

EMPLOYMENT RELATIONS TRIBUNAL
AWARD

RN 100/13

Before

Indiren Sivaramen	Vice-President
Raffick Hossenbaccus	Member
Jay Komarduth Hurry	Member
Triboohun Raj Gunnoo	Member

In the matter of:-

Mrs Jennifer Kathryn Yon Hin (Disputant)

And

**National Housing Development Company Limited
(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 two parties have not been able to reach an agreement and the Tribunal thus proceeded to hear the matter. Both parties were assisted by Counsel. The terms of reference read as follows:

“Whether the National Housing Development Company Limited should grant me one increment as per Employee’s Conditions of Service following my obtention of an Advanced Diploma in Secretarial and Administration in February 2011.”

The Disputant deponed before the Tribunal. She started working as Clerk at the Respondent on 30 January 1995 and then was promoted until she was appointed Senior Confidential Secretary in November 2006. She enrolled on a Diploma Course in Secretarial and Administration and her course was partly financed by Respondent for levels one and two. She averred that she obtained two “diplômes”, that is, one for level one and one for level two. She enrolled on a part-time course for an ‘Advanced Diploma’ and requested for one increment for her ‘Advanced Diploma’. Respondent turned down her request for

incremental credit as per a memorandum dated 11 September 2013 (copy marked Doc K).

She did not agree with the stand of the Respondent that the 'Advanced Secretarial Course', mentioned in the scheme of duties of the post of Senior Confidential Secretary, was a diploma.

In cross-examination, Disputant identified a copy of an 'Intermediate Diploma' which she had produced to the company and same was produced and marked Doc X. She agreed that she must obtain her 'Intermediate Diploma' before her 'Advanced Diploma'. Disputant was cross-examined in relation to particular subjects that appeared in both the Intermediate and Advanced Diplomas. She agreed that she refused the request of the Respondent to make an application to the Mauritius Qualifications Authority for 'recognition' of her certificates. She said that as per Doc K this was never in issue.

Mr Anuth, the representative of the Respondent deposed at another sitting and he stated that the 'Advanced Secretarial Course' in the scheme of service of Senior Confidential Secretary has been specified by the Board as being a Diploma in Secretarial studies. He however confirmed that Disputant was not promoted on the condition that she obtains the qualifications required for the post (paragraph 3.1.14 of the then Conditions of Service would not apply). Financial assistance to the tune of Rs 19,000 was granted to Disputant for the diploma course. As per the conditions of service, no distinction is made between a Diploma and an 'Advanced Diploma'. The Respondent is not governed by the Pay Research Bureau (PRB) Report.

In cross-examination, Mr Anuth agreed that the interpretation given by the Board came after the Statement of Defence of Respondent had been filed. The term 'Advanced Secretarial Course' has been used ever since the post of Senior Confidential Secretary has been created at the Respondent.

Counsel for Disputant submitted that the 'Advanced Secretarial Course' is a course of one semester run by the Ministry of Civil Service and Administrative Reforms together with the University of Technology as per the PRB Report. He suggested that there were three different diplomas with three different qualifications. He added that any interpretation that emanates from the Board afterwards cannot have retrospective effect. He submitted that Disputant had received no sponsorship for the 'Advanced Diploma'.

Counsel for Respondent submitted that the Disputant has not proved on a balance of probabilities that she is eligible for the incremental credit. He added that it was for the Board to decide in the best interests of the company what will be accepted as an 'Advanced Secretarial Course' and that in any event as per the relevant scheme of service the course has to be recognised by the Board. The diploma was, according to him, a pre-requisite in the scheme of service for Senior Confidential Secretary. He wondered whether there was any difference between a Diploma and an 'Advanced Diploma'. He also relied on paragraph 3.1.8 of the Conditions of Service in relation to increments granted for particular qualifications.

The Tribunal has examined all the evidence on record including the submissions of both Counsel. The Respondent is refusing to grant Disputant the incremental credit because according to Respondent (1) the qualification obtained by Disputant was already a prerequisite qualification in the scheme of service for the post of Senior Confidential Secretary and (2) the Respondent had partly financed the Diploma course of Disputant. The Tribunal will consider the second objection first for reasons which will become obvious later. The request made by the Disputant for sponsorship was by way of a letter dated 13 February 2008 (copy marked Doc C) and this letter only refers to Diploma in Secretarial & Administration. There is no mention of level 1 or 2 at this stage and even a copy of a receipt from Orian Educational Centre Ltd (produced by Disputant) refers to a sum of Rs 19,000 having been received from Respondent for a diploma course. Though Disputant has chosen to produce copies of several documents, there is no document to suggest that the Respondent specifically intended to or sponsored Disputant only for levels 1 and level 2. Even if this was the case, the Tribunal was very much puzzled to hear about allegedly different types of diploma as opposed to different levels completed for the award of a diploma. We were unfortunately not enlightened by Disputant as to the different 'so called' diplomas and nobody from the relevant institution/s was called to adduce such evidence.

