

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 29/12

Miss Vasantee Kallychurn

(Disputant)

and

The State (Ministry of Health & Quality of Life)

(Respondent)

ERT/RN 30/12

Mr Swaley Mamode Jandoo

(Disputant)

and

The State (Ministry of Health & Quality of Life)

(Respondent)

The present matter has been referred to the *Tribunal* for arbitration by the *Commission for Conciliation and Mediation* pursuant to section 69 (7) of the *Employment Relations Act* on the following terms of reference:

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

The Disputants were assisted by a Trade Union representative and the Respondent was represented by State Counsel and instructed by State Attorney. Both parties have put in a statement of case in the matter and the Disputants have also put in a statement in reply to the Respondent's statement of case.

The Disputants, in their statement of case, have mainly averred that prior to 27 June 2012 they were working on a roster involving 9 hospital attendants in a ward which comprised of 3 shifts over 24 hours, i.e. Shift 7 (7 am to 4 pm), Shift 9 (9 am to 6 pm) and Night shift (6 pm to 7 am). From Monday to Sunday, there were 2 Health Care Assistants ("HCAs") present during each shift. Each HCA was required to work the night and day shifts alternately and put in 40 hours of work at a rate of 8 hours per shift and 5 shifts per week. The Respondent introduced a new roster, referred to as Roster C, with effect from 27 June 2011 and the said roster comprised of 3 shifts, 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), and involved only 7 HCAs. For the reasons that they have put forward in their statement of case, the Disputants have found Roster C to be unacceptable. Furthermore, despite Roster C having been reviewed with a new shift having been included (i.e. 9 – 6 (9 am to 6 pm)), the working conditions of the Disputants have not changed.

The Respondent in its statement of case has stated that Roster C has been implemented at J. Nehru Hospital on a trial basis for 3 months with effect from 27 June 2011 and that it decided to maintain the implementation of Roster C following the trial period. The Respondent has not denied the hours of work and the number of shifts put in by the Disputants under the previous roster and have recognised that the Disputants had dinner time and 4 hours resting time during the night shift and that they had one hour for lunch/dinner, whereas with Roster C they have ½ hour lunch/dinner time. Under Roster C, the Disputants are still working 40 hours per week and now work 4 days instead of 5 days in a week. Furthermore, there are 3 HCAs present between 0900 hours and 1600 hours. As regards their lunch/dinner time, the Disputants do get to take same between 11.30 – 12.00 hours, 12.00 and 12.30 hours and 12.30 – 13.00 hours during the day shift and between 19.30 – 20.00 hours during the night shift. The Disputants under Roster C now benefit from 3 days off per week and have an additional 52 days off per year, making a total of 156 days off per year. During the 0700 to 0900 hours period, the Respondent has averred that there are 2 HCAs posted as was previously during this period. The Respondent has further averred that the Union des Travailleurs du Ministère de la Santé (the "UTMS"), which is the sole recognised Union for the grade of HCA, was consulted and agreed to the implementation of Roster C and the HCAs were given advanced notice of same.

The Representative of the Disputants called Miss Vasantee Kallychurn (the first Disputant) to depose in the matter. She stated that she is an HCA since 1991 and opted for the *Pay Research Bureau* (the “PRB”) *Report* in 2008. She works on shift and contends that the *PRB Report* stated that her hours of work will not be changed. She worked two day shifts 7 – 4 and 9 – 6 and one night shift (6 – 7) with two HCAs in each of the shifts. She produced an extract of the *PRB Report 2008 Volume II Part I Recommendation 137, paragraph 30.424* (Document A). Her roster was changed on 27 June 2011. Previously, in the night shift she had 4 hours resting time. In Roster C (the new roster), there is no resting time and the lunch hour has been reduced to half an hour. As per the *PRB Report* unduly long shifts without lying-in period can be avoided and she produced an extract of same (*paragraph 18.5.55 H (iii)* of the *PRB Report 2008 Volume I* – Document B). She has also invoked discrimination as being in a minor grade, when compared to the Doctors, nurses, clerical assistants, technicians, etc. they work with and who have resting time. She produced an extract of the *Equal Opportunities Act* to this effect (*section 5* of the aforesaid *Act* – Document C). According to her uniformity does not exist in the hospital and among the hospitals. She does not agree to Roster C as it has changed her conditions of work. Furthermore, there have been no changes made to Roster C.

