

EMPLOYMENT RELATIONS TRIBUNAL

ERT/RN 102/2014

AWARD

Before:

Shameer Janhangeer	Vice-President
Vijay Kumar Mohit	Member
Rabin Gungoo	Member
Khalad Oochotoya	Member

In the matter of: -

Mr. Joseph Roger Elsmi Aglar

and

The Medine Sugar Estates Co. Ltd

The present matter has been referred to the Tribunal by the Commission for Conciliation and Mediation for arbitration pursuant to *section 67(9)* of the *Employment Relations Act 2008*. The terms of reference of the labour dispute reads as follows:

“Whether following my retirement at the age of 60 from Medine Sugar Estate Co. Ltd, I should have contributed 50% of (montant de la prime annuelle du plan médical des membres retraités et leurs dependents) Health & Catastrophe Schemes, instead of 100% from year 2004 to date.”

The parties in the present matter have put in a statement of agreed facts, wherein it has been averred that the Disputant has been employed by the Respondent Company as Personnel Manager for over 36 years having retired at the age of 60 on 8th March 2002. His pension benefits were governed under a '*Protocol d'Accord*' agreed between the *Mauritius Sugar Producers Association* (the "*MSPA*") and the *Sugar Industry Staff Employees Association* (the "*SISEA*"). He was notably entitled to a *Medical Health Care Insurance* (the "*medical scheme*") with half of the contribution to the annual premium coming from the employer and the remaining half paid by the Disputant himself as from his date of retirement.

Furthermore, as per the Statement of Agreed Facts, on or around 25th August 2004, Mr Joseph Roger Elsmi Aglar was invited by the Respondent to take advantage of the *Voluntary Retirement Scheme* (the "*VRS*") option which he had agreed to by signing same on 30th August 2004. The *VRS* package offered him a cash compensation of Rs 1,504,565.81 from which a sum of Rs 1,266,628.83 was deducted as being already paid by the Respondent following his normal retirement scheme; and a plot of land of 7 perche at La Marie/Pousson.

Mr Aglar has averred that he was not informed of the fact that the Respondent would cancel its 50% contribution to the premium of the *medical scheme* if he opted for the *VRS* option. The Respondent Company has, however, averred that since the Disputant has opted for the *VRS* package, he has automatically renounced his entitlement to the normal retirement package.

It is only in 2013 on being informed that the medical insurance premium was due for an increase that Mr Aglar became aware that he had, according to the Respondent, renounced the benefits which had accrued to him prior to opting for the *VRS*.

Correspondence were exchange between the two parties with the Respondent informing Mr Aglar that their contribution to the *medical scheme* had been cancelled after the Disputant had opted for the *VRS*.

Annexed to the Statement of Agreed Facts are the *Protocol d'Accord* between the *MSPA* and the *SISEA*; the *VRS* Agreement between Disputant and Respondent; a table indicating the amounts of premium for medical insurance deducted from Disputant's pension; a note explicative from the *MSPA* dated 16 November 2001 regarding the '*Mise en application du VRS*'; and pay slips of the Disputant from January 2014 to August 2014. Additional documents, namely letters dated 23 March 2013 and 09 April 2013 from the Applicant and a reply by the Respondent dated 26 April 2013, were also attached in relation to the agreed statement of facts.

Mr Jugdiss Bundhoo, Manager Policy Planning at the *Mauritius Cane Industry Authority* (the "*M CIA*"), was called to adduce evidence in the matter. Being familiar with the workings of the *VRS*, he explained that same was first implemented for the period 2001 and 2005 as one of the proposals of the action plan for the sugar industry. The whole idea was to reduce the costs of production and for the industry to be viable, profitable and continue to contribute to the national economy. As most of our sugar is exported to the European Union who was again coming up with the reform of their sugar regime, an accelerated action plan was conceived for 2006 – 2015 with the *VRS* being part of this plan. The *VRS* was one of the measures that was translated into legal form and implemented as *section 23* of the *Sugar Industry Efficiency Act* (the "*SIEA*"). The *VRS* package is negotiated as per the law which specifies what sort of package each and everyone gets.

Mr Bundhoo went on to explain the workings of the *VRS*. He stated that it is for the company to decide whether they wish to go ahead with the *VRS* scheme. Once they have done so, they have to apply to the *Ministry of Agriculture*, from where the application will be forwarded to the *Mauritius Sugar Authority* (the "*MSA*"), which is now the *M CIA*, and

after examining the application, approval for same will be recommended to the *Minister of Agriculture*. Once the *Minister* has approved the application of the *VRS*, the company can now go ahead with the scheme. The company cannot however force someone to go on the *VRS* against his wishes. It is through mutual consent as specified in the law.

