

## EMPLOYMENT RELATIONS TRIBUNAL

### AWARD

RN 31/15

Before

<b>Indiren Sivaramen</b>	<b>Vice-President</b>
<b>Esther Hanoomanjee</b>	<b>Member</b>
<b>Jay Komarduth Hurry</b>	<b>Member</b>
<b>Georges Karl Louis</b>	<b>Member</b>

In the matter of:-

**Mr Devendra Nath Busgeeth (Disputant)**

**And**

**The Mauritius Cane Industry Authority (Respondent)**

In the presence of:-

- 1. Pay Research Bureau (Co-Respondent No 1)**
- 2. Ministry of Agro-Industry and Food Security (representing the State of Mauritius) (Co-Respondent No 2)**

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"). Co-Respondents No 1 and No 2 have been joined as parties with the agreement of both the Disputant and Respondent's Counsel. All parties were eventually assisted by a legal representative before us. They have all filed a Statement of Case or a written 'Stand' or a 'Particulars of Claim' (as termed by Disputant who also filed a 'Response to Respondent Statement of Case') in the present matter. The terms of reference of the dispute read as follows:

*"Whether the MCIA should grant me, as per para 18.9.11 and 18.9.12 of EOAC 65, (2013) incremental credits effective as from January 2013 for continuous assignment of duties as Deputy General Manager during*

*period 31 March 2008 to 15 February 2011 at the Ex Cane Planters and Millers Arbitration and Control Board.”*

The Disputant deposed before the Tribunal and he confirmed what he has averred in ‘the course of the brief’. He was assigned the duties of Deputy General Manager for nearly three years at the *Cane Planters and Millers Arbitration and Control Board*. On 16 February 2011 he was offered appointment as Deputy General Manager in a temporary capacity. He was eventually appointed in a substantive capacity in the said post as from the same date. The Respondent is a body corporate under the Mauritius Cane Industry Authority Act 2011 and has taken over the responsibilities and functions, and assets and liabilities of the *Cane Planters and Millers Arbitration and Control Board*. Disputant joined the Respondent on 5 December 2012 as Manager, Cane Payment after continuous service with the ex *Cane Planters and Millers Arbitration and Control Board*. Disputant averred that there is little difference between the duties of Deputy General Manager, *Cane Planters and Millers Arbitration and Control Board* and those of Manager, Cane Payment at the Respondent.

Disputant added that Recommendation 65 of Errors, Omissions and Anomalies Committee (EOAC) Report 2013 applies to his case and that he should be granted incremental credits for continuous assignment of duties as Deputy General Manager during the period March 2008 to February 2011.

In cross-examination, Disputant agreed that there was no provision for the post of Deputy General Manager on the establishment of Respondent. However, he stated that the post of Manager, Cane Payment was an equivalent post. Respondent informed him that Respondent had been advised that his case does not fall within Recommendation 65 of EOAC Report 2013. He would have been qualified for the said incremental credits only if he had continued as Deputy General Manager at the ex *Cane Planters and Millers Arbitration and Control Board*. He however insisted that he was still qualified for the incremental credits and did not agree that the recommendation applies for persons still serving in the same grade and organization. Disputant averred that in the light of the Memorandum of Understanding (MOU) (signed among the relevant Ministry, Respondent and trade unions) he could not be worse off. He suggested that prior to 5 December 2012 he was eligible for the increments and that his salary should be adjusted hypothetically.

Mr Santbakshing, the Human Resource Manager of Respondent then deposed and he solemnly affirmed to the correctness of the Statement of Case of Respondent. He stated that the proper parties are now before the Tribunal. In cross-examination, he stated that the Respondent sought advice on the matter through Co-Respondent No 2. He also deposed on differences between the ex *Cane Planters and Millers Arbitration and Control Board* and the Respondent.

Mr Nagamah, the acting Deputy Director of Co-Respondent No 1 also deposed before the Tribunal. He stated that the salary of Disputant should have been adjusted hypothetically under paragraph 18.9.12 of Recommendation 65 of EOAC Report 2013 but however at the date of implementation of that report, the Disputant was no more in the same capacity, that is, Deputy General Manager. Also, the *Cane Planters and Millers Arbitration and Control Board* was already a defunct organisation. For Co-Respondent No 1, there were thus two different organisations and two different grade appellations.

