

EMPLOYMENT RELATIONS TRIBUNAL

RN 1051

AWARD

Before

Rashid Hossen	-	President
Kumaraswamy Venkatasawmy	-	Member
Abdool Feroze Acharauz	-	Member
Renganaden Veeramootoo	-	Member

In the matter of:

Hotels & Restaurants Employees Union

And

Maritim Hotel

The then Minister of Labour, Industrial Relations and Employment referred the present dispute to the Tribunal on the 3rd December 2008 by virtue of **Section 82 (1) (f)** of the repealed **Industrial Relations Act of 1973**, for arbitration.

Conciliation meetings were initially held at the Ministry of Labour, Industrial Relations and Employment but no settlement was reached.

The Hotels and Restaurants Employees Union is hereafter referred to as the Disputant and Maritim Hotel as the Respondent.

The point in dispute is:-

“Whether Management should grant a salary increase of 13% to all workers with effect from 1st July 2007 or otherwise.”

Each party filed a Statement of Case which we find apposite to reproduce for ease of reference.

Statement of Case of the Disputant:-

Dispute

Whether Management should grant and increase of 13% to all workers with effect from 1st July 2008 or otherwise.”

Assumption

Wages increase or pay determination must be seen in both economic and socio political contexts. These principles apply to the Hospitality Industry.

The demand for an increase in the wages of the workers of Maritim Hotel should also be regarded as a review of the equity of the wage/salary level in this hotel.

1. Economic background.

(1) The tourist industry has attained a 15 per cent growth in arrivals in 2007.

According to the C.S.O. in 2008 it achieved a rate of 7.5 per cent growth.

(ii) Most hotel groups reaped at the order of billion rupees, despite the present world's financial meltdown referred to as a financial “crisis”, Mauritius is still a safe and secure and privileged destination for tourists, namely from the niche markets of France, Reunion and South Africa.

Anyway to quote Tom Baum, Professor at Stathclyde University and expert in Tourism and Hospitality Management who paid a visit to Mauritius in January 2009. "Tourism is quite different from other sectors of the economy. People will continue to travel notwithstanding the crisis" – Refer L'Express 7.1.09.

(iii) Actual occupancy rate cannot be a reasonable ground to refrain an increase in wage rates. This type of argument is part of the short term mentality. The reality is that the economy will bounce back and tourists will come back.

(iv) Furthermore in August 2008 the Minister of Tourism and Leisure Hon. Xavier Luc Duval announced in the National Assembly that the construction of 27 new hotels is in the pipeline for 2009.

2. Cost of Living.

(i) The inflation rate has almost reached a double digit of figure. The demand for a review of pay scales is to offset, at least in past, the rises in the cost of living and the loss in purchasing power of the workers.

3. Comparability.

(i) The principles of equity and fairness should also be applied to a flourishing sector as tourism.

While some other hotel groups have systematically reviewed their pay structures, this hotel has lagged behind for years and their workers have been the first to suffer.

(ii) Claims for a wage increase are fully justified on the basis of:

*The work is like work.
The work rates as equivalent.
The work of equal value."*

Statement of Case of the Respondent:-

"1. *The Dispute*

Whether Management should grant and (sic) increase of 13% to all workers with effect from 1st July 2008, otherwise.

It is assumed that the percentage increase referred to above relates to salaries.

2. *The case for Maritim Hotel (hereinafter referred to as 'Management') as regards the statement of case (the 'Statement of Case') of the Hotels and Restaurants Employees Union (the 'Union') is set out below.*

Generally

3. *The stand of Management is that, having regard to the prevailing economic situation in the hospitality and tourism industry (the 'industry') and more particularly in view of the performance of Maritim Hotel (the 'Hotel') over the past year, and in the light of future occupancy rates and the world economic recession, the increase of 13% to all workers, with retroactive effect from 01 July 2008 is not warranted.*

Management draws attention that although the Hotel will be closed for renovation for a period of six months, starting on 01 April 2009.

(a) all the employees of the Hotel will be on full pay during that period; and

(b) Management will be investing in the training of the staff, in accordance with their needs and in line with the Human Resources Development Plan of the Hotel.