Upon questions put to her by State Counsel for the Respondent in cross-examination, the Disputant notably stated that under the new roster, her duties have remained the same. Being a shift worker she has to work 40 hours per week according to the *PRB Report*. She agreed that she still works 40 hours per week under the new shifts as under the previous roster, but does not agree with the loss of resting time and the lunch time. She was informed of Roster C in 2010 and a week before 27 June 2011 she was made aware that Roster C was going to be implemented. She is not aware of a letter dated 27 April 2010 addressed to all HCAs in relation to Roster C. Although she still works 40 hours per week, her workload has increased as before they were 4 HCAs working and now they are 3 HCAs, even 2 or 1. She and the other Disputant do not work in the same ward of the Hospital. With the new roster, she has 52 additional days off. She agreed that there were two HCAs working in each of the previous shifts and that now between 0900 hours and 1600 hours there are 3 HCAs, between 0700 hours and 0900 hours there are 3 HCAs and between 1600 hours and 1800 hours there are 2 HCAs present. She now has 3 days off per week having worked her 40 hours and only one night shift per week, whereas she was previously working 5 nights per week. Despite that she now works only 2 shifts of up to 1800 hours per week, with Mr S. M. Jandoo (the second Disputant who posted in the detainee ward) working only one shift of up to 1800 hours per week, whereas previously she was working her 9 – 6 shifts five days in a week, she does not agree in as much as she now works alone. With the present night shift, she has half an hour dinner time and the next day she is off whereas with the previous roster she could be working night and working

the day shift on the following day. With the duties she attends to in the gynaecology ward (where she is posted) during the night, she does not agree with the long shift of work.

Mr Ramdev Santoo, Executive Officer, Health Services, was called to depose on behalf of the Respondent. He notably stated that prior to the implementation of Roster C, he had meetings with the staff to inform them that the roster will be changed and also explained the advantages and disadvantages thereof. He also issued a document to know how many were willing or not willing for the new proposed roster. Since before there has been a request for a new roster from the trade union representing the HCAs. He received instructions from the Ministry for the implementation of Roster C on a trial basis of 3 months from 27 June 2011. After the 3 months trial period, he carried out a survey which showed that the grand majority were willing to continue with Roster C, which is continuing up to today. The shifts in Roster C are 7 – 4, 7 – 6, 9 – 6 (which has been added) and the 6 – 9 night shift. Presently, between 0700 hours and 0900 hours and between 1600 hours and 1800 hours there are 2 HCAs each as with the previous roster and between 0900 hours and 1600 hours, there are 3 HCAs. He produced a copy of the survey carried out in relation to the female and male HCAs (Documents D and E). The scheme of service has not changed, nor has their duties and they still work 40 hours per week. There is one HCA in each of the shifts of Roster C with each having half an hour lunch. Previously the night shift was five times a week, whereas now it is only once a week. When there was shortage of staff, which was a usual occurrence, night duty was followed by day duty. Mr S. Jandoo works in the detainee ward and his roster is 7 – 4, 7 – 6 and night 6 – 7. As regards duties, during the day all units are functional whereas during the night, many units are not, e.g. the kitchen, the linen unit, the pharmacy unit. He has noticed that the Disputants sometimes take more than half an hour for lunch. According to him, the HCAs are willing to continue with Roster C and do not wish to revert to the previous roster and are generally satisfied.

Under questions from the representative of the Disputants, Mr. R. Santoo confirmed that he carried out two surveys in relation to Roster C at the hospital and explained how he carried out the surveys. The survey in relation to Documents D and E were carried out about 3 to 4 months after 27 June 2011. He also explained how he adjusted the number of HCAs in the roster in the heavy wards. He also stated that he is authorized to change the hours of attendance and pointed out that he is responsible for a department where there have been several changes and explained how he must adapt the hours of work when the Direction so demands.

The Disputants in the present matter, as per the terms of reference of the dispute, wish to know whether the implementation of Roster C at J. Nehru Hospital should be stopped and the previous roster for their grade be restored.

Miss Vasantee Kallychurn, who was called to adduce evidence on behalf of the Disputants, has raised certain issues with regard to the new roster that has been implemented at J. Nehru Hospital since 27 June 2011.

