

# EMPLOYMENT RELATIONS TRIBUNAL

## AWARD

RN 685

Before:

Rashid HOSSEN	-	President
Kumaraswamy VENKATASAWMY	-	Member
Abdool Feroze ACHARAUZ	-	Member
Renganaden VEERAMOOTOO	-	Member

In the matter of:-

Miss J. Rose and Miss B. Frederic

And

Casino de Maurice Ltd

The point in dispute is:-

***“Whether in the light of the Award of the Permanent Arbitration Tribunal in RN 611, following an agreement reached by the parties; wherein Devanand Ramboccus, Surveillance Officer of Casino Ltd, whose casino is and was at all relevant times managed by SIC Management Services Co Ltd, has been appointed Assistant Surveillance Manager, the complainants, his senior in the post of Surveillance Officer, should also be appointed to the same post and remain his senior in the post of Assistant Surveillance Manager.”***

The present dispute was referred for compulsory Arbitration by the Ministry of Labour, Industrial Relations and 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 under this Act and may be proceeded with before the Tribunal.”*

The two Applicants' cases were originally separate and now they have been consolidated. So there is now one case before us with two Applicants.

Casino de Maurice Ltd is herein referred to as the Employer and Miss J. Rose and Miss B. Frederic as Applicant No 1 and Applicant No 2 respectively.

### **Statement of Case of Juanita Rose**

SIC Management Services Ltd is a management company controlled by the State Investment Company of Mauritius.

It manages casinos as follows:-

<b>On behalf of</b>	<b>Location</b>
Casino de Maurice Ltd.	Curepipe Casino
Sun Casinos Ltd	St. Géran
	La Pirogue
Caudan Waterfront	Caudan
Beach Casinos Ltd	Trou aux Biches
	Le Morne
	Victoria Hotel
Le Grand Casino du Domaine Ltd	Domaine les Pailles

SIC Management Services Ltd is referred to as '*the management company*'.

(1) All employees of the casinos may be posted by the management company at any one of the above casinos at any time and for any period of time. All employees who work under the control and supervision of the management company are remunerated by one or other of the above companies. The complainant is remunerated by Sun Casinos Ltd.

(2) After its establishment in December 1991, the Surveillance Department had the following structure:

- (i) Trainee Inspectors from the gaming floor. (These are normally Inspectors from the gaming floor who have preferred to change from gaming to surveillance. While under training they are paid their salary as Inspectors).
- (ii) Surveillance Officers
- (iii) The Assistant Surveillance Manager
- (iv) The Surveillance Manager

- (3) Employees of grades (i) and (ii) in paragraph 5 above, since the permanent establishment of the Surveillance Department in 1991, may be posted by the management company at any one of the above casinos at any time and for any period of time.
- (4) Before all disputes arose, Mr. Gungaphul was the one and only Assistant Surveillance Manager (ASM) in the Surveillance Department of casinos managed by SICMS. He has been appointed to the post by letter and had been performing his duties as such for years, when he was suddenly demoted to the post of Surveillance Officer through a “memo” sent to all Surveillance Officers by one Mark Homewood, then Surveillance Manager, who later became known as Mark Bernard.
- (5) All the duties of Mr. Gungaphul pertaining to the post of ASM were then entrusted to one Dushiant Ramlakhan and one Bheemal Dabeesingh, both Surveillance Officers and both his juniors.
- (6) At that point in time the following were surveillance officers

	<b>Date/Year/Year of appointment</b>
1. Juanita Rose	1990
2. Brigitte Pittumbur	1991
3. Devanand Ramboccus	1991
4. Parveen Peerbux	1991
5. Sunil Jugroo	1991
6. Nirmala Wootun	1992
7. Bibi Warsally	1992
8. Nathalie Lactive	1992
9. Kishore Ragoonundun	1993
10. Shiva Parianen	1993
11. Dushiant Ramlakhan	1993
12. Bhimal Dabeesingh	1993
13. Stella Frappier	1993
14. Pradeep Dabydoyal	1993
15. Satish Ragoobar	1994
16. Janine Andrianarison	1994
17. Robert Bane	1996
18. Lilette Dedans	1996
19. Preetviraj Husraz	1996
20. Kumar Ramesur	1996

