

EMPLOYMENT RELATIONS TRIBUNAL

AWARD

RN 93/13

Before

Indiren Sivaramen	Vice-President
Ramprakash Ramkissen	Member
Rabin Gungoo	Member
Renganaden Veeramootoo	Member

In the matter of:-

Mr Purussram Greedharee (Disputant)

And

Mauritius Ports Authority (Respondent)

In presence of

Cargo Handling Corporation Limited (Co-Respondent)

The present matter has been referred to the Tribunal by the Commission for Conciliation and Mediation (hereinafter referred to as the "CCM") under Section 69(7) of the Employment Relations Act (hereinafter referred to as "the Act"). The terms of reference are as follows: "*I, Purussram Greedharee contends whether the Mauritius Ports Authority should have calculated my retirement pensions and benefits on the hypothetical salary of a Workshop Supervisor – restyled into that of Superintendent equivalent to the grade of Plant Supervisor at the Cargo Handling Corporation or otherwise.*" All the parties were assisted by Counsel and the Tribunal proceeded to hear the matter.

The Disputant deponed before the Tribunal and he solemnly affirmed to the truthfulness of the contents of his Statement of Case. He was employed by the Mauritius Ports Authority and retired in January 2006. He was seconded on duty when he was Plant Operator as an 'on loan' employee to the Co-Respondent. In 1999, he was promoted as Plant Supervisor at the Co-Respondent. He continued to work as Plant Supervisor at the Co-Respondent until he retired in January 2006. When he retired, his promotion as Plant Supervisor at Co-respondent was not considered by Respondent. He referred to the responsibilities of the parties under a tripartite agreement (among the Mauritius

Marine Authority (whose activities were taken over by the Respondent), the Co-Respondent and a trade union – the Maritime Transport and Port Employees Union). Disputant prays that his pension be based on the salary of Plant Supervisor since he has worked as Plant Supervisor. He averred that if he had continued working at the Respondent, he might have been promoted supervisor. He averred that all supervisors at the Respondent were at the same level and that they are now referred to as Plant Superintendent.

In cross-examination, Disputant conceded that when he 'returned' at Respondent, there was in fact no post of Plant Superintendent but only of Workshop Superintendent. He agreed that he signed a document to go 'on loan' to Co-Respondent. He stated that there was an incentive for his colleagues and him to go and work at Co-Respondent and that the trade union thus agreed to same. He agreed that in the form he signed there was nothing which indicated that promotion at the Co-Respondent would be considered when he returns back to the Respondent. However, he agreed that he had been granted increases following salary restructuring exercises carried out at the Respondent.

Mr Moloo, Human Resources Manager, then deposed on behalf of the Respondent. He stated that the Respondent was not aware that Disputant had been promoted from Plant Operator to Plant Supervisor at the Co-Respondent. He stated that the Respondent does not have the post of Plant Supervisor in its structure anymore even though this post existed in 1997 when the Respondent was involved in cargo handling operations. There was one incumbent in that post and the latter retired in 1998 following a voluntary retirement scheme and the post was scrapped. Mr Moloo averred that Disputant was holding the post of Plant Operator when he was seconded to work at the Co-Respondent and that when he reverted back for his retirement, he was still holding that post which was however restyled as Equipment Operator. Mr Moloo stated that there was nothing mentioned about promotion in the tripartite agreement. He stated that all the plant operators agreed to be seconded to work at the Co-Respondent. The salary for the purpose of conversion for Disputant's pension has been increased following successive salary reviews at the Respondent.

In cross-examination, Mr Moloo stated that the post of Plant Operator at the Respondent was restyled in 2005 as Equipment Operator. Mr Moloo stated that 'on loan' employees are on the payroll of Co-Respondent and are paid all benefits accruing to them. The post of Equipment Operator has been maintained on the structure of Respondent on a personal basis for the purpose of retirement of those workers. No provision has been made for any promotion which the workers may be granted in between at the Co-Respondent. When questioned on the post of Workshop Supervisor, he could not say if this was equivalent to the post of Plant Supervisor (at Co-Respondent). There are about twenty incumbents who are still 'on loan' at the Co-Respondent and who will, according to Mr Moloo, retire as Equipment Operator.

