

**EMPLOYMENT RELATIONS TRIBUNAL
AWARD**

ERT/RN 83/2012

Before:

Shameer Janhangeer	-	Vice-President
Raffick Hossenbaccus	-	Member
Rabin Gungoo	-	Member
Triboohun Raj Gunnoo	-	Member

In the matter of:-

Mr Bissoondyal Ramrukheea

Disputant

and

Mauritius Ports Authority

Respondent

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

Whether I should be entitled to three increments following my promotion from Port Fire Officer to Superintendent, PES upon the implementation of the Human Resource Development Plan HRD 2010.

The Disputant and the Mauritius Ports Authority (the "MPA") were both assisted by Counsel and instructed by Attorney. Both parties have put in a statement of case in relation to the present dispute.

The Disputant, in his statement of case, has notably averred that he has recently been upgraded from the post of Port Fire Officer to that of Superintendent (Port Emergency

Services) (“PES”) and that the upgrading amounts to a promotion. He contends that he is therefore entitled to three increments pursuant to *clause 8 of Appendix B of the Human Resource Development Report 2010*. He has also averred that he exercised an individual option form on or about 6 December 2010 being under the impression that by exercising and accepting same he would be promoted and benefit from three increments. He was under the legitimate expectation that his terms and conditions of employment would be better than the current one. After having exercised the option, he was upgraded and appointed as Superintendent (PES). The Disputant has also given a chronology of events in relation to the *Human Resource Development (the “HRD”) Plans* as well as the *Job Evaluation Appeals Committee (the “JEAC”)* set up at the MPA in 2006 leading to the present dispute. With regard to the post of Superintendent (PES), he has averred that it is categorized at Broad Band 3 and is required to perform duties and functions between 7 am to 3 pm from Mondays to Fridays, between 7 am to 1 pm on Saturdays and is required to stay on call during abnormal hours so as to take any tactical decision during an emergency.

The Disputant further averred that he signed an irrevocable option form by 6 December 2010 on the basis and understanding that he was being upgraded to Broad Band 3, this would amount to a promotion and he would be entitled to three increments as per *clause 8.1 of HRD 2010*. He sent a number of correspondences to the Respondent, to which he received no reply. On 19 March 2012, he received a reply to a letter dated 2 March 2012, wherein he was told that his appointment to the post of Superintendent (PES) was merely a restyling, not a promotion and as such he was not entitled to three increments.

The Disputant has also averred that the job guidelines of Port Fire Officer are similar to that of Controller (PES) and is completely different to that Superintendent (PES). In going over the guidelines of the three posts, it has been submitted that the post of Port Fire Officer has been taken over/restyled to that of Controller (PES) whereas the post of Superintendent (PES) is of a completely different nature with different terms and conditions. The upgrade from Port Fire Officer to Superintendent (PES) therefore amounts to a promotion. The Disputant has also averred that prior to the upgrade his financial conditions were more favourable in as much as his overtime and public holiday allowances have been abolished. Further, to his statement of case, the Disputant has also attached annexes of the documents he has referred to therein.

The Respondent, in its statement of case, has admitted most of the averments of the Disputant’s statement of case. However, it has averred that the post of Port Fire Officer was restyled to that of Superintendent (PES), the *HRD Report 2010* having taken on board the recommendations of the *JEAC 2006*. The Respondent has also averred that the nature of the

post of Superintendent (PES) is such that he may be requested to attend duties outside office hours only in cases of emergency. It has further been averred that the question of promotion never arose for the applicant. In relation to the correspondences sent by the Disputant, he was verbally informed that he has already opted to accept the emoluments and conditions of service prescribed for the post of Superintendent (PES) in the *HRD 2010* and that his claim could not be favourably considered. The consultant also reviewed the job guidelines in respect of Port Emergency Services and has made new recommendations in respect of same which were approved by the MPA Board.

The Respondent, in its statement of case, has also denied that the post of Port Fire Officer has been restyled as Controller, PES and averred that the post of Controller has been created in the new structure, as per the Organisational Structure attached to its statement of case. Furthermore, the Respondent has set up a *Job Evaluation Appeals Committee* to examine appeals from employees who were not satisfied with their personal grading arising out of the *HRD Report 2010*.

