

EMPLOYMENT RELATIONS TRIBUNAL

AWARD

Before:-

Shameer Janhangeer	-	Vice-President
Abdool Rahoof Saib	-	Member
Philippe Edward Blackburn	-	Member
Hurryjeet Sooreea	-	Member

In the matters of:-

ERT/RN 31/12

Mrs Pooniawtee Devi Bhurtun

(Disputant)

and

The State (Ministry of Health & Quality of Life)

(Respondent)

ERT/RN 32/12

Mrs Uma Devi Moolchand

(Disputant)

and

The State (Ministry of Health & Quality of Life)

(Respondent)

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

“Whether the implementation of Roster C as from 27 June 2011 for the grade of Hospital Care Attendant at S S R N Hospital should be stopped and the previous Roster prior to 27 June 2011 be restored.”

The Disputants were assisted by a Trade Unionist and the Respondent was represented by State Counsel and instructed by State Attorney. Both parties have each filed a statement of case in the matter. The cases of the two Disputants were consolidated prior to the hearing of the matter.

The Disputants in their statement of case have averred that prior to 27 June 2011, they were working according to a roster involving eight hospital care attendants in a ward. The aforesaid roster included three shifts over 24 hours, i.e. Shift A (7 am to 1.30 pm); Shift B (11.20 am to 6 pm); and the night shift (5.20 pm to 7 am). The number of shifts put in by an individual Hospital Care Attendant (“HCA”) over a week would be two each for Shift A and Shift B and one for the night shift. A new roster, referred to as Roster C, was introduced with effect from 27 June 2011 which included three shifts over 24 hours, i.e. Shift 7 – 4 (7 am to 4 pm), Shift 7 – 6 (7 am to 6 pm) and night shift (6 pm to 7 am). The total number of hours put in would be $40 \frac{1}{3}$ of which $39 \frac{5}{6}$ being reckoned as working hours. Under the new roster, the number of shifts put in by an individual HCA over a week would be two for Shift 7 – 4, one for Shift 7 – 6 and one for the night shift. The total number of hours put in would be 42 of which 40 being reckoned as working hours. For the reasons set in their statement of case, the Disputants find that the new roster (Roster C) is unacceptable. The Disputant has further averred that Roster C was meant to be implemented on a trial basis for three months and has already been implemented for ten months. Furthermore, a new shift has been introduced to Roster C (i.e. 9 am to 6 pm).

The Respondent in its statement of case did not dispute the shifts worked on the previous roster and averred that the Disputants worked for 40 hours under the previous roster in a seven day working week. In relation to the shifts under the new roster which came into effect on 27 June 2011, the Respondent notably stated that between 0900 hours and 1600 hours, there are three HCAs working. The Respondent has denied that Roster C is unacceptable for the Disputants and has averred that under the new roaster the disputants work less days per week (i.e. 4 days instead of 5) and that the additional $1 \frac{1}{2}$ / 2 hours additional which represent lunch/dinner time are not included in the 40 hours per week. They now have more days off per week (i.e. 3 days instead of 2). Furthermore, although some adjustments have been brought to Roster C (4 shifts instead of 3 shifts), the working week is still the same. In

relation to the introduction of the new roster on a trial basis, it was decided to maintain Roster C in light of positive results noted and following a survey showing that the majority of HCAs are agreeable to Roster C. The Respondent has further averred that Roster C is also implemented at Dr A.G. Jeetoo and Flacq Hospitals and that it has been introduced at S S R N and J. Nehru Hospitals with a view to applying the same shift system in all hospitals.

