

EMPLOYMENT RELATIONS TRIBUNAL

AWARD

RN 299/11, RN 300/11, RN 301/11

In the matter of:-

RN 299/11

Mr Krishnaduth Ramkalam

(Disputant No 1)

And

Airports of Mauritius Co Ltd

(Respondent)

RN 300/11

Mr Dhanraj Ramtohul

(Disputant No 2)

And

Airports of Mauritius Co Ltd

(Respondent)

RN 301/11

Devendranathsingh Baulah

(Disputant No 3)

And

Airports of Mauritius Co Ltd

(Respondent)

The above three cases have been consolidated with the agreement of all parties. Ample time has been given to the parties to try to reach a settlement in the present matter but to no avail and the matter had to be heard. The terms of reference in the above cases are similar and read as follows:

“Whether following the change in my hours of work from “8.45 hrs to 16.00 hours” to “8.30 to 16.30 hours”, I, Mr [...], an ex-DCA employee, should have been granted a compensation equivalent to two increments as per paragraph 17.2.1 (iii) of the Airports of Mauritius Co. Ltd Terms and Conditions of Employment (January 2009), or otherwise.”

Mr Ramkalam deposed on behalf of all three disputants before the Tribunal. He averred that he works on day duty and is thus eligible to the two increments sought. He stated that with the change in his working hours from ‘08 45 hrs to 16 00 hrs’ to ‘08 30 hrs to 16 30 hrs’, he should have benefitted from the two increments mentioned in paragraph 17.2.1(iii) of Respondent’s Terms and Conditions of Employment. He added that he has worked from 08 45 hrs to 16 00 hrs for twenty years at the Respondent and that all the conditions mentioned in paragraph 17.2.1 (iii) are applicable in his case. He maintained that he works day duty even though part of the staff at the Respondent

would, according to him, work “roster on shift”. He referred here to a “four watch system” where four teams would do the same work at different times.

Mr Ramkalam added that they are responsible for the proper functioning on a 24 hours basis of equipment necessary for the smooth running of the airport. He went on to state that on several occasions in case of major breakdowns they have had to work beyond their working hours. They do not derive any additional remuneration for the extra hours put in. Mr Ramkalam maintained that working odd hours in such cases do not make them become shift workers. He stated that he would fall under paragraph 17.2.1(iii) of the ‘Terms and Conditions of Employment’ which was applicable at Respondent as from January 2009.

Mr Ramkalam also referred to his letter of appointment as Principal Technician dated 7 July 2009 where it was mentioned that all other terms and conditions of employment remain unchanged. It was only in a further letter dated 7 August 2009 that he was referred to the new working hours.

When cross-examined by Counsel for Respondent, Mr Ramkalam accepted having received the letter of appointment dated 18 September 1995 (copy annexed as Annex A to Respondent’s Reply to disputant’s statement of case) from Airport Management Services Limited. Mr Ramkalam was agreeable with the terms and conditions mentioned in the said document. He also accepted having received and accepted an offer of appointment dated 15 March 1999 from Respondent whereby he has agreed to be governed by the same terms and conditions as were currently in force at Airport Management Services Limited.

Mr Ramkalam however did not agree that whilst he was employed on shift, he was assigned day shift. According to him, one cannot be on shift or a shift worker if one is working every day from 08 45 hrs to 16 00 hrs. He agreed that following his promotion as Principal Technician in July 2009, he benefitted from three increments. However, he did not agree that when he was promoted in July 2009, the working hours applicable to the post of ‘Principal Technician’ were from 08 30 hrs to 16 30 hrs.

Ms Rajkomar, Human Resources Manager then deposed on behalf of the Respondent and she stated that the working condition of the grade of Senior Technician is a 24-hour shift grade. In this grade of employees, some are working both night shift and day shift whilst others have been assigned only day shift. Mr Ramkalam and his colleagues were responsible for certain equipment and they had to be present during the day to man those equipment. However, whenever there was a requirement to stay beyond working hours, at night, on Sundays or public holidays, they were required to come and work. Ms Rajkomar stated that since Respondent was incorporated in 1999, there were three categories of employees, that is, first shift employees among whom some were assigned day duties, shift and so on, then a second category consisting of ex-DCA (from the civil service) workers working only day duty as per their grade and a third category consisting of employees recruited directly by Respondent and doing only day duty. According to her, Mr Ramkalam fell in the first category of employees.

The disputants opted to work from 08 30 hrs to 16 30 hrs when the new Terms and Conditions came into effect in January 2009 but Ms Rajkomar averred that this was not applicable to them. She stated that the grade of Senior Technician was considered as a shift grade and was thus not concerned with day duty hours.

When cross-examined by Counsel for the disputants, Ms Rajkomar stated that exigencies of service would apply to every employee at the Respondent whether on shift or day duty. She did not agree that the disputants are not shift workers and referred persistently to the terms and conditions as per the employment contracts. She added that it would be unmanageable to have different categories of staff within the same grade. Ms Rajkomar averred that the disputants were not supposed to work according to the working hours of 08 45 hrs to 16 00 hrs following their appointment as Principal Technician and that they had flouted the terms and conditions applicable to them.