The Disputant has adduced evidence in the matter. He joined the MPA on 22 April 2002 as Port Fire Officer. He went over the *HRD Plans* at the MPA in 2005 and 2010 as well as the *JEAC Report 2006*. He referred to the recommendations for upgrading of the post of Port Fire Officer made in the *JEAC Report*. He also referred to the *HRD Report 2010*, whereby the consultant had to take onboard and implement all the recommendations of the *JEAC Report 2006*, and pointed out that the post of Port Fire Officer was recommended for an upgrade. At *Appendix B* of the *HRD 2010*, he referred to the section on salary on promotion, wherein upon promotion an employee is to be awarded three increments. He was informed by management through a circular note that the *HRD Report 2010* had been approved and that an average salary increase of 36.7 % has been granted to all employees. In another circular note, he was informed that an option form will be distributed to all employees and ought to be signed and returned by the 6th of December 2010. He signed the option form by his own free will on the understanding that in his new post (of Superintendent PES) he would now have more responsibilities to assume and with the remuneration which is equivalent to a promotion, he would be awarded three increments as he has read from the implementation of the *HRD 2010*. He contended that he was sure that he would receive the three increments. He wrote twice to management on the issue and received a reply to his second letter, wherein the Respondent stated that the post of Port Fire Officer has been restyled as Superintendent (PES) with the *HRD Report 2010* and that it is not considered as a promotion. The Disputant also went over the job guidelines for the post of Port Fire Officer, Superintendent (PES) and Controller, stating that the post of Port Fire Officer bears similar characteristics to that of the actual post of Controller and that his previous post of Port Fire

Officer is completely different to that of his present post of Superintendent. He signed the form on the legitimate expectancy that he would be granted three increments.

The Disputant, in questions put to him under cross-examination, stated that the upgrading of the post of Port Fire Officer is a promotion. He acknowledged that the post of Port Fire Officer is not listed in the *JEAC Report 2006* under increments to be awarded. He could not point out where in the *JEAC Report* that he has been promoted or whether a recommendation has been made to this effect. He made his complaint in 2011 when the post was implemented as Superintendent. He understands that he has been promoted basing himself on the *HRD 2010* and *Appendix B* of same even though it is stated that the post has been upgraded.

The Disputant has also produced the job guidelines for the post of Port Fire Officer (Document A) as well as the organisational structure of the MPA coming into effect after the *HRD 2010* (Document B).

Mr Mukram Moloo, Human Resources Manager at the Mauritius Ports Authority, was called to depose for the Respondent. He notably stated that the Disputant did not sign the option form under protest. The Disputant subsequently made a complaint and was informed in writing by management that the post of Port Fire Officer had been restyled as Superintendent, which was graded and classified at level 6, this was not considered as a promotion from Port Fire Officer to Superintendent and that a new grade of Controller has been created. The *JEAC* made several recommendations among which was the granting of increments to specific grades as well as for the upgrading to be considered in the next salary review in 2010. The upgrading recommended was fully considered by the consultant in the *2010 Report* and they have been accordingly upgraded without granting of any increment. There has been no granting of increments mentioned in the *Report*. The job guidelines of the previous post of Port Fire Officer have been reviewed. New responsibilities have been added to the job guidelines as regards the duties of the Superintendent of the Port Emergency Department. The post of Port Fire Officer and that of Superintendent are not totally different. There has been a compression of grades at the Mauritius Ports Authority from 19 to 12 in 2010 and the Disputant is now graded 6 out of 12.

In reply to questions under cross-examination, Mr M. Moloo notably stated that the *JEAC Report 2006* was in respect of personal grading only. *Section 3.9* of the aforesaid *Report* is in relation to "*Increments to be Awarded*" to specific grades whose incumbents had deponed before the Committee and this was implemented in the *HRD 2010*. He further

stated that the posts of Engineering Superintendent, Accounting Technician and Assistant Human Resources Manager upgraded in the *HRD 2010* have also received increments according to *section 3.9* of the *JEAC Report 2006*. The deponent also produced a complete copy of *Circular Note No. 11 of 2010* (Document C). He did not agree that the words 'upgraded' and 'promotion' have been linked at *paragraph 9.2.3* of the *HRD 2010*, which refers to Technician and Senior Technician. He did agree that there is no mention of the word 'restyling' in the *HRD Report 2010*.

