

EMPLOYMENT RELATIONS TRIBUNAL

ERT/RN 30/09

AWARD

Rashid Hossen	-	President
Philippe Edward Blackburn	-	Member
Renganaden Veeramootoo	-	Member
Jean Paul Sarah	-	Member

In the matter of:-

Dhanrajsing Ramlugun

And

Air Mauritius Ltd

On the 2nd December, 2008, Mr Dhanrajsing Ramlugun, the Applicant, reported to the Minister of Labour, Industrial Relations and Employment the existence of a labour dispute between himself and Air Mauritius Ltd.

Conciliation Meetings were held at the Commission for Conciliation and Mediation but to no avail.

The Commission for Conciliation and Mediation referred the dispute to the Tribunal for arbitration in terms of **Section 69(7) of the Employment Relations Act of 2008.**

Air Mauritius Ltd is hereafter referred to as the Respondent.

Terms of Reference

The terms of reference reads as follows:-

- “(i) Whether Mr D. Ramlugun, confirmed on the Establishment of Air Mauritius Ltd in the position of Human Resource Manager (Crew Operation) since January 2008 and therefore whether Air Mauritius Ltd and or its préposés can interfere and review his contract of employment unilaterally.***
- (ii) Whether Air Mauritius Ltd and/or its préposés can be allowed to continue to conduct itself in a manner tantamount to victimisation and harassment thereby causing him serious prejudice in his legitimate right to further progress in his career.”***

Dispute number (2) has been withdrawn.

It is apposite to note that the terms of reference as drafted by Applicant himself under dispute (1) were slightly different and questioned initially whether he was indeed confirmed on the establishment of Air Mauritius Ltd in the position of Human Resource Manager (Crew Operations). The Tribunal cannot understand the change brought to those terms of reference by the Commission for Conciliation and Mediation.

Statements of Case

The Applicant submitted to us a twenty-nine paragraphs' Statement of Case which we reproduce below, the moreso as he only confirmed to its correctness before the Tribunal:-

- “1. Applicant is holder of Higher School Certificate, an Advanced Certificate and a Diploma in Human Resources Management. He joined Air Mauritius in August 1984 as cabin crew and was promoted to the post of Senior Flight Purser in October 1990. Applicant has also during the years

completed several vocational courses. His competence and dedication to work have always been acknowledged by his peers and superiors.

2. In 1997, Applicant became President of the Air Mauritius cabin crew union (AMCCA) and held that post for almost 5 years prior to joining management in August 2004. Since March 2009, the Applicant is the President of the Air Mauritius Ltd Management Employees Association (AMMEA). During his tenure as a union official he has participated in various important organizational improvement initiatives alongside management colleagues.
3. In May 2004, Applicant was called upon to apply and was selected for the post of Hotel Contracts Manager (HOTAC) in the Management B grade. Though the post of a Hotel Contracts Manager was one of indeterminate duration, Applicant sought a 2 years contract (from 01 August 2004 to 31st July 2006), in order to set the right example so that his stay in the post is also conditional to performance. It was also an agreed provision of the contract that Applicant could revert to his previous post of Senior Flight Purser by giving the notice.
4. Initially, Applicant was convinced to take up the HOTAC position in view of his experience and knowledge of crew operations and its work environment. He was also led to believe that the HOTAC job would be a stepping stone towards the constituting of the management team that would implement the new cabin crew department restructure plan, a plan that Applicant had been instrumental in drawing up and accepted by management.
5. Applicant avers that he took over the job as Hotel Contracts Manager without any proper handing-over and familiarization process and furthermore prior to his assuming duty, the senior most staff in the section had been transferred. However his direct reporting was within the HR Structure where he was involved in all meetings on relevant HR matters.
6. Applicant avers that since he received little support from management to drive forward the agreed improvement plan for crew operations as set out under paragraph 4, he felt exploited and indicated his intention to resign from the Hotel Contracts Management position on several occasions. He was, however, convinced by his superiors to remain in the management team and was promised that his role would be redefined in line with the agreed plan for crew operations.
7. Applicant strong commitment to the initially agreed integrated plan for crew operations meant that he did not consider other management offers that came his way. For instance, he declined the offers that were made to him by the then head of HR for the post of HR Manager – Airport or that of Compensations & Benefits Manager. Applicant avers that he was always motivated to bring value-added in an area where his experience and knowledge would be most relevant.
8. For unknown reasons the implementation of the restructure plan of the Cabin Operations Management and Applicant's lateral move into the crew administration unit was repeatedly postponed. Applicant informed his superior that he wanted to revert to his post of Senior Flight Purser at the end period of his Hotel Contract Manager's contract i.e. 01 September 2006. Applicant was again convinced to stay on, and that the agreed plan would be implemented and his role redefined accordingly. On that basis, at the end of the 2 years tenure Applicant was given an extension of contract by Respondent. Applicant therefore continued with the HOTAC Manager position.

