EMPLOYMENT RELATIONS TRIBUNAL

AWARD

RN 49/13

Before

Indiren Sivaramen	**Vice-President**
Soonarain Ramana	**Member**
Desire Yves Albert Luckey	**Member**
Triboohun Raj Gunnoo	**Member**

In the matter of:-

Mr Rama Valaydon (Disputant)

And

Cargo Handling Corporation Ltd (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"). Both parties were assisted by Counsel and the terms of reference read as follows:

"Whether the Personal Pensionable Allowance (PPA) paid to me should be 20% of my basic salary."

The Disputant deponed before the Tribunal and he solemnly affirmed to the truth of the contents of his Statement of Case. He produced copies of the draft final report for the salary restructuring exercise for 2002 (Doc A), final report for the salary restructuring exercise for 2008 (Doc B) and report of the job evaluation appeals committee (JEAC) (Doc C) for the 2008 salary restructuring exercise. He averred that his claim would concern about 340 workers (Doc D) at the Respondent and not some 1400 workers, that is, Respondent's whole work force as Respondent would contend. He came to this figure by using a list of workers who joined the company and/or were appointed as at 2008 since there was a new salary restructure exercise effective as from January 2009.

In cross-examination, he agreed that it was the 'salary restructure exercise' in 2002 which introduced for the first time the personal pensionable allowance ("PPA"). This was for workers in Operations and its purpose was to avoid a setback in the revenue of

those workers when they obtain their pension. The trade union accepted this PPA. In 2003, Disputant was paid PPA at 20% of his basic salary. Mr Valaydon did not agree that the consultant recommended in its final report for the 2008 salary restructure exercise that there would be a cap on the personal pensionable allowance for every worker. According to him, for the "ancien", the PPA had been kept on a personal basis. He earned Rs 4363- monthly as PPA as from 2008 even though from 2004 to 2008 the quantum of PPA paid to him varied as per his basic salary. He agreed that in 2004 he earned a basic salary of Rs 15300- and that now he earns a basic salary of Rs 46,145-. However, he added that he had promotions from SSO (Senior Supervisor Operations) up to Terminal Superintendent. A salary restructure exercise in 2013 has been rejected by the union.

Mr Valaydon criticized the agreement entered into between Respondent and the Port Louis Maritime Employees Association (PLMEA) in 2013 though he agreed that the PLMEA represents some 80% of the workers at Respondent. He averred that there was no need to extend the PPA to all workers at the Respondent and that this was "un cadeau" given to all workers. He stated that for the workers in 'Corporate Services' there is no such drop in revenue when they receive their pension. He agreed that for 1300 workers, the bill might amount to over Rs 100 millions but added that his case concerning PPA was already before relevant authorities when management decided to extend same to all workers. He averred that the agreement management has entered into with PLMEA is being challenged before other institutions. He did not agree that the 350 or so workers who, according to him, should benefit from PPA were privileged workers. He instead qualified management as irresponsible for granting such a gift (PPA) to all workers and which caused the (financial) situation at Respondent to worsen. At the same time, he conceded that he earns several allowances in terms of bonuses to compensate for efforts he put in. In re-examination, Mr Valaydon stated that the dispute stayed for about two years before the Ministry of Labour, Employment and Industrial Relations and the Minister himself before the matter was referred to the Commission for Conciliation and Mediation in January 2013.

Mr Seegoolam, the Assistant Human Resources Manager of Respondent then deponed and he identified a table showing the monthly basic salary and PPA allegedly earned by Disputant for the period July 2003 to October 2013 (Doc E). He explained the rationale for the PPA and agreed that at its inception, PPA was calculated as a percentage from 20 to 25% of the basic salary. In the 2008 salary restructure exercise, the consultant recommended that there were too many allowances and that allowances should be kept on a personal basis with PPA being capped for those who were there during the period 2003 to 2008. For new entrants there would be no PPA and other allowances. The issue was considered by the JEAC and it came to the same conclusion, that is, the PPA has been capped. Ever since 2008, the PPA has remained fixed despite substantial increases in the basic salary. He stated that prior to the 2013 salary restructure exercise, there were negotiations before the appropriate forum and an agreement was entered into with a trade union representing 80% of the workers to the effect that PPA would be allowed to all workers at Respondent. He added that the financial impact if PPA is not capped will be around Rs 120 millions.