Mr Dahari, the Human Resources Manager of Co-Respondent was then tendered for cross-examination and he confirmed that Disputant had been promoted to the post of

Plant Supervisor at the Co-Respondent. He did not officially inform Respondent about same.

The Tribunal has examined all the evidence on record including the submission of Counsel. The Disputant is the one who has reported the labour dispute and as per the terms of reference is contending that the Respondent should have calculated his retirement pensions and benefits on the hypothetical salary of a Workshop Supervisor – restyled into that of Superintendent. Surprisingly, only a brief Statement of Case has been filed on behalf of Disputant with not a single document being annexed or produced. A very much detailed Statement of Case has been filed on behalf of Respondent with six annexes. The labour dispute before the Tribunal raises interesting issues in relation to, inter alia, pension rights, secondment and/or 'loaning' of workers by their employer to other institutions and an agreement entered into by the employer, the beneficiary of services of "on loan employees" and a trade union. Though reference has been made in both the Statements of Case of Disputant and Respondent to the chronology of events leading to Disputant becoming an "on loan employee" of Co-Respondent, one would have expected the Disputant to put before the Tribunal all relevant information which would have allowed the Tribunal to enquire into and arbitrate the dispute fairly and thus make an award with the benefit of having all pertinent information on record. This is the more so that the Tribunal may, in the exercise of its functions in relation to a matter before it have regard to a non-exhaustive list of principles laid down at section 97 of the Act including principles of natural justice, interests of persons immediately concerned and principles and best practices of good employment relations.

In this particular case, the prayer is for the retirement pensions and benefits to be calculated "on the hypothetical salary of a Workshop Supervisor – restyled into that of Superintendent equivalent to the grade of Plant Supervisor at the Cargo Handling Corporation". No evidence at all has been adduced in relation to the salary scale at any point in time of a Workshop Supervisor or Superintendent (at the Respondent) and that of a Plant Supervisor (at the Co-Respondent). No evidence has been adduced as to the scheme of duties or duties performed by them and no evidence has been adduced to support the averment of Disputant that the grade of Workshop Supervisor restyled into that of Superintendent (at the Respondent) is the nearest equivalent grade to that of Plant Supervisor at the Co-Respondent. We keep in mind that the Tribunal may, in an appropriate case and where a grade no longer exists, have recourse to a hypothetical salary based on the nearest equivalent grade. Thus, even if the averment of Disputant that his pension should have been based on a grade equivalent to Plant Supervisor is accepted, the nearest equivalent grade is something which has to be determined and the Tribunal certainly cannot make assumptions that the grade of Workshop Supervisor or Superintendent at Respondent is the nearest equivalent grade to Plant Supervisor at the Co-Respondent. Annex VI to Respondent's Statement of Case which purports to be an extract of the Salary Report 2005 showing the revised grading structure at Respondent in fact exacerbates the difficulty faced by Disputant inasmuch as neither the grade Workshop Supervisor nor Superintendent appears but instead other grades

such as Equipment Operator, Assistant Operations Supervisor, Operations Supervisor or 'Superintendent – General Services' appear at different grading levels.

There is more to it however and we hope that Disputant did not deliberately refrain from adducing evidence in relation to salary scales and salaries and emoluments he earned. Indeed, it is apposite to note that Disputant accepted when deponing in chief that his salary was increased on the basis of the grade of Plant Operator (or more exactly Equipment Operator following the Salary Report 2005) following a salary restructuring which was applicable for the Respondent (and very importantly not for Co-Respondent) in 2005. He was already a Plant Supervisor then and yet there is no complaint in relation to the 2005 salary increase. The Disputant is instead bent on having his pension benefits recalculated based on hypothetical salaries. We are left in the dark as to why Disputant did not complain against or dispute the 2005 salary increase granted to him following the salary review exercise. The Tribunal notes that Disputant conceded that there was an incentive given for him to go and work at Co-Respondent but once more we do not have more information as to the nature of that incentive.

