

EMPLOYMENT RELATIONS TRIBUNAL

AWARD

ERT/RN 5/12

Before:

Shameer Janhangeer	-	Vice-President
Abdool Rahoof Saib	-	Member
Marie Pierre Jacques Henri de Marassé-Enouf	-	Member
Hurryjeet Sooreea	-	Member

In the matter of:-

Mr Jadoonundun Charitar

Disputant

and

Central Electricity Board (CEB)

Respondent

The present matter has been referred to the *Tribunal* for arbitration pursuant to section 69(7) of the *Employment Relations Act* (the "Act") by the *Commission for Conciliation and Mediation* (the "CCM"). The terms of reference of the dispute are as follows:

1. "Whether the Central Electricity Board (CEB) should grant me leave and passage benefits under the Tour of Service Scheme for the period November 2005 to 19 October 2008."
2. "Whether the Central Electricity Board (CEB) should refund me the full cost, Rs 9000 (nine thousand rupees) instead of only 50% i.e. Rs 4500 (four thousand and five hundred rupees) of the fees paid in July 2009 to attend a seminar organized by the ACCA Mauritius Branch in July 2009."

The Disputant is the Chief Internal Auditor at the *CEB*, which is a body corporate established under the *Central Electricity Board Act* (the "*CEB Act*"). The *CEB* is responsible for the control and development of electricity supplies in Mauritius and has the power to employ such technical and administrative staff as it thinks fit.

The Disputant and the Respondent were both represented by Counsel and have each filed a statement of case in the matter.

The Disputant in his statement of case has, under the first item of the Dispute, mainly averred that he was interdicted on 21.11.2005 and following the findings of a disciplinary committee, which found the charges levelled against him to be unproven; he was reinstated as Chief Internal Auditor on 20.10.2008. On 08.12.2008, the Human Resource Manager informed the Disputant that he will continue to accumulate leave and passage benefits during his period of interdiction (vide Document 8 annexed to the statement of case). Following an application to go on leave abroad, the Disputant was informed by the Human Resource Manager that he has been directed to inform him (the Disputant) that he was not entitled to leaves and benefits under the Tour of Service System during the interdiction period (vide Document 9 annexed to the statement of case). The Disputant has averred that the Board already gave its approval in October/November 2008 (for the restoration of his leave and passage benefits) but came back on its decision in November 2009. The Disputant has further averred that that he was paid other outstanding benefits which he was denied when under interdiction (vide Document 12 annexed to the statement of case).

Under the second item of the dispute, the Disputant has averred that towards the end of April or beginning of May 2009, he applied to attend a workshop organised by the ACCA Mauritius Branch to which he was informed, on 07.05.2009, that his request was not approved (vide Document 15 annexed to the statement of case). On 28.07.2009, he attended a similar workshop for which he applied directly. He furthermore applied for a refund of the course fees on 28.07.2009 (vide Document 16 annexed to the statement of case). The Disputant was eventually refunded 50% of the fees paid following the

implementation of the new salary structure and conditions of service effective as from 01.07.2009.

The Respondent in its statement of case has, in relation to the first item of the dispute, notably stated that following the reinstatement of the Disputant as Chief Internal Auditor, the Human Resources Department proposed that Mr J. Charitar be exceptionally allowed to accumulate leave and passage benefits during his interdiction given that none of the charges were proved. However, the *CEB* decided that the Disputant was not entitled to Leave and Passage Benefits and did not approve same. As per the Revised Internal Regulations for those eligible for the Tour of Service System (vide Annex E of the statement of case), the privileges are grantable by the Board at its discretion and subject to the normal exigencies of the service. Furthermore, despite the Board having considered the report of the *CCM*, it maintained its previous decision to the effect that an employee could not be entitled to leave and passage benefits during the period of interdiction.