Specifically

4. *The stand of the Management in respect of each of the averments of the Union in the Statement of Case is set out below, using the same numbering as adopted in the Statement of Case.*

(1) Management makes no admission in respect of the figures quoted therein and draws attention that the Union is relying on general figures applicable to the Industry generally and do not reflect the specific performance of the Hotel.

(ii) In respect of the statement set out herein, Management

(a) Takes note that the Union is aware of the present world's critical financial situation;

(b) Draws attention that the Hotel in Mauritius is not reaping 'at the order of billions of rupees';

(c) States that although Mauritius is a safe secure and privileged situation for tourists, the Industry is already showing signs of substantial decrease in tourist arrivals in view of the recession in Europe and this has already caused the laying off of employees in the Industry;

- (d) *The reference of an article of L'Express dated 07 January 2009 which is, of a general nature bears no reference to the Dispute inasmuch as it does not address the specificities of the Hotel. Further, the opinion expressed by the author of the article is not based on any study of the local situation prevailing in Mauritius and cannot give support to the Union in the present dispute.*
- (e) *Management states that the Hotel draws its clientele from foreign jurisdictions in approximately the following terms, namely United Kingdom (45%), Germany (30%), France (4%).*
- (iii) *Management makes no admission of the contents of this paragraph and states that*
- (a) *It takes good note of the implied admission in respect of the relevance of actual occupancy rates;*
 - (b) *It is surprised that such an important factor is being discarded by the Union as not being a reasonable ground in the consideration to be given in the increase in wage rates;*
 - (c) *The whole economic performance of any hotel depends on its occupancy rates;*
 - (d) *Medium and long term forecasting of occupancy rates and their impact on wages increase, far from reflecting short term mentality, as alleged, is an essential consideration in the financial management of the Hotel;*
 - (e) *In reply to the last sentence, Management states that such a statement from the Union reflects neither present trends in the Industry nor future forecasts.*
 - (f) *Management draws attention that the occupancy rates for the months of January, February and March 2009 have been 64.2%, 53.2% and 40% respectively, which are well below the budget for that period.*
- (iv) *With regard to the statement reported to have been made by the Honourable Minister of Tourism and Leisure, this statement was made prior to the world economic recession, which is having a direct consequence on the Industry and Management reiterates its stand as set out in paragraph (iii)(e), above.*
- 2(i) *Management makes no admission in respect of the statement of the Union, draws attention that statutory increases in wages and*

salaries are calculated to reflect the cost of living whilst having regard to the increase which the national economy and various economic operators can sustain.

- 3(i) *Management denies the implied stand of the Union that Management does not act equitable and fairly in its relationship with its personnel. Management further denies that the Industry is flourishing and/or that it is benefiting from such alleged 'flourishing of the sector.'*

Management denies the second paragraph therein and states that it has always complied with all statutory increases and has in most financial years compensated its employees over and above the statutory increase.

- 3(ii) *Management denies that the claim of the Union is justified and states that any increase in wages can only be supported if the turnover and profitability of the Hotel so warrant, which is not the case, having regard to the present economic context."*

The Union's case rests essentially on the testimony of Mr Jack Bizlall, its negotiator. This witness swore as to the truth of the contents of the Union's Statement of Case. He stated that there are two grounds upon which the Union's case rests. First, the claim of the Union is with regard to the loss of purchasing power of the workers which is the main issue and secondly the relativity with other hotels in Mauritius. As regards the purchasing power, he stated that a document dated 8th August 2008 has been submitted to the employer. A copy of the said document has been produced before the Tribunal. According to the witness there has been a revision of the Remuneration Order in 2005 taking into account the CPI movement up to June 2005. It is now 2010 and there remained two options. The Union could either wait for the next revision of the Remuneration Order or otherwise negotiate with the employer for the salary adjustment based on CPI progression. The Union mentioned to the employer the high rate of the CPI for the past three years and this has been its main contention. All employees who were drawing less than what is prescribed in the 2005 Remuneration Order have had their salaries adjusted and this is not the case regarding the others and

there is an accumulation of loss in purchasing power over the years and it represents in terms of percentage a claim of 13% which is a residual percentage. The witness stated that he took into account the whole payment made under the prescribed additional Remuneration Orders i.e., what is left to be paid to adjust salaries so as to bring them to the level of year 2005 at least. He added that the Remuneration Order in connection with the tourist industry provides for a minimum condition and this applies to other entities in that sector, from (the very) "*Restaurant Pensionnat*" in the street corner to the big hotels. The quality of services offered by the employees for a star hotel is the same as that offered in a small hotel in the street corner although the standard can be on the high side as from a three star hotel requiring much more skills, dexterity and interaction with tourist.

