

# **EMPLOYMENT RELATIONS TRIBUNAL**

## **AWARD**

**RN 82/12**

### **Before:**

<b>Rashid HOSSEN</b>	-	<b>President</b>
<b>Geeanduth GANGARAM</b>	-	<b>Member</b>
<b>Jheenarainsing SOOBAGRAH</b>	-	<b>Member</b>
<b>Renganaden VEERAMOOTOO</b>	-	<b>Member</b>

### **In the matter of:**

**Mr. Ramesh Koonjoo**

**And**

**Cargo Handling Corporation Ltd**

The Commission for Conciliation and Mediation referred the present matter to the Tribunal for Arbitration as per Section 69(7) of the Employment Relations Act 2008.

On 21 May 2012, the Disputant, Mr. Ramesh Koonjoo reported to the Commission the existence of a labour dispute between himself and the Cargo Handling Corporation Ltd.

Conciliation meetings were held at the Commission and no settlement has been possible.

The Terms of Reference read:- *“Whether I, HR Officer, posted at the Mauritius Container Terminal should be paid the Incentive Bonus restyled as Supplementary Allowance and should benefit the same terms and conditions of employment applicable prior to 1<sup>st</sup> January 2009, or otherwise.”*

The Disputant was assisted by a Trade Union representative.

Miss V. Bunwaree, Counsel together with Mr. M. Sauzier. SC appeared for the Respondent.

In a brief written statement filed in the Tribunal, Disputant averred that he is actually holding the post of *“Human Resource Officer”* at the Mauritius Container Terminal, Cargo Handling Corporation Ltd. During the year 2009 and up to 2011 he requested in vain a supplementary allowance as earned by the former Human Resource Officer.

The Respondent filed a statement of case resisting the application for the supplementary allowance. It averred that in March 2008, Disputant who was holding the post of Human Resource Officer was transferred to the Mauritius Container

Terminal as Human Resource Officer. The Supplementary Allowance was an incentive for employees in operation department to work at the Mauritius Container Terminal where work was demanding and where employees were incited to perform 3<sup>rd</sup> shift. Corporate staff not posted in the operation department of the Mauritius Container Terminal was also being paid the said supplementary allowance up to the month of February 2002. It was stopped as a matter of policy. This payment to the corporate staff of the Mauritius Container Terminal was stopped as a matter of policy.

The Disputant deponed before the Tribunal. According to him, the supplementary bonus was given to all employees. He denied that it was an incentive to those who were at the Mauritius Container Terminal. He further denied that the supplementary bonus which was initially an incentive bonus was re-styled as a 3<sup>rd</sup> shift bonus and restricted only to a certain category of employees as per the Salary Restructuring Exercise Report implemented in July 2003. He is not aware that as from July 2003, no employee of the corporate staff was paid any incentive bonus. With regard to the case of Mrs Ramnath, he agreed that on the 25<sup>th</sup> February 2003, she was posted as Confidential Secretary to the Operations Department.

Mr. Jacques Louis Fanor, the Disputant's representative deponed to the effect that one Mr. Dahari receives the

Supplementary Allowance, being a Corporate whereas Disputant's request dates back to more than 5 years. It is discriminatory when one Mr. Davey who was occupying the post of Human Resource Officer benefitted from a *'package'*. As regard the Confidential Secretary (Mrs Jumnah Ramnath), her request was attended to by Management. Disputant added he was denied a list of beneficiaries as from the year 2002.

The Assistant Human Resource Manager, Mr. Hemraj Dahari deponed on behalf of the Respondent. He confirmed the correctness of the statements of case filed on behalf of the Respondent. According to the witness, with the implementation and commissioning of the Mauritius Container Terminal in 1999 Management devised an Incentive Bonus Scheme to motivate employees to work at the Mauritius Container Terminal. Work at the Terminal was more demanding with the introduction of the 3 shift system and all employees posted at the Terminal at that time started benefitting from the Incentive Bonus. There was also a guarantee that no reduction would be effected in overtime as a result of the implementation of the 3 shift system. The first Corporate staff, including the Secretary, who proceeded to work at the Terminal were paid the Incentive Bonus just like every employee posted there at that particular point in time, whether Corporate or Operations. This was so far the period 1999 to 2002. The witness was paid such Incentive Bonus as he himself joined in the year 2000. On or about the month of February 2002, some IT

Staff was posted at the Terminal and formed part of the Corporate staff. Management then decided that the Incentive Bonus should be paid as it was designed initially, i.e. applicable only to those doing shift work and at that time the IT personnel did not get Incentive Bonus. The July Salary Restructuring Exercise Report regulated the terms and conditions of employment. It decided that the Incentive Bonus should be kept on a personal basis and recruits at the Terminal who work on a 3 shift system should get the Night Allowance, i.e. the 3<sup>rd</sup> shift allowance, applicable only to Operations posts.

The witness further stated that the Disputant joined the Terminal sometime in March 2008. The IT Officer who had been posted at the Terminal prior to Disputant was not paid the Incentive Bonus. According to the witness, the contents of the Report were done in agreement with the Unions, although not all employees are members of the unions.

Counsel for the Respondent submitted that this case is based on facts. The representative of the Cargo Handling Company explained how the Incentive Bonus came about to be paid to the employees when the Mauritius Container Terminal was initially set up and the reason for such payment. It is admitted that it was paid indiscriminately to all employees joining the Terminal whether they worked in Corporate or Operations division. Things have changed

with the implementation of the Salary Restructuring Exercise Report 2003. Disputant only joined in 2008.

The Tribunal finds that the gist and kernel of this matter is the implementation of the Salary Restructuring Exercise Report that was implemented as from July 2003. There had been no objection to its implementation and para 453, relevant to the present issue reads:- “**We recommend that a 3<sup>rd</sup> shift allowance be granted to those new recruits who work on 3 shifts. Should any new employee receiving a shift allowance be redeployed to perform 2 shifts duties or normal office hours he will forego the shift allowance.**” The Assistant Human Resource Manager confirmed that new recruits have not been receiving the Supplementary Allowance. The Tribunal further finds that Corporate employees were entitled to the Incentive Bonus up to 1<sup>st</sup> of July 2003. The case of Mrs Jumnah Ramnath cannot be invoked in as much as she joined on the 25<sup>th</sup> of February 2003 and Disputant has not successfully challenged it.

We find no reason to intervene and the dispute is set aside.

**(Sd) Rashid HOSSEN**  
**President**

**(Sd) Geeanduth GANGARAM**  
**Member**

**(Sd) Jheenarainsing SOOBAGRAH**  
**Member**

**(Sd) Renganaden VEERAMOOTOO**  
**Member**

**Date: 31 January 2013**