9. In the absence of concrete action by Respondent to fulfill its commitment and the worsening work environment, Applicant had signified his intention to resign as Hotel Contracts Manager in June 2007.
10. The constant failure of Respondent to implement the Restructure Plan and the abrupt and inconsiderate response given to Applicant's letter of resignation in August 2007 caused the latter serious distress and disturbed his health and consequently had to temporarily suspend his MBA studies he was undertaking and for which he had already paid more than Rs 200,000.
11. In September 2007, while Applicant was on leave he was informed by Respondent in an email that the Hotel Contract (Hotac) duties would henceforth fall under the Procurement Division and will be dealt by the Senior Manager of that section. In the same mail Applicant was bluntly told to seek an alternative posting in the Cabin Operations. Applicant was so affected by this brutal reversal in commitment by Respondent that he had to be admitted to a Clinic and stayed on sick leave for a further 18 days after the end of his normal leave.
12. On resuming duty on 01 November 2007, Applicant found himself with no clear assignment as no one was willing to take any firm commitment to assign him responsibilities and duties as per his competence and experience.
13. Upon Applicant's protest, several job offers were made to him without any due consideration for his wishes, experience and competence. There was clearly no consistency in Respondent's commitment except that at every meeting to resolve the issue, Applicant's felt deeply victimized, harassed and humiliated.
14. Hence, between November 2007 and 21st January 2008, Applicant attended his place of work but had nothing to do.
15. In January 2008, a new head was appointed to HR in the capacity of Executive Vice President of Human Resources (EVPHR). As Applicant still had a Hotel Contracts Manager's contract with direct reporting to EVPHR, he considered it legitimate and urgent to table his grievances to his new boss. The new head of HR was agreeable with the concept of dedicated HR for crew together with the integration of certain key administrative and support functions and included Applicant in his HR team.
16. Although Applicant was entrusted with the responsibility for HR matters for the Cabin Operations department since 21st January 2008, his position on the establishment was still based on the extension of the previous contract relating to his position as Hotel Contracts Manager (HOTAC).
17. Being aware of the need for a properly formalized contract of employment setting out the relevant scheme of duties and conditions attached to his new position in HR, Applicant wrote to the EVPHR on several occasions to express his concern. At one point in time, Applicant offered to resign from the responsibility of HR for Cabin Operations and ask to revert to flying duties.
18. In June 2008, Applicant noted that an internal vacancy notice had been issued for the post of 'Head of Procurement (Hotel Contracts)' i.e. the Hotac Manager position. The particulars and list of duties for the said job tallied with the official contract that Applicant had as at that date. Applicant caused a Notice to be served on Air Mauritius on 18th July 2008. The recruitment exercise was maintained until beginning October 2008 when it was stayed for unknown reason.