In cross-examination, Mr Seegoolam conceded that with the salary restructure exercise of 2002, PPA was granted to compensate workers in Operations and did not concern other workers. He averred that there were claims that by not extending the PPA to other workers, the Respondent was acting in a discriminatory manner. He was referred to Doc B and he stated that since the financial impact of PPA upon implementation of the report was given as 0%, PPA had been capped. When questioned on the agreement reached with PLMEA in 2013, Mr Seegoolam maintained that the company was receiving representations from other workers that workers in Operations were being treated more favourably than those in Corporate Services. At one point in time, Mr Seegoolam accepted that the PPA was an acquired right.

Counsel for Disputant submitted that the central question is whether PPA as determined in the salary restructure exercise of 2002 was an acquired right or not. He went on to suggest that if the Tribunal finds that it is an acquired right, this is the end of the matter since the 2008 salary restructure exercise or even the agreement signed in 2013 could not have provided for a less favourable PPA to Disputant. He referred to the rationale for the introduction of PPA in 2002 and argued that the PPA has been capped only after 2009 and that this was done by the employer. This could not affect the acquired right of the Disputant. He referred to extracts from *Dr D. Fok Kan, Introduction to Mauritian Labour Law, 2/ The Law of Industrial Relations* and to the cases of **R. D'Unienville & Anor v Mauritius Commercial Bank 2013 SCJ 404, Harry Dikranian v Attorney General of Quebec 2005 SCC 73, The Savanne Bus Service Co. Ltd v Mamode Yousouf Nayamuth 1976 SCJ 66, J.U Laverdure v Sugar Planters Mechanical Pool Corporation 1989 SCJ 204** and **The New Mauritius Hotels Group v Benoit 1982 MR 109**.

Counsel for Respondent submitted that the PPA as alleged by Disputant, that is, at a rate of 20% of the basic salary cannot be an acquired right. He suggested that with the salary restructure exercise in 2008, the PPA was capped. He also referred to the remarkable increase in the basic salary of Disputant. Counsel argued that it was not bad management to extend the limited facility that constituted the capped PPA to all workers to avoid any discrimination. He submitted that the agreement in 2013 was entered into with a trade union which represents 80% of the workers at Respondent. He stressed on the fact that the existence of the PPA was never put into doubt but that it was fair that the PPA be enlarged to all workers. Counsel referred to **Judgment 832** of the **International Labour Organisation** in the case of **Re Ayoub, Lucal, Monat, Perret-Nguyen and Samson.** He submitted that "fixité" in the amount will determine if it is an acquired right. In the present matter, he argued that the facts are different and that there has been an evolution so that the PPA has been capped and accepted by one and all over the past years. The PPA is an acquired right according to him but not the rate of 20%.

In reply, Counsel for Disputant submitted that "fixité" relates to the mode of calculation also and not only to the amount. He referred again to the case of **J.U Laverdure**

(above). He also suggested that Disputant never accepted the salary restructure exercise of 2008.

The Tribunal has examined all the evidence on record including the submissions of both Counsel. Any salary restructuring exercise at the Respondent has been an extremely difficult and perilous enterprise. For instance, in December 2002, a restructuring exercise was carried out by a consulting firm but since the unions disagreed on a number of points, management had to request for another report. The new report was apparently rejected by the unions on some litigious points. The parties then agreed to commission another Salary Restructuring Commission which led to the Salary Restructuring Exercise 2008 (as per the 2008 Report at page CSL 1, copy produced and marked Doc B). As per Doc A produced by Disputant himself even though we keep in mind that it might not have been accepted *in toto* by the unions, we note that a Salary Restructuring Committee was also set up in 2000 to conduct a review of the remuneration system at the Respondent (following the 1996 Salary Restructuring Committee whose report was implemented) and the report submitted in April 2001 was rejected. Employees apparently benefitted in the meantime from an interim salary increase. We need not mention the fate of the 2013 salary restructuring exercise. It is against this background that a review of the remuneration system at the Respondent must be viewed. Any Salary Restructuring Committee has to take a number of considerations which include the specificities of the port, duties and responsibilities of various categories of employees and the ability of the Respondent to meet its financial obligations.