Mrs Pooniawtee Devi Bhurtun, the first Disputant, was called to depone by the Trade Union representative. She stated that she is a Hospital Care Attendant working at S S R N Hospital. She explained her duties at the Hospital and notably stated that previously she did not have an hour for lunch. A second Roster C has been introduced with four shifts instead of three shifts of which in the 7 – 4 and the 7 – 6 shifts there are only 2 HCAs in the ward. With the new shift introduced, i.e. 9 am to 6 pm, there are only two instead of three HCAs in the ward. She also explained that when there is only one HCA, all the duties cannot be performed. Furthermore, with the second Roster C, they do not have time to take their lunch hour properly. Even with the new night shift, i.e. 6 pm to 7 am, they do not have time to have their meal. She stated that she works 42 hours including the lunch/dinner time and is paid for 40 hours and is not paid overtime. Under the previous roster, there were more people working, however there was no lunch/dinner time. As from June 2011, there was a reduction in staff. She further explained that when she has to accompany a patient for a scan, she does overtime, returns home at seven and her family life is disturbed. She even has to take longer leaves as she is tired because of the long shift.

In reply to questions put by State Counsel for the Respondent, the Disputant stated that there was 15 minutes tea time in the previous roster even though there was no lunch time. She agreed that she now works 4 days instead of 5 days per week under the new roster and now has 3 days off. She does the night shift once or twice a week depending on the roster given and accepted that the night shift was shorter than before. She also agreed that there was also more than one HCA in the ward. She is not aware of a letter/petition addressed to the Minister of Civil Service Affairs stating that the HCAs do not wish to continue with Roster C. In relation to the time-off granted for overtime, the Disputant acknowledged that it is given, however she does not get the time to take it.

The second Disputant Mrs Uma Devi Moolchand was also called to depone. She explained that between 7 am to 4 pm, there are two HCAs working, one from 7 am to 4 pm and the other 7 am to 6 pm. However, because of their tasks there is only one in the ward at times

and at times there is no HCA in the ward. With the new shift, there were three persons at 7 am, two in the 7 – 4 shift and one in the 7 – 6 shift. With the introduction of the 9 – 6 shift, the number of HCAs has decreased to two. She opted for the conditions of the Pay Research Bureau Report (the “*PRB Report*”) when she joined in 2009. With the 7 – 6 shift, they get tired and have more work in the afternoon and have transport problems as their last bus leaves the Hospital at 6.15 pm. There is no resting time in the long shift of 7 – 6. In the night shift, a HCA does have resting time. She produced an extract from the *PRB Report* in relation to shift schedules (vide Document A). There is no paid overtime as they are given time off, however other grades are given overtime. She produced an extract of the *PRB Report* in relation to overtime for shift work (vide Document B). Furthermore, when she takes her time-off, her colleagues have to cover for her work. She also explained the effects of the late shift (7 – 6) on her family life. When she works the 7 – 6 shift alone, she cannot have her lunch time and this gives her health problems for which she has to take medication. Before June 2011, they had tea time and were three HCAs in the morning. Now, when she is alone in the ward she cannot have same. With the introduction of Roster C, her colleagues now take more leaves as they cannot work consecutive long shifts.

Under cross-examination from State Counsel, the Disputant notably stated that although the night shift was previously longer, the day shift was shorter and they were not tired. She agreed that the new roster has 40 hours per week, however before they were five persons working and now they are three and they have to do five days’ work in four days. Compared to nurses they do not have any resting time in the night shift which is presently longer. She maintained that the 7 – 6 shift is hard for them. She further maintained that under the previous roster, they benefited from tea time and were offered tea, bread and butter in the mess. With the reduced number of staff, they cannot perform all their duties listed in their scheme of service in particular during the 7 – 6 shift when working alone. She acknowledged that absenteeism has risen. Although during 9 am and 4 pm there are supposed to be 3 HCAs, in practice, this is not the case in the ward. Under the old roster, although there was no lunch hour they had intervals in which they could eat. In their 7 – 6 shift, they do not manage to have their lunch time. Although she now has more days off per year, she performs five days’ work in four days’ time with only three HCAs working.

The Trade Union representative also called a Senior Hospital Care Attendant, Mrs Luchmama Haulkoree. She produced a letter dated 7 June 2011 from a Ward Manager addressed to herself, the Secretary of the Health Workers Union (Document C), wherein it has been stated that work is not being carried out in the Hospital as there is a shortage of staff. She

stated the shift of the HCAs is not balanced; they cannot eat and work and are frustrated in their work.