The Disputant has notably relied on *paragraph 30.424 (i)* of the *PRB Report 2008 Volume II* contending that her hours of work should not have been changed having opted for same in 2008. However, this paragraph cannot be read in isolation in as much as at *paragraph 30.424 (ii)*, it has been stated that the Responsible Officer of the Respondent should continue to determine the hours of attendance of work of its employees to meet the operational needs of the Health Sector. Furthermore, it cannot be said that the Respondent has single handedly altered the shift schedules of the HCAs having been in consultations with the sole recognised union for the grade and having held meetings with the staff to inform them of the changes in their roster prior to its formal implementation. Moreover, it has not been disputed that she still works 40 hours per week.

The Disputants main complaint in relation to Roster C has been in regard to the night shift, which is from 6 pm to 7 am and includes half an hour dinner time. They no longer have the 4 hours resting time which they previously enjoyed nor do they benefit from the one hour dinner time. She has however admitted that the night shift was previously performed five times in a week and that at times the night shift was followed by the day shift. Under Roster C, the night shift is only once a week and the HCA is off for the next day, which greatly lessens the need for a formal resting time when compared to the shift schedules practiced under the previous roster. Furthermore, it has not been disputed that during the night shift, the HCA has less duties to attend to. Although as per the *PRB Report 2008*, it should be ensured that unduly long shifts without lying-in periods are, as far as possible, to be avoided, it cannot be ignored that the only night shift in a week under Roster C is more to the advantage of the HCA and ensures that employees do not permanently work on night shifts (*vide paragraph 18.5.55 I (iii)* of the *PRB Report 2008 Volume I*).

The *Tribunal* has also noted that the Disputant has complained of discrimination in as much as other grades are receiving resting time. However, it must be observed that the conditions of work of other grades in the hospital service are not the actual subject matter of the dispute which relates to the implementation of Roster C for the grade of HCA at J. Nehru Hospital.

The Disputant has also complained of her lunch time which is of half an hour under Roster C, whereas under the previous roster they were entitled to an hour for lunch. Having half an hour for lunch is not inconsistent with the conditions set out in the *PRB Report 2008* for the normal hours of attendance for full-time employees who work on a five to six day weekly basis (vide *paragraph 18.5.6* of the *PRB Report 2008 Volume I*) and as per the evidence adduced, it has not been disputed that the Disputants may have at times taken over half an hours lunch time. However, it is for the Respondent to ensure that the lunch/dinner time allocated during the shifts is properly taken to guard against overlapping with the working hours of the shift schedules which should not exceed 40 hours in a week.

It may also be noted that to ensure the smooth running of the hospital as an essential 24 hour service, the evidence of the Respondent has demonstrated that there are 2 HCAs each between 0700 and 0900 hours and 1600 and 1800 hours and 3 HCAs in between per ward in the new roster.

Despite the issues that have been raised in relation to the implementation of Roster C, the benefits of the roster ought to be given due consideration in relation to the dispute at hand. Under Roster C, the HCA now has 52 additional days off and only works 4 days in a week. The new roster also allows for a rest period after the night shift giving effect to *paragraph 18.5.55 I (ii)* of the *PRB Report 2008*, which provides that a rest period of at least 11 hours between two shifts should be guaranteed as far as possible where the shift involves night work. Furthermore, there is only one night shift per week and the Disputant only works up to 1800 hours two days in a week.

Bearing in mind that as per the *PRB Report*, shift workers are required to work on roster or at staggered hours if the exigencies of the service so require (vide *paragraph 18.5.3* of the *PRB Report 2008 Volume I*) and having regard to the essential nature of the 24 hours service of a hospital, the *Tribunal* cannot award that the implementation of Roster C for the grade of Hospital Care Attendant at J. Nehru Hospital be stopped and that the previous roster be restored. The HCAs and the hospital administration/management at J. Nehru Hospital are however called upon to have an entente to ensure the smooth implementation of the new roster at the hospital and for the promotion of good and harmonious employment relations at the workplace.

In the circumstances, the present labour dispute is set aside.

(Sd) Shameer Janhangeer
(Vice-President)

(Sd) Abdool Rahoof Saib
(Member)

(Sd) Philippe Edward Blackburn
(Member)

(Sd) Hurryjeet Sooreea
(Member)

Date: 8th November 2012