

# EMPLOYMENT RELATIONS TRIBUNAL

## AWARD

**Before:**

**Shameer Janhangeer**

**Vice-President**

**Ramprakash Ramkissen**

**Member**

**Triboohun Raj Gunnoo**

**Member**

**In the matter of: -**

**ERT/RN 35/2015**

**Mr Siva RAMASAWMY**

*Disputant*

**and**

**CENTRAL ELECTRICITY BOARD**

*Respondent*

The present matter has been referred to the Tribunal for arbitration by the Commission for Conciliation and Mediation in accordance with *section 69 (7)* of the *Employment Relations Act 2008*. The terms of reference of the dispute reads as follows:

*Whether the reduction of cost of living allowance 2014 by the CEB in favour of Mr S. Ramasawmy as from 1<sup>st</sup> July 2013 is justified.*

Both parties were assisted by Counsel. The Disputant was assisted by Mr A. Domaingue SC. Whereas the Respondent was assisted by Mr R. Chetty, SC. Both parties have submitted their respective statements of case in the present matter.

It should be noted that Mr Desire Yves Albert Luckey, who was sitting as the representative of the employer in the present matter, regrettably passed away on 23 January 2016. The hearing of the matter continued following his demise with the accord of the parties and their respective Counsel.

#### *THE DISPUTANT'S STATEMENT OF CASE*

Mr Siva Ramasawmy has averred that the statutory compensation under the *Additional Remuneration (2014) Act 2013* (the "Act") amounts to Rs 659 per month instead of Rs 359 per month. Prior to the application of the *Collective Agreement* dated 27<sup>th</sup> June 2014, his pension slip for the month of May 2014 included the item 'Compensation 2014' in the sum of Rs 659. Thereafter, following the implementation of the *Collective Agreement*, the aforesaid item has been replaced by the Item 'Compensation 2014 (Appana 2)' in the amount of Rs 359 which is Rs 300 less than the statutory amount. This is apparent from the pension slips for the months of July 2014, August 2014 and January 2015 annexed.

The Disputant made written representations by letter dated 19<sup>th</sup> August 2014 seeking clarifications from the Central Electricity Board (the "CEB") for this deduction. No reply has been received from the Respondent. The *Collective Agreement*, save for the compensation for the period 2009 to 2013, has not provided for any further deduction to the monthly pension or any adjustment to the 2014 Compensation. The Disputant therefore avers that his Compensation 2014 has been unpaid as from July 2014 to date which amounts to Rs 3,300.

#### *THE RESPONDENT'S STATEMENT OF CASE*

The Respondent has averred that Mr Siva Ramasawmy took early retirement as a Principal Personnel Officer from the CEB on 20<sup>th</sup> December 2003 following which he drew a monthly pension. He joined the CEB on 23<sup>rd</sup> November 1966. The letter dated 19<sup>th</sup> August 2014 from the Disputant was addressed to its former Chairman Mr Narroo and was never forwarded to nor copied to Management. The *Collective Agreement* was signed on 27<sup>th</sup> June 2014 between the CEB and the CEB Staff Association (the "CEBSA") and deemed to take effect as from 1<sup>st</sup> July 2013. It has catered for the revision of the monthly pension of CEB

pensioners for the period 1<sup>st</sup> July 2013 to 30<sup>th</sup> June 2017. *Paragraph 8.3* of same relates to the re-computation of retired employees.

It has been averred that the *Act* has provided for additional remuneration/statutory compensation payable as from 1<sup>st</sup> January 2014 based on the cumulative inflation for the period January 2013 to December 2013. *Paragraph 2.2* of the *Collective Agreement* deals with the implementation of the statutory compensation and adjusted the additional remuneration payable from January 2014 – Rs 150 per month for monthly wages of up to Rs 8,100; and 1.85 % rounded to the next rupee for monthly wages above Rs 8,100 up to 20,000. The CEB cannot effect double payment; i.e. the increase in pension for the period 1<sup>st</sup> January 2013 to 30<sup>th</sup> June 2013 and at the same time effect payment of the 2014 statutory compensation, which includes inflation for the aforesaid period. The Respondent has adjusted the 2014 statutory compensation to a revised compensation equivalent to 50% of the statutory compensation.

