

EMPLOYMENT RELATIONS TRIBUNAL

AWARD

RN 120/14, 121/14, 122/14, 124/14, 125/14, 126/14, 127/14, 128/14, 129/14, 130/14, 131/14, 132/14, 133/14, 134/14, 135/14, 136/14, 137/14, 138/14, 139/14, 140/14, 141/14, 142/14, 143/14, 144/14, 145/14, 146/14

Before:	Indiren Sivaramen	-	Vice-President
	Esther Hanoomanjee	-	Member
	Desire Yves Albert Luckey	-	Member
	Georges Karl Louis	-	Member

In the matter of:-

Mr Ashvin Varma Pydegadu and others (Disputants)

And

Air Mauritius Ltd (Respondent)

In presence of: Licensed Aircraft Engineers Association (Co-Respondent)

The above twenty-six cases have been referred to the Tribunal for arbitration in terms of Section 69(7) of the Employment Relations Act 2008 (the "Act"). The Disputants and Respondent were assisted by Counsel and all the cases have been consolidated with the agreement of both Counsel. Co-Respondent which is a recognised trade union for Licensed Aircraft Engineers has been joined as a party in the present matter. The terms of reference are the same in all the cases and read as follows:

"Whether my entry point salary as Licensed Aircraft Engineer (LAE), Aircraft Type Rating allowance and increment as years of service, to be equalized with the majority of LAEs appointed prior April 2012 that is a starting salary of Rs 53869, each aircraft type rating allowance inclusive of first type rating of Rs 5000 and actual yearly increment of Rs1972 (5% of Rs 39453),or otherwise".

Mr Mansuri deposed on behalf of the Disputants and he solemnly affirmed to the truth of the contents of the Statements of Case filed on behalf of the Disputants. The main issue is the entry point salary of the disputants as LAEs. The grade of LAEs was previously in the LS5 salary scale. As from March 2010, LAEs migrated from LS5 salary scale to a higher band which is TS3. In the band, there are different categories of employees with different "basic starting points". When the LAEs migrated from LS 5 scale to TS3 band, they were pitched at the basic starting point of Rs 39,453. Then salaries are adjusted using a conversion formula according to the years of service. The yearly increment and the 'aircraft type rating' were also adjusted. Mr Mansuri averred that the Memorandum of Understanding entered into between Respondent and the relevant trade union (Annex 1 to the Statement of Case of Respondent) constituted a trade-off for certain favourable conditions which LAEs have foregone against a substantial increase in remuneration.

Mr Mansuri stated that before the Disputants became LAEs, they were Aircraft Maintenance Engineers (AMEs). He explained the practical assessments and oral examinations conducted in-house before an AME can have his first rating and become a LAE. He described the category of LAE as being a homogeneous category whereby everyone would have the same duties and responsibilities. However, when the Disputants have been promoted as LAEs, they were only pitched at a basic starting point of Rs 33,146. Thus, all LAEs prior to 2012 had been pitched at a higher salary point whilst they were pitched at only Rs 33,146 with a different package for aircraft type rating and a lesser annual increment because of their lower basic starting salary. At the time the MOU was entered into, there were around 42 LAEs at Respondent. Mr Mansuri also confirmed that all the Disputants were employees of Respondent in 2010 when the existing LAEs were granted the benefits as per the MOU. He expected as LAE to be given no less favourable treatment than LAEs in the batch of 42.

Mr Mansuri averred that in 2011 there was yet another adjustment whereby some LAEs would have obtained 9 to 13 increments whereas LAEs with less than two years had no increment at all. The majority of existing LAEs would have allegedly benefitted from 13 increments resulting in a starting salary of Rs 53,869. Mr Mansuri also adduced evidence to the effect that several employees left Respondent despite being granted the retention package. He added that as from 2009 there was a pool of AMEs on their way to become LAEs. According to him, the said AMEs were not given their chance at that time. The adjustments made to the salaries of the then 42 existing LAEs were not additions to their salaries but an integral part of their salaries. He also averred that many LAEs appointed after the Disputants have been pitched at a higher basic point than the Disputants.

In cross-examination, Mr Mansuri agreed that the MOU entered into between Respondent and The Air Mauritius Staff Association (AMSA) related to the then existing 42 LAEs. He conceded that the Respondent has the right to take corrective measures as from a specific point in time but he added that this should be done with fairness. He conceded that it was plausible that the retention package granted in 2011 did not change the basic salary as such. Mr Mansuri stated that there are many LAEs in the batch of 42 who still have single aircraft type rating. He also averred that there are LAEs appointed after 2012 with single aircraft type rating who are earning a basic salary of Rs 39,453. He has two aircraft type ratings and is still pitched at Rs 33,146. At this stage, Counsel for Respondent stated that for the aircraft type rating allowance there would be no issue and things would be regularized.