19. In/about August 2008, Applicant's new posting within HR structure was formalized and renamed as HR Manager (Crew Operations) with retroactive effect from January 2008 and a salary adjustment effected based on his new list of duties.
20. On the 10th November 2008 while Applicant was on Leave, he received a registered letter, dated 6th November 2008, from the Secretary of the Board of Air Mauritius informing him that the Audit Committee of the Board had initiated an inquiry into his appointment and that he was being reverted to his previous contract and the prevailing salary as at August 2008. Due to the distress and humiliation this situation entailed, Applicant could again not concentrate on his forthcoming MBA exams and he had to seek extension of his leave.
21. Applicant returned to work from Leave on 24th November 2008 but had no assignment to discharge although he was still in presence of a valid contract i.e. HR Manager (Crew Operations). Furthermore, his salary had been unilaterally reduced.
22. Applicant wrote to the EVPHR, the Secretary of the Board, the Chairman of the Board, the members of the Audit Committee and the CEO to express his concerns and explain his plight. No one responded to him.
23. In/about November 2008, the Chief Executive Officer and the EVPHR met Applicant during which he was offered the position of Customer Support Manager. Since that vacancy was recently advertised and the selection process nearly completed, Applicant failed to see how he could take up a position he had not applied for, and furthermore if he did accept the offer, that may invite another audit query.
24. On 2nd & 10th December 2008, Applicant reported this dispute to the Ministry (MLIR).
25. On 15th December 2008, Applicant received a letter dated 10th December 08 under the signature of Mr C Muleya, informing him about his unilateral transfer to the Customer Support department, a position which he declined in November 2008.
26. Whilst maintaining all his rights under the law Applicant complied to the said transfer.
27. Applicant avers that the acts and doings of Air Mauritius through its unilateral change to his contract of employment are unlawful and illegal. Applicant has reasons to believe that is being victimized, harassed and deliberately subjected to repeated stress and humiliation which are undermining his basic rights, human dignity, and relationship with his colleagues at work and his general employments rights under law.
28. Applicant avers that his position on the establishment of Air Mauritius therefore rests on the contract of HR Manager (Crew Operations) of August 2008, which sets out his duties and obligations.
29. Applicant therefore prays the Tribunal rule that his position on the establishment of Air Mauritius is that of HR Manager (Crew Operations), as contained in his contract dated 4th August 2008 and that he be reverted to that position."

In return the Respondent submitted its Statement of Case which reads:-

- “1. With regards to paragraph 1 of the Statement of Case, the Respondent denies that Applicant’s competence and dedication to work has always been acknowledged by his peers and superiors and puts the Applicant to the proof thereof.
2. With regards to paragraph 2 of the Statement of Case, the Respondent denies that Applicant has participated in various important organizational initiatives alongside management colleagues and puts the Applicant to the proof thereof.
3. With regards to paragraph 3 of the Statement of Case, the Applicant avers that the post of Hotel Contracts Manager was advertised internally for all suitable employees of the Company. The Applicant applied and was selected for the post following a selection exercise. The Respondent denies that Applicant was called upon to apply for the post and puts the Applicant to the proof thereof. The Respondent further denies the other averments in their form and/or tenor, puts the Applicant to the proof thereof.
4. The Respondent denies the averments made in paragraphs 4 and 5 of the Statement of Case in their form and/or tenor, puts the Applicant to the proof thereof and further avers that Applicant participated normally in Union Meetings where issues regarding crew hotel accommodation were discussed.
5. The Respondent denies the averments made in paragraph 6 of the Statement of Case in their form and/or tenor, puts the Applicant to the proof thereof and further avers that the duties of Applicant as Hotel Contracts Manager were outlined in the Job Description attached to Applicant’s contract of employment.
6. The Respondent denies the averments made in paragraph 7 of the Statement of Case in their form and/or tenor, puts the Applicant to the proof thereof and avers that vacant positions if any within the Company, are as per policy normally advertised internally through open Internal Vacancy Notices.
7. The Respondent denies the averments made in paragraph 8 of the Statement of Case in their form and/or tenor, puts the Applicant to the proof thereof and avers that any restructure plan is the prerogative of Management which is decided upon in consultation with concerned department. Applicant could have made suggestions if any but the decision to implement any such structure rests on Management.
8. The Respondent denies the averments made in paragraph 9 of the Statement of Case in their form and/or tenor and avers that Applicant had on many occasions signified his intention to resign from his post of Hotel Contract Manager.
9. The Respondent denies the averments made in paragraph 10 of the Statement of Case in their form and/or tenor reiterates its averments made in paragraph 7 above and further avers that implementation of any restructure plan rests on Management which takes into account financial and operational dimensions.
10. The Respondent denies the averments made in paragraph 11 of the Statement of Case in their form and/or tenor, puts the Applicant to the proof thereof and avers that Hotac duties were entrusted to tall under Procurement Department following a restructuring of the Procurement Department.
11. The Respondent denies the averments made in paragraphs 12 and 13 of the Statement of Case in their form and/or tenor, puts the Applicant to the

proof thereof and confirms that after Hotac Section was entrusted to Procurement Department, several proposals were made to Applicant taking account of his past experience in the Company and there was no intention whatsoever for Respondent to demean Applicant as this is the usual process that is followed whenever there is a re-shufflement of staff.

