

EMPLOYMENT RELATIONS TRIBUNAL

AWARD

R.N 1040

Before:

Rashid Hossen	President
Philippe Blackburn	Member
Balram Tacouri	Member
Maurice Christian Aime Laurette	Member

In the matter of:-

SARWANSINGH NAVIN SEERUTTUN, Applicant

AND

AIRPORTS OF MAURITIUS CO. LTD, Respondent

The present dispute was referred by the Minister of Labour, Industrial Relations and Employment in virtue of Section **82 (1) (f) of the 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 pending under this Act and may be proceeded with before the Tribunal.”.

The points in dispute are:-

1.- Whether Mr. Sarvansingh Navin Seeruttun should be paid an allowance for performing duties of another Systems Administrator with effect from July 2003 to date, or otherwise.

2.-Whether he should be appointed as Manager ICT Services with effect from November 2006 through the same procedure which has been followed for the appointment of Manager Assets and Maintenance, or otherwise.

The Applicant was represented by Mr. G Ollivry, Q.C, whereas the Respondent was represented by Mr. R.Unnuth of Counsel.

Statement of case of Applicant:-

Point no. 1-

1. This is a claim for remuneration for performing double duties. Applicant was appointed as Systems Administrator (SA) by AML in 2001 to administer AML business information systems such as network, domain controllers, mail systems, payroll applications, document management systems.
2. The Airport Logistics Ltd (ALL) had appointed one full time airport-based SA to administer the airport operations information systems comprising of the mission critical applications such as light information systems, airport PABX and provided Customer Relations Management to airport based stakeholders (airlines, Mauritius Duty Free Paradise, Government organizations among other things.
3. When AML took over ALL in July 2003, Applicant was asked by his Manager ICT services in presence of the CEO to be caretaker SA for airport operations information systems pending recruitment of a new SA by ALL. He accepted in good faith. Management had felt the urgency to recruit a replacement SA. The post had been advertised twice but without success.
4. In the meantime, he continued to do the job and shouldered the additional responsibilities without compensation despite his several claims.

Point no. 2

1. It has been common practice to fill vacant positions within AML by advertising internally. AML has intentionally and willfully bent the rules and deprived Applicant of his rights/chances of being appointed at managerial level in the post of Manager ICT Services. The post of Manager ICT Services was advertised internally on 17 October 2006. He applied in full confidence being clearly qualified. However, he was told verbally that because of lack of candidates, the post would be advertised externally. He waited and underwent the interview. He states that he performed very well but still did not get the post.
2. After some time when the post of Manager Assets and maintenance became vacant, AML issued one notice informing all employees that Mr. V. Ujoodha had been appointed automatically to the post. And this without any vacancy notice neither internally nor externally and without interview.

3. It will be submitted that AML acted wrongfully and/or tortuously and or abusively by appointing Mr. Ujoodha without any advertisement either internally or externally to the prejudice of the applicant.

Statement of Case of Respondent

Point no. 1

1. Mr. Sarwansingh Seeruttun joined Airports of Mauritius Co. Ltd (AML) on 15 February 2001 as IT Systems Administrator and was confirmed in his post on 15 August 2001.
2. Following taking over of Airport Logistics Ltd, (ALL by AML), in December 2000, the latter made arrangements to recruit a second IT System Administrator, and advertised this post in 2002, 2003 and 2006 but was not successful. Even DCDM was approached in 2004 as a Recruitment Consultant for this post based on available data in their records, but in vain.
3. The main reason for the non-recruitment of a second IT System Administrator was that AML could not find the appropriate candidates.
4. Since October 2002, provision and maintenance of ICT services in the passenger terminal building have been outsourced to Bytes Technologies. AML has only to oversee works carried out.
5. AML considers that there have been no double duties. The Systems Administrator was given only duties which were not foreign to him and which fell within his scope of works. The volume of work at AML is such that the Systems Administrator has also to liaise with contractors for ICT services in the passenger terminal building. Therefore, it is deemed that the duties shouldered by Mr. Seeruttun are part and parcel of his duties of Systems Administrator.
6. Following the non-recruitment of another Systems Administrator and upon the recommendations of the then Manager ICT Services, Mr. Seeruttun was granted one additional increment in February 2005 for the additional responsibilities, that include the administration of the Flight Information Display System (FIDS), that the latter was shouldering, as mentioned in paras 4 and 5 above.
7. Following the resignation of the Manager ICT Services in August 2007, Mr. Seeruttun was assigned the duties of Manager until the recruitment of another Manager ICT Services in January 2008. An acting allowance was paid to him for that period.
8. On the issue concerning point 1 of the Statement of Case of the Applicant, Management's stand is that Mr. Seeruttun was never assigned the duties of a

second Systems Administrator. However, as per para 6, AML considers that he has already been compensated for the additional duties he has carried out.