Also, whilst it is accepted that the secondment of Disputant to Co-Respondent occurred since the coming into operation of the Co-Respondent in 1983 (and not later on in 1998 when the tripartite agreement was entered into), the Disputant is quite silent as to the circumstances in which he was seconded to the Co-Respondent. At one point in time, he averred that he signed a document to go 'on loan' but that he signed same because he was forced to do so. We will need to go into the chronology of events. The Disputant was in fact temporarily seconded to the Consolidated Cargo Services (Mauritius) Limited (CCS(M)L) ever since 1980 (as admitted at paragraph 6 of Disputant's own Statement of Case). A copy of a letter dated 18 June 1980 in relation to the secondment was annexed as Annex III to Respondent's Statement of Case and this document was not challenged before us.

With the coming into operation of the Co-Respondent in 1983, Disputant was seconded to the Co-Respondent and his secondment to CCS(M)L ceased. Annex IV to the Statement of Case of Respondent refers to a copy of a letter dated 14 September 1983 in relation to this secondment. The said letter which has again not been challenged contained more or less similar provisions. Both letters provided that the acquired rights of the worker as regards pension would remain unaffected and that the period of secondment would be counted as part of his service within the Mauritius Marine Authority for pension purposes. There were no other provisions in relation to the pensioning off of a worker.

In the tripartite agreement (Annex V to Respondent's Statement of Case), we have the following:

"7. Should:

(a) A Cargo Handling Equipment Operator apply for his pensioning off from the Authority;

....

the employee concerned shall be transferred back to the Mauritius Marine Authority for the appropriate action under the MMA conditions of employment and internal procedures.”

Following the renaming of the Mauritius Marine Authority to Mauritius Ports Authority, the conditions of employment and internal procedures applicable would be those of the Respondent. We have not been apprised of any such conditions of employment or internal procedures which may impact one way or the other on the ‘pensioning off’ process. Though reference has been made in the tripartite agreement to the Mauritius Marine Authority Pension Fund and the Family Protection Scheme, again no evidence has been adduced in relation to the regulations applicable thereto. The Tribunal will thus only refer to the law which is applicable in the present matter. This is section 8 of the Statutory Bodies Pension Funds Act (as amended by Act No. 26 of 2012) which reads as follows:

8. Amount of pension benefit

*The amount of pension benefit to which an officer is eligible shall be computed –
(a) in respect of an officer appointed before 1 January 2013, by reference to the annual pensionable emoluments drawn by him at the date of his retirement; or
(b) in respect of an officer appointed on or after 1 January 2013, in such manner as may be prescribed.*

Previously and at the time that Disputant retired, section 8 of the same Act read as follows:

Emoluments for purposes of computing pension benefits

8. The amount of pension benefit to which an officer is eligible shall be computed by reference to the annual pensionable emoluments drawn by him at the date of his retirement.

The Respondent is a statutory body as defined under the Statutory Bodies Pension Funds Act and is governed by same.

Irrespective of whether Disputant was transferred on loan to the Co-Respondent or that Respondent was not ‘officially’ informed of the promotion granted to Disputant, it is clear that the pension benefit to which Disputant is eligible has to be computed by reference to the annual pensionable emoluments drawn by him at the date of his retirement. We do not however have evidence of such emoluments on record.

For all the reasons given above and the evidence available before the Tribunal, the Tribunal cannot award that the Respondent should have calculated the retirement pensions and benefits of Disputant on the hypothetical salary of a Workshop Supervisor – restyled into that of Superintendent equivalent to the grade of Plant Supervisor at the

Cargo Handling Corporation. However, the Tribunal is confident that the present award has shed light on the various issues raised and shall guide parties accordingly.

(Sd) Indiren Sivaramen
Vice-President

(Sd) Ramprakash Ramkissen
Member

(Sd) Rabin Gungoo
Member

(Sd) Renganaden Veeramootoo
Member

7 February 2014