

EMPLOYMENT RELATIONS TRIBUNAL

AWARD

RN 1004

Before:

Rashid HOSSEN	-	President
Pradeep DURSUN	-	Member
Hurryjeet SOOREEA	-	Member
Bulram TACOURI	-	Member

In the matter of:

NEGUIBE TOORABALLY & 4 OTHERS

And

CENTRAL ELECTRICITY BOARD (C.E.B)

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, as amended.

The newly enacted Employment Relations Act 2008 makes provision for such dispute to be heard before the newly constituted Employment Relations Tribunal:-

“Section 108(10) – 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 under this Act and may be proceeded with before the Tribunal.”

The points in dispute are:-

- “1. Whether the salary scale of Maintenance Foremen N. Toorabally, G. Roussel, B. Heloise, J. Minator and V. Callee should be in Scale 8 as for Shift Foremen instead of Scale 7 with effect from July 1999 or otherwise.
2. Whether the salary of Foremen (Maintenance) N. Torabally, G. Roussel, B. Heloise, J. Minator and V. Callee should be in Scale 5 as for Foremen (on shift) instead of Scale 4 with effect from July 2005 or otherwise”.

The Applicants were represented by Mr D. Ramano of Counsel whereas the Respondent was assisted by Mr. I. Mamoojee of Counsel.

Statement of Case of the Applicants

1. The applicants are Maintenance Foremen (Mechanical Electrical) at the Respondent's Thermal Power Station.
2. In 1994, the Shift Foremen declared a dispute for their upgrading.
3. The Permanent Arbitration Tribunal (PAT) in its award of the 05 April 1994 upgraded the Shift Foremen from Scale 8 to Scale 10.
4. The Maintenance Foremen remained in Scale 9.
5. The Applicants have repeatedly been urging the Respondent and the different Salary Committees set up by the Central Electricity Board since 1994 to bring their salary scale at par with that of the Shift Foremen.
6. The Applicants contend that the Permanent Arbitration Tribunal (PAT) in its award (RN 240 of 05 April 1994) ruled that *“all the posts of Foremen should be on the same scale”* and that *“the proper scale for the post of Foremen should be Scale 10”*.
7. The Applicants relying on this award are of the opinion that the Award ruling applies not only to the Shift Forman but to all posts of Foremen including Maintenance Foremen.
8. Following a compression of the Salary Scale, the post of Maintenance Foremen was up to June 2005 on Scale 7 in the salary structure.

9. In July 2005, a second compression of scale was effected and the Maintenance Foreman was pitched on Scale 7 and the Shift Foreman on Scale 5 in the salary structure.
10. The Applicants contend that the work done in 2005 by the Price Waterhouse Coopers (PWC) the Consultant was flawed. The Consultants did not take into consideration all the essential elements that truly reflect all the functions, responsibilities and accountability of their job.

Statement of Case of the Respondent

1. In different agreements signed between the Central Electricity Board Staff Association and the Central Electricity Board, after salary reviews, the post of Foreman (Construction and Maintenance Power Station) and Shift Forman (Not Consolidated) were classified as follows:-

Salary Agreements/Salary Reviews	Salary Scale of Shift Foreman (Not Consolidated)	Salary Scale of Foreman (Construction and Maintenance Power Station)	Period of Salary Agreement
1988	8	9	July 1987 to June 1990
1990	9	9	July 1990 to June 1993
1993	9	9	July 1993 to June 1999
2000	8	7	July 1999 to June 2005
2006	5	4	July 2005 to June 2009

2. In 1988, the Shift Foremen declared a dispute which was referred to the Permanent Arbitration Tribunal. The Tribunal in its award RN 240 of 05 April 1994 upgraded their salary scale from Scale 8 to Scale 10.
3. The award was implemented specifically to Shift Foremen as it applied to employees in that grade and their salary scale was accordingly classified in salary Scale 10.

