

EMPLOYMENT RELATIONS TRIBUNAL

AWARD

RN 185/15

Before:	Indiren Sivaramen	-	Vice-President
	Vijay Kumar Mohit	-	Member
	Rabin Gungoo	-	Member
	Georges Karl Louis	-	Member

In the matter of:-

Mr Maheswarnath Mohabeer (Disputant)

And

Mauritius Ports Authority (Respondent)

The above case has been referred to the Tribunal for arbitration in terms of Section 69(7) of the Employment Relations Act 2008 (the "Act").

The terms of reference read as follows:

"No incremental credit for additional qualifications was granted for my application dated 19 March 2014 despite that I fully meet all the criteria as laid down under section 5.6 of the Mauritius Ports Authority Terms and Conditions 2010."

Mr Mohabeer, a Safety and Health Officer, deposed before the Tribunal and he stated that it was the third time that he was applying to have incremental credits for additional qualifications that he would have obtained. He made an application for the first time at the end of 2011 for a post-graduate diploma. Initially, his application was turned down but finally after his case was referred to the "Civil Service", he was granted the increment in 2013. He made a second application in 2012 when he completed a MSc in Safety and Risk Management. In March 2013, he was informed that his (second) application had not been acceded to. He was informed that the Mauritius Qualifications Authority (MQA) has a National Qualification Framework where a MSc and a "post-graduate" are on the same level. He had already enrolled for a BSc Occupational Safety and Health and he did not then challenge the decision following his second application.

On 19 March 2014, Mr Mohabeer made a third application (relating to the present case) for incremental credit for his BSc Occupational Safety and Health. He enrolled for the BSc course because this was a qualification requirement for the post of Manager Safety and Health. He produced a copy of a letter he sent to Respondent asking for incremental credit for his BSc (Doc B). He did not receive any reply in writing but was later informed that a “post-graduate diploma” was at a higher level than a BSc.

In cross-examination, Disputant stated that he was relying on Respondent’s Terms and Conditions 2010 which he had opted for. He could not say if the BSc qualification he held was lower than his MSc qualification. He could not say how his MSc in Safety and Risk Management compared to a BSc in Occupational Safety and Health Management. He did not agree that paragraph 5.6 of Respondent’s Terms and Conditions 2010 was limited to the grant of one incremental credit only. He averred that he satisfied all the criteria mentioned for the grant of the incremental credit.

The qualification required in his scheme of service is a diploma in Occupational Safety and Health. Disputant conceded that he did not possess any document certifying that his BSc was recognized by the MQA or the Tertiary Education Commission (TEC). He however added that his BSc emanates from the University of Technology of Mauritius (UTM) and that all qualifications granted by the UTM are recognised by TEC and MQA. He could ask for a document from TEC to the effect that his BSc qualification is recognised. In re-examination, Disputant was referred to the criteria in paragraph 5.6 of Respondent’s Terms and Conditions 2010. He averred that UTM is a recognised body by both TEC and the MQA. He averred that he studied two years to obtain his BSc.

Mrs Gungaram, HR Manager, then deposed on behalf of Respondent. She stated that the Statement of Reply of Respondent was correct and accurate. The matter was referred to the Board of Directors and the application was turned down. She stated that the maximum number of incremental credit granted up to now to employees of Respondent is one.

In cross-examination, Mrs Gungaram stated that since 2010, 14 employees (out of a workforce of 526 employees) had so far been granted one incremental credit at the Respondent. She was also questioned on the relevance of paragraph 5.6(b) (iv) of Respondent’s Terms and Conditions 2010.