Mr Mansuri averred that a high attrition still prevails with high demand from Middle Eastern airlines. He refused to accept that a LAE who has more aircraft type ratings would have more experience than someone who has less aircraft type ratings. He denied that if the Disputants' starting salaries were pitched at Rs 53,869-, the batch of 42 could in turn level a dispute that the Respondent was discriminating against its own policy regarding the exit MOU, that is, in relation to the retention package.

In re-examination, Mr Mansuri explained how the figure of Rs 53,869 was arrived at.

Mr Keerodhur, Executive Vice-President, Technical Services Department then deposed and he solemnly affirmed to the correctness of the contents of Respondent's Statement of Case. He explained how the MOU was entered into after prolonged discussions for about two and a half years. He stated that a new package had to be given to the LAEs more in line with what the market was offering and the attrition of LAEs had to be addressed. He also mentioned that the pattern of operation was evolving and Respondent had to come with new working conditions. The MOU was done in such a way that there would be no 'domino effect' on the rest of the employees of Respondent. Mr Keerodhur stated that the MOU limits itself to the then 42 LAEs. A copy of an acceptance form given to those LAEs was produced (Doc C). Each one of them signed such a form. A formula was devised whereby LAEs who were on the LS5 scale could be mapped on the new TS3 scale. There was no LAE who was freshly appointed then. A starting salary point of Rs 39,453- was applied and a multiple of increments equivalent to the number of years of service less one that the existing LAEs had acquired was added to the starting salary point. A document explaining the migration mechanism used to move the LAEs from the LS5 scale to the TS3 scale was produced (Doc D). For a freshly qualified LAE appointed after 2012 with no prior years of experience, Respondent has applied a starting point of Rs 33,146. With 3 full type aircraft ratings however, the starting salary point for the LAE will be Rs 39,453.

Provision was made for freshly appointed LAEs to acquire experience, years of service and aircraft type ratings.

The LAEs in the batch of 42 were no more members of the trade union AMSA. Since attrition was continuing and the number of LAEs came down to a critical mass needed to sustain operation, there was renegotiation with the existing batch of 42 LAEs and a retention adjustment (as per Doc D) was worked out. This was done on a one to one basis depending on the years of service of the particular LAE. The starting salary point however was not changed according to him. As from 2012 after an intensive training program, the disputants became LAEs and there were then enough LAEs to cope with normal attrition. If the disputants are granted a starting salary point of Rs 53,869, this will affect relativities everywhere in the salary system that exists at Respondent and create havoc.

Mr Keerodhur stated that Respondent has agreed that aircraft type rating allowance will be aligned for each and every LAE irrespective of when they were promoted LAE. Mr Keerodhur then referred to two LAEs who were in the batch appointed post 2012 and who have joined a trade union, the LAEA. The LAEA was formed by the first batch of 42 LAEs even though there are LAEs qualified after 2012 who are now joining the union. Management has regular meetings and negotiations with that union. Mr Keerodhur averred that whatever LAEA benefits from Management it is obvious that the said two LAEs (though post 2012) would benefit from the same package.

In cross-examination, Mr Keerodhur stated that the changes brought by the MOU were made at a period when there was scarcity of LAEs and there was no mention of the period over which it would apply. He stated that the MOU was done to upgrade the LAEs whilst previously they were on the same scale as administrative staff. Mr Keerodhur stressed on Article 31 of the contract of employment annexed to Respondent's Statement of Case (Annex 4) and averred that the MOU is superseded by the agreement entered into by each disputant and Respondent. He agreed that many LAEs in the batch 42 still did not have 3 aircraft type ratings.

Mr Keerodhur stated that there was no amendment of the starting salary but that it was the basic salary which was adjusted. There was no scheme as such but a mere letter was drawn for each and every existing LAE. Mr Keerodhur stated that though there is a demand for LAEs locally and on the international market, the demand is not as acute as it was 4 to 5 years ago. He was confronted with a news release from the International Civil Aviation Organisation (Doc E) dated 8 March 2011 and he maintained that the attrition rate has gone down completely at Respondent with some ex-employees even coming back to work for Respondent. Mr Keerodhur did not agree that the policy of having two batches of LAEs with different conditions is discriminatory. He accepted that

a LAE in the batch 42 and one from the group of disputants will have the same load of work if they have the same aircraft type rating keeping all other parameters the same.

In re-examination, Mr Keerodhur stated that no conversion was needed for the disputants since they were not initially on the LS5 band. He stated that in 2006, Respondent had 60 LAEs and between 2006 and 2010 they lost some of the LAEs whereby they reached the level of 42 when the MOU was signed. That figure went further down to 38 and following training, new employees have started as from 2012 to qualify as LAEs. As at today, Respondent has a total of 65 LAEs which is sufficient to cater for normal attrition. He stated that if the request of the disputants as per the terms of reference is granted this will impact on other salary scales and disrupt the whole relativity grid that exists at Respondent. Also, Respondent cannot afford to apply such increases for the disputants.