Though there may have been some litigious points with the 2002 report, it is undisputed that the PPA was first introduced at the Respondent in or about January 2003 on the recommendation of the Salary Restructuring Committee of December 2002. This recommendation was accepted by management and the unions. This constituted a change in the salary structure. According to Doc A, most categories of staff in Operations had been granted the following variable components, that is, (1) productivity bonus, (2) additional shift allowance, (3) incentive bonus and (4) other benefits in terms of allowances. Other categories of staff in Corporate Services did not enjoy the said benefits and one of the findings in the 2002 Report was that this had resulted in a disturbance in the internal relativity in terms of salary package. The productivity bonus was considered in the 2002 report more in the nature of a guaranteed payment which was no longer linked with the productivity output of each worker. The productivity bonus was thus converted into two parts, the first part being the PPA at rates varying between 20 to 25% and the second part being a new supplementary allowance which would include other components. The purpose for the PPA was to avoid that employees in Operations face a too significant drop in their pay packet when they retire. Indeed, the various variable components which those workers benefitted were not taken into consideration when calculating pension contribution. However, the Tribunal will at the same time quote extensively from page 51 of Doc A:

SALARY COMPONENTS

Findings

407 The existing salary structure is cumbersome with multiplicity of salary components (fixed and variable). Most categories of staff in operations are granted the following variable components:

- *Productivity Bonus*
- *Additional shift allowance*
- *Incentive bonus*
- *Other benefits in terms of allowances.*

408 The above benefits however do not form part of the salary package of other categories of staff in Corporate Services. This therefore has resulted in a disturbance in internal relativity.

409 If we were to divide the existing categories into sub categories in terms of the composition of their pay packet, the number of grades for both operations and administration will increase from 40 to 130.

410 The external relativity also has been disturbed. When comparing the total salary package of staff with the external market; the remuneration package for operations staff is relatively higher, whereas the administration staff are below the market rate.

411 Inevitably the different salary packages have disturbed the internal and external relativities between different grades of employees and the implications are as follows:

- *No promotional incentives for employees in operations as they will not enjoy the same benefits in their promotional route.*
- *Representations from employees of same category claiming "equal work equal pay."*
- *Some employees at senior/supervisory level lack motivation; their remuneration package does not reflect their additional responsibilities, as unlike their subordinates, they do not benefit from various allowances.*

412 For operations staff and some administration staff, their basic salaries range between 40% to 70% of their take home pay which is cumbersome to manage and a burden for the company.

413 Since the implementation of the last SRC report in 1997 it has been observed that the salary cost of the company has increased by 37% representing (60% - 80%) of total revenue, a percentage figure which has gone down to 54% in year 2002/03. Despite the decrease in the ratio staff costs: operating income, CHCL is still facing financial difficulties and if management does not find ways and

means to control the various variable components which are linked to basic salary, the wage will grow out of proportion.

The 2008 Salary Restructuring Exercise though conducted by a different entity came up to nearly the same conclusions as far as the wage bill of Respondent was concerned. At pages CSL 24 and CSL 25 we have the following:

5. SALARY RECOMMENDATIONS

Prior to formulating any recommendations on the salary structure, the consultants looked into the employments costs and their evolution over the last three years. We have therefore analysed the financial statements of CHCL from the year 2004-2005 to 2007-2008 as follows:

5.1.1 Employment Cost Analysis

	Year								
	FY 2004	*FY 2005*		*FY 2006*		*FY 2007*		*FY 2008*	
			% Var		*% Var*		*% Var*		*% Var*
	RS 000								
Turnover (Operating Income)	*873,587*	*861,585*	*1%*	*854,647*	*1%*	*949,796*	*11%*	*1,153,608*	*21%*
Operating Expenses + Concession fees	*301,276*	*327,758*	*9%*	*374,161*	*14%*	*397,499*	*6%*	*514,118*	*29%*
Turnover – Operating Expenses	*572,311*	*533,827*	*-7%*	*480,486*	*-10%*	*552,297*	*15%*	*639,490*	*16%*
Employment Cost	*486,416*	*493,000*	*1%*	*509,149*	*3%*	*526,623*	*3%*	*642,730*	*22%*
Emp. Cost/Turnover	*56%*	*57%*		*60%*		*55%*		*56%*	
Emp. Cost/Operating Expenses	*161%*	*150%*		*136%*		*132%*		*125%*	
Headcount	*781*	*809*	*4%*	*830*	*3%*	*842*	*1%*	*890*	*6%*

Turnover/headcount	*1,119*	*1,065*	*5%*	*1,030*	*3%*	*1,128*	*10%*	*1,296*	*15%*
Operating Expenses / Headcount	*386*	*405*	*5%*	*451*	*11%*	*472*	*5%*	*578*	*22%*
Empl.Cost /Headcount	*623*	*609*	*-2%*	*613*	*1%*	*625*	*2%*	*722*	*15%*
(Turnover-OpeExp) /Headcount	*733*	*660*	*10%*	*579*	*12%*	*656*	*13%*	*719*	*10%*

- *The figures above show that the turnover has increased by 21% in the last FY, while the Operating cost (including the Concession Fees) have increased by 29% in FY 2007-2008 compared to 2006-2007.*
- *The employment cost have increased steadily from 2003-2004 up to 2007-2008. In 2007-2008 it increased by 22% while the headcount increased by 6%.*
- *We note that the employment cost is a major component of the CHCL expenses representing more than 50% of the turnover, i.e. 56% in 2007-2008. The ratio of Employment Cost v/s Operating Expenses is also high, i.e. 125% in FY 2008.*

5.2 EXISTING CHCL SALARY BILL

The salary bill for the year 2007/2008 stands as follows:

Salary Bill	***Actual***
Basic	*146,311,680*
End of Bonus	*73,800,000*
Personal Pensionable Allowance	*30,879,000*
Additional Shift Allowance	*16,142,000*
Supp. Allowance	*24,262,000*
Overtime	*134,988,000*
Productivity Bonus on Overtime	*7,150,000*
Incentive Bonus	*6,026,000*
3rd Shift Allowance	*3,918,000*
Other Allowances	*14,358,320*
Travelling	*27,426,000*
Fleximeal time Allowance	*8,340,000*
Meal Allowance	*5,252,000*
Travelling paid Cash	*2,000,000*
Paid Leave	*6,676,000*

Pension	*64,677,000*
Passage Benefits	*5,932,000*
Total	***578,138,000***

An analysis of the total current salary bill shows that the various allowances and overtime represent 70% and 92% respectively, i.e. 162% of total basic salary. This is not a sustainable and healthy state of affairs in the long run. Our proposal in section 5.2 represents an increase of 26% in total salary bill. The Unions insisted on the preservation of their acquired rights. We consider that all allowances should be maintained on a personal basis. However, we do not recommend any increase in these allowances. (see section 5.1.5)
CHCL is a commercial entity and must be profitable and efficient to remain competitive in the region and maintain its financial sustainability.
We therefore recommend that Management present these proposals as a total package and not to be considered as piece-meal.