#### *THE EVIDENCE OF WITNESSES*

Mr Siva Ramasawmy, retired Assistant Human Resource Officer, affirmed as to the correctness of his statement of case and to the annexures attached thereto. Referring to his payslip 2014/15 Annex B to this statement of case, he was paid Rs 659 as compensation for the year 2014 for the month of May 2014. This is the amount that is due to him under the *Act* as from 1<sup>st</sup> January 2014. This amount was paid to him from January to May 2014. In his payslips attached as Annex C, C<sub>1</sub> and C<sub>2</sub>, the compensation paid have been in the amount of Rs 320 and Rs 359. He referred to *paragraphs 2.2* and *8.3* of the *Collective Agreement* between the CEB and the CEBSA, stating that the former paragraph applies to serving employees exclusively. Mr Ramasawmy is therefore seeking an award from the Tribunal to the effect that the CEB has wrongly deducted various sums of money as from June 2014 to date. His monthly compensation should have remained at the level of Rs 659. He has been pensioned off since 2003. The Disputant also produced a copy of the *Collective Agreement* signed on 27<sup>th</sup> June 2014 (Document A).

In response to questions from Counsel for the Respondent, Mr Ramasawmy notably stated that his claim relates to the cost of living allowance item. He agreed that according to the *Collective Agreement*, he has been paid compensation covering the period 1<sup>st</sup> July 2009 to 30<sup>th</sup> June 2013, an increase of 17 % effective as from July 2013 less compensation for the period 2009 to 2013 already paid.

Mr Goranah Asiriah, Officer-in-Charge of the HR Department at the CEB, deposed on behalf of the Respondent. According to him, the CEB has applied the law and the provisions of the *Collective Agreement*. He also explained the application of *paragraph 8.3* of the *Collective Agreement*. There are *Collective Agreements* every 4 years at the CEB and every year (what is provided for in) the *Act* is paid to both employees and pensioners.

Mr Asiriah, upon questions from Counsel for the Disputant, notably stated that the sum of Rs 659 as being the Disputant's additional remuneration for 2014 was rightly calculated and applied. This amount was paid from the months of January 2014 to May 2014. The reduction of the compensation as per the payslip of July 2014 to Rs 320 is an updating of the pension as the *Collective Agreement* was implemented and the 17% increase paid. The reduction occurred as from July 2014. The back pay of 17% pension increase in the amount of Rs 18,909 in Annex C<sub>1</sub> represents the difference in the revised pension as compared with his previous pension paid for the period July 2013 to June 2014. The reduction in the compensation was pursuant to *paragraph 2.2* of the *Collective Agreement* and in line with the *Act*.

Mr Dharmalingum Veeragoo, former HR Manager at the CEB, also deposed on behalf of the Respondent. He explained that the CEB agreed to compensate the pensioners for their loss of purchasing power for the period July 2009 to June 2013. Cumulative inflation was calculated at 16.4% and the CEB agreed to pay an increase of 17% effective 1<sup>st</sup> July 2013 less compensation already paid. The aim was to compensate them for the loss of purchasing power and if they were already compensated they would be paid the balance.

Mr Veeragoo went on to explain the reduction of the compensation noted from the payslips of May 2014 and July 2014 in stating that as from January 2014, the collective agreement was not yet signed and not implemented. However, the *Act* was implemented in the meantime and the Disputant was paid Rs 659. When the *Collective Agreement* was signed on 27 June 2014, the 17% increase payable was for the period July 2009 to June 2013, which includes the period January (2013) to June 2013. An adjustment was made and when the back-pay was computed, what had already been overpaid from January 2014 to June 2014 was deducted. He also explained that the figure Rs 18,909 in the July 2014 payslip represents the 17% increase less normal compensation already paid for the 4 years (July 2009 to June 2013) less the compensation overpaid since January 2014 to June 2014. The normal increase as from July 2014 is Rs 320. The difference was paid as they have not been compensated as from July (2013).

Mr Veeragoo also stated that as per advice from the *Mauritius Employers Federation (MEF)*, the *Act* also applies to pensioners and the witness produced an *Information Note* from the *MEF* on same (Document B). He also produced the chapter on '*Public Service Pension*' from the Pay Research Bureau Report 2008 (Document C). Mr Veeragoo also added that if the interpretation of the Disputant were to be adopted, it will have a serious impact on the payment of pensions to all CEB pensioners.