4. The Applicants in the present case and 3 others declared dispute which was referred to the Permanent Arbitration Tribunal.
5. On 27 February 1998, the Permanent Arbitration Tribunal in its Award (RN 507) concluded that the matter should be re-examined by the salary Commissioner which was about to be appointed.
6. The Bundhoo Salary Commission was appointed in December 1998 with the following Terms of Reference:-
 - *A review of the salary structure, classifications/grading of posts and other conditions of service pertaining to the whole organisation for the period June 1996 to June 1999 and for the period July 1999 to June 2002.*
 - *A review of the productivity bonus scheme based on losses of electricity.*

It was also required to consider the following:-

- (a) The need to take into account the economical and financial status of the organisation.
- (b) Pay relativities in line with market realities, whilst considering the specificities of the Board.
- (c) The need to establish and maintain reasonable differentials in rewards between different categories of skills and levels of responsibilities.
- (d) The need to develop a rational pay structure by results and to relate as far as possible remuneration to increase productivity.
- (e) The need to update the job descriptions and job specifications in line with latest technological developments and new exigencies in the power sector.
- (f) The need to re-assess the conditions of service so as to attract and retain competent and efficient resource persons required to maintain a high standard of service, and
- (g) The need to review the internal regulations.

7. The post of Maintenance Foreman was referred to the Salary Commissioner for its re-examination and classification.
8. In his report in 2000, the Salary Commissioner recommended inter alia the following salary scales for the grades of Maintenance Foreman and Shift Foreman.

Maintenance Foreman – Scale 7

Rs 10,000 x 400-12,000x500-15,000x600-15,600

Shift Foreman – Scale 8

Rs 11,200x400-12,000x500-15,000x600-17,400

9. In this report, the Salary Commissioner had this to say:-
“the structures are administratively cumbersome and complex on account of the unjustified multiplicity of salary points with salary differentials beyond the scope of the Commission’s understanding. It further mentioned that organizations in the ever-increasing competitive environment are tending more towards polyvalent and multi-functional manpower resources, providing them with opportunities for career progression and mobility not only vertically but also laterally. The Commission considers that the CEB has no alternative but to follow suit. It is therefore, in the interest of both the CEB and its employees to do away with such salary structures which, as highlighted above, are pregnant with several weaknesses/drawbacks. Hence, the need for the need for the introduction of an harmonized salary structure for all the staff of the CEB, which will, inter alia, improve salary administration and facilitate mobility.”
10. On the basis of the above, the number of salary scales was compressed from a 24 salary scale point to a 20 salary scale point.
11. Another salary review was carried out in 2004 by Price Waterhouse Coopers with the following terms of reference:-

- *Critically examine current job grades, compensation structure, and terms and conditions of employment, including the Internal Regulations, with a view to rationalizing, harmonizing and simplifying these so as to attract and retain the competent and efficient resource persons required to perform the duties and functions of the CEB.*
- *Eliminate overlapping jobs and functions, reduce the number of job grades, if necessary, to a level consistent with best business management practices within electric utilities, and establish the optimum human resources requirements of the organization, and*
- *Establish appropriate levels of compensation and benefits consistent with Mauritius market exigencies relative to comparable companies in similar operational environments.*

12. The Consultants were invited to take into consideration ongoing reforms and long term developments in the electricity sector and the finance of the Central Electricity Board.

13. The Consultants carried out the exercise in two phases namely a first job evaluation exercise and secondly a review of compensation.

14. In their recommendations, in 2006, the Consultants classified Maintenance Foremen in Scale 4 and Foremen (on shift) in Scale 5 respectively as follows:-

Scale 4: Maintenance Foremen

Rs13,500x500-16,000x600-19,600x800-20,400 PB 21,200x800-22,800

Scale 5: Foremen (on shift)

Rs15,000x500-16,000x600-19,600x800-22,800 PB 23,600x800-24,400

15. Following the recommendations of the Consultant a collective agreement was signed between Central Electricity Board and Central Electricity Board Staff Association.

16. All employees of the Central Electricity Board including the applicants were invited to exercise their option to accept or not to -accept the revised job descriptions and terms and conditions of service.
17. The Applicants signed the irrevocable option form exercising their option to accept the revised emoluments, terms and conditions of service and revised scheduled of duties.
18. The Central Electricity Board has already issued an expression of interest for carrying out a job evaluation and compensation exercise to be effective as from 01 July 2009.
19. The Applicants are invited to make their representations to the Consultants.