Thus at page CSL 33, the financial impact upon implementation of the 2008 report is given as follows:

5.4 FINANCIAL IMPACT

5.4.1 Upon Implementation

Based on the master scale and corresponding conversion table the consultants estimated the financial impact on the basic salary bill (including COLA awarded up to 2007) of implementing the new pay structure. The results of these calculations are shown in the table below:

Salary Bill	***Present***	***Estimates***	***% Financial Impact***
Basic	*146,311,680*	*181,634,640*	*24%*
End of Bonus	*73,800,000*	*91,616,995*	*24%*
Allowances			
Personal Pensionable Allowance	*30,879,000*	*30,879,000*	*0%*
Additional Shift Allowance	*16,142,000*	*16,142,000*	*0%*
Supp Allowance	*24,262,000*	*24,262,000*	*0%*
Incentive Bonus	*6,026,000*	*6,026,000*	*0%*
3rd Shift Allowance	*3,918,000*	*3,918,000*	*0%*
Fleximeal time Allowance	*8,340,000*	*8,340,000*	*0%*
Other Allowances	*14,358,320*	*16,942,818*	*18%*
Overtime	*134,988,000*	*167,577,167*	*24%*

Productivity Bonus on Overtime	*7,150,000*	*8,876,172*	*24%*
Travelling	*27,426,000*	*38,396,400*	*40%*
Meal Allowance	*5,252,000*	*6,197,360*	*18%*
Refund of Travelling by bus	*2,000,000*	*2,000,000*	*0%*
Paid leave	*6,676,000*	*8,287,738*	*24%*
Pension	*64,677,000*	*80,291,496*	*24%*
Provision for Passage benefits @ 5% of BS	*5,932,000*	*7,265,386*	*22%*
New Productivity Bonus (based on 18 moves @ MCT & 11 @ MPT		*30,000,000*	
Total	***578,138,000***	***728,653,170***	***26%***
	Additional	*150,515,170*	
Back Pay as from Jan 08		*26,492,220*	

As can be seen in the table above, the cost of implementing the new pay structure will represent an increase of 26% of about Rs 150.5 millions on top of the current annual salary bill including COLA already granted up to 2007. An increase of that magnitude generally have a big impact on any organization, let alone one like CHCL whose profitability is currently not very significant. It is therefore vital that CHCL find internal ways for funding this additional cost.

An analysis of major costs items, apart from basic salaries, shows that allowances represent 70% and overtime 92% of total basic salaries. These two items constitute priority areas for cost savings by CHCL Management. Concerning the various allowances, we have already frozen them at their current levels, and we strongly recommend that Management considers doing away with this practice over time (underlining is ours).

Indeed as per the table above, it is clear that the various allowances have been frozen at their current levels or capped. Had the consultant intended to keep the rate at which PPA was calculated unchanged as opposed to the quantum paid for the PPA, there should have been a financial impact of 24% mentioned for PPA in the table (see above) at page CSL 33 of the 2008 report.

The following provision at page CSL 32 of the same report confirms our interpretation even though the consultant could, may be, have been more explicit here as regards the PPA.

5.3.5 Allowances

We consider that the granting of allowances creates undue pressures on the payroll system, as well as being a source of frustration and jealousy among fellow workers.

This practice should be discontinued and be replaced with the New Productivity Bonus Scheme in the long run (ref section 7.3).

We advise CHCL Management to review all allowances in view of rationalising and alleviating the payroll system.
The guiding principle for granting allowances should be on a requirement basis and should drive behaviours appropriate / in line with CHCL vision and corporate strategy. Additional duties of same level and complexity should not be the basis for granting allowances.

The SRC 2002 report set the Personal Pensionable Allowance Rate for the various grades in the Operations Department ranging from 20% to 25% of Basic Salary. We have not reviewed the allowance.

We understand that the following allowances were fixed at the last SRC and granted on a personal basis:

- → *Supplementary Allowance*
- → *Additional Shifts Allowance*
- → *Incentive Bonus*
- → *Third Shift Allowance*
- → *Flexitime Allowance*

These allowances can only be maintained on a personal basis as they constitute an acquired right for the employees concerned. Management may consider consolidating these allowances into a single item.

In any event reference is made to the allowance itself (PPA) not having been reviewed and not to the rate.

According to Mr Seegoolam, paragraph 7.5 of the JEAC report for 2008 SRC encompasses the PPA also. Even if this is the case, there is no mention that the rates themselves varying from 20 to 25% of basic salary constitute acquired rights or should be maintained. Reference is only made to allowances which have to be maintained on a personal basis for those who are already benefiting.