The Tribunal finds that an 'Advanced Diploma' (if it exists) is still a diploma. It has not been suggested otherwise by Disputant.

The request for incremental credit was made only on 5 April 2013 for a course which Disputant allegedly completed in 2011. The Disputant has remained silent on when she allegedly informed Respondent that she was enrolling for the 'Advanced Diploma' course. There is no evidence

in relation to the enrolment itself (for the 'Advanced Diploma') or of any fees paid for same. Disputant issued the memorandum dated 8 July 2010 to Respondent (copy marked Doc F) and there is no mention of 'Advanced Diploma'. At the same time, Disputant had already been awarded the 'English for Business Communications' - Level 3 since 21 August 2009. Disputant only informed Respondent on 30 November 2011 that she had enrolled for an 'Advanced Diploma' when she was supposed to have been awarded the "Secretarial and Administration – Advanced Diploma" since February 2011 (as per Doc J). The Tribunal notes the various inconsistencies in the documents produced before it and will mention only a few. The "Secretarial and Administration – Intermediate Diploma" (as per Doc X) was awarded in July 2011 and the "Secretarial and Administration – Advanced Diploma" in February 2011. At the same time, there were a few identical qualifying examinations appearing on both certificates (Docs J and X). In a memorandum dated 11 March 2009, the Disputant stated that she had a "distinction" in Office Procedures (Level 2) (as per Doc E) when her certificate shows she had only a "Pass" for "Office Procedures–Level 2" for her "Secretarial and Administration – Intermediate Diploma" awarded in July 2011 (as per Doc X). Curiously, in the copy of the certificate for "Secretarial and Administration – Advanced Diploma" (awarded in February 2011 as per Doc J), Disputant had a First Class for the same "Office Procedures–Level 2".

It is interesting to note that the copy of the certificate refers to "Secretarial and Administration – Advanced Diploma" (as per Doc J) and not to Advanced Diploma in Secretarial and Administration (obviously if this exists). Doc X refers to "Secretarial and Administration – Intermediate Diploma" and one may legitimately wonder whether it is indeed only an 'intermediate diploma' as its name suggests. The Disputant has the burden to prove that she should have been granted the increment sought. She should have adduced evidence to clarify these issues and the inconsistencies but she failed to do so. The Respondent agreed to and did finance partly the course of "Diploma in Secretarial and Administration" for Disputant (for tuition fees) as per the latter's request (Doc C). The Tribunal is not satisfied that the "Secretarial and Administration – Advanced Diploma" constitutes a different qualification from a diploma. For all the reasons given above, the Tribunal is not satisfied even on a balance of probabilities that the Disputant was not sponsored (even if partly for the tuition fees) by the Respondent for her 'diploma' the more so when one apparently ends up with a "Secretarial and Administration – Intermediate Diploma" at the end of level 2. Thus, by virtue of section 3.1.16 of the Conditions of

Service at Respondent (Doc B), the Disputant was not entitled to the payment of the incremental credit sought. This is moreover in line with section 3.1.8 of the same Conditions of Service where Diploma level is treated as one qualification entitling a worker to one increment.

There is thus no need for us to consider the first limb of the objection of Respondent. However, in view of the stand adopted by Respondent, the Tribunal will make a few observations. The Disputant was promoted to the post of Senior Confidential Secretary as from November 2006. It is undisputed that she was not promoted on the condition that she obtains the qualifications required for that post. The conditions of service at Respondent were then as per Doc V (and not Doc B). Subject to conditions mentioned in Doc V, one increment was generally granted for relevant additional recognised qualifications obtained at certificate level or up to one year full time study (section 3.1.7 of Doc V). There is no evidence on record to suggest that the ‘Advanced Secretarial Course’ recognised by the Board, as mentioned in the scheme of duties of Senior Confidential Secretary, was, at that time, no less than a Diploma. In fact, section 3.1.7 of Doc V would suggest, in our view that the vaguely defined “course”, in the absence of any evidence to the contrary, could have been at certificate or even lower level. Though the Respondent is not governed by the Pay Research Bureau (PRB) Reports, there is nothing sinister, when interpreting an ambiguous technical term (in the absence of any directly relevant indication), to seek guidance from all relevant useful material including any relevant PRB Report where an identical term may have been used. Obviously, the Board may decide to clarify what is the required qualification and such clarification will apply from then on but what matters most is that this must be clearly communicated beforehand to all parties concerned.

For all the reasons given under the second limb of the objection of Respondent, the dispute is set aside.

(Sd) Indiren Sivaramen

Vice-President

(Sd) Jay Komarduth Hurry
Member

28 May 2014

(Sd) Raffick Hossenbaccus

Member

(Sd)Triboohun Raj Gunnoo
Member