In relation to the second item of the dispute, the *CEB* has contended that as per normal practice, an employee willing to follow a course/training/workshop sponsored by the Board should seek the prior approval of Management before enrolling on same. Following the application of the Disputant, he was informed that his request could not be approved as no more seats were available. Disputant did not seek the prior approval of Management before enrolling on same as should normally be. The request for refund made by the Disputant was not entertained. Eventually, Management reconsidered the request for refund and decided, in line with the provisions of the *Appanna Report* regarding Continuous Professional Development (CPD), to refund half the fees paid (i.e. Rs 4,500).

The Disputant was called by Counsel to adduce evidence on his behalf. Mr Jadoonundun Charitar solemnly affirmed to the correctness of his statement of case and produced the 19 documents attached thereto (marked Documents A₁ to A₁₉). He referred to Document A₈ (a memorandum dated 08.12.2008 from the Human Resources Manager). As per Document A₉ (a memorandum dated 20.11.2009 from the Human Resources Manager), he was informed that he was not entitled to benefits under the Tour of Service Scheme during the period under interdiction and the letter makes no mention of the Board. Despite

the collective agreement signed with the Central Electricity Board Staff Association (“CEBSA”) stating that passage benefits and vacation leave shall not be earned during any period of interdiction, the Disputant contended that this governs vacation leave regulation and that his claim is under the Tour of Service System. The Disputant expounded on the schemes prevailing at the CEB, i.e. Tour of Service; Air Mileage Credit; and Vacation Leave and Passage Benefits with each having its own separate regulations. He further stated that when under interdiction in 2006, the General Manager proposed that he could avail himself of the passage benefits that have accrued to him so far. He further explained that under the vacation leave scheme there is no restriction and you continue to accumulate whereas under the tour of service scheme one is entitled to a passage benefit after three years. He maintained that the letter dated 08.12.2008 (produced as Document A₈) from the Human Resources Manager is clear and unambiguous. In relation to the second issue, the Disputant does not agree with the stand of the CEB that sponsorship of training for an employee is upon the discretion of Management and subject to the approval of the Board. He however conceded that the General Manager can refuse and has a discretionary power to say no.

Mr J. Charitar was cross-examined by Counsel for the Respondent. He notably stated that the granting and approval of leaves for Heads of Department is at the level of the General Manager but could not produce any evidence to support same. In support of his averment that the Board had already given its approval in October/November 2008 but came back on its decision in November 2009 he referred to the letter from the Human Resources Manager (vide Document A₈) and did not have any minutes from the Board to support same. He did not agree that the Board decided that he was not entitled to Leave and Passage Benefits during his interdiction. He agreed that paragraph (e) of the Tour of Service System in the CEB collective agreement (vide Annex E to the Respondent’s statement of case), i.e. that the Regulations do not give an employee a right to any leave, passage or other privileges, such privileges being granted by the Board at its discretion, is part of the regulations which form part of the collective agreement with the CEB Staff Association. He further agreed that he signed the option form on the new salary structure and revised conditions of service taking effect from 1st July 2005 and produced the aforesaid option form (vide Document B). He agreed that under the Vacation Leave Regulations, an employee shall not earn vacation leave during any period of interdiction despite contending that he is not

governed by the Vacation Leave Regulations. He agreed that under the Passage Benefits Scheme, it is stated that passage benefits shall not be earned in respect of any period of interdiction. Under the second item of the dispute, the Disputant stated that at present to obtain the fifty per cent refund, the course must be approved first. According to him, given that he was turned down and told that he would get his chance in any next batch as and when available, the Management had already given its approval for the next time. He applied directly for an ACCA workshop on 28 July and he was not sponsored by the CEB. He further stated that the recommendation in relation to the refund of fifty per cent of the fees is conditional to the approval of the Board.

Under re-examination from his Counsel, the Disputant clarified that under the Tour of Service System, there is no regulation governing the cessation of accumulation during a period of interdiction. He further referred to the conditions under the "Leave & Passage Benefits (Top Management) – Tour of Service System", which state that the conditions applicable are those contained in the Leave & Passage Regulations of the Tour of Service System.