The representative of the MPA has further stated that following the *HRD 2010*, a *JEAC* was set up, made recommendations to management which were approved by the Board. The Superintendent (PES) did submit his grievance but same was not retained by the Committee, whose mandate was to consider grievances of employees concerning personal grading only.

The *Tribunal* in the present matter is being asked to decide whether the Disputant is entitled to three increments following what he contends is a promotion from the post of Port Fire Officer to Superintendent (PES) pursuant to the implementation of the *HRD 2010* at the Mauritius Ports Authority.

The Disputant has been working as Port Fire Officer at the Respondent Authority since April 2002. On 6 December 2012, he was appointed Superintendent (PES) after having exercised an option form accepting the emoluments and conditions of service prescribed for his post in the *HRD Report 2010*.

In 2006, following the implementation of the *HRD 2005* exercise at the MPA, a *Job Evaluation Appeals Committee* was set up to consider appeals from employees who were aggrieved by their personal grading. The *JEAC* came out with its report in 2006 and cited the post of Port Fire Officer, amongst other posts, for upgrading to be considered by the next *HRD*. The *Report* also advised that the next *HRD* exercise review the job guidelines for the position of Port Fire Officer with an upgrading.

The aforesaid *2006 Report*, in making its recommendations, did point out that there are meritorious cases, but felt that it would not be advisable to recommend an upgrading as this will disturb the relativities within the *HRD 2005* structure. It was therefore recommended that all cases be reconsidered on its merits in the light of the 2010 *HRD* exercise. The *JEAC* furthermore recommended a horizontal salary movement up to a

maximum of three increments as a form of compensation pending the next *HRD* exercise. It may be noted that the post of Port Fire Officer was not among the posts listed for an award of increments.

A new *HRD Plan* was implemented at the MPA on 11 November 2010. The *HRD 2010* took on board the findings/recommendations of the *JEAC 2006* and integrated same as far as possible in the new *HRD Plan* as per its terms of reference. In relation to the post of Port Fire Officer, the *HRD Report 2010*, in applying the *JEAC* recommendations, upgraded same to Superintendent, Emergency Services reporting to the Manager, Emergency Services (*vide paragraph 9.2.1 and Appendix A (Proposed Grading Structure) of the Report*). The *HRD 2010* also restructured the number of grades at the MPA to 12 (instead of 19) and maintained 5 Broad Bands. The new post was graded at level 6 (MPA Broad Band 3), the previous post being graded at level 11. In relation to the upgrade of the post, the *HRD 2010* stated the following (at *paragraph 9.2.2 of the Report*):

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.

The Board of the MPA on 11 November 2010 approved the recommendations of the *HRD Report 2010* and informed the employees of same via a *Circular Note (No. 10 of 2010)*. Management subsequently issued another *Circular Note (No. 11 of 2010)* informing employees that a *Job Evaluation Appeal Committee* will be set up and that employees aggrieved by their grading should submit written requests; and that option forms will be circulated to all employees.

The Disputant signed the option form on 6 December 2010. He subsequently wrote two letters to Management (on 11 July 2011 and 2 March 2012) stating that he opted for the new post on the understanding that he will be awarded three increments relying on *clause 8.1 of the HRD 2010*. He received a reply to his letter dated 2 March 2012 stating that position of Port Fire Officer has been restyled to Superintendent, Port Emergency Services with the *HRD Report 2010*; that this is not considered a promotion; and that a new grade of Controller, Port Emergency Services has been created.

The Disputant has throughout the proceedings contended that he has been promoted to his new post. He has notably stated that his previous post of Port Fire Officer has been taken over/restyled to that of Controller (PES) and that the post of Superintendent (PES) is of a completely different nature with different terms and conditions. He therefore

understands that the upgrade from the post of Port Fire Officer to that of Superintendent (PES) amounts to a promotion.