Point no. 2

1. On point of dispute no. 2, Mr. Seeruttun went through the selection process for the post of Manager ICT Services, but was ranked third. The exercise was carried out in total transparency. We wish to enlighten the Tribunal that a more suitable candidate has already been appointed Manager ICT Services since January 2008. Hence the appointment of Mr. Seeruttun as Manager ICT Services at this stage is a non-issue.
2. The AML Board decided to advertise externally the post of Manager ICT Services to widen the choice of selection of the best suitable candidate as it was fully entitled to do so.
3. The Board decided, in its full discretion, to appoint Mr. Ujoodha as Manager Assets Maintenance – as highlighted by Mr. Seeruttun – for the following reasons:-
 - The nature and specificities of the post of Manager Assets Maintenance require the incumbent to be fully versed in equipment and operations solely used at the airport,
 - Mr. Ujoodha possesses the qualifications and the specific airport experience
 - Mr. Ujoodha was already acting in the said post.

Testimonial evidence

Mr. Seeruttun deponed as to the following:-

1. With regard to the first dispute, he stated that he was employed by Airport of Mauritius Co. Ltd to look after System Administrative duties, internal financial applications among other things for AML systems; Mr. Kris Seeburn was employed by Airport Logistics Ltd as Systems Administrator to look after operation of passenger terminal activities.
2. In 2003, AML took over ALL and Mr. Seeburn who was employed by Kemp Chatteris left. ALL decided to recruit another Systems Administrator to fill that post, but they were not successful even after advertising the post on three occasions.
3. He was then asked by the CEO to look after the system as in his capacity as the Systems Administrator it was considered that he should be able to look after the system until somebody else was recruited. Since this verbal agreement, he has been doing the job(i.e. his own job and that of Mr. Seeburn).

4. He added that in the meantime, AML has carried out a salary review and a job redefinition exercise. He stated that some elements on which he was looking at had been included in his scheme of duties without his knowledge. He was therefore claiming an allowance of Rs 10,000 monthly for doing the work of Mr. Seeburn, being given that the latter was earning approximately Rs 25,000 monthly.
5. As far as the post of Manager ICT Services was concerned, he stated that the incumbent of the post was Mr. Sembhoo. In his capacity as Systems Administrator, he was assigned the job of acting Manager ICT Services whenever Mr. Sembhoo was on Leave. This has happened on three or four occasions. He worked under the guidance of the Director, Mr. Samssoon., and there were no report against him.
6. When Mr. Sembhoo left the Company in November 2006, he was appointed as acting Manager ICT Services with an acting allowance of between Rs 7,000 and Rs 8,000. He carried out the job for 14 consecutive months.
7. In November/December 2007, the Company decided to fill the post and advertised the post internally as in previous cases. However, he was later informed, informally, that the Company had decided to open up the competition to allow more candidates from outside. The HR Manager gave him the assurance that he would have his chance.
8. He came third at the interview. The candidate who came first did not accept the job and it was offered to the one who came second, one Mrs. Gungoosingh who accepted and she is still occupying the post.
9. In April 2008 for the filling of the post of Manager Maintenance Services, Mr. Ujoodha was appointed automatically to that post. There was no internal vacancy notice or external vacancy notice. Mr. Ujoodha was not even called for interview.
10. He stated that he has not been treated in the same manner as Mr. Ujoodha and felt that he has been penalized. He considered that the Company should repair this by creating another post of Manager as the system at the airport is growing in size, and a new terminal is being created. In reply to counsel, he stated that the Company has offered him a post of Senior System Administrator. The salary for the post of Senior System Administrator is only Rs 2,000 more than his current salary as System Administrator.
11. Under cross-examination, he agreed that the additional work he had to undertake on the departure of Mr. Seeburn was not different in substance but there was a larger volume of work to be done. He also agreed that as System Administrator for AML he had to oversee and supervise the work of ALL, the subsidiary of AML, and admitted that he received one increment for the additional volume of work. He said he did not protest about the payment of this increment.

12. He was assigned the duties of Manager of ICT in an acting capacity as from 2006, and this assignment lasted 14 months. He admitted that an actingship per se did not entitle him to promotion to that post.
13. In spite of the allusion made to the post of Manager Assets and Maintenance, he wanted to be the ICT Manager. There was an external advertisement for the filling of the post and about 5 or 6 candidates were called for interview. He attended the interview too. He agreed that the best candidate was recruited for the post but said that he disagreed with the selection process. AML should have advertised the post internally as they have done in the past. He agreed that, then, he would have been the sole candidate for the post.
14. The appointment of Mr. Ujoodha was decided by the Board; in fact all decisions are taken by the Board. The duties which were assigned to Mr. Ujoodha before his appointment are related to assets maintenance akin to all airports.
15. As System Administrator, he agreed that he could step in that position in any organization such as the National Computer Board, the National Transport Corporation, the Tertiary Education Commission or the University of Mauritius, be it with the help of some contacts.
16. Mr. Ujoodha has been working in the Assets Maintenance Department for more than 20 years. The Applicant added that the job of Electrical Engineer is nothing more than looking at UPS and power line. He pointed out that he had the basic formation of an engineer though he was not himself an engineer. He understands UPS and power very well and there is nothing more complex that Mr. Ujoodha has to do. As Acting Manager Services, he has had the opportunity to work in the Assets Maintenance Department under the umbrella of the Director Assets Maintenance. It was he who drove the UPS and Mr. Ujoodha could not purchase UPS.
17. Under re-examination, the Applicant said that Mr. Ujoodha was selected, and appointed by the Board directly without any vacancy advertisement either internal or external.