- (7) Mr. Ramboccus, a Surveillance Officer, was later transferred by Mr. Bernard from his duties in the Surveillance Rooms of SICMS to reception duties at the entrance of casinos. There was no apparent reason for this.
- (8) Industrial disputes were reported in both cases. These were later referred to the Industrial Relations Commission, which recommended that both Mr. Gungaphul and Mr. Ramboccus be reinstated in their respective posts.
- (9) As the employer disregarded the recommendations, the two cases were later referred to the Tribunal.
- (10) However, after such reference but before the Award was made in the case of Ramboccus, SICMS appointed Messrs Ramlakhan and Dabeesingh to the post of ASM, in complete disregard of the fact that the cases of Mr. Ramboccus and Mr. Gungaphul involving that post were pending before the Tribunal. This caused Mr. Ramboccus to amend his dispute before the Tribunal to one as to whether he should, as well, be appointed to the post of ASM. As to Mr. Gungaphul he now wants to be appointed to a higher post, as he was in one before.
- (11) Subsequently, in the case of Mr. Ramboccus, an agreement reached between the parties was made the subject of the above Award, which reads as follows: an agreement as follows:-

*“Mr. Devanand Rambocus is at present Surveillance Officer at point Rs17,600 in the scale of Rs14,000 x 500 – 17,000 x600 -20,000. By virtue of this agreement he is promoted to the post of Assistant Surveillance Manager (ASM) in the scale of 19,500 x 750 – 21,000 x 1,500 – 25,000. He will start at the point actually reached by Messrs. B. Dabeesingh and D. Ramlakhan in the scale for ASM. Such promotion will take effect as from 1<sup>st</sup> July 2000.*

*Mr. Rambocus was appointed Surveillance Officer with effect from 1<sup>st</sup> February 1993, while Messrs Bheemal Dabeesingh and Dooshiant Ramlakhan were appointed to that post with effect from 1<sup>st</sup> August 1993. By virtue of this agreement and in conformity with the spirit of the Findings of the Industrial Relations Commission dated 2 April 1999 (IRC?DIS?3/98), Mr. Rambocus remains the seniormost officer in the grade of ASM, with the exception of Mr. Gungaphul.*

*The parties have moved that the agreement be made an award of the Tribunal. The Tribunal awards accordingly”.*

- (12) Following the Award, Mr. Ramboccus has been offered the post of ASM. However, he has accepted the post under protest, as his appointments has been made subject to a probationary period of 6 months, which is against the letter and spirit of the Award.
- (13) The above means that there are now three posts of ASM, while the original holder of the post, Mr. Gungaphul, is still waiting for the outcome of his case before the Tribunal.
- (14) A few months ago Mr. Gungaphul was offered his post back but he has to share his previous duties as ASM with Messrs Ramlakhan, Dabeesingh and Ramboccus. Mr. Gungaphul is sharing his previous duties as ASM under protest.
- (15) According to my instructions, Mrs Juanita Rose, Surveillance Officer, is and has always been senior to Messrs Ramlakhan, Dabeesingh and Ramboccus.
- (16) When the report of dispute was made by Mr. Ramboccus, both ladies were asked to join in. However, they failed to do so, mindful of reprisals at work.
- (17) Mr. Ramboccus has been informed of the above reports of dispute. He fully agrees that Miss Rose and Mrs Pittumbur are his seniors.
- (18) Complainant avers as follows:
- (i) At the time Messrs Dabeesingh and Ramlakhan were designated to depute for Mr. Gungaphul she was the seniormost among the Surveillance Officers and has a better record of service than either Messrs Dabeesingh or Ramlakhan and should have been so deputed;
  - (ii) At the time Messrs Dabeesingh, Ramlakhan and Ramboccus were appointed to the post of ASM she should have been appointed to that post in lieu and instead of one of them.
- (19) Complainant further avers that she has all along been discriminated against because she is of the female sex.
- In the light of the above, the Tribunal is moved to award in terms of the demand of the complainant.

