

EMPLOYMENT RELATIONS TRIBUNAL

AWARD

RN 106/13

Before

Indiren Sivaramen	Vice-President
Ramprakash Ramkissen	Member
Rajesvari Narasingam Ramdoo	Member
Renganaden Veeramootoo	Member

In the matter of:-

Mr Suraj Reedoo (Disputant)

And

Irrigation Authority (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:

“Payment of increment for additional qualification, as per section 18.9.25 of the Pay Research Bureau Report 2008.”

The Disputant deponed before the Tribunal and he solemnly affirmed to the truth of the contents of his statement of case. In 2010, he was awarded a Diploma in Human Resource Management. He averred that the current scheme of service for Field Officer at Respondent existed since thirty years back and that all Field Officers at Respondent are doing duties which are much over and above what are provided for under the current scheme of service. He referred to some of the additional duties. He stated that his immediate supervisor took into consideration the actual duties he was carrying to arrive at the conclusion that ten modules out of the eighteen modules he had covered in his Diploma course were relevant to the duties performed. His Head of Department however considered his duties only in the light of the

existing scheme of service. He averred that the parent Ministry copied to him a letter sent to Respondent whereby the Respondent was asked why Disputant had not been paid his increment when his immediate supervisor had certified that over 50% of the modules were relevant to the performance of his duties. He also explained that the ad-hoc allowance referred to in Respondent's statement of case is in relation to work he is doing for a Field Officer who has retired and is not in relation to additional duties he is already performing at the Respondent.

In cross-examination, Disputant agreed that the views of Mr Thakoor, his immediate supervisor, were based on the draft scheme of service and not as per his existing one. However, he maintained that the views of Mr Thakoor were based on the actual situation as regards duties he is performing. He agreed that his Head of Department has given his views that only 2 modules out of the eighteen he has completed were relevant to his scheme of duties but he added that the latter has not taken on board the real situation. He agreed that additional work and additional qualifications are two different things.

Mrs Dulthummon, Senior Human Resource Officer, then deponed on behalf of the Respondent. She stated that the policy is to ask recommendations from the head of department whether the qualification obtained is in line with the duties performed. She received a recommendation from Mr Kong Thoo Lin that only two modules out of the eighteen covered were relevant to the performance of the duties of Disputant. The views of the immediate supervisor of Disputant were on the other hand based on the draft proposed scheme of service and addressed to the Head of Department. Mrs Dulthummon stated that the scheme of service is considered to determine what falls within the performance of the duties of an employee.

In cross-examination, Mrs Dulthummon was referred to remarks included in Annex 4 to Respondent's statement of case and she agreed that Disputant is carrying out the duties referred to in the draft amended scheme of service. She also agreed that when the immediate supervisor gave his opinion, he knew that Disputant was doing the additional duties. However, she explained that management cannot approve something based on a draft scheme of service. She was also cross-examined on the letter emanating from the parent ministry whereby explanations were sought as to why Disputant was not granted the increment.

Mr Kong Thoo Lin, the Head of Operation and Maintenance, then deponed. He went through the scheme of service of Field Officer and

the different modules covered by Disputant in his course and came to the conclusion that only 2 out of 18 modules were relevant to the performance of his duties. He stated that he would not agree with the views expressed by Mr Thakoor if they are based on the actual scheme of service.

In cross-examination, Mr Kong Thoo Lin was reluctant to accept that Disputant was actually carrying out additional duties to those mentioned in the existing scheme of service. However, he conceded that Annex 4 to Respondent's statement of case does indicate so. He suggested that in the existing scheme of service there is mention of "cognate duties" and that it is only these "cognate duties" which have been listed in the proposed draft scheme of service. He stated that when he referred to the scheme of service, "all this had to be taken into consideration". In re-examination, he stated that his views were based on the cognate duties also.

Counsel for Disputant submitted that the words 'performance of duties in the grade' can only be the actual duties performed by Disputant. He referred to the views of the immediate supervisor (as per Annex 2 to Respondent's statement of case) which must, according to him, be read as a whole. He criticized Mr Kong Thoo Lin's interpretation of "cognate duties". He also argued that the Respondent could not accept that Disputant performs duties which are outside the scope of his scheme of duty and then at the same time, for the purposes of the increment, state that they are not concerned with the additional duties.

Counsel for Respondent submitted that the views of Mr Thakoor cannot be considered as the latter relied on a proposed scheme of service which is not in force yet. He argued that the Respondent would rightly seek clarification from the Head of Department as to the relevancy of qualifications. He submitted that increments based on additional qualifications cannot depend on the performance of work but has to be based on the scheme of duty.

The Tribunal has examined all the evidence on record and the submissions of both counsel. There is no evidence before us as to whether the present dispute has been referred to the Standing Committee mentioned in paragraph 18.9.37 of the 2008 Pay Research Bureau (PRB) Report (volume 1) through the parent Ministry. In any event, no objection has been taken to the Tribunal hearing the present dispute and the Tribunal will thus proceed with the determination of the

said dispute. The relevant provision of the 2008 PRB Report (volume 1) reads as follows:

“18.9.25 We recommend that, for additional qualifications which are partly relevant, only those qualifications wherein 50% of the modules are relevant to the performance of the duties of the grade be considered for the grant of incremental credit.”