Mr Sailendra Sahye was called to depone on behalf of the Respondent. He affirmed as to the correctness of the Respondent's statement of case. In relation to the first item of the dispute, he stated that there are no documents to support the Disputant's averments at paragraphs 20 and 21 of his statement of case (i.e. his application for leave and passage benefits under the Tour of Service System in November 2009 and being informed that he was not entitled to same contrary what had been communicated to him on 8 December 2008; and that the Board had come back on its approval given in October/November 2008). In relation to the second dispute, he stated that if an employee is interested in following a course, he must apply to the General Manager, as is the case for a Head of Department, for prior approval. When approval is obtained, the Officer is then released and sponsored to follow the course. The Disputant did not apply for the seminar; he only made a claim for refund of payment. The CEB nevertheless, following the recommendations of the *Appanna Report*, paid fifty per cent of the fees. A collective agreement on terms and conditions of employment was signed on 1 July 2005 at the CEB and ended on 30 June 2009. The *Appanna Report*, which now prevails, was signed on 1 July 2009 and will end on 30 June 2013.

Mr S. Sahye was thoroughly cross-examined by Counsel for the Disputant. He pointed out that the interdiction of the Disputant is not one of normal circumstances and therefore it was at the discretion of the Board to decide whether or not to grant leave and passage benefits under the Tour of Service Scheme. With regard to the other benefits that were paid to the Disputant (vide letter produced as Document A₁₂), he could not say whether this is following a decision of the Board. In relation to the memorandum from the Human Resources Manager (vide Document A₈), he stated that this was a recommendation made to the Disputant to grant leave and passage benefits and not an approval as the Human Resources Manager recommends and does not approve. The recommendation was not made to the Board or the General Manager as per Document A₈. Furthermore, there is no mention of the word “approval” in relation to the accumulation of leave and passage benefits during the period of interdiction in the aforesaid document. Mr Sahye did recognize that the Disputant may have made an application to use his leave and passage benefits in November 2009. The Tour of Service System governs only leave and passage benefits. There is no provision governing cases of interdiction under the Tour of Service System, however this is integrated under the Internal Regulations no. 4 of the Regulations. Mr S. Sahye produced a copy of the Collective Agreement with CEB Staff Association dated 9 February 2006 (vide Document C).

In relation to the refund of the course fees being claimed by the Disputant, Mr S. Sahye, under cross-examination, notably stated that the *CEB* paid in full for the three employees who attended the seminar as they had received prior approval and were sponsored fully. As for Mr J. Charitar, he enrolled and paid directly for the workshop he attended and then asked for a refund of the amount paid. The normal practice at the *CEB* is for employees to seek the approval of the General Manager and if they entertain the request of the Disputant, other employees may enrol and pay for a course and then ask for a refund with the *CEB* and the *CEB* cannot take this liability.

Under re-examination from Counsel for the Respondent, Mr S. Sahye acknowledged that Annexes D and E (which are extracts of the Collective Agreement with CEB Staff

Association) of the Respondent's statement of case both form part of the same document (vide Document C) and that the document should be read in its integrity.

The dispute at hand is in relation to two items, firstly, whether the Disputant should be granted leave and passage benefits under the Tour of Service Scheme for the aforesaid period from his employer; and secondly, whether the Disputant should be refunded the full cost of the fees of an ACCA Mauritius Branch seminar held in July 2009.

The background to the first item of the dispute is the interdiction of Mr J. Charitar, the Chief Internal Auditor at the *CEB*, from 21 November 2005 to 19 October 2008. He was formally charged before a Disciplinary Committee, which had eventually found the charges preferred against him not proved. On 3 October 2008, he was offered the post of Compliance and Risk Management Officer (vide Document A₃) at the level of Head of Department with all relevant benefits, which he refused insisting that he be reinstated in his former position as Chief Internal Auditor (vide letter dated 6 October 2008 produced as Document A₄); a request which the *CEB*, through its then General Manager, approved (as per a letter dated 15 October 2008 produced as Document A₅) with effect as from 20 October 2008.