Mr Chandrasen Nath Boodhun, Acting Hospital Executive Assistant at S S R N Hospital, was also called by the Trade Union Representative. He acknowledged having signed a letter dated 26 September 2011 wherein it has been suggested that Roster C be maintained at the Hospital. He carried out a survey in relation to Roster C at S S R N. He recognised that there was an improvement between 4 pm to 6 pm when only one HCA was working, however for the moment there are two HCAs working. Since June 2012, they have been receiving overtime and prior to June, there were replacements available. The Health Executive Assistant Office based at the Hospital recommended that Roster C be maintained after the three months trial period which started as from 27 June 2011.

Following questions put by State Counsel, he identified a letter dated 26 September 2011 (Annex D to the Respondent's Statement of Case) wherein he stated his views and comments in relation to Roster C and suggested that Roster C be maintained. He also stated that the survey referred to therein, which showed that most HCAs were willing, was carried out by his team. He further explained that Roster C was implemented on a three months trial basis following approval from the Ministry. Notice was given twenty days prior to implementation and explanations were also given. The level of absenteeism and leaves (granted) has stayed the same with the new roster. They have received no written complaints from the ward in relation to Roster C. He confirmed that the number of hours of work is forty with each shift having half an hour lunch time and that the duties have remained the same. He cannot force anyone to work over their shift, however sometimes they need people to cover for the running of the Hospital service. There is no fixed time for lunch and the HCAs may take their lunch time flexibly. With Roster C, there is only one night per week. According to him there are no transport problems for those who go on errands outside the Hospital. Along with the HCA cadre, there are other cadres, e.g. nursing, medical officers, who also work during the same time. Between 9 am to 4 pm, there are normally three HCAs, with at least two HCAs always present.

Messrs Halimannoo Sham, Officer; Sariss Emamdee, Officer; Kisorilall Tacouri, Officer; and Gowtam Choytooa; Leading Hand; were also called on behalf of the Disputants. They mainly stated that they work in the Health Executive Assistant Office of S S R N Hospital. They furthermore acknowledged having signed a letter dated 26 September 2011 addressed to the

Regional Health Director S S R N Hospital wherein they have stated that they are satisfied with the implementation of the new Roster C.

Mr Gurudev Aubeeluck, Ag. Senior Human Resources Officer at the Ministry of Health, was called to adduce evidence on behalf of the Respondent. He stated that Roster C, which is meant to cover 24 hours, has been implemented at Flacq and Dr Jeetoo Hospitals and is now being implemented at S S R N and J. Nehru Hospital. This is due to the Ministry's policy on uniformity in all hospitals and to have a common roster in all hospitals. He explained that under the previous roster at S S R N Hospital, there were overlapping hours, wastage of manpower and although there was no lunch time because of the overlapping hours, the HCAs working were able to have their lunch. He also stated that the agreed HCA patient ratio was being observed, i.e. 1 to 15 patients, 2 to 25 patients and 1 to 25 patients during the night. With regard to the long shift, he explained that the HCA has to put 13 hours instead of the normal 8 hours, however the next day he is off so as not to go beyond the 40 hours. The implementation of the new roster is being done in consultation with the sole recognised Union, i.e. the Union des Travailleurs du Ministère de la Santé (UTMS). They have not received any written complaints in relation to the working conditions of the HCAs. In relation to the errands performed by the HCAs outside ward and outside the hospital, he stated that this is part of their schedule of duties and if because of the errands they arrive late exceeding the 40 hours week, they will have to be compensated either by overtime or time-off. Furthermore, as from September 2012 there were minor changes brought to Roster C as with the previous Roster C, from 4 pm to 6 pm there was only one HCA and certain wards with heavy workloads were not able to cope. Now from 9 hours to 16 hours there are more than two HCAs.

The present dispute is whether the implementation of Roster C for the grade of Hospital Care Attendant at S S R N Hospital should be stopped and the previous roster prior to 27 June 2011 be restored. Having considered the evidence on record, the following issues have been raised by the two Disputants in relation to Roster C being implemented at S S R N Hospital for the grade of HCA:

- (i) There are only two HCAs present in the ward in the 7 – 4 and 7 – 6 shifts of Roster C, which now has four shifts.
- (ii) With 2nd Roster C there are only 2 HCAs in the ward during the 9 – 6 shift.