Referring to the Disputant's *VRS* agreement form dated 30 August 2004, Mr Bundhoo stated that the person will not be eligible for both the retirement benefit and the cash compensation. What the person receives from normal retirement will have to be deducted. To his knowledge, once the retiree has benefited from the *VRS*, he cannot benefit under his normal retirement scheme. There is an explanatory exercise for workers who opt for the *VRS* telling them what benefits they will receive under the scheme. Being from a responsible institution, an explanatory exercise was carried out with each and every one of the 6000 workers who benefitted from the *VRS* to ensure that they understood what they were opting for.

In relation to a letter dated 26 April 2013 from the Respondent referring to a so-called agreement with the *MSA* on the possibility of this category of employees being covered under the existing company health insurance scheme, Mr Bundhoo did not have any information in relation to same nor has he found any document which would warrant the employer to remove or to suppress undertakings which existed prior to the *VRS* towards employees or retired employees. He further produced a 'Computation of Cost to be recouped under the *VRS2* / *ERS* / *Blue Print*' (Document A) showing the major cost items involved. He added that it is silent regarding medical schemes.

Mr Bundhoo also clarified the workings of the *VRS* with regard to *paragraph 5* of the *11th Schedule* of the *SIEA* which relates to estate houses and hospital facilities. The hospital facilities are those offered by the sugar estates which make provision for medical facilities. The worker who has opted for the *VRS* could make use of this facility for up to five years.

Mr Kevin Lennon was also called to adduced evidence in the present matter. The Human Resource Manager of the Respondent stated that Mr Aglar benefits from the estate's dispensary's medical facilities since he opted for the *VRS* up to today. Despite the *11th Schedule* (of the *SIEA*) which mentions 5 years, it was a decision of the management to allow this facility even if they are not obliged to do so. In relation to the letter dated 26 April 2013 from the Respondent, which refers to an agreement with the then *Mauritius Sugar Authority* that these category of workers could be still be covered under the medical plan of the company but that the premium payable by the employee would be 100%, Mr Lennon stated that this refers a discussion with the officer responsible for the *VRS* at the *MSA*. The company could offer the employee the possibility of keeping the medical insurance governed under the *MSPA – SISEA* agreement; however the employee would pay 100% of the premium instead of 50 % given that he would be considered as a *VRS* employee and not as a normal retired employee. This policy has been in force since 2004.

Mr Lennon also stated that it is since the *VRS* that the employer does not contribute 50 % to the *medical scheme* and this is following discussions with Mr Guttea of the *MSA*. The Disputant is still entitled to 2/3 of his last salary as provided under the *MSPA – SISEA* agreements having the required years of service; and which is made up of contributions made to the *NPF*, doubled by the contributions made by the Respondent to the *SIPF* and the rest, if need be, made by the Respondent to equal 2/3 of the last salary of the employee. This was not disputed by the Respondent after 2004.

Mr Lennon further explained that the Disputant was invited to a meeting in 2004 to come and opt for the *VRS* with a signed letter. He recalls that the former Managing Director did maybe verbally state '*ou bien*'. However, nothing in writing in relation to the medical insurance scheme was made. He assumed that Mr Aglar read what the *VRS* was before signing. The increase in the premium payable as from January 2005 was significant and it was eight years after that the Disputant reacts to say that the 100% contribution is not fair at all. He maintained that there was nothing in writing.

Both Counsel have respectfully put in written submissions in relation to the dispute. The gist of the Applicant's submission relate to principles of fairness and natural justice inasmuch as the Respondent had failed to inform him that its contribution to the *medical scheme* would be cancelled upon joining the *VRS*; and unilaterally and without consulting the Applicant started to deduct the full amount of the premium since 2004. In relation to the document dated 30 August 2004, it has been submitted that the Disputant has not forfeited any of the benefits he has enjoyed since he retired in 2002 which includes the *medical scheme*; and that he has always benefitted from all the advantages he was entitled to except for the contribution made by the employer to the *medical scheme*.

The Respondent has on the other hand notably submitted that the Disputant has renounced his normal retirement benefits he was entitled to in 2002 before opting for the *VRS* and that the employee cannot benefit from both the normal retirement and the *VRS*.

The terms of reference of the present matter asks the Tribunal to enquire into whether Mr Aglar should contribute half of the annual premium of the medical insurance plan for retirees and their dependents instead of the full amount that he is currently contributing as from 2004 to present.