In cross-examination, he stated that he could not depose in relation to duties under the two appellations.

Mr Kurrimbux, Assistant Manager, Human Resource, at Co-Respondent No 2 also deposed before the Tribunal and he confirmed the contents of the “Stand” of Co-Respondent No 2.

The Tribunal has examined all the evidence on record including the submissions of all counsel and attorney-at-law appearing for the parties. Paragraphs 18.9.11 and 18.9.12 (under Recommendation EOAC 65) of the EOAC Report 2013 provide as follows:

***Recommendation EOAC 65***

18.9.11 *The Committee recommends that, where an officer has been appointed to act/assigned duties in a higher office and is subsequently appointed to the same office after a selection exercise and his appointment takes effect as from the date of assumption of duty, the officer should be granted one incremental credit for each completed year of actingship/assignment of duties provided that:*

- (a) *such actingship/assignment of duties is continuous;*

- (b) *the adjusted salary is not higher than what the officer would have drawn had he been appointed in a substantive capacity on the date he was appointed to act/assigned higher duties; and*
- (c) *such incremental credit is payable as from the date the officer is appointed substantively in the post.*

18.9.12 *The Committee further recommends that the salary of officers falling in a similar situation prior to the date of implementation of this Report, should be adjusted hypothetically.*

It is not denied that if Disputant had remained in the post of Deputy General Manager at the *Cane Planters and Millers Arbitration and Control Board* of the Ministry of Agro Industry and Food Security, he would have benefitted from Recommendation EOAC 65, that is, paragraphs 18.9.11 and 18.9.12 of EOAC Report 2013. His salary would have been adjusted hypothetically. Indeed, paragraph 18.9.12 of the EOAC Report 2013 caters specifically for officers falling in a similar situation as under the previous paragraph 18.9.11 but prior to the date of implementation of the EOAC Report 2013. Without paragraph 18.9.12 of the EOAC Report 2013, Disputant clearly would not have benefitted from Recommendation EOAC 65 since at the time of implementation of the EOAC Report 2013, Disputant had already been appointed to the post of Deputy General Manager at the *Cane Planters and Millers Arbitration and Control Board*.

Now, paragraph 18.9.12 (just like paragraph 18.9.11) becomes effective only on the date of implementation of the EOAC Report 2013, that is, 1 January 2013. Before 1 January 2013, Disputant had in fact no right whatsoever to the incremental credits under Recommendation EOAC 65.

Paragraph (ii) under the heading “Posting of staff by the MCIA” in the MOU among Respondent, Co-Respondent and the trade unions relating to the transfer or otherwise of the staff of the six Service Providing Institutions to Respondent provides as follows:

*“Any employee of any of the six SPIs who is transferred to the permanent and pensionable establishment of the MCIA will be on terms and conditions, including accrued pension rights, which are not less favourable than those obtained by him before the transfer.”*

So the terms and conditions of employment of Disputant (if we assume Disputant was 'transferred' when he agreed to the offer of appointment as Manager, Cane Payment at the Respondent) had to be no less favourable than those obtained by him before his transfer. At that time, he was not eligible or entitled to the incremental credits and Disputant cannot pray in aid the MOU entered into among the relevant parties.

Also, Disputant is now occupying the post of Manager, Cane Payment at the Respondent whilst previously he held the post of Deputy General Manager at the *Cane Planters and Millers Arbitration and Control Board* of the Ministry of Agro Industry and Food Security. The Respondent is a new organisation which has been set up as a body corporate under The Mauritius Cane Industry Authority Act. Despite what has been averred by Disputant that he is holding an equivalent post, Disputant cannot be said to be occupying the same office in the present matter. At the time Disputant joined the Respondent, the EOAC Report 2013 did not yet come into effect and Disputant cannot pretend that he had any acquired rights or legitimate expectation to benefit from Recommendation EOAC 65 of the said report.

For the reasons given above, the Disputant has failed to show on a balance of probabilities that he should be granted the said incremental credits and the dispute is thus set aside.

**(Sd) Indiren Sivaramen**  
**Vice-President**

**(Sd) Esther Hanoomanjee**  
**Member**

**(Sd) Jay Komarduth Hurry**  
**Member**

**(Sd) Georges Karl Louis**  
**Member**

**13 November 2015**