- (iii) They are now performing five days' work in four days' time with only three HCAs working whereas with the previous roster there were more people working.
- (iv) Although they now have more days off during the year, i.e. 156 as compared to 104, they now take more leaves as they work longer and are more tired.
- (v) They do not have time to take the time-off granted for overtime and there is no paid overtime.
- (vi) They do not have time to take their meal time properly during the day and during the night shift (i.e. 6 – 7) with Roster C.
- (vii) With the long shift (i.e. 7 – 6), they do not manage to have their lunch time, they are having health problems and it has a detrimental impact on their family/social life.
- (viii) They also raised issues about the errands they had to perform, e.g. accompanying patients to other Hospitals and carrying of gas cylinders in the ward, which may also lead to working beyond the shift.

Under the recommendations of the *PRB Report 2008* on conditions of service, the standard working week of officers working on roster and staggered hours is not less than 33 $\frac{3}{4}$ hours and not more than 40 hours as specified by Responsible Officers (vide *paragraph 18.5.2* of the *PRB Report 2008 Volume I*). Moreover, it has also been recommended that shift workers may be required to work on roster or at staggered hours, if the exigencies of service so require (vide *paragraph 18.5.3* of the *PRB Report 2008 Volume I*). Shift work is defined as a flexible working arrangement for a 24-hour coverage, whereas workers operating on a roster basis do not work on a 24 hour basis but according to a structured pattern of work specifying the start and finish times of turns of duty which may or may not include night duty (vide *paragraphs 18.5.47* and *18.5.48* of the *PRB Report 2008 Volume I* respectively).

The previous roster with the number of HCAs on service during each shift and the number of shifts put in by an individual HCA was set as follows:

Shift A: 7 am to 1.40 pm (no lunch time) – 2 shifts per week
 3 HCAs (Monday to Saturday); 2 HCA (Sunday)

Shift B: 11.20 am to 6 pm (no lunch time) – 2 shifts per week
2 HCAs (Monday to Sunday)

Night Shift: 5.10/5.20 pm to 7 am (½ hour dinner time) – 1 shift per week
1 HCA (Monday to Sunday)

Roster C which has been introduced as from 27 June 2011 with the number of HCAs on service during each shift and the number of shifts put in by an individual HCA is as follows:

Shift 7 – 4: 7 am to 4 pm (with ½ hour lunch time) – 2 shifts per week
2 HCAs (Monday to Saturday); 1 HCA (Sunday)

Shift 7 – 6: 7 am to 6 pm (with ½ hour lunch time) – 1 shift per week
1 HCA (Monday to Sunday)

Night Shift: 6 pm to 7 am (with ½ hour dinner time) – 1 shift per week
1 HCA (Monday to Sunday)

A new Roster C was introduced with an additional 9 – 6 shift. This roster with the number of HCAs on service during each shift and the number of shifts put in by an individual HCA is as follows:

Shift 7 – 4: 7 am to 4 pm (with ½ hour lunch time) – 1 shift per week
1 HCA (Monday to Sunday)

Shift 7 – 6: 7 am to 6 pm (with ½ hour lunch time) – 1 shift per week
1 HCA (Monday to Sunday)

Shift 9 – 6: 9 am to 6 pm (with ½ hour lunch time) – 1 shift per week
1 HCA (Monday to Sunday)

Night Shift: 6 pm to 7 am (with ½ hour dinner time) – 1 shift per week
1 HCA (Monday to Sunday)

Having considered the rosters the Disputants were and are now working under, it may be seen that the number of shifts per working week has now decreased to four and with the adjustment made to Roster C, they now work an additional 9 – 6 shift instead of two 7 – 4 shifts. Furthermore, the ½ hour lunch/dinner time per shift is now included in the roster, whereas although the Disputants had time to take their lunch, the roster did not provide for

any lunch time. The Disputants have also accepted that they now work less days during the week, i.e. 4 days instead of 5, with 3 days off and hence have 156 days off during the year which is more than the 104 days off they previously had. As regards the long shift in the new Roster, i.e. the 7 – 6, they have admitted that this is only scheduled once a week.