12. With regards to paragraph 14 of the Statement of Case, the Respondent avers that proposals had been made to Applicant with which he was agreeable and if Applicant had nothing to do, which in any event is denied by the Respondent, it was certainly through no fault of the Respondent.
13. The Respondent takes note of the averments made in paragraph 15 of the Statement of Case.
14. With regards to paragraph 16 of the Statement of Case, the Respondent avers that the responsibilities entrusted to Applicant in HR (Cabin Operations) effective January 2008 was an interim measure which was taken following the resignation of the substantive HR Officer of the Cabin Crew Section.
15. The Respondent denies the averments made in paragraph 17 of the Statement of Case in their form and/or tenor and avers that Applicant had offered to resign from his responsibilities (Cabin Ops) as he wanted to have a structure for the Cabin Operations Department, which would have suited his convenience and wish and not the best interest of the Company.
16. With regards to paragraph 18 of the Statement of Case, the Respondent avers that the post of "Head of Procurement" (Hotel Contracts) had been advertised in the wake of the restructure of the Procurement Department which henceforth was made responsible for Crew Accommodation and payment of Crew Allowance, but that the post has not been filled in yet as Respondent had following its financial problems resulting from its hedging exercise, put on hold all recruitments and promotions within the Company.
17. With regards to paragraph 19 of the Statement of Case, the Respondent avers that the substantive appointment of Applicant as "HR Manager Crew Operations" with retroactive effect from January 2008 with a revised salary was done in complete defiance of the Company's policy on Recruitment and Promotions without the authority of the Chief Executive Officer. This was highlighted in an Internal Audit Report which was carried out subsequently when this matter was brought to the attention of the Board and higher Management of the Company.
18. The Respondent denies the averments made in the last sentence in paragraph 20 of the Statement of Case and puts the Applicant to the proof thereof.
19. With regards to paragraph 21 of the Statement of Case, the Respondent avers that Applicant had to be moved out from the HR Department in view of the comments made by the Internal Audit in its report and also following representations which had been received from staff of the HR Department who had complained that their career path in the department were affected and threatened to take industrial actions.
20. With regards to paragraphs 22 and 23, the Respondent avers that Applicant was offered the position of Customer Support Manager as this post was vacant on the establishment as after a recruitment exercise no suitable applicant was found. Any alleged plight of the Applicant was through no fault of the Respondent.

21. Respondent further avers that after Procurement Department had taken up the activities related to Crew Accommodation/Crew Allowance, it had the responsibility to find an alternative suitable posting of Applicant.
22. The Respondent takes note of paragraphs 24, 25 and 26 of the Statement of Case.
23. The Respondent denies most vehemently the allegations made in paragraph 27 of the Statement of Case and puts the Applicant to the proof thereof.
24. The Respondent denies the averments made in paragraph 28 of the Statement of Case and puts the Applicant to the proof thereof.
25. With regards to paragraph 29 of the Statement of Case, the Respondent avers that the appointment of the Applicant to the post of Human Resources Manager (Crew Operations) was done without authority or approval from the Chief Executive Officer. When it was discovered by Management and Board it became the subject matter of an internal audit enquiry which revealed that:
 - (a) Though, the then EVP HR & OD confirmed to the internal audit, that the appointment of the Applicant was a lateral transfer and that he, i.e. the then EVP HR & OD was empowered to do so without having to seek the approval of the Chief Executive Officer, the audit enquiry revealed that as per HR Policies and Procedures manual dated November 2007, the selection report for recruitment/appointment at Management Level B grade needed to be approved by both the Chief Executive Officer and the EVP-HR & OD following which the EVP HR & OD is authorized to sign the contract of employment.
 - (b) The post of Human Resources Manager (Crew Operations) does not exist in the latest HR organizational structure, which was circularized through email to all employees in April 2007. As per normal practice, any change in the organizational structure needs to be approved by the Chief Executive Officer and circularized to all concerned.
 - (c) Although the then EVP HR & OD stated that the appointment of the Applicants to the post of Human Resources Manager (Cabin Operations) was a lateral transfer, the monthly salary of the Applicant was Rs 55,400 and increase of Rs 6,146 from his previous salary (Rs 49,254) as Hotel Contracts Manager without the approval of the Chief Executive Officer and in complete disregard of the Company Policy on Wage and Salary Administration.
 - (d) The post of Human Resources Manager (Cabin Operations) was neither evaluated nor advertised. The direct appointment of the Applicant to that post has deprived the rights and aspirations of all eligible employees and trampled their rights to promotion.
 - (e) Based on the internal vacancy notices dated October 2007 and September 2008, whereby the post of Human Resources Manager had been advertised, the minimum qualification requested was a degree in HR/Business/Management or an equivalent qualification from a recognized university, whilst according to documents available from the HR Department, the highest qualification of the Applicant was a diploma in Management.
 - (f) The internal enquiry concluded its report by the following: "the recruitment and selection procedures have not been followed as far as the appointment of Mr. Ramlagun (the Applicant) as HR