The Tribunal has examined the evidence on record and the submissions of both Counsel. As regards the aircraft type rating allowance, the Tribunal takes note that Respondent has agreed that the allowance will be aligned for each and every LAE irrespective of when they were promoted. Allowance for each aircraft type rating inclusive of first type rating will thus be Rs 5000 as per the "New Type Rating Allowance" provided in Doc B (sub-paragraph 3 under paragraph 2) subject to a maximum allowance of Rs 20,000 for four type ratings and above. The Tribunal thus awards accordingly.

Clause 1 in the Preamble of the MOU reads as follows:

1. AMSA has since April 2009 made several representations to MK Management for a review of salary and working conditions of a specific category of employees for whom AMSA has negotiating rights and who are included within its bargaining unit.

The category was described as "existing Licensed Aircraft Engineers (LAEs), Workshop Technicians and MCC all of whom are based in the Technical Services Department of Air Mauritius." Clause 3 of the same Preamble provides:

3. These representations by AMSA were made on the basis that these employees were not satisfied with their prevailing terms and conditions of employment.

Clause 3 of the MOU provides as follows:

3. Both parties agree to the following changes in remuneration and working conditions as forming part of the process to the transition of the Technical Services Department to a separate business unit, within MK, over time. This is also critical to improve retention of Certifying Technicians, MCC and LAEs and provide appropriate

succession planning. This will also improve overall productivity and competitiveness of the Company.

There is also evidence from Mr Keerodhur that the MOU was entered into to better the terms and conditions of work of the existing LAEs whereby they were moved from staff grade to a higher technical services grade. Even though it is expressly provided in the MOU (clause 5) that the Air Mauritius Staff Association agrees that all LAEs “will no longer be represented by Air Mauritius Staff Association (AMSA) and they will cease to be members of AMSA”, all existing LAEs (the batch of 42) have accepted the revised terms and conditions of service set out in the MOU. This is not a case where Disputants are complaining that their constitutional right or right under the Act to belong to AMSA has been breached. In fact, the second paragraph of clause 5 of the MOU specifically provides that “[AMSA agrees that]: *It will not object to the fact that Certifying Technicians and LAEs shall by 31 March 2010, if they so wish, become member of an association, which will be recognized by MK management, created specifically for all staff of Technical Services. A work council will be set up to foster good working relationship.*

We have no evidence of the pattern of trade union and management organization at Respondent except that the Co-Respondent has averred in his Statement of Case that he is now the “sole representative and bargaining agent for Licensed Aircraft Engineers (LAEs)”. Mr Keerodhur also stated that there is only one bargaining unit at Respondent for the grade of LAEs. The Tribunal will not pronounce itself on the appropriateness of having as a condition precedent to the implementation of the MOU that the then LAEs will cease to be members of AMSA. What is important is that the then LAEs have accepted the new terms and conditions of employment and a copy of the acceptance form allegedly signed by each of these LAEs has been produced (Doc C). Paragraphs 3 and 5 of the said document are relevant and read as follows:

3. *I hereby irrevocably accept the revised emoluments and conditions of services as set forth in the Agreement signed between Air Mauritius and AMSA on 11 March 2010 and agree that the terms and conditions embodied in the MOU and Procedural Agreement signed between AMSA and Air Mauritius on 31 March 2008 will no longer form part of the new terms and conditions of my employment at Air Mauritius. In consideration thereof, I shall do needful to obtain three full type ratings within 24 months from 1 April 2010.*

5. *I understand that obtention of the three type ratings within 24 months from 1 April 2010 is an essential condition of this agreement with my employer. Consequently, I agree that if I fail to obtain the three full type ratings within this period I shall revert back to the terms and conditions of employment under which I was employed prior to me signing this option form.*

It is agreed however that up to now many of the LAEs in the batch of 42 have not yet obtained the three full type ratings which is a condition required (within 24 months from 1 April 2010) both in the MOU and in the acceptance form signed by the batch 42 LAEs. According to Mr Keerodhur, Management has a discretion whether to enforce the conditions imposed on the LAEs in the batch of 42. He referred to the key role of the LAE and that Management has to take decisions based on circumstances as things unfold. There is indeed no evidence before us that Respondent has insisted for compliance with the conditions mentioned in the MOU and acceptance form by LAEs in the batch of 42.