However, it does appear that the gist of the complaints raised in relation to the Roster C is related to the number of HCAs present during each shift. The Disputants have contended that they now work more with less HCAs on service during the shifts. The Respondent has maintained that there are at least two HCAs working between 9 hours to 16 hours with the new Roster C and that the agreed HCA – Patient ratio (i.e. 1 to 15, 2 to 25 and 1 to 25 during the night) is being observed. For the smooth running of Roster C, the Respondent should therefore ensure there are a sufficient and adequate number of HCAs on service during each shift and see to it that a HCA is not working alone on any given shift.

As regards issue of the meal time that is allocated to the HCAs in Roster C, it has been contended that this can be taken flexibly and that there is no fixed time to take same. However, the *Tribunal* would urge the Respondent to give particular attention to this complaint and ensure that the meal times of the HCAs are being respected in as much as it would defeat the purpose of having included lunch/dinner time in the new roster with the disputants not being able to properly take same.

As regards the issues raised regarding the 7 – 6 long shift, the Respondent should explore ways as to limit the alleged detrimental impact on the social life of the Disputants to enable them to adapt to same. Under the previous roster, the lengths of the day shifts were shorter (i.e. 7 am to 1.40 pm and 11.20 am to 6 pm) and with the implementation of Roster C which has introduced this long shift, the working habits of the Disputants may have been upset. The *Tribunal* would therefore urge the Respondent to reconsider this particular shift, by for example providing for a break/resting time and/or adding more HCAs on service during this shift, so as to enable the HCA grade to adapt their working habits to this new shift and to limit its impact on their time in line with the recommendations of the *PRB Report 2008* (vide *paragraph 18.5.55 H of the PRB Report 2008 Volume I*) in relation to unduly long shifts. The Respondent should also ensure that public transport is available for the HCAs within a reasonable time at the end of the shift schedule.

With regard to the issue of overtime work done by the Disputants, they have contended that they were only given time-off and were not paid for same. This has not been denied by the Respondent and during course of the hearing, it was borne out by Mr C. Boodhun of the Health Executive Assistant's Office that since June 2012 the HCAs have been receiving overtime allowance. Although, this is not the actual subject matter of the present dispute, the *Tribunal* has taken note that the Respondent is addressing this issue which may be common to any roster.

Moreover, the Disputants have not denied that the errands they have to perform form part of their duties. Although they may not be satisfied with the chores they have to perform, this is not an issue which is directly relevant to the implementation of Roster C at S S R N Hospital or any other hospital and is more pertinent to the scheme of duties of the HCA grade.

Having considered the issues raised by the Disputants in relation to Roster C, it cannot be said that the implementation of the aforesaid roster is unfavorable to the Disputants when compared to the previous roster. Although the Disputants have made certain complaints, they have acknowledged that the new roster has less shifts, more days off per week and per year and their lunch time is now included in same. Moreover, the shift mainly complained of (i.e. the 7 – 6) is only once per week. The *Tribunal* has noted that the Respondent has not turned a blind eye to the issues raised by the Disputants in its efforts towards the implementation of the roster and would be advised to ensure that there are adequate staff for the smooth running of the roster. This entente between the Disputants and the Respondent is a necessary factor for the smooth running of the hospital as an essential public service and can only lead to the promotion and improvement of good employment relations in the workplace (vide *G. Rousseau & Ors. and Le Warehouse (RN 1013 of 2010)* and *The State Bank of Mauritius Staff Union and State Bank of Mauritius (RN 1001 of 2010)*).

The *Tribunal* cannot therefore find that the implementation of Roster C for the grade of Health Care Attendants at S S R N Hospital should be stopped and that the previous Roster prior to 27 June 2011 be restored.

The dispute is therefore accordingly set aside.

(Sd) Shameer Janhangeer
(Vice-President)

(Sd) Abdool Rahoof Saib
(Member)

(Sd) Philippe Edward Blackburn
(Member)

(Sd) Hurryjeet Sooreea
(Member)

Date: 12th September 2012