Manager (Cabin Operations) is concerned. This 'direct appointment' may have deprived the right and aspiration of all eligible employees and consequently might have put MK (the Respondent) in an embarrassing situation for non-adherence to its own procedures for appointment."

For all these reasons set forth above, the Respondent therefore moves that the Applicant's case be set aside."

Testimonial and Documentary Evidence

The Applicant deposed under solemn affirmation and confirmed the averments contained in his Statement of Case.

He was lengthily cross-examined and he conceded to the following:-

- he had promised initially to put in an explicit manner and tabular form all his grievances to the Ministry of Labour which he failed to do on paper;
- he had written tons of emails to the various préposés of the Respondent's Company concerning the present matter;
- in September 2006 he wrote to the Respondent Company and tendered his initial resignation from the post of Hotel Contracts Manager to take effect on 11th September 2006;
- he, however, never resigned because according to him the Company did not accept his resignation. Prior to that, he had sent another email making proposals to the Company and offered to be part of a new set up;
- he was not satisfied with the administration of Air Mauritius and had he been the top brass that is to say the Director General, he would have administered the Company differently;

- he wrote another correspondence to the Company on the 31st August 2006 complaining that nothing concrete had emerged from his proposals and again he threatened to resign but remained an employee of the Company. He confirmed that he was called upon not to resign on several occasions;
- on 8th September 2008 he sent a further correspondence to the Company in which he referred to his previous email on the subject of resignation notice and informed the Company that he had not heard anything regarding it;
- Mr Dinesh Burrenchobay, the then Executive Vice President Human Resources wrote to the Applicant on the 24th October 2006 suggesting to him as a solution to go back to flying as a Senior Flight Purser or to be part of the new structure approved by the Company for Cabin Operations;
- according to the Applicant the second plan remained a promise, following which he sent a series of emails to Mr Burrenchobay;
- the Applicant wrote to Mr Manoj Ujoodha, the Chief Executive Officer of the Respondent Company accusing the latter of not being impartial enough with respect to the Applicant's person. He further accused the C.E.O. of lacking objectivity and for having to put the Applicant on trial. He casted doubts on the C.E.O.'s performance and referred to it as being "shameful" and criticized the fact that the C.E.O. depends on a consultant.

- on 12th August 2007 Applicant wrote to the C.E.O. confirming his decision to resign from the post of Hotel Contracts Manager with effect 20th August 2007;
- the Applicant conceded to long emails messages being sent and received and the one he received on the 11th August to read as follows:-

“Raj, Please spare us your long usual lectures. You sound like a broken record when you repeat that you were not involved in discussions in the pilots MOU as if to justify something. There were no changes concerning HOTAC arrangements for pilots except that it needs to be reviewed outside of the MOU with all present. The allowances were reviewed. Somehow you do not seem to write long emails with solutions. The crew are already contacting Irvin with their queries and it is being dealt with. Have a nice week end, Dinesh.”