With regard to the issue of relativity with other hotels, the witness stated that the only contention of the employer has been that its financial situation does not allow for a salary revision. The matter was referred to the Tribunal under the Industrial Relations Act and the witness personally contacted the Personnel Manager of the hotel and asked him to start negotiations. He denied that the employees of Maritim Hotel are correctly paid. He considered that when he contacted the employer to have the Procedural Agreement, there were many issues upon which agreement had been reached although some required further discussions. He was expecting that these negotiations would end and would lead the way to a Collective Agreement being signed and it would have been the end of the matter.

On being cross-examined, the witness stated that the case concerning the Procedural Agreement between the two parties *in lite* was mentioned before this present Tribunal on that very day i.e. 28th September 2010 while this present matter was being heard. He pointed out that there remain only

minor issues between the parties which required to be sorted out. He explained the reason as to why the Union is maintaining this dispute before the Tribunal. The disputes were initially declared under the Industrial Relations Act when compulsory arbitration was still a provision in the law. Should the Union decide to withdraw the case but ultimately fail to reach an agreement through collective bargaining, the employer may decide not to agree to refer the matter jointly to the Tribunal. The witness' move is therefore strategical, as he said. And he further stated that the clients of Maritim Hotel are from UK and represent about 45%. He was not aware that the employees of the Respondent are working only on a 5-day week basis. He would rather that all the elements that are being raised by the Respondent be taken on board at the table of negotiation, and he was not informed that Maritim Hotel was waiting for a common compensation from AHRIM before discussing issues with the Union.

Mr Bizlall had no objection to start negotiating and to put an end to the present matter before the Tribunal. He conceded that the Union could not attend meetings fixed at the Chambers of Respondent's Counsel and that was on two occasions. He stressed that both parties should act in good faith and the deadlock arose because of the employer's position which started with a zero per cent increase for the employees. The Union is prepared to negotiate if the employer agrees on the principle of granting an increase and the quantum of which should be discussed with the help of AHRIM. He considered it reasonable for someone who has been asking for now three years for a salary increase to know whether in principle the employer agrees to grant it. He is not contesting the fact that the employees were kept on full pay salary when Maritim Hotel was under renovation and added that no employee suffered from any loss of remuneration during that period. He further agreed that Management invested in the training of staff although he

believed that the investment should have gone into their salaries. He is unaware if the hotel may have suffered loss in the recent years. He further considered that Government does take care of purchasing power of the workers in Mauritius by giving what is called yearly increases. He emphasized that over and above the cost of living allowance, civil servants are entitled to an increase every five years through the Pay Research Bureau (PRB) and this practice is not allowed in the private sector. He considered that excluding Government compensation, Maritim Hotel has been paying compensation to its workers up to 2008. If the Respondent insists on the issue of recession, this ought to be a matter to be discussed through negotiations. As regards the figure of 13%, he stressed on the adverse effect that this would have on the salaries of employees if not granted. He could not say much about the impact that would have on the hotel's budget as this information had not been partaken to him due to lack of negotiation. He averred that when the purchasing power of the workers are not reinstated, there is unfair competition with other hotels that are reinstating their purchasing power so much so that the hotel which is not reinstating the purchasing power of its employees is perhaps either benefitting from a tariff providing for such reinstatement and reducing its prices, therefore allowing the loss to be the criteria of benefit for the hotel itself and that according to the witness is unfair.