The Disputant was employed at the Respondent Sugar Estate as a Personnel Manager for over 36 years having retired on 8 March 2002 at the age of 60 years. Upon retirement, the Disputant has benefitted from a *Medical Health Care Insurance* to which he contributed half of the annual premium with the other half being paid by the Respondent. This was in line with the *Protocol d'Accord* made between the *MSPA* and the *SISEA* (the "*Protocol d'Accord*") for retired employees signed on 19 November 2002.

Indeed, the *Protocol d'Accord*, in relation to the *medical scheme*, has provided:

1. Soins médicaux aux cadres retraités

...

1.2 Un nouveaux Plan Médical pour les cadres retraités et de leurs dépendants est agréé à partir du 1^{er} octobre 2002.

1.3 Une copie de la couverture médical complète est annexée (**voir Annexe 1**).

The Disputant was thereafter in August 2004 invited to opt for the *Voluntary Retirement Scheme* ("VRS") by the Respondent, which he signed on 30 August 2004. As per this document, he received a cash compensation, from which an amount already paid to him by the Respondent following normal retirement was deducted, as well as a plot of land of 7 perche.

Since opting for the VRS, Mr Aglar has continued to benefit from the *medical scheme*, although he has been paying the full amount of the premium since 2005 instead of the 50 % he was paying prior to have opted for the VRS. He has however, only become aware of this in 2013 as he was not informed that the Respondent was not paying its 50 % contribution towards the insurance scheme given that he had opted for the VRS.

Upon opting for the VRS, Mr Aglar signed a document dated 30 August 2004 headed '**Voluntary Retirement Scheme (VRS)**' (the "VRS Document") wherein he accepted '*the cash compensation due under the VRS less the amount already received from Medine Sugar Estates on my retirement*'. In the said document, he has notably declared that:

- (i) *I have no other claim of whatsoever nature (past, present, future or contingent) towards my employer and/or its director and/or managers, apart from the plot of land of extend of (7) perche situated at **LA MARIE/POUSSON** to be remitted to me or to my heirs;*

- (ii) *Such compensation is being paid to me in full and complete determination of all my rights under the Voluntary Retirement Scheme (VRS) provided under Sec. 23 of the Sugar Industry Efficiency Act 2001;*

On 23 March 2013, Mr Aglar wrote to the Respondent stating that having retired at the age of 60 years with 37 years of continuous service, he is entitled to all the advantages relative to his status as an ex-employee of Medine Sugar Estates Co. Ltd and that the VRS offered by the company '*sans l'avoir revendiqué, ne peut influencer*'. He also, in a letter dated 09 April 2013, reiterated his objection to the medical premium being deducted from his monthly pension as being completely unjustified and inapplicable to his category of retirees.

In reply to the assertions of Mr Aglar, the Respondent replied via a letter dated 26 April 2013 explaining the following in relation to the medical health premium being deducted from his monthly pension:

...

En 2004, la compagnie a implémenté un plan de retraite volontaire (VRS) où, selon les dispositions de la loi régissant ce plan, vous avez automatiquement été concerné par les conditions associés à ce plan. Catégorisé comme un bénéficiaire du VRS, vous avez dès alors bénéficié des conditions nettement plus avantageuses que celles d'un employé parti à la retraite normale.

A la lumière de ce qui précède, La Direction, en accord avec la Mauritius Sugar Authority, a, alors, agréé que cette catégorie d'employés pourraient avoir la possibilité d'être toujours couverte sous le même plan médical de la compagnie, mais que la contribution de l'employé serait de 100%.

Nous souhaitons vous rappeler que cette politique est respectée depuis sa mise en application et qu'aucun changement n'a été apporté depuis 2004. Ce principe de prélèvement mensuel mentionné au paragraphe précédent est appliqué pour votre épouse et vous-même depuis plus de 8 ans. Nous souhaitons attirer votre attention sur le fait que vous n'avez jamais objecté à ce principe.

...

The representative of the *M CIA* in his evidence in relation to the letter dated 26 April 2013 stated he had no information in relation to same nor any evidence that would warrant the employer to remove or suppress undertakings which existed prior to the *VRS* towards its employees or retired employees.

Mr K. Lennon, on the other hand, stated that the aforesaid letter refers to a discussion with the officer responsible for the *VRS* at the *MSA*. He explained that the company could offer the possibility for an employee to remain on the existing *medical scheme* governed by the *Protocol D'Accord* but that the employee's contribution would be 100 % instead of 50%. He did not mention any agreement as has been referred to in the letter.

