EMPLOYMENT RELATIONS TRIBUNAL

AWARD

RN 53/13, 54/13, 55/13, 56/13, 57/13, 58/13, 59/13, 60/13, 61/13, 62/13

Before:	**Indiren Sivaramen**	**-**	**Vice-President**
	Raffick Hossenbaccus	**-**	**Member**
	Rajesvari Narasingam Ramdoo	**-**	**Member**
	Georges Karl Louis	**-**	**Member**

In the matter of:-

RN 53/13 **Mr Louis Juan James Charlotte (Disputant No. 1)**
And
Air Mauritius Ltd (Respondent)

RN 54/13 **Mr Shafeeuddin Ponoor (Disputant No. 2)**
And
Air Mauritius Ltd (Respondent)

RN 55/13 **Mr Lyndon Lyngess Coopamah (Disputant No. 3)**
And
Air Mauritius Ltd (Respondent)

RN 56/13 **Mr Seepersadjee Bholah (Disputant No. 4)**
And
Air Mauritius Ltd (Respondent)

RN 57/13 **Mr Balmoocoond Indr Kumar Lall Bhaugeerothee (Disputant No. 5)**

And
Air Mauritius Ltd (Respondent)

RN 58/13 **Mr Mohummud Imtayaize Beeharry (Disputant No. 6)**
And
Air Mauritius Ltd (Respondent)

RN 59/13 **Mr Thierry Edmund Pierre (Disputant No. 7)**
And
Air Mauritius Ltd (Respondent)

RN 60/13 **Mr Jowaheer Coonjbeeharry (Disputant No. 8)**
And
Air Mauritius Ltd (Respondent)

RN 61/13 **Mr Gajanand Dev Essoo (Disputant No. 9)**
And
Air Mauritius Ltd (Respondent)

RN 62/13 **Mr Sheik Mohammed S. Feizal I. Peerally (Disputant No. 10)**
And
Air Mauritius Ltd (Respondent)

The above ten cases have been referred to the Tribunal for arbitration in terms of Section 69(7) of the Employment Relations Act 2008 (the "Act"). The Disputants and Respondent were assisted by Counsel and all the cases have been consolidated with the agreement of both Counsel. The terms of reference are the same in all the cases and read as follows:

"Whether Air Mauritius was wrong to have unilaterally retracted from and to have recalled its prior unequivocal decision to pitch the undersigned on the LS5 salary scale from the LS4 salary scale, and whether Air Mauritius should be recommended to

reconsider its position and to reinstate the undersigned on the LS5 salary scale forthwith with the corresponding two increments."

Disputant No. 4 deponed before the Tribunal on behalf of all the disputants. He produced copies of a letter dated 5 July 2011 in relation to job evaluation results under the signature of Mrs Purmessur, Manager Human Resource of Respondent (Doc A), a side agreement entered into between Air Mauritius Staff Association (AMSA) and Management (Doc B), a letter of understanding between AMSA and Respondent (Doc C) and a table showing different salary scales (Doc D). He stated that the Disputants made requests to be pitched on the higher scale (as per job evaluation result) and the Respondent finally agreed to their request and he produced copies of individual letters addressed to each disputant (Docs E to E9). Disputant No. 4 stated that they have been paid partly as per the letters received with fuel and maintenance allowances and he produced copies of pay slips (Docs F to F4). Then without any prior notice or meeting, they again received individual letters (copies marked Docs G to G9) informing them that the initial letters (Docs E to E9) were being recalled due to the financial situation of the company. He stated that the request of the Disputants will not be a financial burden for the company since they will be having only their fuel and maintenance allowances with same salary. He also referred to correspondences they sent to Respondent asking that the company reviews its stand (Docs H to H3).

Disputant No. 4 also produced copies of further correspondences (Docs I to I2) to show negotiations between parties before Docs E to E9 were issued to them and an extract of the Annual Report of the company (Doc J). He stated that Respondent was wrong to have recalled Docs E to E9 and the Disputants are seeking a finding from this Tribunal that Respondent was wrong to have recalled the letters. They are also asking that the Tribunal directs the Respondent to recall the said letters and to pitch them on LS 5 salary scale.