- on 12th July 2007 he again wrote to the Company highlighting what according to him are the obvious shortcomings at the Company;
- he had known one Mr Ramdin who was also a member of the Cabin Crew and who became a friend of his and Applicant appreciated him when he served as Executive Vice President Human Resources. Mr Ramdin served in that post for six months;
- he is holder of a Higher School Certificate, an Advanced Certificate and a Diploma in Human Resources Management;

- the job of Human Resources Manager Crew Operations was not advertised just like many other jobs at Air Mauritius and according to the Applicant these jobs never existed;
- it was Management of Air Mauritius that appointed him to that job and it was Mr Ramdin who signed the contract;
- he was unaware that there were other persons more qualified than him at Air Mauritius and who were aspiring for that post;
- the post to which he was appointed was a lateral transfer as Management B with a considerable increase in salary;
- when asked whether he went through a selection process before obtaining the job of Human Resources Management group of Operations, the Applicant answered that he was already doing that job and a selection process was not called for because it was a lateral transfer;
- he denied having passed over any Head of the Company;
- he conceded not being a degree holder;
- he further affirmed that lots of people are in Management B without being a degree holder and Mrs Parmessur applied as a degree holder for various jobs positions with a MBA but yet she could not get in;
- he denied that because of his friendship with Mr Ramdin, the Executive Vice President Human Resources, that he got the job and that the Recruitment and Selection Policy was not followed;

- being chosen without a selection process was the doing of Mr Ramdin.

The Respondent called two witnesses in support of its averments contained in its Statement of Case.

Mr Vijay Seetul, the Executive Vice President Internal Audit at Air Mauritius Ltd testified to the effect that he signed a report after the Audit Committee had looked at the appointment of the Applicant, Mr Dhanrajsing Ramlugun commonly known as Raj Ramlugun, as Human Resources Manager Crew Operations on the 4th August 2008. The witness stressed that the Applicant received a new package but did not receive the appropriate approval and authorization and he has produced a copy of the said report which he signed and solemnly affirmed to its correctness. In that report he referred to the Recruitment and Selection Policy that exists at the Company. He mentioned in that report that the said policy had not been followed in the case of the Applicant being appointed to the post of Human Resources Manager Crew Operations. He came to that conclusion after investigation. The witness added that he took into consideration what was held in the case of **Daisy Chong Ah Yan and Air Mauritius Ltd** where the Tribunal held that redress is justified whenever an employee's rights have been trampled upon. He had in mind other employees' rights which needed to be redressed following the irregular appointment of the Applicant. Besides, added the witness, he did not have a degree in Human Resources Management as required for the post of Human Resources Manager Crew Operations.

On being cross-examined the witness stated that he was mandated by the Audit Committee at its sitting at the end of October 2008 to start an enquiry into the matter and the report was submitted on the 23rd

January 2009. The Applicant was transferred on the 15th December 2008 within the Human Resource Department itself. The transfer of the Applicant within the Human Resource Department came prior to the report coming out. He denied that he was also inquiring as to the salary issue of the Applicant. He was only looking at whether the Applicant's transfer and nomination was properly done and that was his only mandate. He added that for lateral transfer, there was a policy available on the intranet at Air Mauritius Ltd in September 2008, which he produced to the Tribunal. He stated that any lateral transfer, for Management B where there are various levels and with each level having its own criteria, the transfer, nomination or selection should be done with the approval of the Chief Executive Officer and in some cases the Chief Executive Officer and the Executive Vice President Human Resources together.

The next witness to depone was Mrs Roshni Purmessur, Human Resources Officer. She confirmed that on the 9th September 2009, she addressed a letter to the Chief Executive and produced a copy of same. She solemnly affirmed the correctness of the letter. The contents of the letter are as follows:-

"Dear Sir

I wish to apprise you of the following:

- 1. I joined the services of Air Mauritius Ltd, in early 90's as Secretary within the Human Resource Department based at the Airport.*
- 2. Having since been exposed to the functions of the Human Resource Department, I embarked my career in the Human Resource Discipline and have successfully completed several professional qualifications with broaden management skills until in 2005, when I post graduated for an Executive Masters Degree in Business Administration from the Birmingham University, United Kingdom.*
- 3. Over the 19 years, I have served and handled HR responsibilities of all Business Units at the airport with professionalism, dedication, faithfulness and without reproach. I have always been assessed as an exemplary officer by my different Superiors, even if my "franc-parler" was to the discontent of most of them.*
- 4. So far, all major assignments (MOU settlement, negotiations, salary administration, involvement in policies, day-to-day operations) given to me have always been dealt with, professionally taking into consideration the superior interest of the Company.*

