EMPLOYMENT RELATIONS TRIBUNAL

AWARD

RN 55/12

Before

Indiren Sivaramen	**Vice-President**
Jheenarainsing Soobagrah	**Member**
Jean Paul Sarah	**Member**
Hurryjeet Sooreea	**Member**

In the matter of:-

Mr Dayanund Koobrawa (Disputant)

And

Sugar Investment Trust (Respondent)

The present matter has been referred to the Tribunal by the Commission for Conciliation and Mediation under Section 69(7) of the Employment Relations Act (hereinafter referred to as "the Act"). The parties have not been able to reach an agreement in the said matter and the Tribunal thus proceeded to hear the parties and witnesses. The terms of reference read as follows:

"Whether Mr Dayanand KOOBRAWA should be entitled to a salary of Rs 48,000 to be at par with other Team-Leaders in the new grading of SIT-8, effective as from October 2011."

The Disputant deposed before the Tribunal and he affirmed to the correctness and veracity of the contents of his Statement of Case. He joined the Respondent in June 2008 with a basic salary of Rs 35,000 and prior to a salary revision carried out in October 2011, his salary was Rs 35,820. With the salary review in 2011, he was in Management Grade 8 and his salary was increased to Rs 37,500. He averred that there has never been any performance appraisal exercise carried out as far as he and other team leaders are concerned although such exercise is carried out for other staff. He stated that he has never been warned nor been the subject of any disciplinary matter. He explained that at the Respondent the procedure in relation to "warning" is

that an employee would be called and given an “instruction”, next a “verbal warning” if required, then a “severe warning” and ultimately there will be a disciplinary committee.

The Disputant stated that the grade 8 salary scale (following the 2011 salary revision) ran from Rs 37,500 to Rs 80,000. He has mentioned a salary of Rs 48,000 because one of the team leaders joined the Respondent at the same period and with nearly the same salary as him and has, following the review in 2011, the nearest salary (Rs 48,000) to what he obtains. The remaining two team leaders have each a salary of Rs 60,000.

In cross-examination, Disputant stated that as Team Leader of Administration and Human Resources, he reports as from 2010 to the Financial Controller, Mr Nitin Gocool. Previously he was reporting to the Chief Executive Officer (CEO) but as from 2010 he does not have any contact with the CEO. It is apposite to note that it was put to Disputant that his probation had been increased by another period of six months following a meeting with the CEO and Disputant flatly disagreed with this. He averred that he is requesting for a salary of Rs 48,000 in view of the next lower salary, that is, Rs 48,000 which an employee in his category is earning and also because of his qualifications and experience. Disputant stated that there is a system of performance appraisal for all staff except for the Team Leaders and that he has never been assessed, been informed of his weakness and where he has to improve.

Mr G Bouic, a Human Resource Consultant and Chief Executive Officer of Alentaris Consulting Ltd, was then called to depose as a witness for the Respondent. He was the Project Director for a project completed in the year 2010 involving among other things a job analysis exercise to determine the contents of the jobs, a job grading exercise, a pay review exercise and recommendations to be made for the structure of jobs at the Respondent. He stated that jobs that are of similar worth are put in a broadband even though they may be slightly different in terms of the score obtained using a factor point system. Mr Bouic stated that there was a technical exercise involving numerous considerations which had to be carried out to determine the minimum and maximum points in every salary scale. The spread or span between the minimum and maximum points, according to him, for the professional and technical jobs and for management and senior management will be between 40 to 60%. He referred to the migration of employees to the new proposed scales where obviously the least that can be done is the migration of an employee to the lowest salary point in the relevant salary band. He stated that then there are conditions as to where each employee should fit in depending on “personal matters regarding the individual such as the performance, the length of service, the future potential of that person etc. etc., the consultant will not know about it.” In cross-examination, he stated that he would grade jobs and not the employees.