Now, from Doc E, it is clear that Disputant has been receiving a fixed sum of Rs 4363- monthly as from September 2008 as PPA. This is so even though he has earned various increases in his basic salary so much so that his basic salary increased from Rs20,000- in September 2008 to Rs45,800- in October 2013. In January 2009, his basic salary increased from Rs20,000- to Rs27,050- already. It was only for the period from March 2004 when he obtained PPA (as per Doc E) to December 2008, that the PPA represented a fixed percentage of his basic salary that is 20%. This is in line with Doc B and even Doc C since as stated above the PPA was capped for reasons given in Doc B and which were to some extent reproduced in Doc C and not very different from

statements already made in Doc A since 2002. One should not forget that the PPA emanated from the existing productivity bonus and that there were already recommendations in 2002 for the consolidation of salary components such as incentive bonus and personal allowances into a new supplementary allowance. The main issue which the Tribunal has now to consider is whether the SRC 2008 could legitimately and validly cap PPA for workers who were already earning the PPA bearing in mind their acquired rights.

The Tribunal will at this stage refer to the case law on the matter. Counsel for Disputant has referred lengthily to the cases of **R.d'Unienville & anor (above)** and **Harry Dikranian (above).** The Tribunal finds that the above cases dealt specifically with the effect of changes in the law on contracts signed and entered into before the new provisions in the law came into force. In the Canadian case of **Harry Dikranian (above),** reference is made for example to *Le droit transitoire: conflits des lois dans le temps (2^{e} ed. 1993).* It is our humble view that it would not be proper to assimilate the notion of 'acquired rights' in this context to acquired rights as used in employment law. Indeed, acquired rights when used in labour disputes will apply, inter alia, to "usages" in an enterprise which become binding. According to *Dr D.Fok Kan, Introduction au droit du travail mauricien, 1/Les relations individuelles de travail, 2^{e} edition* at page 30, for "un usage" to be binding on the parties, three conditions must exist, that is, (1) "constance" (2) "généralité dans le paiement" (3) "et fixité dans le montant." There is for example no need here and for obvious reasons to lay stress on a right to be vested in a specific individual whose legal situation must be "tangible, concrete and distinctive" which however is referred to in the above two cases as one of the conditions which must exist for a vested right to exist.

In employment law, very often acquired rights of workers are in conflict with the right of the employer to conduct its affairs or manage its operations as he wishes. The law does not interfere with "le pouvoir de direction" of the employer so long as he does not interfere with the acquired rights of the employees (**A.J Maurel Construction Ltée v Froget H.R.N 2008 MR 6**). What are those acquired rights? The Supreme Court in the case of **A.J Maurel Construction Ltée (above)** provides some guidance. Indeed, the Supreme Court referred to Dalloz, Camerlynck, Droit du Travail, 2nd ed. as follows:

« L'employeur, maître selon la jurisprudence de l'organisation et du bon fonctionnement de ses services, peut librement, et sans engager sa responsabilité, apporter « dans les limites de son pouvoir de direction » (des changements dans la structure de son entreprise et des aménagements dans l'exécution de la prestation de travail, … »
However, when he does so, he should ensure that he does not interfere with the acquired rights of the employees. The exercise of the power of the employer to manage his business as he thinks fit is permissible:

« dès l'instant où il ne porte pas atteinte pour autant aux « elements substantiels du contrat » (4) ou ne lui apporte pas de « modification essentielle (5) – concernant la qualification, les attributions principales, les conditions de travail ou la rémunération. »