The Disputant is mainly relying on a document headed "CENTRAL ELECTICITY BOARD MEMORANDUM" from the Human Resources Manager (produced as Document A₈) dated 8 December 2008 addressed to Mr J. Charitar. The aforesaid memorandum states the following in relation to the issue of leave and passage benefits:

3. Leave and Passage Benefits

You will continue to accumulate leave and passage benefits during the period of interdiction, except for the period during which your last request for leave overseas was approved.

According to the Disputant, he was informed that he was not entitled to leave and passage benefits upon him having applied for use of the said benefits which had accumulated during the period of interdiction in November 2009. He further averred that the Board had already given its approval in October/November 2008. He unfortunately did not have any evidence in support of his averments with regard to the Board's approval.

The memorandum from the Human Resources Manager dated 8 December 2008 is by no means a letter from the Board of the *CEB*. Mr S. Sahye, who adduced evidence on behalf of the Respondent, maintained that it was a recommendation made by the Human Resources Manager and that there was no approval from the Board. Furthermore, the Disputant himself (at paragraph 20 of his statement of case) has not referred to the memorandum as being the approval of the Board allegedly given in October/November 2008. The *Tribunal* thus cannot find that the *CEB* gave its approval for the accumulation of the Disputant's Leave and Passage Benefits during his period of interdiction and that it subsequently came back on its decision about a year later.

Furthermore, it is not disputed that Mr J. Charitar falls under the Tour of Service Scheme being a Head of Department. However, it should be noted that the Tour of Service Scheme is part of the Collective Agreement with *CEB* Staff Association (the "*Collective Agreement*" produced as Document C) wherein it falls under the heading "*Revised Internal Regulations No. 4 – Leave and Passage Benefits*". The *Collective Agreement*, which was in force at the time, regulates the terms and conditions of employment at the *CEB* and applies generally to every employee of the *CEB*.

The *Collective Agreement* has provided, under the *Revised Internal Regulations No. 4*, for three schemes, namely Passage Benefit Scheme, the Tour of Service System and the Air Mileage Credit Scheme. A mutual provision to both the Passage Benefit Scheme and the Air Mileage Credit Scheme is that passage benefits shall not be earned in respect of any period of interdiction. However, under the Tour of Service System, it has been expressly provided that:

Nothing in those Regulations shall give an employee a right to any leave, passage or other privileges, such privileges being grantable by the Board at its discretion, and subject to the normal exigencies of the service.

This provision of the *Collective Agreement* clearly does not confer an automatic right to leave and passage benefits under the Tour of Service Scheme to employees eligible for

same at the *CEB*. The right to the Leave and Passage Benefits is subject to a discretion which has been vested with the Board, which clearly has the power to grant or not to grant same.

In relation to the exercise of a power, one may note what was stated in *Auckloo v The State of Mauritius and Ors.* [2004 SCJ 312]:

It is one of the sine qua non of a democratic set-up that where power is entrusted to a person, he or she should exercise it judiciously and not arbitrarily: Breen v Amalgamated Engineering Union [1971] 2 QB 175.

On the facts of the present matter, the Disputant was reinstated in his former position of Chief Internal Auditor as from 20 October 2008 after having been on interdiction for a period of almost three years from 21 November 2005 to 19 October 2008. As per a letter dated 15 October 2008 from the *CEB* (produced as Document A₅), he was told that other related issues are being looked into and he will be informed shortly. Moreover, in relation to his other privileges and benefits, the Disputant has received his end of year bonus, productivity sick leaves bonus and productivity bonus, his monthly travelling, loan and cash grant for the purchase of car as well as telephone allowances for the period he was under interdiction.

Furthermore, the *Tribunal* has taken note that the date of reinstatement of the Disputant, i.e. 20 October 2009, has not been backdated to the period prior to his interdiction, i.e. as from 21 November 2005.