In cross-examination, Disputant No. 4 agreed that there was a job evaluation carried out in 2009 and that the results were disclosed only in 2011. He agreed that the company was in a difficult financial situation in 2009 and 2010 and still had a financial loss up to 2012. He was aware of the 7 Step Plan engineered to salvage the company and agreed that same is being engineered to preserve jobs at Air Mauritius. From 2009 to 2013 there has been no laying off of workers in his Load Control Department. He agreed that Doc B which was signed on 8 May 2012 specifically mentions that "This agreement will not be implemented until the financial situation gets healthy, i.e implementation will take place only when MK [Respondent] will start generating profits." He agreed that there was also mention that Management would not go along with evaluation of jobs on a piece-meal basis but would adopt a holistic approach. However, he added that they were not concerned with this agreement since their job evaluation

had already been carried out and results published. In December 2012, they had a meeting with Mr Puddoo, the Executive Vice-President, Human Resources (EVP-HR) and the latter undertook to implement the job evaluation report in January 2013.

Disputant No. 4 stated that he obtained the car and maintenance allowances which are benefits which go along with the LS 5 scale for one month and that same was withdrawn afterwards. There was no pay increase however. He referred to salary increases granted and implemented by the Respondent for various trade unions over the period 2012 to 2013 including for the Disputants.

In re-examination, Disputant No. 4 stated that the stand to recall his letter has been frustrating to him. He referred to the group of employees referred to in Annexes 3a, 3b and 3c to Respondent's Statement of Case and he stated that they belong to the Shift Supervisor Passenger Handling. He identified their category on Doc A and averred that they are not entitled to be upgraded.

Mrs Purmessur, Human Resources Manager, deponed on behalf of the Respondent and she solemnly affirmed to the correctness of the contents of Respondent's Statement of Case. She explained that during negotiations with executive members of AMSA in 2011, Management decided to evaluate four jobs apart from the job (Senior Operations Officer- Load Control) which had already been evaluated in 2009. As a communication process, the results were communicated without however the intention of implementing anything since they were piecemeal evaluation. The incumbents went to meet the new EVP-HR on 18 December 2012 and he informed them that we were going to implement the results of the evaluation. The letters (Docs E to E9) were already issued when new executive members of AMSA met with the Chief Executive Officer and the EVP-HR. She was then instructed by the EVP-HR to recall Docs E to E9 because AMSA members were objecting to piecemeal evaluations and other members of the union were pressing for evaluations of their jobs. She stated that job evaluation being relatively new in the company, there is no agreed process in the organization that when a person's job is pitched at a higher level, the latter should also obtain two increments as is the case when one is promoted through a proper selection exercise.

Mrs Purmessur then ventured to say that after Docs E to E9 were sent, people started to pressurize Management that their jobs should also be reviewed. She stated that if Management was to stick to the ten persons, may be it could leave the situation where it was. However, with the numerous requests for job evaluations, this was going to become a problem for the organization. At the same time, the company could not go for a holistic job evaluation exercise because of its precarious financial situation. The

company is not denying the Disputants what is due to them but is saying that it cannot implement same now.

In cross-examination, Mrs Purmessur agreed that Respondent had full control and was the only decision-maker to decide when to disclose the results of the job evaluation exercise of 2009. However, she maintained that the results were not disclosed with a view to implement. After the results were implemented, Management started having pressure. Mrs Purmessur however did not agree that Respondent considered that it had taken a wrong decision and had to revoke same. As at 28 February 2013 as mentioned in the unconditional letters issued to Disputants (Docs E to E9), the Respondent was making profits. Mrs Purmessur agreed that the CEO announced to employees by way of an e-mail dated 21 February 2013 that the company had made a profit of 6.1 million euros (Doc K). This was the quarter 3 results in 2013. There was no meeting or negotiation before Respondent revoked Docs E to E9 on 21 March 2013. Mrs Purmessur agreed that all the persons referred to in Annexes 3a, 3b and 3c to Respondent's Statement of Case belong to the Shift Supervisor – Passenger Handling and that they have not been recommended any upgrade following the evaluation exercise. She agreed that there had been a final decision by the company to upgrade the Disputants.