**Statement on behalf of Management in lieu of a Statement of case:-**

As regards these two disputes as reported in July 2001, without in any way concurring with and /or admitting any of the facts, matters and things stated and contained in the Disputants' Statements of Case, Management wishes to submit as follows:-

- (a) Considering the nature of these disputes and the observations:
  - (i) Contained in the heading of the Statements of Case of Disputants;
  - (ii) Made by Counsel for the Disputants before the Tribunal on 12<sup>th</sup> November 2007 and the reservations made by the undersigned on behalf of Management;

- (b) That there has been no significant progress in the intended strategic partnership as yet ;
- (c) The dispute reported by I. Gungaphul (RN 612) is still pending;
- (d) The claims of B. Dabeesingh and 5 others against Management before the Supreme Court, are submitted to Private Arbitration;
- (e) There is pending before this Tribunal a dispute reported by D. Ramlakhan against B. Dabeesingh's being in charge of Surveillance; RN 950-mention 10<sup>th</sup> November 2008.
- (f) There are no vacancies existing or likely to exist in the foreseeable future; there are 3 Assistants Surveillance Officers, i.e. Ramlakhan, I. Gungaphul and S. Ramboccus in post.
- (g) That seniority has been one of the criteria considered for promotion to any post, and not the sole and determining one.

Under the circumstances, Management respectfully submits that these two disputes should be set aside, and prays accordingly.

During the sitting of 5 February 2009, Mr. Moorli Gajudhur has asked the Tribunal that paragraph (e) above needs to be deleted since the filing of the statement, the dispute has been disposed of. The motion has been granted by the Tribunal.

Under examination, Miss J. Rose testified that:-

1. She joined Sun Casinos Ltd on 2 September 1985 as "croupier" and became Trainee Inspector in September 1988 and then Gaming Floor Inspector.
2. On 1 December 1990 she was appointed Surveillance Officer. The reason why one is appointed as Surveillance Officer is that one should know the gaming.
3. Up to December 1990 she had worked at La Pirogue and afterwards at Curepipe, St Geran, Trou aux Biches, Domaine les Pailles and Belle Mare.
4. At present there are four Assistant Surveillance Managers namely Messrs Bhimal Dabeesingh, Dushiant Ramlakhan, Sharma Ramboccus and Ishwur Gungaphul.
5. There are also at present 11 male Surveillance Officers and 2 male Trainees.
6. When the 4 Assistant Surveillance Managers were appointed, no consideration was given to her. There was no internal advertisement and no interviews were effected for those who were appointed.
7. All the appointees, save Mr. Gungaphul, were her juniors.
8. There is no Assistant Surveillance Manager of the female sex

The following documents were filed to the Tribunal on behalf of Miss Rose. **Document A.** This document confirms the appointment of Miss Rose as Surveillance officer with effect from 1 December 1991.

**Document B** dated 29 April 1998 from Mr. Mark Bernard, Surveillance Manager, who congratulates the witness for her high standard of work and for the detection of a fraud.

**Document C** dated 16 July 1998 in relation to a post of Senior Surveillance officer. Mr. Mark Bernard recommended Miss Rose to the Chairman of SICMS as prime candidate for the position of SSO based on her past working performance as Surveillance Officer and the Questionnaire Paper she took.

**Document D.** This is a letter dated 18 December 2002 from Mr. Graig Murray, Surveillance Manager. As per the said letter, the witness was offered temporary position of Acting Assistant Surveillance Manager with effect from 18 December 2002 to January 2003.

The witness has also testified that:-

- (a) She was not appointed Senior Surveillance Officer following the recommendation of 16 July 1998 from Mr. Mark Bernard (Doc C).
- (b) She was paid an allowance for the period she was in post as Acting Assistant Surveillance Manager.