In his contention, the Disputant is relying on the job guidelines of the posts of Port Fire Officer, Controller (PES) and Superintendent (PES). From the job guidelines for the posts of Port Fire Officer and Controller (PES), it may be noted that main purpose of both posts are the same, i.e. to take overall command and control as officer in charge of a shift and to organise and supervise all duties performed by Port Firemen. Furthermore, the required minimum experience for both posts is at least 5 years' experience in the grade of Port Fireman with a good record of attendance and conduct; as are the number of hours of work, i.e. 42 hours weekly. The Port Fire Officer reported to the Port Emergency & Environment Controller, whereas the new post of Controller (PES) reports to the Superintendent (PES).

The post of Controller (PES) is third in the reporting line of the relevant unit of the Marine Department in the 2010 organisational structure whereas the former post of Port Fire Officer is second in the reporting line (below the Port Emergency & Environment Controller) in the 2005 organisational structure. However, the *HRD 2010* has compressed the number of grades at the MPA from 19 to 12 and it may be noted that the PES unit now has 4 grades (i.e. Manager; Superintendent; Controller; and Port Fireman) whereas the unit previously comprised of 5 grades in the *HRD 2005*.

The *Tribunal* has noted that although the statement of duties / key responsibilities of both posts bear certain common features, they are not completely identical when compared to each other. For instance, the *Tribunal* has noted *inter alia* that the Controller (PES) is also required to deliver lectures and advise on fire prevention, safety and first aid to MPA employees; to coach, guide and train all junior staff; play an active role in promoting safety and security at the MPA; to adhere to and promote MPA's corporate values; and to contribute to the enhancement of the port environment.

As regards the post of Superintendent (PES), its main purpose is to assist in the smooth running of the PES Unit, the post is second in the reporting line of the Unit reporting to the Manager (PES) and the holder of the post must have at least 7 years' experience in fire fighting and fire prevention. The post is graded at level 6 of the new structure at the MPA and it has not been disputed that the duties of the post are of a different nature to that of the Port Fire Officer and/or Controller (PES).

The *Tribunal*, in basing itself on the job guidelines of the posts of Port Fire Officer and Controller (PES) and having considered the restructuring in relation to the relevant posts brought by the implementation of the *HRD* exercise in 2010 as well as the job guidelines of the post of Superintendent (PES), cannot therefore conclude that the posts of Port Fire Officer and Controller (PES) are similar.

The Disputant has also relied on *paragraph 9.2* of the *HRD Report 2010* as well as on *clause 8 of Appendix B* of the aforesaid *Report* in asserting that he has been promoted to the post of Superintendent (PES).

It would be appropriate to note from the *Concise Oxford English Dictionary* that the word “upgrade” means “to raise to a higher standard or rank”, whereas the word “promotion” means “raise to a higher position or rank”. Although the two terms do appear to be identical in meaning, the makers of the *HRD Report 2010*, in adopting the recommendations of the *JEAC Report 2006*, have been careful to use the word “upgrading” instead of the word “promotion” in relation to the post of Port Fire Officer. Moreover, as has been rightly pointed out by Counsel for the Disputant, the *Report*, at *paragraph 9.2.3*, only mentions “promotion” in relation to “upgrading” with regard to the post of Technician.

Furthermore, the *Tribunal* has also noted the following from the *JEAC Report 2006* in relation to the post of Port Fire Officer (at *Annex 1* of the *Report*):

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 enabling the provision of substantial assistance to the Head of that unit in shouldering his responsibilities.

It is clear from the above paragraph that the *JEAC*, before whom the Disputant was represented by the Human Resource Director, never proposed any actual promotion for the post of Port Fire Officer but that a review be carried out for the job guidelines for the post which would enable the holder of the post to provide substantial assistance to the Port Emergency & Environment Controller.

The *Tribunal* has noted that *paragraph 9.2* of the *HRD Report 2010* sets out an upgrading of the post of Port Fire Officer among other posts (i.e. Engineering Superintendent; Accounting Technician; Auditing Technician; Assistant Human Resources Manager; and Secretary) and has expressly stated that the post of Port Fire Officer has been upgraded and will work during the day only. Furthermore, at *Appendix A* of the *Report* (i.e.

the *Proposed Grading Structure*), the post of Port Fire Officer has been proposed for grading as Superintendent, Emergency Services reporting to the Manager, Emergency Services. It may also be noted from *Appendix A* that the post of Port Emergency & Environment Controller is now at graded at level 4A in the new grading structure with a new title of Manager, Emergency Services.