Mr Puddoo, the EVP-HR, then deponed and he stated that he is posted at Respondent since 1 June 2012. He referred to meetings Management had with unions on 8 June 2012 and 22 June 2012 to apprise them of the economic and financial situation of the company and of the challenges the company was facing. The strategic plan – the 7 Step Plan- of the company was discussed. Mr Puddoo stated that there are two sets of factors which have led to the recall on 21 March 2013 of Docs E to E9. First, in the course of a meeting between top management and the 'Intersyndicale' which includes AMSA, the latter clearly brought to the attention of Management that they are against a piecemeal job evaluation exercise being carried out in the organization. Mr Puddoo then referred to what he called a basic principle whereby whenever a job evaluation is carried out, it should, as far as possible, be company-wide and not done on a piecemeal basis. Mr Puddoo stated that March is probably part of the good quarters of the company but even then the forecast was that they were going to make a loss for the financial year ending 31 March 2012 (which we understand should read 2013). The CEO had referred to the agreement signed in May 2012 to the effect that implementation of the outcome of any job evaluation exercise would be dependent on the financial situation of the company and as the situation was not bright, it was decided to recall the letters issued. Mr Puddoo stated that the Respondent is merely asking for time when the company has the means, the financial capability to consider the implementation of the job evaluation exercise.

In cross-examination, he stated that it was at the beginning of March that Respondent became aware that it would go through a loss as at end of March 2013. He agreed that the decision taken on 28 February 2013 to upgrade the Disputants was taken "en toute connaissance de cause". Mr Puddoo conceded that the union cannot make a request to revoke the letters already issued and that this was Management's decision. Mr Puddoo agreed that since March 2013 posts in management and non-management positions have been advertised as per the operational requirements of the company. A new salary scale has been implemented as per the MOU signed in 2011 and back pay has been paid by Respondent to all its employees as per that MOU. Mr Puddoo does not dispute that Docs E to E9 constitute firm unconditional offers made to pitch the Disputants from level 4 to 5. The revocation has been carried out without any consultation but he averred that the Disputants have been informed of the decision much before 21 March 2013.

Counsel for disputants submitted that Docs E to E9 represent unconditional offers made to the 10 disputants that they would be pitched to level 5. The disputants would thus carry on level 5 and derive increments as and when they become due. They are also entitled to fuel and car maintenance allowance. The disputants by accepting the payment of those allowances have accepted the offer so that it has become a material term of their contract of employment. There is, according to him, a "*novation*". Counsel relied on an extract from *Dr. Fok Kan, Introduction au droit du travail mauricien, Les relations individuelles de travail* and the Supreme Court judgment in the case of **Vacoas Transport Co Ltd v Pointu 1970 MR 35**. Counsel added that the modification of the contract by Respondent in this case modified a substantial or material term of the contract of employment. Counsel relied on the Supreme Court cases of **A.J Maurel Construction Ltee v Henri Richard Norbert Froget 2008 MR 6** and **Cayeux Ltd v De Maroussem 1974 MR 166**. The revocation, that is, by way of the letters dated 21 March 2013 is bad in law and the effect is null and void.

Counsel then referred to the terms of reference and conceded that in relation to the second limb, the disputants have some difficulty. He however invited the Tribunal not to be too technical and to bear in mind that the dispute has been referred (or more appropriately reported) to the Commission for Conciliation and Mediation which can only recommend with a view to reaching a settlement. The disputants in fact move that the Tribunal directs Respondent to recall Docs G to G9. He also referred to the powers of the Tribunal under section 6(2)(e) of the Second Schedule to the Employment Relations Act.