Under cross-examination, Miss J. Rose stated that:-

1. Messrs Gungaphul, Ramlakhan, Ramboccus and Dabeesingh were appointed Assistant Surveillance Manager respectively in 1994, 1999, 2001 and in 2006.
2. Since October 2008, Mr. Ramlakhan fulfils the same functions to those of Mr. Dabeesingh as in charge of surveillance.
3. There was no interview held when she was appointed as surveillance officer.
4. Seniority is one of the criteria taken into consideration for promotion.
5. At present there is no vacancy for the post of Assistant Surveillance Manager.
6. There was no vacancy when she was appointed as Surveillance Officer.

Miss Brigitte Frederic, the second Applicant, confirmed under examination all the facts advanced by Miss J. Rose. The demand of the second Applicant is the same as that of the first Applicant, i.e. to be appointed as Assistant Surveillance Manager.

Under Cross examination, the second applicant conceded that:-

- (a) She has not previously exercised in the post of Assistant Surveillance Manager as has been the case for the first Applicant;
- (b) She is not aware if there is a vacancy for the post of Assistant Surveillance Manager at present.

Mr. Rajesh Seegobin, Human Resources Representative Casino de Maurice testified as follows:-

1. At paragraph © of the statement on behalf of Management it has been put that there was a dispute reported by Mr. Ramlakhan and it was coming in November 2008. The dispute has already been disposed of.
2. At the very outset Mr. Dabeesingh was in charge of the Surveillance and Security Department. Due to a settlement before this Tribunal, Mr. Ramlakhan has been given equal responsibility to that of Mr. Dabeesingh.
3. He does not know if there is any hope of a restructuring or upgrading of certain persons to a higher post.
4. Messrs Dabeesingh and Ramlakhan are temporarily in charge of surveillance pending the appointment of a Surveillance Manager.

The witness, under cross –examination, conceded the following:-

1. Mr. Ramboccus had a case before this Tribunal.
2. He came to know about the Statement of Case of the Applicant only a month or two weeks back before this Hearing.
3. He knows that there is a case of Mr. Gungaphul pending before this Tribunal but he does not know anything about this case.
4. The Head of the Human Resource Department is the Human Resource Manager namely Mr. Baboo Jadatsing Gowrisunkur. Mr. Woodun is the Administrative and the Support Services Manager. He did not ask either of them what the Gungaphul case before this Tribunal is about.
5. Messrs Dabeesingh and Ramlakhan were appointed as Assistant Surveillance Manager on 1 July 1999. He does not know if they were appointed while the cases of Messrs Ramboccus and Gungaphul were before this Tribunal.

In his submission, Mr. Gujadhur highlighted:-

- (a) Miss Rose said when deponing that there are no vacancies existing but the appointments to the post of Assistant Surveillance Manager are made at the discretion of the Management.



- (b) There are no vacancies in the pipeline and the strategic partnership is still being dilly-dallying about.

Furthermore he asked how will the Tribunal grant an appropriate possible redress by imposing on Management to create posts and appoint these persons because they are senior most or by removing two of the four other earlier appointees, to step down and to make room for these two persons.

In his submission, Mr. Ruchpaul affirmed that :-

1. Miss Rose said that in the case of Assistant Surveillance Manager there has been no advertisement of vacancies. This has been the case for all the four appointments. No consideration at all was given to her case.
2. It has been established that among the four who were appointed, three of them were her juniors. There is no reason to believe that she does not deserve to be appointed. She has got evidence of her ability.
3. The Tribunal has got power to appoint. It should not deprive itself of this power. This case is a clear cut case of award of an appointment. One cannot simply say that there is no vacancy.

In reply, Mr. Gujadhur submitted that the Tribunal has no legal power to appoint. He added that if the Supreme Court itself does not feel it has power to substitute itself for the employer, still less he believed that the Tribunal should confer to itself this power.

