no adverse report and warning were ignored.
- He is presently the Head Cashier and could be promoted to management.
- Cage Controller is immediately superior to Head Cashier.
- Several people acting as Gaming Cashiers had been promoted in Administrative Post.

- He conceded that in his Statement of Case he had not mentioned any person promoted from Head Cashier to Managerial post.
- This post does not exist presently at the Casino of Mauritius and has been split.
- He does not agree that Collective Agreement concerns posts up to a certain level and does not include posts in dispute as well.
- He is for the appointment to the post of Administrative and Human Resources Manager or otherwise, that is to any other post at managerial level.
- He conceded that at present there is no vacancy for the post of Administrative and Human Resources Manager and the management cannot create a post specially for him.

Mr. R. Seegobin for the Respondent stated that:-

- The Collective Agreement had been signed in April 2002. Employees up to a certain level in the management hierarchy are concerned and does not cover managerial posts as the Administrative Manager.
- The Agreement covers posts of lower level. Lower to those posts mentioned in the Statement of Case of the Applicant.
- The post of Administrative and Human Resources Manager does not exist presently. There has been redistribution in the responsibilities. This is in the Statement of Case.
- The post is separated between the Administrative Manager with some specific responsibilities and to that of the Human Resource Manager.
- The structure and the hierarchy cannot undergo any change for the time being.

- Applicant joined the Casino in 1993 and was working as Gaming Cashier and he is at present posted in the Human Resource Department.

- As far as the Administrative and Human Resources Manager is concerned, there are two separate positions.
- Messrs Futloo, Raj Ghura, Woodun, Baboo Gowreesunkur were appointed with different Scheme of Responsibilities.
- The distribution of responsibilities for Mr. Futloo was different to that of Mr. Ghura and it is different to that of Mr. Woodun and of Mr. Gowreesunkur and all of them have been exercising as per the attached Scheme of Duties.
- As regard the posts at managerial level, it is advertised internally.
- The posts for appointment up to a certain level of management positions are not necessarily advertised. It is left to the management to decide.
- The Collective Agreement is signed between the Management and the Casino Employees Union.
- Managers are not members of the Union.

Tribunal's considerations:-

The Tribunal finds that the post of Administrative and Human Resources Manager does not presently exist at the Sun Casinos Ltd.

The term of reference is not in relation to the post of Cage of Controller but to that of Administrative and Human Resources Manager.

Applicant has agreed that the post of Administrative and Human Resources Manager has been split. Management cannot create a post that is tailor made for the applicant.

A Collective Agreement was signed in 2002 and it does not cover managerial posts. The appointment of Messrs Futloo, Raj Ghura, Woodun,

Baboo Gowreesunkur was in relation to different schemes of responsibilities. Also, the distribution of responsibilities at that time for Mr. Futloo was different to that of Mr. Ghura. Likewise in the case of Mr. Woodun and Mr. Gowreesunkur although they were exercising as per the scheme of duties.

In the light of the above, the Tribunal is of the considered view that the Company cannot go beyond its structure and hierarchy. The dispute is therefore set aside.

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(sd) Rashid HOSSEN
President

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(sd) Geeanduth GANGARAM
Member

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(sd) Jheenarainsing SOOBAGRAH
Member

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(sd) Hurryjeet SOOREEA
Member

Date: 15 September, 2009