5. *My professional qualifications, my rich experience and my passion for the HR functions have always been motivating factors resulting in my commitment and dedication to the department.*

However, my concerns are as follows:

- (a) In October 2007, an internal vacancy notice for the post of HR Manager was advertised and being eligible as per the set criteria, I accordingly submitted my application for the vacant position*
- (b) On the other hand, one colleague, namely Mr R Ramlugun also submitted his application for the said post although he was not eligible as per the requirements defined in the vacancy notice.*
- (c) For unknown reasons, the selection exercise never took place.*
- (d) Surprisingly in January 2008, Mr R Ramlugun was automatically nominated HR Manager Crew Operations although he did neither possess the required qualifications nor had any exposure/experience in HR functions and he did not go through a selection process.*
- (e) In September 2008, a vacancy notice for the post of HR Manager, was again advertised and being eligible, I again submitted my application for the said post*
- (f) Strangely again, the selection exercise never took place*
- (g) It has to be pointed out that I served as HR Officer dedicated to the Cabin Operations Business Unit for almost five years at Management C level whereas Mr R Ramlugun was assigned the same HR responsibilities at Management B level. In addition to my HR responsibilities to the Cabin Operations Business Unit, I was, in September 2005, requested to also handle the HR responsibilities of the Technical Services Business Unit following the resignation of one HR Officer from the company.*
- (h) In September 2007, Mr R Ramlugun left the Cabin Operations Business Unit and since then I have been again asked to handle the HR functions of that department in addition to the Ground Operations and Transport Business Units.*
- (i) As pointed out earlier, I served one Business Unit (Technical Services) for about two years in addition to my dedicated department without any additional remuneration. Again the same scenario was repeated in September 2007 where I was requested to assist, in addition to the Ground Operations and Transport depts., the Cabin Operations department. After several requests for an additional remuneration, I was after almost one year allocated a meager allowance. The fact that I am the one, who is each time requested to assist any Business Unit, is itself a proof that management recognizes that I have the required skills, experience and competencies to function independently in any Business Unit with high responsibilities.*

In the light of the foregoing, I feel that the acts and doings of my Superiors have been causing me a lot of prejudice and consequently I have been deprived of my career growth. The nomination of Mr Ramlugun as HR Manager, bears testimony that fairness, justice and equal opportunity towards me, have all been flouted. Other injustice done to me is as hereunder:

- (i) One of my colleagues who in a very short span of time left the Pay Office to join the HR department without any selection exercise, was nominated HR Manager without any functional HR experience;*
- (ii) Another one who joined the HR department without any vacancy, sometime in 2002 and who is not involved in core line HR activities, bears the job title of HR Manager, enjoying the facilities of a company car while not being on the Management B grade.*
- (iii) A further colleague joined the HR department again sometime in 2002 and never functioned as HR Manager, yet had the title of HR Manager, while being responsible for HRIS system only.*

Knowing my capabilities and qualities in handling higher responsibilities in a complex organization as ours and the level of responsibilities I am handling, I am making an appeal to you as the CEO of the company, to reconsider the whole issue of injustice and unfairness done towards me. I therefore claim that my nomination as HR Manager be considered.

I sincerely trust that you will reasonably bring redress to my situation."

In cross-examination she stated that she applied for the position of HR Manager in October 2007 and was never called for an interview. She applied for another position of Customer Support Manager and was called for an interview but she was not selected. She applied for a position of Strategic Planning Manager but could not attend the interview because of the demise of her father. She again applied for the post of HR Manager in September 2008 and the interview did not take place. According to her, she was never given the chance to be interviewed for the position of HR Manager. She further added that she was not selected as Customer Support Manager inspite of the degree because everyone knew who was going to be selected prior to the selection itself. She recognized though that Customer Support Management is not actually her area of activities but she applied for a post there as she was frustrated for not being interviewed as HR Manager. She did not notice any weaknesses in the work of the Applicant although she maintained that she was prejudiced by his nomination.

