

## EMPLOYMENT RELATIONS TRIBUNAL

### AWARD

**RN 81/12**

**Before**

<b>Indiren Sivaramen</b>	<b>Vice-President</b>
<b>Jheenarainsing Soobagrah</b>	<b>Member</b>
<b>Geeanduth Gangaram</b>	<b>Member</b>
<b>Renganaden Veeramootoo</b>	<b>Member</b>

**In the matter of:-**

**Mr Heymant Kumar Beekee      (Disputant)**

**And**

**Mauritius Ports Authority      (Respondent)**

The present matter has been referred to the Tribunal by the Commission for Conciliation and Mediation under Section 69(7) of the Employment Relations Act (hereinafter referred to as "the Act"). The parties have not been able to reach an agreement in the said matter and the Tribunal thus proceeded to hear the parties. The terms of reference read as follows:

*"Whether, following the upgrading of the post of Port Fire Officer to that of Superintendent, Port Emergency Services I should be granted 3 increments for change in the conditions of employment, change in job guidelines, loss of opportunity and defavourable financial conditions?"*

The Disputant deposed to the effect that for the whole of the year 2010 he had stayed as Port Fire Officer and not as Superintendent (Port Emergency Services). He produced copies of certain entries which would, according to him, prove same (Docs A to E). He produced a copy of the Code of Ethics dated December 2010 at the Respondent (Doc F). The Disputant referred to Circular Notes 10 and 11 of 2010 and conceded that he had signed an option form but he averred that he signed same on the understanding that an appeal he had made to the Respondent would be taken into consideration. He stated that the consultants, while taking on board the findings/recommendations contained in the Job Evaluation Appeal Committee Report of 2006, have widely upgraded the post of Port Fire Officer in their 2010 Report. These recommendations were, according to him, approved by the Board. He then produced copies of extracts from the 2010 Human Resource Development (HRD) Report (Doc G). Mr Beekee stressed on the fact that only Job Guidelines were attached to the option form and that the conditions of service were never attached. The Disputant complained that he has been upgraded with new conditions of employment and added responsibilities to be in charge of all units as opposed to

being previously in charge of only one batch whilst all his benefits and allowances would have been removed. He maintained that he has been promoted or upgraded for higher duties whilst his financial condition would have worsened. He added that he has even been brought from broadband 4, that is, tactical supervision, to broadband 3 which relates to tactical integration so that responsibilities would have increased. He did not agree that the post of Port Fire Officer had been merely restyled and averred that on several occasions in the 2005, 2006 and 2010 reports, there is mention that the post has been upgraded. He stated that the post was upgraded in terms of responsibilities with change in the conditions of employment, loss of opportunity and less favourable financial conditions. Mr Beekee then produced another extract from the Human Resource Development Report 2010 (Doc H).

The Disputant further referred to a requirement of five years' experience for a Port Fire Officer whilst the experience required for Superintendent (Port Emergency Services) is seven years. He averred that he was never handed any letter when he became Superintendent. Disputant added that by the nature of his work he is required to work 24 hours a day because he is called upon to give directives even from home. He maintained that by remaining at a lower rank his financial condition would have been more favourable than at the higher position he has been put. He also stated that "the change has come because it is an organizational change which I have accepted".

In cross-examination, a copy of the option form signed by Disputant was produced (Doc J). Disputant agreed that with the restructuring, the conditions of service have been reviewed and there was an incentive bonus which he did not have before, the vehicles grant scheme and vacation leave. He stated that in this particular case, an upgrading was a promotion. He averred that the Assistant Human Resources Manager whose post is also mentioned under heading "Upgrading" in the 2010 HRD Report already obtained three increments prior to 2010 and it was the Port Fire Officer who did not obtain the increments. Mr Beekee finally agreed that he has signed the option form and agreed to be bound by the new terms and conditions. He agreed that his post had been upgraded and added that in his case this is more than a promotion in the light of the major changes in the job guidelines.

Mr Moloo, the Human Resources Manager of the Respondent, then deposed and he stated that following the restructuring exercise at the Respondent as per the 2010 HRD Report, his post of Assistant Human Resources Manager was upgraded to that of Manager Human Resources. He referred to the benefits he enjoyed following the upgrading of his post but he was not entitled to three increments following the said upgrading. He stated that the post of Port Fire Officer was restyled to that of Superintendent and as per the recommendations of the consultant, the Disputant was required to work day duty only as he was now responsible for his station in a supervisory capacity. He stated that Disputant has signed the option form and has benefitted from the 2010 HRD Report in terms of salary increase, a car grant which was not available to him previously, the supervisory nature of his duty and the fact that he does day duty only. He stated that as per the new structure, there is the Port Fireman, the Controller, Port Emergency Services, then the Superintendent, Port Emergency Services and the Manager, Port Emergency Services. The first two categories of workers are working on a shift system as per the new structure.