Mr K. Lennon also recalled that when Mr Aglar called at a meeting to opt for the *VRS* in 2004, it appeared that the previous Managing Director did maybe verbally inform but he has nothing in writing in relation to the *medical scheme*. He however confirmed that in relation to the *VRS*, he presumed that Mr Aglar read what he was signing. According to the witness, there was a significant increase to the amount of the premium since 2005 and it is 8 years after that the Disputant reacts to say that the increase is not fair.

In opting for the *VRS*, the Disputant was paid a cash compensation from which an amount already paid by the Respondent upon the former's retirement was deducted. Bearing in mind that the issue in dispute relates to the premium paid for the *medical scheme* which is part of the Disputant's normal retirement package, it would be pertinent to consider whether the Disputant may still enjoy his normal retirement benefits even after having opted for the *VRS* when given the opportunity by his employer to do so.

The Tribunal has noted that the Disputant in the matter is still drawing his monthly pension from which the premium for the *medical scheme* is being deducted on a monthly basis. Mr K. Lennon in his evidence has stated that Mr Aglar is still entitled to 2/3 of his salary as provided under the *MSPA – SISEA* agreements as pension. This pension is made up of contributions made to the National Pension Fund, contributions made by the Respondent to the Sugar Industry Pension Fund and the rest, if needed, by the Respondent to equate to 2/3 of his last salary.

Mr J. Bundhoo of the *MCIA*, who deposed lengthily on the workings of the *VRS*, is of the opinion that once the employee, or retiree as in this case, has benefited from the *VRS*, he cannot benefit from the normal retirement scheme. This is moreover consistent with the '*note explicative*' from the *MSPA* in relation to the '*Mise en Application du VRS*' dated 16 November 2001 annexed to the statement of agreed facts, wherein it is mentioned:

3.3 Pension des cadres optant pour le VRS

- L'employeur n'a plus aucune obligation légale de pension (en particulier la provision de 2/3 des derniers salaires) vis-à-vis des cadres optant pour le VRS. Ces cadres pourront toutefois obtenir une pension du SIPF, du NPF et/ou d'une assurance de pension contractée sur la base des contribution effectuées en leur nom et selon les termes de ces fonds respectifs.

Counsel for the Disputant has contended that the Disputant has not forfeited the benefits he enjoyed since retirement in 2002 when opting for the *VRS* as per the *VRS Document* save for the contribution made by the Respondent to the *medical scheme*. On the other hand, it has been submitted that the employee cannot benefit from his normal retirement package as well as from the *VRS* relying on the amount deducted from the cash compensation and the declaration made in the *VRS Document* to the effect that he has no further claim against his former employer except for the plot of land mentioned therein.

In relation to the Disputant's normal retirement benefits, the Tribunal has taken note of the evidence of the Respondent's representative that the Disputant still draws his monthly pension based on the last salary he was drawing. The pay slips ranging from January 2014 to August 2014, evidencing the payment of Disputant's pension and the deduction for the *medical scheme*, annexed to the statement of agreed facts also confirm the evidence of the Respondent's representative. Although this aspect has not been canvassed during the proceedings, it may be noted that *section 24* of the *SIEA* gives the worker under a *VRS* an entitlement to a contributory retirement pension.

The fact that the Disputant has been allowed to continue with the *medical scheme*, albeit now contributing the full cost of the premium - which is an entitlement under normal retirement for employees as per the *Protocol d'Accord* - is also proof of the fact that not all of his normal retirement benefits have been forgone since opting for the *VRS*. In this regard, *section 23* of the *SIEA* is silent as to the situation of a retired employee eligible for the *VRS* and eventually opting for same nor has it been expressly stated that the employee is no longer eligible to his normal retirement benefits.

However, it is pertinent in this matter to consider whether *paragraph (i)* of the *VRS Document* (as reproduced above) may be interpreted as a bar to the Disputant's entitlement to half of the contribution from his former employer to the *medical scheme* as it were under normal retirement. In the aforesaid paragraph, the Disputant has clearly stated that he has '*no other claim of whatsoever nature (past, present, future or contingent) towards his employer*'. Although, the Respondent has not taken this as an objection in law to the present labour dispute, the declaration made in *paragraph (i)* is widely worded encompassing all types of claims and has solely expressly excluded the plot of land from its wide ambit.

Paragraph (iv) of the VRS Document must also be noted in this context. This states as follows:

I have read and taken full cognizance of this document and I am signing it of my own free and in full knowledge of its contents and implications.

The Tribunal, in the circumstances, does find that the Disputant is bound to honour his engagement in relation to the renunciation of any claims against his employer as set in the *VRS Document* signed upon his acceptance of the *VRS*. This engagement, which was signed in consideration for the cash compensation received, would include the claim to half of the premium he contributes towards the *medical scheme* which he was benefiting from his former employer under normal retirement.