Mr R Bholah, the CEO of the Respondent, then deposed before the Tribunal and he stated that Disputant was at a certain point in time reporting to him and then he called on the Financial Controller and Head of Administration to look after Disputant. Mr Bholah stated that he “was not very much satisfied with his performance” and that every time he had to talk to Disputant to remind him how he had to deliver to his job

expectations. He was finally losing too much time in coaching Disputant and had to take on and address all human resource issues himself. The witness stated that he was uncomfortable in confirming Disputant after his probation period but that even then he motivated Disputant to improve and move forward. He had called Disputant in his office to inform him of the problems he was having with his performance. He made Disputant read an unsigned document and informed the latter that he wanted to issue same to him. He did not however issue the letter and finally Disputant was granted a chance and confirmed in his post. He referred to Disputant absenting himself from work and to refer to the leave as being unauthorized and to salary adjustments to be made only after he would have enquired into same. He added that employees are being recruited at the Respondent without Disputant even being aware when Disputant was given clear instructions that he had to overlook recruitment. The Respondent rents premises even though it has space available. In one case, the tenancy period was allowed to lapse and the rent agreement was thus renewed for three years when this was in fact not the wish of Management. Mr Bholah stated that his style of management is an open-door policy whereby employees can meet him without a prior appointment. The Board of Directors, according to him, analysed and approved the report drawn by the consultant and same was implemented.

Mr Bholah added that nobody even in the same category has the same salary. The salary of each employee is performance-related based on merit, work load, commitment and loyalty. Mr Bholah added that since the present dispute, the Disputant has shown some initiative and pro-activeness. In cross-examination, Mr Bholah had some difficulty when he was asked if it was proper management to employ people who perform poorly but then he added that other employees also have some “bad load” but they correct it and move forward. He agreed that in a letter dated 27 October 2011 sent to Disputant, he expressed his appreciation for the positive contribution of all staff including Disputant. The letter was meant to be positive and to motivate people. When asked if he had put anything on record at the Respondent on the alleged poor performance of Disputant, Mr Bholah conceded that this was not his way of doing things. He has never put on record any warnings for Disputant. He agreed that the nature of the job involved with Human Resource/Administration is a job graded at SIT 8. Mr Bholah stated that he did not embark on a performance appraisal before Disputant was migrated to the lowest scale in the grading SIT 8. He uses the same methodology as for all the other employees. Out of six team leaders, only Disputant was migrated on the lowest end of the salary scale. Some team leaders had salary increases of more than 20% but this was matched to the nature of their jobs, their commitment, delivery and contribution. Mr Bholah is the one who recommends to the Board at what point an employee should migrate on the new scale.

In re-examination, Mr Bholah then stated that in order to come to a figure, each and every employee is assessed and the assessment is based on factors he had mentioned such as performance, loyalty, commitment and so on.

Mr N Gocool, the Head of Finance and Administration at the Respondent, deposed at another sitting and he averred that Disputant has been working under his supervision as

from the year 2010. He confirmed that there is an open door policy at the Respondent whereby he can meet the CEO anytime and whereby his subordinates can "pop into my (his) office as well". If ever there is a problem with an employee, he would call the person in his office and he would engage in counseling. He averred that they have never served a document on an employee for poor performance. He stated that there have been many problems with Disputant but he finally referred to the problem of the rental agreement which was tacitly renewed for three years because Disputant failed to inform management about the renewal of the said agreement. He then referred to a complaint he would have received in relation to Disputant from the Head of Operations of the Waterpark. For the migration of employees to their new grades, he stated that there was an assessment done by the CEO, himself and another colleague who was however not directly concerned with Disputant. He stated that the CEO and he considered that the commitment of Disputant at work and his pro-activeness was not up to the standard. However, Mr Gocool then referred to noting some improvements in the work of Disputant over the past two months.

In cross-examination, Mr Gocool stated that when he joined the Respondent in his capacity as Financial Controller there was no proper handing over which was done by his predecessor to him. He is not aware if his predecessor was handling the issue of tenancy. He then added that the CEO told him that Disputant was the one handling the rental agreement and that "I must believe the CEO". He agreed that with the audit report, there was a change in the structure of the different departments at the Respondent so that the Human Resource Department was officially shifted to his responsibility. It was then that Disputant started to report to him officially. He was thus officially the supervising officer of Disputant as from October 2011 (effective date of the audit report). He did not make any report in writing or record in writing that Disputant was performing poorly because this is not the policy at the Respondent. The "assessment" exercise he had earlier described was carried out between him and the CEO and the Disputant did not participate in the exercise. Even then, there was nothing in writing in relation to the so called "assessment" exercise. In re-examination, Mr Gocool stated that in fact the CEO had asked the Disputant and himself that Disputant should work under his supervision and this since 2010.