It is apposite to note that the PRB has in its 2013 Report stated the following in relation to the issue of relevancy of qualifications in the case of partly relevant qualifications:

18.9.16 The grant of incremental credit for additional qualifications which are partly relevant to the performance of the duties of the grade was first introduced in our 2003 PRB Report. In the 2008 PRB Report, because of difficulties faced by the Standing Committee to determine the relevancy of qualifications, we defined the parameters for the grant of incremental credit, where the qualification was partly relevant, to be qualifications wherein 50% of the modules are relevant to the performance of the duties of the grade. Even then, the Standing Committee again reported having difficulties in determining the 50% relevancy of the modules as the modules and course contents differ from one awarding institution to another. This particular condition of service has also led to strained industrial relations at workplace and culminated to disputes before the Tribunals/Courts. The Bureau has once again examined the issue, held discussions with stakeholders and sounded different options in the wake of the current learning environment.

In its 2013 report, the PRB has thus made new recommendations with a view to facilitate implementation in relation to partly relevant qualifications. The Tribunal is not concerned with the 2013 recommendations but only wished to highlight the difficulty raised by section 18.9.25 of the 2008 PRB Report.

Section 18.9.25 (above) refers to “performance of the duties of the grade” and not to “performance of the duties of the officer”. Thus, the simple question is: what are the duties of the grade of “Field Officer”? The duties of the grade will be as per the scheme of service. The PRB provides at section 10.2 of the same report the following:

The scheme of service is a legal document which specifies the qualifications, competencies, skills, experience and qualities required of

the job holder, the duties and responsibilities of a job. The mode of recruitment/appointment is also specified.

The importance of the scheme of service cannot be minimized and the Tribunal will refer to section 10.4 of the same PRB Report which provides as follows:

The scheme of service is of vital importance in the management of human resource functions such as recruitment, promotion, performance management, training and development, job evaluation, design of pay structures, organization design; and therefore the design or amendment to a scheme of service needs to be done with utmost care and in a timely manner...

If the Tribunal was to interpret “performance of the duties of the grade” as including duties performed over and above those mentioned in the scheme of duties by the relevant officer, this could lead to imbalances and anomalies. In any event, performance of additional duties (if any) is a different issue and may be dealt with otherwise, for example by the payment of an allowance. The diploma is one in Human Resource Management and there is no evidence to suggest that Disputant, as Field Worker, was working in the Human Resource Department. The diploma was all along treated as a ‘partly relevant qualification’ in the present matter. Whilst Mr Kong Thoo Lin stated that only two modules were relevant to the performance of the duties of the grade, Mr Thakoor has communicated to Mr Kong Thoo Lin that ten out of the eighteen modules completed would be relevant to the performance of the duties. Disputant has provided as annexes to his statement of case, a synopsis of the different modules and explanations as to why, according to him, the different modules would be relevant to the performance of his duties. Mr Thakoor was not called as a witness before us and as highlighted above, his views was only addressed to Mr Kong Thoo Lin. The latter has maintained his views despite taking cognizance of those of Mr Thakoor.

Mr Thakoor made it clear in Annex 2 to Respondent’s statement of case that he had not considered the first scheme (that is, the existing one) where there are only three duties and that the ten modules he identified would be relevant to the duties performed as per the draft revised scheme of service (underlining is ours). This would not satisfy the requirement of section 18.9.25 of the 2008 PRB Report. In any event, the version of Mr Thakoor was not tested before us and the Tribunal has

not been enlightened as to whether the latter still holds the same view now.

The Tribunal cannot substitute its views for those of the head of department unless obviously the views of the latter are found to be unreasonable. There is no evidence that Disputant has managerial powers at the Respondent or is involved in strategic development/management, financing or has subordinates working directly with him. Such evidence may have enabled the Tribunal to gauge the reasonableness of Mr Kong Thoo Lin's stand.

He who avers, needs to prove and the Disputant all along had the burden of proof to show that he should have been granted the increment for additional qualification under section 18.9.25 of the 2008 PRB Report. He has failed to do so even though we hasten to add that good management principles are not meant only for managers and will apply, as the case may be, across an organisation so that a module on the foundations (underlining is ours) of management (for instance module BA 625 "Management Practice") should not be restricted or considered to be only relevant to management. Such a module will no doubt be relevant even for the performance of the duties of a Field Officer. Similar considerations may apply to modules such as 'Managing Change' and 'Managing Performance' which again may be relevant for the performance of non-managerial duties. Anyone can be and should in fact be encouraged to be a 'change champion' within an organization. However, the Tribunal, for the reasons given above, has been unable to find conclusively despite careful analysis of all evidence before it that 50% of the modules completed (that is, at least nine modules) are relevant to the performance of the duties of the grade of Field Officer.

The dispute is thus set aside.

(Sd) Indiren Sivaramen
Vice-President

(Sd) Ramprakash Ramkissen
Member

(Sd) Rajesvari Narasingam Ramdoo
Veeramootoo
Member

(Sd) Renganaden
Member

9 May 2014