When asked whether he would be surprised to learn that for four months ending 30th April 2010 the hotel made operating losses of Rs 44 M, the witness simply evaded the issue by saying that it was not raised at the table of negotiations. While being in possession of the benchmark of other hotels, he averred that he was not provided with a salary scale at Maritim Hotel to be able to do a comparative salary benchmark. The witness further added that he had signed so many Procedural Agreements with other hotels and is

prepared to do so with the present one and if negotiation starts regarding the issue of 13%, an agreement may be reached as long as the Respondent agrees on the principle of an increase. In the Union's Statement of Case when reference is made to hotel groups reaping billions of rupees, he added that Maritim Hotel is part of this "*pactole*". He further stated that hotels reaped billions of rupees following the depreciation of the rupee. He was not in possession of figures to produce to the Tribunal. Upon being confronted by the Respondent's Counsel regarding the issue that actual occupancy rate cannot be a reasonable ground to refrain an increase in wage rates, the witness stated that it is the opinion of the Union which he shared. He referred to the short term mentality as management profitability is always on a short term basis. He was not allowed to dwell on statements made by the Minister of Tourism, Mr Duval as these would be pertaining to hearsay matters. He considered that from 2006 to 2008 the employees at Maritim Hotel had an average increase of 5.5% p.a. But that was in relation to years of service not to the cost of living allowance and he did not deny that Maritim Hotel did not declare any dividend during the financial year 2009.

Mr Raj Rajkoomar the Director of Human Resource at Maritim Hotel solemnly affirmed to the correctness of the Respondent's Statement of Case except for the year 1st July 2008 in the first paragraph which should in fact read 1st July 2007 as per the Terms of Reference sent by the Minister. According to the witness, staff cost represents the major part of the operation and expenses of Maritim and Rs106,250,000 were spent on that item for the year 2008 and Rs108,421,788 were budgeted for the year 2009. He stated that the 13% increase would not be possible as the hotel is currently operating at a loss and it would have a devastating effect on the financial situation of the company. The hotel was closed for renovation from April 2009 to October 2009 and all personnel and staff received their full time

remuneration during that period and there was no lay off. Compared to other hotels, the staff of Maritim works only on a five-day week. The five-day week means that an employee has two days off every week whereas in other hotels it is six days work and one day off. At Maritim they have a 40-Hours work week when it is 48 at other hotels. Apart from their salary the staff has attendance bonus, uniforms and mask protection together with food when they are on duty as well as transport. The witness added that the employees received salary increases every year over and above Government recommendations, that is, up to 2008 when the hotel was closed. In July 2009, only the Government salary increase was given. The hotel forecast was very low in terms of tourists' arrival and occupancy which led to a reduction in the rate of rooms by half. The occupancy during the month of October was around 60% and December it will be around 30%. The hotel will not be profitable if the increase sought is granted.

Mr Rajkoomar conceded in cross-examination that he had no document for the Tribunal to substantiate what he stated regarding the financial situation of Maritim Hotel. He further conceded that with regard to Government remuneration, only a *"little bit"* was advanced to the employees and that was as suggested by the Minister of Finance namely, Mr Sithanen to *"voluntarily top up a bit"*. He does not deny that if there is only a partial compensation for the rise in cost of living over the years, there will be a rise in the loss of purchasing power of the employees. He does not agree that at Maritim Hotel there is no periodical review of salary increase as in the Government and parastatal bodies. It is possible, according to the witness, that if there is a substantial erosion in the purchasing power of the employees, the latter can now buy less than what they would have obtained before. He further agreed that if the hotel has gone through refurbishing and renovation, it means that the harvest before the refurbishing and renovation had

somehow been good for the hotel. He added that the reason for renovation is to remain competitive in the market. He conceded that although workers do not work during refurbishing he is legally bound to pay them. He further conceded that when workers undergo training this will be to the benefit of the hotel. He is agreeable to issues as they stand from 2007 up to 2010 to be taken into consideration in the next 'collective bargaining' on the salaries and conditions of work.

Counsel for the Union submitted that the elements which the Tribunal has to take into consideration are considered only for the period prior to 2007 i.e. loss of purchasing power or any other issues. That may be relevant to justify the increase in salary. Prior to 2007 the hotel was reaping higher profits. The purchasing power of the employee must be reinstated to allow them to cope with the rise in the cost of living. There has been an increase in the loss of purchasing power over the years. He further added that the 13% increase in salary is residual compared to the percentage loss in purchasing power.

Counsel for the Respondent submitted that the Tribunal has to decide on that issue bearing in mind all the circumstances like capacity to pay and the situation in which the employer will find itself in order to meet such expense.

Tribunal's Considerations

- (1) The unfelicitous drafting of the Union's Statement of Case speaks for itself. For example, we understand the words "Ecomic" to be "Economic" and "behond" to be "behind".
- (2) The Union's witness solemnly affirmed to an incorrect averment of the Union's Statement of Case with regard to the salary increase as from 1st July 2008 instead of 2007 as stated in the Terms of Reference.

