

EMPLOYMENT RELATIONS TRIBUNAL
AWARD

ERT/RN 96/12, ERT/RN 97/12, ERT/RN 98/12, ERT/RN 99/12, ERT/RN 100/12,
ERT/RN 101/12, ERT/RN 102/12, ERT/RN 103/12, ERT/RN 104/12, ERT/RN 105/12,
ERT/RN 106/12, ERT/RN 107/12, ERT/RN 108/12.

Before:	Indiren Sivaramen	-	Vice-President
	Soonarain Ramana	-	Member
	Rajesvari Narasingam Ramdoo	-	Member
	Khalad Oochotoya	-	Member

In the matter of:-

Mrs Marie Chantal Gilberte Francis (Disputant No. 1)

And

Air Mauritius Ltd (Respondent)

Mr Jean Pierre Eric Elix (Disputant No. 2)

And

Air Mauritius Ltd (Respondent)

Mrs Linda Finette – Dawotal (Disputant No. 3)

And

Air Mauritius Ltd (Respondent)

Mrs Rajshree Bhaugeerothee (Disputant No. 4)

And

Air Mauritius Ltd (Respondent)

Mrs Shirley Gladis Gully (Disputant No. 5)

And

Air Mauritius Ltd (Respondent)

Mr Heera Ravishankar Singh Hardowar (Disputant No. 6)

And

Air Mauritius Ltd (Respondent)

Mrs Marie Martine Kathy Lambert (Disputant No. 7)

And

Air Mauritius Ltd (Respondent)

Mrs Marie Cynthia Pamela Ah-Why Pretorius (Disputant No. 8)

And

Air Mauritius Ltd (Respondent)

Mrs Veronique Guylaine Pazot (Disputant No. 9)

	And	
	Air Mauritius Ltd	(Respondent)
Mrs Girivani Damaraging Curpanen		(Disputant No. 10)
	And	
	Air Mauritius Ltd	(Respondent)
Mrs Marie Sheila Genevieve Maugueret		(Disputant No. 11)
	And	
	Air Mauritius Ltd	(Respondent)
Mrs Sabine Valadon		(Disputant No. 12)
	And	
	Air Mauritius Ltd	(Respondent)
Mrs Marie Kathleen Paul		(Disputant No. 13)
	And	
	Air Mauritius Ltd	(Respondent)

The above thirteen 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, except for the name of each and every disputant, and read as follows:

“Whether, I, [name of the relevant disputant], should be entitled to be promoted from Flight Purser to Senior Flight Purser with immediate effect.”

Mr Hardowar, Disputant No. 6, deposed on behalf of all the Disputants, and his evidence was to the effect that the Disputants joined as cabin crew members sometimes between 1986 and 1988 and were promoted Flight Purser sometimes between 1998 and 2000. Mr Hardowar averred that he was victimised in 1993 when he was called for an interview and not selected as Flight Purser. His next interview was in 1996 and he was again not selected. His version was that on the first occasion, many of those who were promoted were his juniors and on the second occasion most, if not 100 per cent, of those who had been promoted were his juniors. In or around 1997, Disputant No. 2 and he were then promoted to Flight Purser and the other Disputants were promoted Flight Purser in or around the year 2000. In 2006, he could not participate in the selection exercise for Senior Flight Purser as he had only eight years’ experience as Flight Purser whilst one had to have ten years’ experience as Flight Purser to qualify. Nine candidates were successful out of thirty-four whilst three others were kept on a waiting list. The three candidates were informed they were on a “waiting list” and that the said communication issued to them would be disregarded if their services were not required by the company within one year. Mr Hardowar referred to the other candidates as those who had “failed” the interview. Some of them went before the then Permanent Arbitration Tribunal. Disputant No. 6 averred that after 2006 there was no selection exercise for Senior Flight Pursers. The three candidates who were on the waiting list, the group of workers who had recourse to the Tribunal and the remaining candidates of the 2006 exercise were all promoted in phases to Senior Flight Pursers. For the last batch of candidates promoted, the promotion is to have effect only as from 2014.

Mr Hardowar averred that the Respondent has breached its own procedures for promotion to the rank of Senior Flight Purser. He added that there was no selection exercise and that it was decided on an ad-hoc basis to promote persons. In cross-examination, Mr Hardowar stated that the Disputants wish that their seniority be given back to them, if possible. He averred that some of the candidates in the 1993 interview exercise for the post of Flight Purser did not have the required minimum four years’ experience and yet were allowed to compete and were eventually selected. He conceded that the Disputants did not then declare a dispute before the Tribunal. Neither did they sign any document when promoted to show they were accepting same under protest.