After careful consideration of the oral and documentary evidence adduced and the submissions of Counsel, the Tribunal notes and comments as follows:-

1. Miss Rose has averred during examination that Messrs Gungaphul, Ramlakhan, Ramboccus and Dabeesingh were appointed as Assistant Surveillance Manager respectively in 1994, 1999, 2001 and in 2006.
2. The first Applicant, to lend support to her case, has submitted five documents (Docs. A, B, C, D and E). However, these documents do not purport to establish that the Applicant is more deserving than those who have been appointed as Assistant Surveillance Manager. True is it that she is senior to three of the appointees, but there are other criteria that are also taken into

account for promotion. It is for the Applicant to adduce sufficient evidence of any wrong on the part of the employer. (***Award in Mootosamy and Baroda Bank of 1984***).

3. There was no internal advertisement and no interview held when the four Assistant Surveillance Managers were promoted. There was also no interview held when Miss Rose was appointed as Surveillance Officer. We understand that the Management has discretion in making appointments. 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 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***).”
4. There is no evidence that the Applicants have been discriminated because they are of the female sex.
5. The second Applicant has not submitted documents. Her Counsel stated that the facts are the same for both Applicants. However, during cross examination, the second Applicant has conceded that she has not previously exercised as Assistant Surveillance Manager as has been the case for the first Applicant. The Tribunal is not convinced that the evidence put forward on behalf of the first Applicant is applicable to the second Applicant as well.
6. The Terms of Reference invite us to consider the Award in RN 611 which we reproduce here:-

**“Parties: Devanand Rambocus and Beach Casino Ltd**

**Terms of Reference**

1. ***Whether Devanand Rambocus should be reinstated in his post of Surveillance Officer.***
2. ***Whether the post of Assistant Surveillance Manager should be advertised and pending such advertisement whether Devanand Rambocus should be granted actingship as Assistant Surveillance Manager in the place of either D.Ramlakhan or B. Dabeesingh.***

***The matter was referred to the Tribunal for settlement by the Minister in Charge of Industrial Relations in accordance with the provisions of Section 82(1)(f) of the Industrial Relation Act 1973.***

***The Parties have reached an agreement as follows:-***

***Mr. Devanand Rambocus is at present Surveillance Officer at point Rs 17,600 in the scale of Rs 14,000 x 500 – 17,000 x 600 – 20,000. By virtue of this agreement he is promoted to the post of Assistant Surveillance Manager (ASM) in the scale 19,500 x 750 – 21,000 x 1500 – 25,000. He will start at the***

*point actually reached by Messrs B. Dabeesingh and D. Ramlakhan in the scale for ASM. Such promotion will take effect as from 1<sup>st</sup> July 2000.*

*Mr. Rambocus was appointed Surveillance Officer with effect from 1<sup>st</sup> February 1993, while Messrs Bheemal Dabeesingh and Dooshiant Ramlakhan were appointed to that post with effect from 1<sup>st</sup> August 1993. By virtue of this agreement and in conformity with the spirit of the Findings of the Industrial Relations Commission dated 2 April 1999 (IRC/DIS/3/98), Mr. Rambocus remains the seniormost officer in the grade of ASM, with the exception of Mr. Gungaphul.*

*The parties have moved that the agreement be made an award of the Tribunal.  
The Tribunal awards accordingly.*

*(H. Balgobin)  
President*

*(H. Seebaluck)*

*(Y.G.M. Atchia)*

*15<sup>th</sup> September 2000”*

We find nothing in this award that is of relevance to the present matter. Each case is decided on its own facts and the award speaks of an agreement reached between parties.

7. From what the Tribunal has gathered from the Applicants and the Respondent, it is an undeniable fact that there is at present no vacancy for the post of Assistant Surveillance Manager. Furthermore, there is no evidence that there has been any progress in the intended strategic partnership as yet.
8. The Tribunal cannot in the circumstances impose on Management the duty to create additional posts of Assistant Surveillance Manager and ask two of the appointees to step down and make room for the Applicants to be appointed.

In the light of the above, the Tribunal is of the considered view that the cases of the Applicants have not been made out. The two disputes are accordingly set aside.

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**Rashid HOSSEN**

**President**

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**Kumaraswamy VENKATASAWMY**

**Member**

.....

**Abdool Feroze ACHARAUZ**

**Member**

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**Renganaden VEERAMOOTOO**

**Member**

**Date: 3<sup>rd</sup> July, 2009**