Furthermore, the *HRD 2010 at Appendix B (MPA Terms and Conditions 2010)* of the *Report* has provided for the following in relation to promotion:

8. PROMOTION

Salary on Promotion

8.1 *On promotion an employee shall, if the promotional post is on a time scale, join the salary scale of the post at the initial or be granted 3 increments from the point (s)he has reached in the scale of his/her former post whichever is more favourable In case the new salary is higher than that of senior colleagues in the promotional post, salaries of these employees shall be adjusted so that they are at par with the newly promoted employee.*

The aforesaid paragraph on the issue of promotion is more in relation to the salary of the post of an employee who has been promoted and not on the criteria of the promotion of an employee from one post to another. The paragraph, moreover, does not confer an automatic entitlement to three increments in as much as there are conditions upon which an employee would be granted same depending on the point he has reached on his salary scale.

Indeed, the *HRD Report 2010* has recognised this lacuna in relation to the issue of promotion at the Respondent organisation as may be noted from *paragraph 15.6* of the *Report*:

Recruitment, selection and promotion

The whole subject of recruitment, selection and promotion of staff would need to be addressed differently at the MPA. When creating and filling organisational roles, it is important to find a match between the values and the needs of the organisation on the one hand and the values and abilities of the individual employee on the other. Without this match, individuals may use or express their technical expertise in ways that cause interpersonal conflicts within work groups or across departmental lines. Also, people will find ways to express their values within a wide range of role behaviours that are allowable but cause enormous disruption and frustration. The matter of competency for the various roles is of course of major consequence for the performance of the organisation. The assessment of an individual's values has been ignored at the MPA in its recruitment, selection and promotion exercises.

It may also be noted from *paragraph 7.1.4* the *2010 Report* that Rent Allowance has been abolished for the post of Port Fire Officer among other posts. However, it has been provided that one additional increment shall be paid on a personal to bearer basis in lieu of rent allowance and same will be considered on a case to case basis where an employee has reached his top salary.

It has not been disputed that the restructuring brought by the *HRD 2010* has abolished the post of Port Fire Officer and created the posts of Superintendent (PES) and Controller (PES) in the relevant unit of the Marine Department. Can it therefore be said that the Disputant has been promoted in as much as he is now in a new post with new responsibilities? In the organisational structure existing prior to 2010, the Disputant's promotional route would have been to the post of Port Emergency and Environment Controller (which is now Manager, Emergency Services). The Disputant in his new post of Superintendent is just below and reports to the post of Manager in the PES Unit. Thus the new structure of the unit has placed the post of Manager (PES) next in line to the post of Superintendent (PES) with the post of Controller (PES) being just below that of Superintendent (PES). It is clear that the adoption of the *HRD Report 2010* by the Board of the MPA has brought in a new structure at the Authority and has revamped the Marine Department to be in line with the aspirations of the organisation.

The Disputant signed an option form on or about 6 December 2010 wherein he acknowledged having taken cognizance of circular notes at the MPA with regard to the implementation of the *HRD Report* and hereby accepted the emoluments and Conditions of Service prescribed for his post in the *HRD Report 2010*.

Having considered the recommendations of the *JEAC Report 2006*, the *HRD Report 2010* as well as the irrevocable option form signed by the Disputant, the *Tribunal* cannot see how the Disputant has understood that he will be awarded three increments as per *clause 8.1* of *Appendix B* of the *HRD Report 2010* in opting for the new post of Superintendent (PES) or that he has been promoted to the new post. The *Tribunal* cannot therefore award that the Disputant should be entitled to three increments with the implementation of the *HRD Plan 2010* at the MPA.

The dispute is therefore set aside.

(Sd) Shameer Janhangeer
(Vice-President)

(Sd) Raffick Hossenbaccus
(Member)

(Sd) Rabin Gungoo
(Member)

(Sd) Triboohun Raj Gunnoo
(Member)

Date: 30th May 2013