Testimonial evidence

Mr Ibrahim Vayid, a witness on behalf of the Applicants deponed on the sitting of the 06 July 2009 in his capacity as a Consultant.

1. The witness presented himself as a Consultant in the field of Human Resources Management with some 30 years of expertise.
2. He did a thorough comparison between the positions of Shift Foreman and Maintenance Foreman. According to him on the basis of function and responsibilities, the position of Maintenance Foreman is at a higher level.
3. The witness referred to the methodology used by Price Waterhouse Coopers and stated that if he could have access to the information used by Price Waterhouse Coopers, he would do a side by side comparison.

Upon cross examination the witness stated that he was just questioning whether the exercise undertaken by Price Waterhouse Coopers was fair and equitable.

He admitted his comparison was based on job descriptions.

The witness was presented with a marked sheet of the job evaluation exercise carried out by Price Waterhouse Coopers but contended to say that the information contained therein would not serve him much.

When cross examined on the methodology used by Price Waterhouse Coopers, the witness admitted that every single consulting firm was free to design its methodology depending on the nature of the classification that would be used.

During the various sittings, both Mr Neguib Toorabally representing the Applicants and Mr S. Sahaye Respondent's representative stood by what was mentioned in their respective statement of cases. Mr. Toorabally complained that the Salary Commissioner limited himself to re-classifying the various salary scales without stating reasons. Mr. Sahye laid emphasis on the fact that it was the Salary Commissioner who decided after examination of the various salary scales.

Mr Mamoojee submitted:-

The contention of the Applicants is an old one dating as far back as in 1994 and that they should be at par with the Shift Foremen. The issue was before the Tribunal and was referred to the Salary Commission. The Salary Commissioner had the opportunity to direct his mind on these issues and in his wisdom did not deem it necessary to keep the Maintenance Foremen and Shift Foremen on the same level. A subsequent Salary Consultant some years later also confirmed this fact in its report. The Consultant has taken into account the nature of the different jobs and have come to the conclusion that the salary scale of the two positions should not be the same.

Mr Ramano submitted:-

There is a historical injustice in the evolution of the posts of Maintenance Foremen and Shift Foremen. The witness who deponed on behalf of Applicants did set the grounds how and why the Maintenance Foremen should be at least at par if not higher than the Shift Foremen.

After careful consideration of the evidence, the Tribunal makes the following observations:-

1. It is a fact that salary scales between Maintenance Foremen and Shift Foremen have evolved differently over the years through the various salary reviews.
2. Subsequent Salary Commissions have been requested to examine the two posts at different periods of time in line with the evolving needs of the Central Electricity Board and they have come with different reasons to justify why differentials have been maintained.
3. In 2005, Price Waterhouse Coopers used the job evaluation methodology to determine the relative worth of jobs within the Central Electricity Board.
4. Job evaluation is a systematic process of measuring the relative value or 'size' of jobs in a hierarchy in order to establish internal relativities and provide the basis for designing grade and pay structures. It is carried out on the basis of factual evidence on the characteristics of the jobs which have been analyzed within a structured framework of criteria or factors.
5. The Tribunal is not inclined to substitute itself for the Consultant which undertook the overall job evaluation exercise and interfere with their findings. There is nothing in substance that would justify that the Salary Consultants' methodology was flawed.
6. The witness on behalf of Applicants admitted that the methodology used by Price Waterhouse Coopers was not being questioned but he did not understand their rationale. The Tribunal is bound to consider evidence which has been ushered during the proceedings.
7. Since the Central Electricity Board has explicitly expressed the wish to carry out a fresh job evaluation and compensation exercise, the Applicants may well be advised to make their representations to the Consultants.

The Tribunal considers that the case of the Applicants has not been made out. The disputes are set aside.

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(sd) Rashid HOSSEN
President

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(sd) Pradeep DURSUN
Member

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(sd) Hurryjeet SOOREEA
Member

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(sd) Bulram TACOURI
Member

Date: 11.02.2010