Counsel for Respondent submitted that irrespective of whatever decision the Tribunal comes to, the disputants cannot, through the infelicitous drafting of the terms of the dispute, press forward for any remedy or award. According to him, the disputants are

asking as a matter of fact whether Respondent should be recommended to reconsider its position. He suggested that the word "award" is missing and that whatever conclusion the Tribunal reaches based on the facts/documents, this cannot be made binding on the parties. On the facts, he agreed that when something is in writing, it has got a binding force but he referred to the letter of understanding between AMSA and Management. He argued that following the meeting of Management with the 'Intersyndicale' on 4 March 2013, it was for the union to go and impress upon its members that the situation was still bad. He analysed the contents of the letter of 21 March 2013 and suggested that Respondent has not denied the disputants the rights which were already given to them in Docs E to E9 but stated that "we shall have to further delay the implementation of the Job Evaluation results." There is no deprivation of the rights acquired following Docs E to E9. Counsel in his submissions leaves open the question as to whether the company is not entitled to revisit its policy in relation to Doc E to E9 when these will, according to him, have a "domino, boomerang, snowball effect on other sectors" because the company started getting pressure. The company does not want to be taken to task for having adopted a piecemeal approach and it is only a question of delaying the implementation of the job evaluation result.

The Tribunal has examined all the evidence on record including the submissions of both Counsel. It is a matter of regret in the present matter that the terms of reference have indeed been infelicitously drafted. The first part of the dispute reads as follows:

"*Whether Air Mauritius was wrong to have unilaterally retracted from and to have recalled its prior unequivocal decision to pitch the undersigned on the LS5 salary scale from the LS4 salary scale, ..".*

Under this part, the Tribunal is being asked to make an award which is of a declaratory nature. Irrespective of the declaration of the Tribunal on this issue, no remedy is being sought (under this limb) and the dispute between the parties would not be settled. In the case of **Mr Abdool Rashid Johar and Cargo Handling Corporation Ltd, RN 93 of 2012,** the Tribunal made the following observation:

"Finally, the Tribunal wishes to make an observation on the manner in which the terms of reference have been drafted. The Tribunal is being required to deliver an Award in relation to whether Mr Johar should have been promoted to Foreman at the last promotion exercise (which we assume to be the appointment made in 2010 and not those made in 2009) at the Respondent having regard to a number of factors. As per the terms of reference, this is not a dispute where the Disputant is seeking to be promoted or to be promoted as from or effective as from 2010. With the terms of reference as couched, an Award of a declaratory nature is being sought. This Tribunal has in various cases emphasized on the importance of having well drafted terms of

*reference (**vide Mr Purussram Greedharee and Mauritius Ports Authority and other, RN 258 of 2011)** and has made certain observations in the case of **Mr Ugadiran Mooneeapen and The Mauritius Institute of Training and Development, RN 35 of 2012,** where the Tribunal was being asked to make a declaratory award."*

Also, the second part of the terms of reference refers to "*whether Air Mauritius should be recommended to reconsider its position and reinstate the undersigned on the LS 5 salary scale forthwith with the corresponding two increments*". For obvious reasons, the Tribunal does not recommend parties what to do but delivers awards which are binding on all parties to whom they apply. In this particular case, the award of the Tribunal would even, as per section 72(1)(e) of the Employment Relations Act become an implied term of the contract of employment of the workers concerned. Clearly, the terms of reference has been badly drafted and to make matters worse reference is made to "*the corresponding two increments*" when as admitted by one and all no increments were granted with the pitching of the disputants on the LS 5 salary scale in February 2013.

This infelicitous drafting and flaws in the terms of reference has added an unnecessary complexity to the dispute the more so in the light of the submissions of Counsel for Respondent in relation to the terms of reference as couched. The Tribunal has had to analyse carefully all relevant provisions of the Employment Relations Act and appropriate case law on the matter. The Tribunal will thus exceptionally rely on section 105(3) of the Employment Relations Act in the present matter.