Mr Hardowar agreed that around ten flights per week had been cancelled at the Respondent even though initially he qualified this as a re-organisation and not compression of flights. When forecasted figures for the period 2012 to 2014 were put to him in relation to predicted reduction in the number of flying hours for Senior Flight Pursers whose number however would be on the rise, Disputant No. 6 agreed. Mr Hardowar stated that there were some 64 other Flight Pursers waiting to be promoted Senior Flight Pursers but stressed that they are all his juniors. He agreed that the appointment of the remaining Flight Pursers who participated in the 2006 selection exercise was as a result of an out of court settlement but he averred that not all of them had gone to the Tribunal. He also criticized the version of the Respondent that currently there are no vacancies for Senior Flight Pursers and observed that the company has even appointed Senior Flight Pursers to be effective as from 2014. In re-examination, Mr Hardowar stated that when flying the A319, they perform as Senior Flight Pursers and receive a responsibility allowance accordingly.

Mrs Purmessur, the Human Resource Manager of the Respondent, then deposed before the Tribunal. She stated that there was an employee requisition form (copy marked Doc A) from the relevant Department (Cabin Operations) to request for nine Senior Flight Pursers. She produced a copy of the relevant selection report with annexes for that post (Doc B) and added that seniority was not the only criteria for appointment to the said post. She stated that if the minimum entry requirement had been set at eight years' experience as Flight Purser (instead of ten as it was in this case), there would have been 117 persons eligible for that post whereas with the entry requirement of ten years' experience, they had 35 candidates. With a wider population, it would have been more difficult to assess the candidates.

Mrs Purmessur did not agree that this group of workers were victimised. She referred to more than twelve flights which would have been compressed weekly and to Senior Flight Pursers complaining to the Respondent that they do not have enough flying hours (block hours) thus affecting their pay package. She then produced a copy of a document in relation to loss of productivity of Senior Flight Pursers incurred as well as forecasted productivity loss (in terms of block hours) for the year 2013 and first quarter of 2014 (Doc C). She then deposed in relation to an Award delivered by the then Permanent Arbitration Tribunal ("PAT") (copy marked Doc D) in the year 2003 following a dispute declared by a group of Flight Pursers who had not been promoted Senior Flight Pursers in a selection exercise in 1998. In the 2006 selection exercise, consideration was given to the 2003 Award and four of the Flight Pursers concerned with the Award of the Tribunal got through along with five new candidates. Three candidates were placed on a waiting list. Nine Flight Pursers who were not selected and who were allegedly concerned with the Award of 2003 complained that they should

have been nominated and went again before the PAT. Mrs Purmessur averred that the then Human Resource Consultant of the Respondent gave a commitment binding the company that they would stop going to Court and that the nine aggrieved Flight Pursers were going to be nominated. Eventually, they were appointed (without a new selection exercise) along with the three others who had been placed on the waiting list (despite the fact that more than one year had elapsed).

This decision created further grievances among the remaining fourteen candidates who had participated in the 2006 exercise and who had not been appointed. The same Consultant gave another commitment that these Flight Pursers were also going to be promoted but effective only as from 2014 (again without any new selection exercise). Mrs Purmessur conceded that this was not a good precedent. She added that the Respondent cannot promote the thirteen Disputants in this case as this would have a snowball effect with some 66 other Flight Pursers who would be queuing up for promotion to Senior Flight Pursers. She stated that if the situation at the Respondent changes and things get better there in one or two years, there will obviously be vacancies.

In cross-examination, Mrs Purmessur confirmed that the request in 2006 was for only nine Senior Flight Pursers. She averred that when the then Human Resource Consultant took the commitment, it was already too late. Mrs Purmessur was also questioned in relation to an alleged confusion in relation to the number of persons involved with the Award of the Tribunal (Doc D).

Counsel for the Disputants submitted that the Disputants have been in employment for a number of years. They were victimized from the very outset and the latter were eventually penalised in 2006 when they could not apply for the post of Senior Flight Purser because they did not have the required ten years' experience as Flight Purser. He referred to the decisions to nominate relevant Flight Pursers as Senior Flight Pursers as leading to a chaotic situation and prayed that the Tribunal "creates a justice in the company".

Counsel for the Respondent referred to the terms of reference before the Tribunal and submitted that there could not be further appointments to the post of Senior Flight Purser at least for the time being. He referred to the unusual promotion of a group of Flight Pursers which is to take effect only as from June 2014 and submitted that the situation of these employees is to be gauged against the financial situation of the Respondent. He referred to the number of routes compressed at the Respondent, the alleged financial difficulties of the Respondent and the latter's search for a strategic partner. He added that appointment of the Disputants as Senior Flight Pursers may have a "domino effect" in relation to some sixty-six other Flight Pursers.