Both Counsel offered submissions at the end of the matter. The present matter constituted perhaps an ideal case where a solution acceptable to both parties could have been worked out and where both parties would have been in a win-win situation. This would have no doubt fostered good employment relations at the Respondent. We say this even though the Tribunal, as opposed to a Court of Law, may in making an Award or other determination have regard to a number of principles laid down in Section 97 of the Employment Relations Act including the principles of natural justice, the interests of persons immediately concerned with a dispute and the principles and best practices of good employment relations.

We will refer to paragraphs 17.2 and 17.2.1 of the Terms and Conditions of Employment at Respondent which came into effect on 1 January 2009:

17.2 (i) "The airport operates on a 24-hour basis and employees are required to work on shift/roster basis as well as on normal day duty. Except as may otherwise be determined by Management, employees are expected to work for 40 hours per week.

17.2.1(ii) The normal hours of work of staff in receipt of a monthly basic salary of Rs.48,400 or more, shall continue to be 08.30 hours to 16.30 hours. They may be required to attend duty over and above the normal hours of work due to emergencies and special events as may be declared by management.

(iii) Employees transferred from the civil service (ex-DCA employees) in receipt of a monthly basic salary of up to Rs.48,400, not working on shift/roster but performing only day duty from 0845 hours to 1600 hours may opt to work from 0830 hours to 1630 hours against compensation equivalent to two increments as hereunder:

- (a) two additional increments after the normal conversion of their salary, subject to their top salary; or*
 - (b) employees whose normal salary converts to the penultimate salary point would be granted the last increment from their salary scale and an allowance equivalent to one increment over and above their top salary; or*
 - (c) employees whose normal salary converts to the top salary point of their salary scale would be granted an allowance equivalent to two increments over and above their top salary.*
- (iv) Employees on shift work are required to provide round the clock service to give 24 hours coverage.*

We have the evidence of Ms Rajkomar in relation to the three categories of employees at Respondent. For her second category of employees consisting of ex-DCA workers working only day duty as per their grade, there is no problem. The issue is about this group of disputants who were at some point in time Senior Technicians, a post where one is expected to do shift work, but where the disputants because of the exigencies in relation to the particular equipment they were manning and responsibilities they were shouldering were assigned day duties or 'day shift' as Ms Rajkomar would put it. There is evidence that other Senior Technicians were working on shift, that is, day and night shift to give 24 hours coverage but there is no such evidence in relation to this group of disputants. This was a special group of Senior Technicians who were assigned day duties and the unchallenged evidence on record, at least for Mr Ramkalam, is that he has been doing so for 20 years starting from the Department of Civil Aviation. Again, there is no evidence at all that Mr Ramkalam or any of the disputants has been asked to work or actually worked on shift during the period they performed as Senior Technicians at the Respondent.

The Tribunal has had the benefit to peruse the Terms and Conditions of Employment applicable at Respondent as from 1 January 2009 (produced as Doc A), and it would appear that Mr Ramkalam could have been posted to the group of Senior Technicians working on shift provided of course there was no reduction in his salary or other benefits already enjoyed by him. Presumably this would apply even prior to January 2009 because of the mention made in the job description for Senior Technician that "Senior Technician shall be required to work on a 24-hour shift system throughout the year." The crux in the present matter is that the disputants have never been working on a shift system or to be more precise a "24-hour shift system". The Tribunal will not delve on the definition of "shift work" as per the Employment Rights Act since it is clear that for there to be shift work, there must be work on which two or more persons are alternately employed at different times. This was never the case for the specific equipment and work that the disputants were responsible for. And very importantly, they can no more be required to do shift work (under normal circumstances) now that they have been appointed Principal Technicians.

The disputants clearly fall under paragraph 17.2.1(iii) of the Terms and Conditions of Employment applicable at Respondent as from 1 January 2009 since they were not working on shift/roster even as Senior Technicians for specific reasons as explained by Ms Rajkomar herself. It is not disputed that the disputants met all the other conditions required under the said paragraph 17.2.1 (iii) above, the only live issue before us being whether they were working on shift/roster. Even as Principal Technician, the starting basic salary of Mr Ramkalam was Rs 44,400.

The disputants were thus entitled to the two additional increments when they agreed to and opted to work from 08 30 hrs to 16 30 hrs instead of 08 45 hrs to 16 00 hrs. This will then be more in line with the inclusion of the following sentence in the letter of appointment of 7 July 2009 of Mr Ramkalam as Principal Technician:

“All other Terms and Conditions of employment remain unchanged.” Indeed, it is agreed (and averred in the Statement of Case of Respondent) that the position of Principal Technician is on day duty. We fail to see how terms and conditions not specifically catered for in the letter of 7 July 2009 could remain unchanged if Mr Ramkalam was allegedly working on shift.

For all the reasons given above, the Tribunal awards that following the change in the hours of work of the disputants from ‘08 45 hrs to 16 00 hrs’ to ‘0830 hrs to 16 30 hrs’, the disputants should be granted the compensation equivalent to two increments as per paragraph 17.2.1(iii) of the Respondent’s Terms and Conditions of Employment (January 2009).

(SD) Indiren Sivaramen
Vice-President

(SD) K. Venkatasawmy
Member

(SD) Jheenarainsing Soobagrah
Member

(SD) Maurice Christian Aimé Laurette
Member

4 May 2012