It is apposite to note firstly that the matter has been referred to the Tribunal by the Commission for Conciliation and Mediation (and not by the parties) under section 69(7) of the Employment Relations Act. The Commission is responsible for the referral and the terms of reference emanates from the Commission. The consent or approval of the employer is not required for a referral under section 69(7) of the Employment Relations Act which is different from a voluntary arbitration which is jointly referred by the parties to the dispute under section 63 of the same Act. In the case of **S.Baccus & Ors v The Permanent Arbitration Tribunal 1986 SCJ 388**, the Supreme Court observed that proceedings before the then Permanent Arbitration Tribunal in relation to a dispute which had been <u>voluntarily</u> (underlining is ours) referred to the Tribunal do not differ materially from proceedings before a Tribunal set up under the provisions of the Code de Procédure Civile and that the rules concerning the "compétence" of the Tribunal should thus be the same. The Supreme Court thus went on, obiter dicta, to state that an Award of the Permanent Arbitration Tribunal which goes outside the terms of reference will be *ultra petita* and may be quashed just as any other Award.

In our humble opinion, this will not necessarily be the case when a dispute has been referred to the Tribunal by the Commission and thus amounts to some sort of compulsory arbitration for the employer. Each case will depend on its own merits. Under section 70 of the Employment Relations Act, the Tribunal has to enquire into the dispute and make an award thereon.

In the case of **Mr Ugadiran Mooneeapen and The Mauritius Institute of Training and Development (above)**, the Tribunal despite being asked to give a declaratory award stated the following:

"*However, the Tribunal is entertaining the present matter in view of the spelling out of the relief sought by the Disputant in his Statement of Case, which relief we find to be reasonable. It is not the wish of the Tribunal to look only at the tree and leave the dispute unaddressed and unresolved and the Disputant's claim will remain a sorry tale*. *(**Margaret Toumany & Another v. Mardaynaiken Veerasamy UKPC 13 of 2012**)."*

This is very appropriate for labour disputes referred to the Tribunal bearing in mind several provisions in the Employment Relations Act which provide for minimum use of legal formalities and encourage the promotion of good employment relations. Thus section 15 of the Second Schedule to the Act provides that:

"*The Tribunal, the Commission or the Board may conduct its proceedings in a manner it deems appropriate in order to determine any matter before it fairly and promptly and may deal with the substantial merits of such matter with a minimum of legal formalities*. " Section 20(1) of the same Schedule provides that the Tribunal shall not be bound by the law of evidence in force in Mauritius. Section 97 of the Employment Relations Act provides a number of factors which the Tribunal may, in the exercise of its functions in relation to a matter before it have regard to, and this includes interests of the persons immediately concerned, principles of natural justice and principles and best practices of good employment relations.

In the present matter, even though the terms of reference are not clear as to the remedy sought, the disputants have in their Statement of Case requested "the Tribunal to make an award directing the Respondent to reconsider its position and to reinstate the Applicants on the LS5 salary scale forthwith …". A Statement of Case has then been filed on behalf of the Respondent whereby the Respondent did not raise any preliminary objection but instead made averments which went into the full merits of the case more particularly at paragraphs 1, 1.1 and 8 of the Statement of Case. Counsel for disputants stated and Disputant No. 4 confirmed that the disputants are not pressing for the "corresponding two increments" as per the last part of the dispute. For all intents and

purposes, the Tribunal will thus not consider the "two increments" issue which is not being pressed.