Counsel for Respondent submitted that the Disputant has been properly, equitably and fairly assessed and has been given the salary which the Management and the Board feel fair having regard to the performance of the employee at his workplace. She also added that the Tribunal finds itself in a difficult position to decide on the quantum of salary of a particular employee.

Counsel for Disputant in turn referred to Articles 16, 46 and 55 of the Code of Practice at the Fourth Schedule to the Employment Relations Act. He suggested that the salary increase granted to Disputant prior to the implementation of the HR Audit Report Salary Review (2010/2011) was unacceptable. Counsel then referred to "the concept of like pay for like work" and suggested that there was discrimination within the policies of salaries at the Respondent. He argued that if Respondent was unhappy with an employee, it must take sanctions provided by law or in the contract. Counsel also

referred to what he termed as the wide powers of the Tribunal to award as per the terms of reference.
The Tribunal has examined all the evidence on record and the submissions of both Counsel. This case is sadly an example of what should be avoided when an organization embarks on some kind of performance appraisal system to determine increases in salary to be given to different employees. The Tribunal finds nothing wrong with the style of management adopted by Management at the Respondent whereby there is an open door policy where emphasis is laid on counseling. Depending on the type of organisation, nature of the business being conducted, nature of the work being carried out by the relevant employees, an open door style of management may indeed be appropriate and bring desired results. However, management style is not to be confused with basic requirements in so far as confirmation in postings, promotions, salary increases, disciplinary actions, warnings or more severe forms of sanctions are concerned. For example, a verbal warning is necessarily an unwritten warning but this does not absolve the responsibility of management to have on record in the appropriate file or personal file of the employee that an oral warning was given to that worker. This is a basic requirement of fairness and in fact protects both the organization and the employee. The law then takes over and provides, for instance, that an oral warning may no longer be valid, subject to certain conditions, beyond a certain period of time.

The Tribunal will refer to the unpalatable evidence on record that though the CEO was minded not to confirm the Disputant because of alleged shortcomings noted, he proceeded to confirm the latter as is the practice for others. It is interesting to note that Counsel for Respondent had put in cross-examination to the Disputant that his probation period had been increased by another six months by the CEO. It is pointless for us to stress again on the need to keep proper records in relation to human resources issues. The Tribunal has not been favoured with the HR Audit Report Salary Review (2010/2011) but Counsel for Disputant made it clear that the report was not being challenged. The Disputant has no qualms with the salary scale proposed for SIT 8 grade (his grade), that is, from Rs 37,500 to Rs 80,000. It is not disputed that following the implementation of the HR Audit Report Salary Review in October 2011, the Disputant when granted a salary of Rs 37,500 was in fact benefiting from a salary increase of only 4.7% (from a previous salary of Rs 35,820). This is explained on behalf of the Respondent by the fact that Management was not satisfied with the performance of Disputant at work.

Now, to have a proper system of appraisal based on performance, certain basic elements must exist. Though the Respondent is not governed by the Pay Research Bureau (PRB), the Tribunal feels that guidelines may be taken from various reports of the PRB (since 1993) as to what performance management is and how a performance management system is to be operated. The Tribunal refers to the 2013 PRB Report (volume 1) at paragraph 7.2 which provides as follows:

Performance Management is a strategic management approach for monitoring how a business is performing. It sets the methodologies, metrics, processes, systems and

software (if any) which are used for monitoring and managing the performance of an organisation and its people. It links people to organisations.

Paragraph 7.4 of the same report reads as follows:

It (meaning Performance Management) *is designed to improve performance by understanding and managing performance key results within an agreed framework of planned goals, objectives and standards. It provides the opportunity to identify development needs of employees as well as a basis for reward. Performance Management enlists the participation of employees in the whole performance process and in the words of Michael Armstrong* ***"is based on the simple proposition that when people know and understand what is expected of them, and have been able to take part in forming those expectations, they can and will perform to meet them".***

The PRB goes further in its 2013 report and recommends that in addition to implementing the Performance Management System, organisations should consider the advisability of adopting a new model for the Performance Management cycle whereby there would be the work planning and results agreement, then quarterly check ins, a half year review and a final performance assessment. The Tribunal agrees that this would be a very suitable cycle and should be adopted the more so where salary increases is made to depend on performance assessment. During the quarterly check ins and mid-year review, supervising officers would have discussions with employees to review progress. Though specific reference has been made to reports of the PRB, Performance Management System, be it in the public service or private sector is the same notion with only small variances in its actual application, for example, in relation to the timing of check ins and reviews. However, the basis of the system must be the same and must necessarily involve the employee being assessed.