In cross-examination, Mr Moloo agreed that there has been a change in the conditions of employment in the case of the Superintendent, Port Emergency Services. Only the job guidelines were attached to the option form and he referred to conditions of service mentioned in the 2010 HRD Report. He stated that only officers posted on shift are entitled to public holiday allowance. Mr Mooloo produced copies of extracts of the 2010 HRD Report (Docs K1 and K2). He agreed that if a job is restyled, the benefits that applied to the job should equally apply to the new post. In the 2006 Report of the Job Evaluation Appeal Committee (JEAC), there was mention that the next (HRD) report should take into consideration the upgrading of the post of Port Fire Officer among other posts. Mr Moloo also agreed that the JEAC had recommended in the year 2006 that appropriate increments should be awarded to job holders who had deposed before the Committee. He agreed that among other workers who were granted increments, the Assistant Human Resources Manager received three increments which were effective as from 1 July 2005. Mr Moloo added that according to the report, incumbents in the grade of Port Fire Officer did not make any appeal so that they were not called to depose before the JEAC. Upon further questioning, Mr Moloo stated that the upgrading which was recommended by the JEAC has been taken into consideration in the (2010) HRD Report but the post which was Port Fire Officer at grade 11 has been restyled to Superintendent at grade 6. When confronted with the use of the term "upgraded" in the 2010 HRD Report in relation to the post of Port Fire Officer, Mr Moloo now stated that the post has been upgraded from grade 11 to 6 following a compression of grades. There was an average salary increase of 36% for all employees.

Counsel for Respondent referred to the 2006 JEAC report following the 2005 HRD plan. Under the heading "Summary of our proposals", Port Fire Officer was the first post mentioned for upgrading to be considered by the next HRD (meaning the 2010 HRD). Though at paragraph 3.9 of the same 2006 JEAC Report, increments had been granted to most of the posts mentioned for upgrading to be considered by the 2010 HRD, only the posts of Port Fire Officer and Corporate Secretary were not mentioned for any increments. Counsel suggested that Disputant was aware of same since 2005 (the JEAC report is however dated 8 June 2006). Counsel submitted that the post of Port Fire Officer has indeed been listed under the heading "Upgrading" in the 2010 HRD report and that the said post has been upgraded without any increment. She drew a distinction between a post which has been listed under "Promotion" in the 2010 HRD report and posts listed under "Upgrading". Counsel stressed on the fact that the situation which was prevailing in 2005, and which was not appealed against, has been ongoing up to 2010. She added that if ever the Disputant had a case, the matter should have been brought before the Tribunal then. The Disputant having signed the option form in 2010 whereby he accepted the 2010 HRD report cannot now go back and claim that he was entitled to three increments. She also referred to the loan facility which Disputant is now benefitting and the 36% increase in his salary. The Disputant made a statement to the effect that there has been an upgrading and not a restyling. He again stated that whilst assuming higher responsibilities his financial condition would have worsened.

The Tribunal has examined all the evidence on record including the documents produced. First of all, the Tribunal would like to place on record that as far as possible, parties should avoid producing extracts of a report or other document and

instead produce copies of the whole report or document. Several extracts of the 2010 HRD Report have been produced or annexed as part of the case of each party but the Tribunal has not been favoured with a copy of the whole document. A complete copy of at least this report should have been produced to further enlighten the Tribunal the more so that the Tribunal is not entitled to and should not embark in any guess work. Indeed, the whole context of a HRD report may sometimes be as important as a single sentence in the same report. Suffice it to say that the Disputant had annexed copies of two letters as Annexures I and II to his bundle of documents wherein there is mention of section 8.1 of the 2010 HRD report. Despite various documents and extracts of documents produced, the Disputant did not produce a copy of that section. In the same annexures, the Disputant also referred to an alleged recommendation following the publication of the report of the JEAC (presumably following the 2010 HRD report) for the payment of three increments to employees for “loss of opportunity” and yet no such evidence or copy of the report has been adduced before us. Reference has also been made in the same Annexure II to increments being awarded to Controllers Port Operations while allegedly being “upgraded” to Superintendent, Port Operations or to Officers Port Operations while being “upgraded” to Controller Port Operations and yet absolutely no evidence has been adduced to substantiate same. From Annex 8A to Respondent’s Statement of Case (and Annexure IV to the bundle of documents of Disputant) however, it would appear that Officer Port Operations (grade 8), Controller Port Operations (grade 7) and Superintendent Port Operations (grade 6) are all new titles following the 2010 HRD Report and that movement from one lower grade to an upper grade will be a promotion and not upgrading of a post.

The Disputant reluctantly accepted having signed the option form and a copy of the option form dated 2 December 2010 was produced. He stated that he signed the option form on the understanding that his appeal would be taken into consideration. Even if this is the case, the Tribunal sees nothing wrong with same. Indeed, the decision of a worker to sign an option form, which by its very nature is an option given to the worker, is his. If the Disputant was not happy with the job guidelines, emoluments, conditions of service and all other compliances as applicable, he ought not to have signed the option form. In this particular case, the Disputant had even been informed that he could make an appeal to the JEAC which was to be set up and he did so. However, one should look at the terms of the JEAC which, as per Circular Note of 11 of 2010 (Annex 2 to Respondent’s Statement of Case), was to hear appeals from employees aggrieved by their grading (underlined in the said Circular). The Disputant was not denied the right to be heard by the JEAC (as per the copy of Disputant’s own letter at Annexure VI to his case) but the Committee found that his appeal fell beyond its scope of work.