This is in contrast to the case of *Ah Qune v The State of Mauritius* [2009 SCJ 301], where the Supreme Court, on appeal, had to decide whether the Appellant, a Senior Government Valuer, was entitled under the recommendations of the *PRB Report of 1998* to travel allowance and sick leave not paid to him whilst under interdiction under the *Public Service Commission Regulations* upon his subsequent reinstatement with retrospective effect. His other benefits claimed for, including his passage benefits, had been restored by the Industrial Court. In taking a practical approach to the issues, the Supreme Court held that the lower court was not at fault in not allowing the two benefits not restored and found that

the “*if interdiction = Benefits not payable, then no interdiction = Benefits payable*” is not a correct equation to be applied in the case.

In the circumstances, given the particular facts of the present matter and having regard to the date of reinstatement of the Disputant, the *Tribunal* cannot find that the *CEB* has made an injudicious exercise of its power in not granting the Disputant Leave and Passage Benefits under the Tour of Service Scheme for the period November 2005 to 19 October 2008.

In relation to the second item of the dispute, it has not been disputed that on 7 May 2009, Mr J. Charitar was informed by the *CEB* that his request to attend a workshop (in May 2009) was not approved as no more seats were available and that he might get his chance in any next batch as and when available. He directly applied, paid for and attended an ACCA workshop in July 2009. He furthermore applied for a refund of the course fees on 28 July 2009. The Respondent eventually refunded 50% of the course fees (i.e. Rs 4,500) and has contended that this was entertained in line of the provisions of the Central Electricity Board – Terms and Conditions of Employment (the “*Appanna Report*”) in relation to Continuous Professional Development (CPD) which currently prevails. However, it may be noted that the initial application by Mr J. Charitar (in May 2009) was prior to the *Appanna Report* which came into effect on 1 July 2009.

The relevant recommendation of the *Appanna Report* reads as follows:

Continuous Professional Development (CPD)

6.46 *We recommend that officers who, as a condition to retain their membership to their recognised Institutes/Bodies are required to achieve a minimum number of units of CPD should be provided an assistance of 50% of the total expense in relation to the achievement of the appropriate number of units of CPD, subject to a maximum of Rs 10,000 annually.*

The gist of the evidence of the Disputant on this issue is that when he was turned down and told that he would get his chance as and when available, the Management had already given its approval for the next time. The relevant extract of the correspondence (vide an e-mail dated 7 May 2009 produced as Document A₁₅) reads as follows:

Dear All,

CEB regrets to inform you that your request to attend the above course could not be approved as no more seats are available on this batch.

Thanks for your usual understanding and may be you'll get your chance in any next batch as & when available.

Furthermore, the evidence of Mr S. Sahye is of some significance on this issue. In addition to having explained the procedure to be followed in such cases, he stated that three other employees sought and obtained approval from the General Manager for the workshop whereas the Disputant enrolled directly and then asked for a refund from the *CEB*. He acknowledged that the issue was one of approval and that through the e-mail dated 7 May 2009 (vide Document A₁₅), the Disputant was told that "may be" he will get his chance in any next batch as and when available.

It is therefore clear that the correspondence from the *CEB* dated 7 May 2009 is by no means an approval for any course to be held in the future. Moreover, having regard to the aforementioned recommendation of the *Appanna Report*, the *CEB* has in consideration of the refund applied for paid 50% of the course fees despite not having approved the seminar attended by the Disputant in July 2009. Although there is nothing in the recommendation on the issue of approval, the refund of 50% certainly demonstrates the good faith of the *CEB* vis-à-vis the Disputant in relation to the dispute.

In the circumstances, the *Tribunal* cannot award that the *CEB* should refund the Disputant the full cost of the fees paid in July 2009 to attend a seminar organised by the ACCA Mauritius Branch in July 2009.

The two items of the present dispute are therefore set aside.

(Sd) Shameer Janhangeer
(Vice-President)

(Sd) Abdool Rahoof Saib
(Member)

(Sd) Marie Pierre Jacques Henri de Marassé-Enouf
(Member)

(Sd) Hurryjeet Sooreea
(Member)

Date: 9 August 2012