In the present case, in the absence of written reports of performance or non-performance, let alone of any warnings, the system would not even meet the requirements of a confidential reporting system of appraising performance. The system is thus characterized by lack of transparency and no feedback is given to the appraisee thus depriving him of the opportunity to discuss performance improvement with his supervisor. In the present matter, whilst there has been an over emphasis on an open door style management, there is evidence that there is nothing in writing in relation to the performance or short comings of Disputant. The version of Disputant that he has never been informed of his weaknesses and where he has to improve thus seems very more plausible in the light of all the evidence including the evasive stand of the CEO when questioned as to whether the Respondent did reply to the letter of Disputant whereby he was formally informing the CEO of his grievance. At paragraph 7 of the Reply of the Respondent to the Statement of Case of Mr Koobrawa, the Respondent admitted among other things that the Disputant reported a dispute at the Commission for Conciliation and Mediation as a result of the refusal of the CEO to respond to Disputant's letter.

The Tribunal also notes that Mr Gocool could not personally confirm if the renewal of lease agreement fell within the attributes of Disputant. If there was a proper performance management system, these duties would have been agreed upon by the employee and his supervisor at the beginning of every performance management cycle. When referring to shortcomings of the Disputant, the CEO has referred mainly to the "tacite reconduction" of a lease agreement and Mr Gocool has also referred to same. Though these shortcomings or poor performance, if true, could have justified a comparatively lower salary increase, these should have been duly recorded and conveyed to the Disputant. Performance of a worker cannot be left to the mere *ipse dixit* of a responsible officer. This would have, at least, avoided the Tribunal the insidious task of assessing evidence from Respondent that Disputant for no obvious reasons would have suddenly improved his performance after he would have taken the initiative to lodge the present dispute against Respondent following the refusal of the CEO to respond to his letter of grievance.

However, the Tribunal notes that the present dispute is in relation to the increase in salary granted to Disputant (migration to the new scale) and that the existing salaries prior to the new grading effective as from October 2011 have not been challenged. The Disputant was already earning less than any of the other Team Leaders. There is indeed nothing wrong with same and Mr Bouic explained that even within the same broadband, jobs may have slightly different scores after using a factor point system. Any reference to the principle of equal remuneration for work of equal value would thus not apply in the present case, the more so, in the absence of evidence of details of results obtained following an analysis of the job contents and responsibilities attributable to the different job titles of the team leaders (in terms of scores obtained).

No evidence has been adduced on behalf of Disputant to show his good or excellent performance at work. As per the terms of reference of the present dispute, the Tribunal is to award whether the Disputant should be entitled to a salary of Rs 48,000 to be at par with other Team Leaders in the new grading of SIT-8. Our first observation is that even if the Tribunal was to award in favour of the Disputant, he would not be at par with other Team Leaders except for Team Leader C (as per the new Annex 5 to the Statement of Case of Disputant) who was already prior to October 2011 earning a higher salary than Disputant. The Tribunal cannot award that Disputant should be entitled to a salary of Rs 48,000 in the absence of evidence that he ought to be awarded such a salary within the salary scale ranging from Rs 37,500 to Rs 80,000. Also, this would constitute a salary increase of some 34% for Disputant which is not justified from the evidence adduced before us. There is no evidence from Disputant that he deserved such a percentage of salary increase which would be greater than that derived by each of the other Team Leaders save for Team Leader A (again as per Annex 5 to the Statement of Case of Disputant).

For all the reasons given above, the Tribunal thus sets aside the dispute of the Disputant. However, in the light of the observations made in this Award, the Tribunal is confident that parties will engage in further negotiations with a view to reaching an

acceptable solution to both parties. The Disputant, who may feel frustrated so far, may thus find comfort and the required motivation to move forward, the more so if there is already a noticeable change in his performance so that both parties benefit from a win-win situation.

(Sd) Indiren Sivaramen
Vice-President

(Sd) Jheenarainsing Soobagrah
Member

(Sd) Jean Paul Sarah
Member

(Sd) Hurryjeet Sooreea
Member **28 December 2012**