The Tribunal will now refer to the JEAC Report of 2006 where the Committee deliberately did not proceed with any upgrading but stated at paragraph 2.7 (Annex 6 to Respondent’s Statement of Case) that “After much thought, the Committee is recommending that no upgrading be effected for the time being and all cases recommended be reconsidered on its merits in the light of the 2010 HRD exercise.” The Committee had found that there were meritorious cases (with no precise indication as to which cases they were) and under the heading “Summary of our proposals”, sub-heading 3.1 “Upgrading to be considered by next HRD”, Port Fire Officer was first on the list. However, one needs to proceed to Annex 1 to the JEAC

Report of 2006 under the heading “Port Emergency & Environment Controller” where it is provided as follows:

*“The grading at 6 is maintained.*

*However, consideration should be given in the next HRD exercise to a review of the job guidelines for the position of Port Fire Officer with an upgrading thus (underlining is ours) enabling the provision of substantial assistance to the Head of that unit in shouldering his responsibilities.”*

Thus, in the case of Port Fire Officer, the recommendation for upgrading was completely for the future whereby according to the Committee there should first be a review of the job guidelines for the position of the Port Fire Officer. This is to be distinguished from other posts where recommendation for upgrading has similarly been made but where the Committee found that some kind of compensation had to be provided already. Thus, for example, in the case of Engineering Superintendent (also mentioned under the sub-heading “Upgrading to be considered by next HRD”), the Committee states at Annex 1 that the post of Engineering Superintendent is a misnomer and that based on the various functions of that position, as they understood it, the holder should perform at a Junior Engineer level and graded accordingly. The Committee thus recommended that the Engineering Superintendent be granted two increments. The actual upgrading of the post of Port Fire Officer only came with the 2010 HRD Report where it is stated at paragraph 9.2 that the recommendations of the JEAC Report of 2006 have been considered and applied in the new structure. At paragraph 9.2.2 of the same 2010 report, it is stated that “The actual Port Fire Officer post has been upgraded and will work during the day only. One to look after the operations, one to look after Emergency matters in the Port and one to look after the administration aspects.” Now, one has immediately an indication of the new conditions of work of the Port Fire Officer. There is evidence that previously Disputant was working on shift but with the 2010 HRD Report he was to do day duty only. This is indeed an upgrading but bears at the same time and necessarily consequences in relation to allowances.

The consultants who drew up the 2010 HRD Report by upgrading the post of Port Fire Officer were very well aware of this fact when making their recommendations on the new pay and grading structure for any incumbent to that post. The Tribunal will go even further and say that in the light of the evidence before us they must have been in a better position to assess very importantly the impact on duties and responsibilities which would arise for any incumbent following the division of work whereby one Port Fire Officer would look after the operations, one after Emergency matters in the Port and one after the administration aspects (as per paragraph 9.2.2 of the 2010 HRD Report). One should keep in mind that the then Port Fire Officer was operating in the then Port Emergency and Environment Unit. There has been unnecessary emphasis on whether there has been upgrading or restyling in the present matter. In fact, this is not the issue in as much as there has been a comprehensive Human Resource Development Plan whereby there has been a complete restructuring of the organisation with a new grading structure. The then existing nineteen grades have been compressed to twelve grades. The proposed title of Superintendent, Port Emergency Services which emanates from the 2010 HRD Report itself (Annexure IV to the case of Disputant) will be a restyling of the

post of Port Fire Officer but at the same time the post as restyled moves from the then grade eleven to the new grade six. However, there has been no promotion from the grade of Port Fire Officer (which has instead been restyled) to the grade of Superintendent, Port Emergency Services.

The Tribunal has carefully considered all the evidence on record including the broadband and alleged less favourable financial condition. There is nothing to indicate that following the whole exercise, whereby Disputant has been given an increased basic salary with improved terms and conditions of work such as a car grant or day duty, Disputant should in addition be granted three increments. The 2010 HRD Report does not hint to such increments and the Disputant has failed to show even on a mere balance of probabilities that he ought to be given the three increments sought. The Disputant has not impressed us even on the issue of less favourable financial condition the more so when we note that as per Annexure 1A to his bundle of documents, in the year 2010 he received Rs 50,322.41 which was passage benefit paid to him and which item does not appear again in his Statement of Emolument for 2011. The Disputant did not produce his Statement of Emolument for 2009 which was in fact a very material document since the effective date of the implementation of the new salary structure was 1 January 2010 (with payment of arrears) even though the option form was signed in December 2010 (as per documents produced including Annex 1 to Respondent's Statement of Case).

For all the reasons given above, the Tribunal sets aside the present dispute.

**(Sd) Indiren Sivaramen**  
**Vice-President**

**(Sd) Jheenarainsing Soobagrah**  
**Member**

**(Sd) Geeanduth Gangaram**  
**Member**

**(Sd) Renganaden Veeramootoo**  
**Member**

**4 January 2013**