The Tribunal has examined all the evidence on record including all documents produced and the statement made by the negotiator and submissions of counsel. Paragraph 5.6 of Respondent’s Terms and Conditions 2010 reads as follows:

Incremental Credit for additional qualifications

Where employees study to obtain additional qualifications directly related to their posts, the Authority shall recognize this effort and shall grant one additional increment subject to the following criteria:

- (a) *Qualifications which are fully or part of which are directly relevant to the performance of the duties of the grade and which are higher than the qualifications specified in the Scheme of Service for the grade; and*
- (b) *Have been obtained as a result of studies, whether carried on one's own or as a result of a fellowship, of at least one academic year duration, full time or its equivalent in terms of contact hours/ part time studies would qualify for incremental credit subject to the following conditions:*
 - (i) *The additional qualifications are obtained following an examination and duly recognized by the Mauritius Qualifications Authority or the Tertiary Education Commission;*
 - (ii) *Where different qualifications are laid down in a particular Scheme of Service, the highest one would be taken as the basic qualifications for the purpose of determining eligibility for incremental credit;*
 - (iii) *Only employees holding a substantive appointment would be considered for the grant of incremental credit for additional qualifications;*
 - (iv) *No incremental credit for additional qualifications would be granted to employees who have already benefited from incremental credit for the same qualifications in another capacity;*

There is nothing in paragraph 5.6 (above) which suggests that the maximum number of incremental credits which may be given to any particular employee for additional qualifications is one. Paragraph 5.6(b)(iv) tends to suggest a *contrario* that an employee may have more than one incremental credit. This would be more in line with principles of good employment relations, fairness, enterprise competitiveness, technological and enterprise innovation and reward for creativity, skill acquisition and productivity gains. It is apposite to note that section 52(b) of the Code of Practice (fourth schedule to the Act) provides that Management shall “*encourage workers to take advantage of relevant further education and training opportunities at all stages of their careers.*” If the intention was to give a maximum of one incremental credit, this should have been clearly laid down in paragraph 5.6 (above).

On the other hand, the Disputant has the burden to show that he qualifies for the incremental credit. He thus had to satisfy the Tribunal that he complied with all the criteria laid down under section 5.6 of Respondent's Terms and Conditions 2010. The Tribunal notes that the Respondent has specifically referred in his Statement of Reply (at paragraph 5(a)) to the criterion relating to the mode and duration of the course as set out in section 5.6(b) of Respondent's Terms and Conditions 2010. Indeed, to be considered for the purposes of incremental credit, the additional qualification must have been obtained as a result of studies of at least one academic year duration, full time or its equivalent in terms of contact hours/ part-time studies.

Disputant has merely averred in the fifth paragraph of his Statement of Case that:

“Paragraph 5.6 of the Terms and Conditions of employment, states that the course must be a full time course or equivalent as part time studies. The criterion is equally met by Mr. Maheswarnath Mohabeer who followed his course on a part time basis during a period of 18 months to top up and obtain the BSc (Hons) in Occupational Safety and Health Management degree (....)”

In re-examination, Disputant for the first time stated that he studied two years to have his BSc (in contradiction to his Statement of Case and Doc B). There is absolutely no evidence that the studies during a period of 18 months or so on a part-time basis (underlining is ours) were indeed equivalent to studies of at least one academic year duration on a full time basis. Also, the Disputant had to show that his qualification was obtained following an examination and duly recognized by the MQA or TEC. Before the Tribunal, Disputant confessed that he did not have any document showing that his BSc qualification was recognized by the TEC (as applicable in the present case). However, he alleged that all qualifications delivered by the UTM would be recognized by the MQA or the TEC. His averments fall short of satisfying the requirements as per section 5.6(b)(i) of Respondent’s Terms and Conditions 2010. This is the more so in this particular case where Disputant has averred that he followed a course on a part-time basis during a period of 18 months (only) to top up (underlining is ours) and obtain the BSc (Hons) in Occupational Safety and Health Management degree.

For all the reasons given above, the Tribunal finds that the Disputant has failed to show on a balance of probabilities that he fully met all the criteria laid down at section 5.6 of Respondent’s Terms and Conditions 2010. The Tribunal cannot award that Disputant should have been granted an incremental credit for his BSc qualification. The present dispute is thus set aside.

(sd) Indiren Sivaramen
Vice-President

(sd) Vijay Kumar Mohit
Member

(sd) Rabin Gungoo
Member

(sd) Georges Karl Louis
Member

20 April 2016