It cannot also be overlooked that the implementation of the *VRS* by an employer in accordance with *section 23* of the *SIEA* shall be made on the principle of mutual consent whereby the *VRS* cannot be imposed on the employee nor can the later compel the employer to make an offer for same.

The aforementioned declaration made in the *VRS Document* would be consistent with the policy of the sugar sector in introducing the *VRS* to reduce costs of production and to make the industry profitable and viable in its contribution to the national economy as was expounded upon by the representative of the *M CIA*; and with the contention of the Respondent that once the employee or a former employee has opted for the *VRS*, he cannot be entitled to his normal retirement benefits. If so were the case, it would defeat the purpose of the objectives of the *VRS* as a social measure for the sugar industry and its overall efficiency.

The Government's *Multi Annual Adaptation Strategy Action Plan 2006 – 2015* has also explained the importance of the VRS as a social package for the sugar sector as follows:

110. In 2001, the principle of compensation being paid to employees voluntarily terminating their contract of employment was extended to the growing activities of the sugar industry. Thus a scheme termed the Voluntary Retirement Scheme (VRS) was introduced.

...

112. The provisions of the Blue Print and the VRS have through attractive and socially acceptable packages facilitated the modernisation of the sugar industry and represent today a significant asset for the implementation of the Action Plan. Indeed, depending on the category and age of a VRS employee, he/she secures 4 to 6 times more compensation/value (value of land) than an employee in any other sector who is paid the severance allowance. For Blue Print employees the ratio moves to 6 to 8 times. These packages are in fact effective means to combat poverty among those having voluntarily terminated their contract of employment.

The use of the VRS as a means to reduce costs in the sector is also reflected in the following paragraph of the *Action Plan 2006 – 2015*:

*205. The implementation of the VRS would be accompanied in all producing entities by a **substantial reduction of overheads.***

The need for the sugar sector to remain competitive is now even more of a priority in view of the reforms to the Common Agricultural Policy ("CAP") of the European Union which is the major export market for our sugar. The reform of the CAP entails quota removal on EU domestic sugar production due in 2015, which has now been extended to 2017. The removal of quotas on EU domestic sugar production is expected to have an adverse impact on our exports of sugar to the European Union as per a *European Commission Joint Research Centre Scientific and Policy Report* titled *EU sugar policy: A sweet transition after 2015 ? (2014)*. It may be noted that Mauritius along with other African

Caribbean and Pacific (ACP) countries enjoy quota free and duty free access to the EU under the Everything but Arms Agreement, which was removed in 2009, and the European Partnership Agreements.

It may also be useful to note that the *Action Plan 2006 – 2015* has stated the following in relation on the issue of pension in relation to beneficiaries of the VRS:

208. Employees above a certain age who accept the VRS are entitled to the early receipt of the contributory retirement pension but at an actuarially calculated reduced rate.

This provision has moreover been reflected in *section 24* of the SIEA:

24. Entitlement to contributory retirement pension

- (1) Every—
- (a) female agricultural or non-agricultural worker of the age of 45 or over; or
 - (b) male agricultural or non-agricultural worker of the age of 50 or over,

shall be entitled to an actuarially calculated contributory retirement pension as from the date the contract of employment is voluntarily terminated by the worker under a VRS, under an ERS or in the context of a factory closure pursuant to section 30 of the Mauritius Cane Industry Authority Act.

The VRS, it is apposite to note, does not exclude medical facilities from its benefits. *Paragraph 5 (b)* of the *11th Schedule* of the SIEA notably provides that for use of hospital facilities on the estate for a period of 5 years from the day the VRS request is approved.

This is moreover consistent with the agreed recommendations of the *Protocol d'Accord* made between the *MSPA* and *SISEA* for retired employees as per *Article 1.1* of same:

Les cadres retraités bénéficieront de soins médicaux gratuits à condition qu'ils viennent consulter les médecins sur les établissements sucriers.

The Tribunal cannot therefore find that the Disputant should have contributed only half of the premium to his *medical scheme* instead of the full amount he has been contributing to as from 2004 for the reasons given above and in view of the fact that he has expressly renounced to any claim from his employer as declared in the *VRS Document* upon accepting the benefits of the *VRS*.

The dispute is therefore set aside.

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Shameer Janhangeer (Sd)
(Vice-President)

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Vijay Kumar Mohit (Sd)
(Member)

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Rabin Gungoo (Sd)
(Member)

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Khalad Oochotoya (Sd)
(Member)

Date: 25th May 2015