- (3) The maker of the Statement of Case, declared to be holder of a Phd, was not present before the Tribunal.
- (4) We endorse the view that the purchasing power of all the employees be periodically reinstated through collective bargaining to avoid that there be unfair competition between the hotels themselves.
- (5) Pursuant to **Section 97(i) of the Employment Relations Act 2008**, the Tribunal may, in the exercise of its functions in relation to a matter before it, have regard, *inter alia*, to the capacity to pay of the enterprise.
- (6) As much as the Union's witness cut a poor figure in the box, the representative of Maritim Hotel was as equally unimpressive. Indeed, on the issue of financial constraint, we expected a representative well versed in that field to expatiate on that matter instead of a Human Resource Manager who appeared timid and hesitant in his answers from the box. Just like in the Union's case, we were left with only the shaken testimonial evidence with no document in support. The Respondent leaves us with the bad impression that the present matter does not warrant a serious consideration.
- (7) The Union on the other hand must brush aside its adamance to continue imposing a pre-condition to any negotiation with respect to the salary increase and Maritim Hotel is urged to stop taking advantage of that situation.
- (8) **Section 97 (g) of the Employment Relations Act 2008** also makes provision for the Tribunal to take into account the protection of employment. Indeed, it is not disputed that all the employees of

Maritim were on full pay during the six months period of renovation and that investment in the training of staff has also been effected.

- (9) Management averred at paragraph 4 (iii) (b) in its Statement of Case that it is surprised that such an important factor like actual occupancy rates is being discarded by the Union as not being a reasonable ground to consider when deciding on the increase in wage rates. We hasten to add that whatever Management may decide to invest into, it can never overlook the issue of salary increase whenever it is justified.
- (10) The business of hotel industry just like any other investment is expected to enjoy and face the ups and downs of the market and we are inclined to agree with the view that medium and long term forecasting of occupancy rates and their impact on wage increase may be a matter of short period. A down turn in the occupancy rates may not necessarily impact negatively on the issue of wage increase although it may affect the quantum for such increase. We believe that the principle to alleviate the workers and allow them to reasonably maintain their purchasing power is *sine qua non* except in circumstances whereby the hotel is in dire financial straits so much so that considering an increase will necessarily and inevitably lead to its closure. We fail to understand that such is the case in the present matter when Maritim Hotel could afford to temporarily close down for renovation.
- (11) We noted a willingness on the part of both parties to work towards a settlement and in line with the provisions of the new law where emphasis is laid on collective bargaining, we invite them to tread along this avenue.

(12) The Tribunal takes judicial notice of an application lodged before it involving the same parties with respect to the making of a Procedure Agreement by way of an Award and an Order for parties to start negotiations. The Union's witness made reference to it in his testimony. On 21st October, 2010, such application was withdrawn on the ground that an agreement had been reached between the parties. We welcome such move. Indeed, that should be a booster towards the start of meaningful negotiations.

(13) We remind the parties of the provisions in the Code of Practice annexed to the Employment Relations Act 2008 in particular Part II in the Fourth Schedule at paragraphs 3 to 6:-

"Neither management nor trade unions can alone promote and maintain a harmonious employment relations climate.

Management and trade unions shall be engaged constructively and be committed to develop the necessary conditions conducive to harmonious employment relations at the workplace.

Management and trade unions shall address employment relations and human resources management issues in a spirit of openness, trust, honesty, mutual respect and understanding.

Management and trade unions shall adopt the right mindset to address conflict with a view to reaching a win-win situation through compromise or consensus, wherever possible."

(14) We firmly believe that the proper avenue is for both parties to trim down their stubbornness and to sit at the negotiating table. Management is to consider an increase in the purchasing power of the

employees. We order the parties to sit at the negotiating table and to hold meaningful negotiations.

This dispute is otherwise set aside.

**(sd) Rashid Hossen
(President)**

**(sd) Kumaraswamy Venkatasawmy
(Member)**

**(sd) Abdool Feroze Acharauz
(Member)**

**(sd) Renganaden Veeramootoo
(Member)**

Date: 28th December, 2010