Mr. Seewoosagur Nemchand, Director Finance and Administration of AML, deponed under solemn affirmation as a Hindu to the effect that the Applicant was Systems Administrator for AML and as such he had to oversee the work of ALL which is a subsidiary of AML. It was part of his job to oversee what ALL was doing. In view of the volume of work involved, the Board approved the payment of an increment to him.

2. It is true that the Applicant acted as Manager ICT services for 14 months, but this actingship does not entitle him to be appointed in the post. Mr.

Nemchand pointed out that he had been acting as CEO of AML for twenty months, and on various occasions during the last 15 years he had deputized the CEO whenever the latter was absent and he did not get the job.

3. AML has a flexible policy with regard to recruitment of employees. All depends on the skill and competence required, whether such skill and competence are available internally or not. Also consideration should be given to the fact that AML is a merger with the Department of Civil Aviation; a lot of employees of AML came from that department, and new ones have been recruited.
4. It was pointed out that AML core services such as maintenance of specialized equipment, carousel baggage, airfield lighting were specialized sectors and required people of 15 years experience or more in the field, and furthermore those people who are accustomed and had developed an aptitude to work with this kind of system. Moreover, there is only one airport in Mauritius, and nobody would have the skill of the engineers required to look after all the assets.
5. Mrs. Gungoosingh who has been appointed as Manager ICT Services is performing well.
6. The decision to advertise the vacancy of the post of Manager ICT Services both internally and externally was a Board's decision. There were five or six candidates and they were interviewed by a panel comprising of Board Members and independent persons. Mr. Nemchand was not on the panel.
7. Mr. Ujoodha was promoted automatically to the post of Manager Assets and Maintenance because he is an Electrical Engineer with 20 years experience in Airport Assets Maintenance and his skill is not available in Mauritius outside the Airport
8. Moreover, He is an ex-employee of Aviation Department which had merged with AML and AML has contractual obligations to preserve the rights of such ex-employees.

Tribunal's observations

1. Airport of Mauritius Co. Ltd (AML) is an equal opportunity employer. Its policy is to recruit the best qualified candidate for a post giving due regard to its contractual obligations towards those employees who have been transferred from the former Aviation department. In this context recruitment can be by automatic promotion, or internal vacancy notice only; or both internal and external depending upon the type of specialisation, competence and skill being sought.

2. The Applicant is employed by Air Mauritius Co. Ltd as Systems Administrator and as such he is also responsible to oversee the System Administration work of the subsidiary company Airport Logistics Ltd (ALL).
3. Upon the taking over of ALL by AML, and the departure of Mr. Seeburn, the volume of System Administration work of the Applicant increased.
4. The applicant has admitted that only the volume of work increased and that in substance it was the same type of work. In this connection, the Board approved the payment of an increment to the Applicant which he accepted.
5. The Applicant acted as Manager ICT Services for about 14 months from November 2006 to November/December 2007, for which he was paid an acting allowance of about Rs 7,000 to Rs8,000.
6. When the vacancy for the post of Manager ICT Services was advertised both internally and externally, the Applicant applied for that post. He came out third and was not appointed. One Mrs. Gungoosingh who came out second was appointed because the first candidate declined the offer.
7. The applicant has admitted that actingship per se did not automatically entitle the employee concerned to be appointed in the post in which he has acted. Actingship per se does not entitle one for appointment in a substantive capacity. **(See D. Goburdhun & Irrigation Authority, RN 483 of 1998).**
8. The contention of the Applicant that he should have been given the same treatment as Mr. Ujoodha who was appointed automatically as Manager Assets and Maintenance without any vacancy notice or selection procedure cannot be entertained for the following reasons:-
 - Mr. Ujoodha, Electrical Engineer has 20 years experience in Airport Assets Maintenance
 - His skill is not otherwise available in Mauritius.
 - He is an ex-employee of Aviation Department which had merged with AML
 - AML has contractual obligations to preserve the rights of such ex-employees
 - On the other hand, Systems Administrators are available (five or six candidates attended the interview for the post of Manager ICT Services).
 - Systems Administrators can move from one sector to another quite easily after some familiarization with the specificity of the organization

Tribunal's conclusion

In view of the above, the Tribunal considers that the Applicant has not made out his case.

The dispute is accordingly set aside.

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(sd) Rashid Hossen
President

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(sd) Philippe Blackburn
Member

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(sd) Balram Tacouri
Member

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(sd) Maurice Christian Aimé Laurette
Member

Date:20th April 2010