To decide whether the Tribunal can entertain the present dispute despite the shortcoming in the terms of reference in relation to the "recommendation" sought, the Tribunal will consider the various factors highlighted above. Fairness and good employment relations will require that the Tribunal decides on the merits of the dispute between the disputants and Respondent promptly as per the remedy sought in the Statement of Case of the disputants. Also, very importantly, there is no evidence of any prejudice being suffered by the Respondent in so doing. The Respondent was always aware of the case of the disputants (as is clear from the two Statements of Case before us) and Counsel for Respondent readily stated the following: "Now, on behalf of the company we have deemed it fit to bring everything before this Tribunal because we wanted the Tribunal not to be shielded from whatever happened, we did not want to obviate the company from the backdrop scene, leading to those 2 letters, 27th of February and 21st of March." Thus, even the Executive Vice-President Human Resources of the Respondent was called to depone on behalf of the Respondent. The Tribunal will thus proceed to consider the merits of the dispute.

The letters (Docs E to E9) were firm unconditional offers to pitch the disputants on the LS 5 salary scale as admitted by Mr Puddoo. Mrs Purmessur agreed that there had been a final decision by the company to upgrade the disputants. Docs E to E9 were issued after several requests were made on behalf of the disputants and a meeting was even held between the incumbents and Mr Puddoo. Docs E to E9 did not come as a surprise and in fact as per Doc I which is dated 28 January 2013, it was clear that the Respondent would be proceeding with the implementation of the job evaluation for Load Controllers shortly and the effective date was even communicated. In February 2013 the Chief Operating Officer of Respondent had informed employees that Respondent had made a profit of 6.1 million euros for quarter 3 results in 2013. Though the Respondent was on the eve of having a forecast (or must have had a forecast bearing in mind the continuous review of the financial status of the company allegedly carried out at the end of every month) for the performance of the company for the financial year ending 31 March 2013, it decided to issue Docs E to E9. Even if the Respondent has sought to recall these letters later, it is apposite to note that none of the witnesses for Respondent accepted that Respondent considered that it had taken a wrong decision. The offers made were implemented to some extent and a car (fuel) allowance and maintenance (repair) allowance were paid to some of the disputants. There is no evidence on record that the offers were there and then not accepted by the disputants and instead we have Doc H2 which is a letter emanating from the attorney-at-law of the disputants whereby he informs the Manager Human Resource that his clients take the

proposals made in her letter dated 28 February 2013 which they have accepted, as final.

Once the Respondent decided to pitch the disputants on LS 5 salary scale and same was accepted, there was a "novation" of the contract of employment of the disputants. Though the disputants were not given any increase in salary, they were given or became eligible for certain allowances which some of them enjoyed for a few weeks before these allowances were removed following Docs G to G9. The allowances granted to them certainly form part of their remuneration (**vide A.J Maurel Construction Ltee v Henri Richard Norbert Froget 2008 SCJ 164**). In that case, the Supreme Court stated the following:

"*A decision which impacts on the pay packet of an employee is a serious matter. That is why, any modification concerning an employee's remuneration is subjected to strict judicial scrutiny. Remuneration includes salary and the benefits that may be said to go with the salary or "the salarium" which includes the "accessories".* ***See Jean-Emmanuel Ray Droit du Travail, droit Vivant p. 173, para123*****.**

…

Be that as it may, the concept of salarium today includes many "accessories" and courts interpret it in favour of the worker against the employer in the absence of clear provision in the contract:

"La modification concernant la rémunération au sujet de laquelle la jurisprudence se montre très stricte, qu'il s'agisse du salaire (18 avr. 1980 Bull. Civ. V. 249 : réduction du coefficient des salaires dans le cadre de réorganisation d'une entreprise) ou de ses accessoires (soc, 20 févr, 1975 préc. (perte de l'avantage de l'assurance du véhicule et de son entretien par l'employeur); 30 nov. 1977, D.1978.I.R. 63. civ v.527 (suppression de primes de chantier); 13 oct. 1977, bull. civ.V.426 (diminution de l'intéressement d'un cadre pendant une période de maladie contrairement à la convention collective)."