The bone of contention here is whether the disputants should also have a starting salary point (prior to adjustments made in 2011) of Rs 39,453 irrespective of whether they have obtained three full type ratings. LAEs already earn an aircraft type rating allowance depending on the number of aircraft type ratings they have. There must be very good reasons for a LAE to have one starting salary point and another one another starting salary point on the same salary band especially when both have the same qualifications (to be appointed LAE) and duties. This may happen exceptionally for example because of the 'personal equation' of a particular LAE. In the present matter, this is not the case and we have two artificially created batches of LAEs who have different starting salary points. Progression along a salary band is a different matter but the starting salary point for a particular grade should generally be the same. The Tribunal is not satisfied with the explanations put forward to justify the different starting salary points for the two batches the more so in the absence of evidence that the Respondent has enforced the conditions which were imposed in the acceptance form or employment agreement of the former batch of LAEs that they had to obtain three aircraft type ratings. Also, the aircraft type rating allowance already caters for LAEs with more type ratings. The Tribunal finds that uniformity among LAEs in relation to the starting salary point is warranted for good employment relations, and to use the words of the MOU "to ensure operational and industrial peace and harmony, improved overall efficiency, performance and productivity with a common objective to ensure proper and successful functioning of the company."

The Tribunal now has to consider the 'retention adjustment' granted in 2011 to the then existing LAEs. Annex 3 to Respondent's Statement of Case is self-explanatory and starts as follows:

"In view of the critical shortage of Licensed Aircraft Engineers, I am pleased to inform that your salary will be revised with:

- *Payment of a 2% increase*

- *A monthly retention adjustment to your basic salary of Rs 10,812 which represents an increase of 12 scale points, effective 01 April 2011.*

The adjustment is strictly on a personal to bearer basis.

Evidence has been adduced on behalf of Respondent to the effect that the attrition of LAEs even in 2011 warranted such a course. Mr Keerodhur stated that in 2006 Respondent had 60 LAEs. Between 2006 and 2010, Respondent lost some LAEs and the figure dropped to 42, that is, the batch which benefitted from the MOU. That figure went further down to 38 where it stabilized. As from 2011, training was given to those who could become LAEs and as from 2012, the trainees started to qualify as LAEs. As at today, Respondent has a total of 65 LAEs. It is not disputed that the Disputants qualified only in 2012. Mr Keerodhur stressed on the fact that Respondent had to ensure a critical mass of LAEs at Respondent to maintain operations. The Tribunal finds that the Respondent has adduced evidence which could justify a retention allowance when the number of LAEs kept on declining despite the MOU. Acute attrition in relation to a particular grade of workers particularly where these workers perform critical functions within an organization may in an appropriate case constitute a valid reason for treating that particular grade of workers differently. This may take the form, for example, of a retention allowance which may well not be justified indefinitely.

Thus, the real issue is whether Respondent could provide the retention adjustment to the existing (or already qualified) LAEs and refuse to extend it to the Disputants. Very importantly, in the present case the Disputants are not seeking a retention allowance or retention adjustment per se. As per the terms of reference each disputant is asking the Tribunal “(w)hether my entry point salary as Licensed Aircraft Engineer (LAE), ..., to be equalized with the majority of LAEs appointed prior April 2012 that is a starting salary of Rs 53869...” (the underlining is ours). This already highlights the fallacy in the argument of the Disputants in that the Disputants seem to be suggesting that even the LAEs in the batch of 42 have different entry point salaries. This is not borne out from the evidence on record and as observed above, the entry point salary for the batch of 42 LAEs is Rs 39,453. There is nothing to suggest that the “entry point salary” for the Disputants should be higher than Rs 39,453. This is moreover in line with the calculation for yearly increment where, as per the terms of reference, the Disputants are seeking an award that the yearly increment be based on a basic starting salary of Rs39,453. Also, any haphazard increase in the entry point salary for the Disputants will certainly affect internal relativities.

The Tribunal thus has no hesitation in finding that the entry point salary for the Disputants cannot be Rs 53,869 and must instead be Rs39,453 for the reasons already given above. The yearly increment of the Disputants will be as per their contract of

employment, that is, as per paragraph 10 of Annex 4 to the Statement of Case of the Respondent with the exception that the basic starting salary will be Rs 39,453.

The Tribunal thus awards that:-

- (1) the entry point salary as LAEs for Disputants shall be Rs 39,453 irrespective of whether they have obtained three full type aircraft ratings;
- (2) allowance for each aircraft type rating inclusive of first type rating shall be Rs5000 as per the "New Type Rating Allowance" provided in Doc B subject to a maximum of Rs20,000 for four type ratings and above; and
- (3) the yearly increment for Disputants shall be as per their contracts of employment with the exception that the basic starting salary shall be Rs 39,453.

(Sd) Indiren Sivaramen

Vice-President

(Sd) Esther Hanoomanjee

Member

(Sd) Desire Yves Albert Luckey

Member

(Sd) Georges Karl Louis

Member

9 October 2015