The Tribunal has examined all the evidence on record including the submissions of Counsel. There seems to be no major issue in relation to the facts and chronology of events in the present matter even though the exact number of employees appointed in each of the different batches was not that straightforward bearing in mind the evidence adduced and the Statements of Case of the parties. The main 'confusion' is in relation to the number of employees who were concerned with the Award of 2003 of the then PAT (as per Doc D). Ex facie Doc D, it would appear that only four Flight Pursers were concerned with the 2003 PAT Award. The Respondent has however amended his Statement of Case at paragraph 14 to refer to "an award was issued by the Permanent Arbitration Tribunal in October 2003 following a dispute raised by 15 [instead of 13 as it read initially] other Flight Pursers." Even Mrs Purmessur was confused about this and she hinted to the fifteen persons consisting of two groups of employees, one initial group of eleven who "have made a case" and another group of four employees. At the same time, when deponing Mrs Purmessur would again refer to 13 employees concerned by the Award of 2003 (for example at pages 118 and 119 of the proceedings).

We take it that the nine employees who were promoted Senior Flight Pursers in the second batch (along with the three who were appointed because they had been placed on a waiting list) were somehow connected with the Award delivered on 28 October 2003 by the then PAT (Doc D) even though it is not clear from the evidence how exactly this was so. There is evidence that they kept going before the PAT and at the same time that there was an "out of court settlement" whereby the episode of the so-called 'commitment' started. After this commitment had been very well 'consumed' and a batch of some twelve Flight Pursers had indeed been appointed, the last batch of fourteen or so Flight Pursers was finally appointed via another commitment by allegedly the same Human Resource Consultant to take effect as from 2014. It was then, according to Mrs Purmessur, too late to rectify things as the damage had been done. It is apposite to note that for the 2006 selection exercise proper, Mrs Purmessur took care to state that "the selection report was approved by the highest level," before the selected candidates got their letters of offer.

Mr Hardwar has averred that the Disputants have been victimised as from 1993 because they were apparently not selected there and then for the post of Flight Purser. The fact is that all thirteen of them were eventually promoted to the post of Flight Purser effective as from different dates and there is no evidence that these promotions were not accepted or challenged in any manner whatsoever. They worked as Flight Pursers for years still not complaining of any alleged wrong doing until the 2006 selection exercise for Senior Flight Purser.

The Respondent decided that the minimum experience required for that post would be ten years' experience as Flight Purser and there is absolutely nothing on record to suggest that there was a sinister motive for doing so. Instead the evidence of Mrs

Purmessur to the effect that there would have been some 117 Flight Pursers eligible for the post if the qualification was kept at eight years' experience has remained unchallenged. This might have rendered any selection process impractical. With a requirement of ten years' experience as Flight Purser, a reasonable number of candidates, that is thirty-five, applied for the post of Senior Flight Purser. The decision where to set the bar was for the Respondent and we cannot find that the Respondent erred or acted mala fide when it decided to set the qualification at ten years' experience as Flight Purser. The Disputants thus were not eligible for the selection exercise in 2006. However, Mr Hardowar has adduced evidence of situations in the past where employees who allegedly did not have the required years of experience were nevertheless considered and even promoted. If ever this was the case, appropriate action should have been taken then and there in the presence of the 'unqualified' candidates. Nothing was done instead until finally all of the thirteen Disputants were promoted to Flight Pursers. The Tribunal cannot find that there has been any victimization, be it, against the thirteen Disputants or any one of them.

It was the manner in which the Respondent tried to remedy previous shortcomings in its promotion exercises to the rank of Senior Flight Purser that it in fact created more problems. One may understand the grievance of the Disputants since there has been no selection exercise proper for the post of Senior Flight Purser at the Respondent since 2006 whilst at the same time all those who participated in the last exercise were eventually promoted in successive batches irrespective of whether they passed or failed the 2006 exercise.

The Disputants are however now praying that they be promoted from Flight Purser to Senior Flight Purser with immediate effect. Thus, they want the Tribunal to do exactly what they have been complaining about, that is, appointment 'de facto' without any selection exercise. This would only perpetuate any wrong already committed and lead to a never ending process. The Tribunal has no hesitation in finding that it cannot award that the thirteen Disputants ought to be promoted with immediate effect, that is, without even going through a selection process. This would go against the principles of natural justice and principles and best practices of good employment relations. Mrs Purmessur went at length on the issue of "block hours" and compression of flights. These as well as the appointment of a batch of Flight Pursers to Senior Flight Pursers with effect only as from 2014 (for whatever it is worth) go a long way to substantiate averments that the Respondent cannot for the time being appoint additional Senior Flight Pursers. The Respondent is hoping that the situation will change in one or two years and the Tribunal, on the basis of such hope, can only recommend that a selection exercise for Senior Flight Pursers be held as soon as possible and that the Respondent

sees to it that the Disputants be eligible this time to participate in the said exercise whereby the best candidates may be promoted to the rank of Senior Flight Pursers.

For all the reasons given above, the disputes are otherwise set aside.

(Sd) Indiren Sivaramen

Vice-President

(Sd) Soonarain Ramana

Member

(Sd) Rajesvari Narasingam Ramdoo

Member

(Sd) Khalad Oochotoya

Member

26 February 2013