Submissions

In a brief submission, Mr Y. Mohamed, S.C. for the Respondent highlighted that Mr Ramdin acted wrongly in not complying with the recruitment policy by appointing the Applicant as Human Resources Manager Crew Operations thereby prejudicing the right of someone more qualified than him and that the Tribunal has the power to order the

company to remedy any mistake committed in the appointment of an employee so that frustration should not be perpetuated in the company.

Tribunal's Considerations

It is not disputed that Applicant was appointed in a substantive capacity as Human Resources Manager Crew Operations with retroactive effect from January 2008 with a revised salary. It is also not disputed that appointment to the post of Human Resources Manager Crew Operations requires essentially a degree which Applicant is not in possession of, whereas another employee, Mrs Roshni Purmessur is a degree holder. Yet the latter was not even considered for an interview. However, the Tribunal is not here to consider whether Mrs Purmessur should have necessarily been considered for appointment. We are to decide whether upon repudiating the contract of appointment of the Applicant to the post of Human Resources Manager Crew Operations, the interference of the Respondent with that contract was proper. We are of the view that such contract of appointment having been entered into in such irregular manner, the appointment cannot be considered to have been proper. We say so for the following reasons:-

- **Document LL**, the Recruitment and Selection Policy paper clearly and ambiguously stipulates that the selection method to a post in the Management B grade necessarily requires the fiat of the Chief Executive Officer and the setting up of an interview panel to be composed of the Chief Executive Officer and eventually the latter is to approve the recommended candidate in a selection report;
- the Human Resource Manager is defined in such a document to be the Human Resource Manager who is at least in Management B level or above;

- according to the investigation report of the internal auditor the selection method and the selection report with regard to recruitment/appointment at Management Level B need to be approved by both the Chief Executive and the Executive Vice President Human Resources and Operations Director. Thereafter, the Executive Vice President Human Resources and Operations Director is authorized to sign the contract of employment;
- the post of Human Resources Manager (Cabin Operations) does not exist in the last Human Resource Organisation Structure which according to the internal auditor was circularized through email to all employees in April 2007 and as per normal practice any change in the organizational structure needs to be approved by the Chief Executive Officer and circularized to all concerned;
- it is confirmed in the auditor's report that during his investigation it was put to him that the appointment of the Applicant to the post of Human Resources Manager Crew Operations was a lateral transfer. But the report confirmed that any lateral transfer was deemed to be effected without any change in basic salary and other benefits. Yet it has remained an undisputed fact before us that the Applicant upon being admitted as Human Resources Manager Crew Operations, received increased salary with added benefits.

We consider that Mr Ramdin who was the then Executive Vice President Human Resources, had no authority to proceed with the appointment of the Applicant to the post of Human Resources

Manager Crew Operations and that such appointment is tainted with procedural impropriety to such an extent that the appointment is *ab initio* inoperative. The legality of the appointment has been challenged by the Respondent and rightly so. We find that the latter cannot be bound by what is patently wrong on the face of it.

We need to add that non-adherence to procedures affects good industrial relations and no wonder such flouting of procedures on behalf of the then Executive Vice President Human Resources, Mr Ashvin Ramdin led to an outcry from other employees like Mrs Purmessur who complained of the procedure adopted besides considering herself to be more qualified and apt for the job. The sequence of events leads us to the irresistible inference that it was such complaint that triggered an investigation by the Respondent.

The Applicant was appointed to the same post without any vacancy notice being issued. Surely a company of such magnitude should implement a better system regarding appointments so that anyone at the level of Management cannot just issue '*hit and run*' contracts to '*aux copains d'abord*' in an attempt to bind the company.

Air Mauritius Ltd claims in paragraph 4.1.1 of its Recruitment and Selection Policy paper to be "*an equal opportunity employer and as such does not discriminate against/favours any applicant on the basis of religion, social origin, political affiliation and sex selection and career advancement purpose.*"

Perhaps the time has come to look again into good governance policy and adopt and follow procedures that could inspire public confidence in the running of the company's business. In **Dattatreya Panday v/s The Judicial and Legal Service Commission PCA no. 33 of 2007**, the Privy Council held that the Commission had acted unfairly in its procedures and quashed the latter's Order with regard to a termination of an appointment.

For the reasons set out above the present dispute is set aside.

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

**(sd)Philippe Edward Blackburn
(Member)**

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

**(sd)Jean Paul Sarah
(Member)**

Date: 9th September, 2010