These would relate to the acquired rights of workers. In this particular case, Disputant has been benefitting from PPA since March 2004. The PPA formed part of his remuneration and the PPA must be considered as an acquired right of Disputant. The PPA was itself introduced following the 2002 SRC recommendations and Disputant was initially paid PPA at 20% of his basic salary. The PPA however very importantly (as per the own Statement of Case of Disputant) was set between 20% and 25% of the proposed basic salary at that time and Disputant was paid PPA at 20% of his basic salary. As from January 2009 (following the 2008 SRC), the PPA was capped at the then prevailing amount of Rs 4363- even though, as per Doc E, Disputant witnessed a substantial increase in his basic salary (around 35%). Since then, Disputant has continued to derive his PPA at Rs 4363- monthly. In our view, the capping of the PPA at the then existing amount was indeed recommended in the 2008 SRC since reference was specifically made to the various allowances (as apparent from the table at page CSL 33) having been frozen at their current levels. Yet the Consultant was all along guided by the principle of having to maintain acquired rights. Another trade union which represents more than 50% of the workers of the bargaining unit at the Respondent allegedly gave its blessing to this fixing of the PPA by entering into a collective agreement with Respondent whereby the PPA would however be extended to all employees at the Respondent.

We have deliberately and taken the liberty to quote large extracts from relevant documents produced before us by Disputant himself. These show that irrespective of who was the consultant at a particular point in time, the unavoidable conclusion was that allowances and overtime represented too high percentages of the total basic salaries. Also, there were grievances right from 2002 at least in relation to the fact that only workers in Operations were benefitting from certain allowances and there was even a finding that this had disturbed the internal relativity. Emphasis in the 2008 SRC report is for the proposals to be presented as an integral package to the employees. Reference is also made to the new productivity bonus, increase in basic salaries and benefits with thus an ensuing improvement in pensions. The recommendations in the report have to be analysed as a package and one cannot refer only to the particular rate of an allowance even be it the PPA. The rate for the PPA right from the beginning was not fixed but varied from 20 to 25% and Disputant benefitted from the rate of 20 % from March 2004 to December 2008 only (as per Doc E). This consists of the period before the 2008 SRC Report was implemented. Though Disputant may claim he has an acquired right for the PPA, he certainly cannot claim that he has an acquired right to have his PPA calculated at the rate of 20% irrespective of any increase in basic salary eventually granted to him or changes which the Respondent may decide in line with remuneration management best practices. Indeed, “fixité” in the “mode de calcul” may indicate that a payment has become part of the “usage dans l’entreprise”. However, the mode of calculation itself does not become the “usage” unless obviously the mode of calculation has become so intricately linked with the payment itself over a long period of time that the mode of calculation may in an appropriate case be considered as also forming part of the “usage”. Each case will depend on its own merits and we are satisfied that this is not the case here.

It is important to highlight that the 2008 SRC Exercise has provided for a new master scale at the Respondent which would apply for both Corporate Services and Operations. As per Doc A, this was not the case previously and workers in Operations had a lower master scale.

Explanations given in the 2008 SRC Report are reasonable and the Tribunal finds no reason to intervene whilst bearing in mind all the facts of the case including the internal relativity which was allegedly disturbed with workers in Operations benefitting from various allowances which could represent a substantial proportion of the basic salary itself. The Disputant is still receiving his PPA as at today and the amount of PPA paid to him has not decreased even though his basic salary has gone up substantially.

Disputant who avers he is the President of the Port Louis Harbour and Dock Workers Union which has the support of more than 50% of the workers at Respondent avers that management has made a gift to some workers at Respondent by extending the PPA to them even though, according to him, they did not deserve same. Be that as it may, the Tribunal has borne in mind that the Award of the Tribunal may have an effect on some 340 workers at the Respondent even though Respondent avers that it would concern all workers at the Respondent and cost some Rs 120 millions following readjustments. The Tribunal is empowered by law (section 97 of the Employment Relations Act) to have regard to a number of principles in exercising its functions and this would include the interests of the persons immediately concerned, principles and best practices of good employment relations (such as uniformity and remuneration management best practices) and economic growth. Finally, the Tribunal wishes to refer to section 56(1) of the Employment Relations Act which provides that a collective agreement shall bind all the workers in the bargaining unit to which the agreement applies. This is to be read in line with the recent amendments brought to the said Act by Act No. 5 of 2013.

For all the reasons given above, the dispute is set aside.

(Sd) Indiren Sivaramen
Vice-President

(Sd) Soonarain Ramana
Member

(Sd) Desire Yves Albert Luckey
Member

(Sd) Triboohun Raj Gunnoo
Member **9 December 2013**