In any event, "remuneration" is widely defined under the Employment Rights Act to refer to all emoluments, in cash or in kind, earned by a worker under an agreement. The allowances no doubt are essential to the contract of employment of the disputants. We need then to consider whether the loss of the said allowances following Docs G to G9 amounted to a substantial change in the conditions of employment of disputants. The modification brought to the renovated contracts of employment in that the incumbents would as from 21 March 2013 no longer be eligible for the allowances does amount to a substantial change in the conditions of employment of disputants. We take this view even though Docs G to G9 refer to Respondent having to "further delay the implementation of the Job Evaluation results". The disputants have been pitched and

have benefited from the pitching to LS 5 salary scale without any condition but following Docs G to G9, there is, up to now, no iota of evidence as to when (if ever) the implementation of the 2009 job evaluation exercise for disputants will be proceeded with**.** Though the Respondent could, by virtue of its "pouvoir de direction", unilaterally modify the conditions of work of the workers where such modifications were reasonable, it could not modify a substantial or material term of the contract of employment without the approval of the workers. The terms of Docs E to E9 are very clear and have been issued "en toute connaissance de cause". Any discussions, agreements or undertakings which may have occurred before February 2013 are not material in this particular case inasmuch as the Respondent was perfectly aware of these and yet in its own sovereign decision decided to implement the salary evaluation exercise carried out for the disputants. The Tribunal is in fact tempted to say that this was alas long overdue even bearing in mind the difficult financial situation of Respondent since 2009. Indeed, the exercise was carried out in 2009 and the Respondent disclosed the results only in 2011. This exercise is not to be confused with other job evaluations which were carried out subsequently in 2011.

Similarly, the explanation given by Respondent that the relevant trade union (AMSA) impressed upon Management at a later meeting/s that it was against piecemeal job evaluation exercise cannot stand in the present case. We hasten to add that we perfectly agree with Mr Puddoo that a job evaluation exercise should as far as possible be carried out company-wide and not on a piecemeal basis. This relates to fairness and avoids many complications. However, in this particular case the job evaluation exercise had been carried out some four years back before Management in its own deliberate judgment decided to implement same. It could not go back on such a decision. Also, the evidence in relation to pressure mounting on Management to have more job evaluation exercises is neither here nor there. Management, the more so in relation to an organization such as Respondent, cannot take decisions according to pressure. The side agreement entered in May 2012 and subsequent meetings held with trade unions reveal that parties are conscious of the difficult situation in which the company finds itself. There is evidence that the MOU of 2011 has had to be implemented in phases. The requests received by Management from Check in supervisors (copies annexed to the Statement of Case of Respondent) are for them to be pitched to LS 5 salary scale. From Annex 3b and 3c, their case appears to be different in that they went through a job evaluation process which was not successful and yet want to be pitched at LS 5 salary scale without a new job evaluation exercise. Rightly or wrongly they are complaining about "many posts which would have been upgraded recently without going through the job evaluation process". They are not seeking implementation of job evaluation exercises already carried out. In any event, from Doc A it is only for Senior Operations Officer – Load Control that the result following job evaluation was a movement from a

lower salary scale to a higher salary scale. There is no evidence that the implementation of the 2009 job evaluation exercise for the ten disputants will have a major financial implication on the Respondent and Mrs Purmessur conceded that Management could have left the situation where it was if Management was to stick to the ten disputants. Also, Management and unions seem to agree that henceforth job evaluation should be carried out company-wide as opposed to on a piecemeal basis.

For all the reasons given above, the Tribunal awards that Respondent was wrong to have unilaterally recalled Docs E to E9 and should reinstate the disputants on the LS 5 salary scale forthwith. The disputants are not pressing with the "two increments" issue and this part of the terms of reference is thus set aside. In view of the special circumstances of the present dispute, this award will bind only the current parties and is not to be used as a precedent or support for job evaluation on a piecemeal basis.

(Sd) Indiren Sivaramen

Vice-President

(Sd) Raffick Hossenbaccus

Member

(Sd) Rajesvari Narasingam Ramdoo

Member

(Sd) Georges Karl Louis

Member

13 November 2013