Upon questions from Counsel for the Disputant, Mr Veeragoo stated that *Paragraph 2.2* of the *Collective Agreement* applies to serving employees and not to pensioners. The '*increment due to officers*' mentioned therein was paid to serving officers and not to pensioners. A pensioner would not have been entitled to any 17% increase under *Paragraph 2.2* had it not been for *Paragraph 8.3* of the *Collective Agreement*. The cut-off date under *Paragraph 8.3* would be 30<sup>th</sup> of June 2013. The 17% increase paid is under the *Collective Agreement* and not by law. Therefore, no increase in wages or salary or pension was paid to Mr Ramasawmy from 1<sup>st</sup> July to 31<sup>st</sup> December 2013.

Mr Veeragoo also stated that he would provide a computation of the figure. He thereafter produced a document titled '*Explanation of the Payment of monthly pension effected to Mr Siva Ramasawmy*' worked by himself on behalf of the CEB (Document D). A table worked out by him titled '*Pension paid in June 2013*' to Mr Ramasawmy was produced (Document E). He also produced two documents titled '*Pension backpay paid in July 2014*' and '*Central Electricity Board, August 2014 Adjustment*' (Documents F and G).

On being further questioned by Counsel for the Disputant, Mr Veeragoo notably stated that he has to implement the *Collective Agreement* and the provisions of the *Act* which came into effect on 1<sup>st</sup> January 2014. The *Collective Agreement* provides that the pension has to be increased as from 1<sup>st</sup> July 2013. The pension had not yet been increased as at December 2013. The implementation of the increase due as from 1<sup>st</sup> July 2013 would be paid as from July 2014. The sum of Rs 20,943 in the underpayment representing 12 months plus end of year bonus back-pay.

The Disputant's new pension after the 17 % increase is Rs 17,795 + Rs 1,611 +Rs 320 which is Rs 19,726.30. The pension has increased retrospectively with effect 1<sup>st</sup> July 2013 by Rs 1,611 to Rs 19,406 and as from January (2014) with the new revised compensation of Rs 320. In January 2014, he was overpaid Rs 659, but should have been paid Rs 320. The amount overpaid was recouped from the CEB by deduction from his back-pay of Rs 20,943.

Mr Veeragoo could not confirm if the Disputant was written to with regards to the excess payment made. He does not agree that deduction was wrongly made. The deduction was made pursuant to the *Act, section 3 (3) (b)* with Rs 320 representing the difference. The *Collective Agreement* was not yet signed so they paid Rs 659 as decreed by the Government. Upon signing the *Collective Agreement* on 27<sup>th</sup> June 2014, they had to recoup the part of the compensation overpaid. The *Collective Agreement* compensates for inflation for the period up to June 2013 which included half of the year in question.

Mr Veeragoo also stated that he did pay for the period 1<sup>st</sup> July 2013 to 31<sup>st</sup> December 2013 an increase in salary under the *Collective Agreement* and not from 1<sup>st</sup> January 2013 to 31<sup>st</sup> December 2013.

#### *THE SUBMISSIONS OF COUNSEL*

Learned Senior Counsel for the Disputant has, in law, submitted that the present matter does not come within the case provided by *section 3 (3)* of the *Act*. The CEB would only be justified in paying the difference if the collective agreement had provided for an increase from 1<sup>st</sup> January to the 31<sup>st</sup> December and would not be justified in seeking to pay the difference if the collective agreement provides for an increase from 1<sup>st</sup> July to 31<sup>st</sup> December. The provision would not apply.

Mr A. Domaingue SC therefore went on to submit that the deduction was contrary to *section 3 (3) (b)* of the *Act* and that there has been no compliance with *section 3 (1)* as the payment as per the *Collective Agreement* was not made in respect of the 'abovementioned period' as provided by the statute. The *Collective Agreement* did not come within the intendment of the legislator regarding the specified abovementioned period.

Learned Senior Counsel for the Respondent has on his part relied on *section 3 (3)* and *Part I* of the *Schedule* of the *Act*. He referred to a letter dated 19<sup>th</sup> August 2014 from the Disputant to the Chairman of the CEB in submitting that the *Collective Agreement* needs to be interpreted. The *Collective Agreement* was not in force until 1<sup>st</sup> July 2014 and is deemed to take effect as from 1<sup>st</sup> July 2013. It was his submission that the CEB has complied with the agreement and with the law.

On the matter of the application of *section 3 (3)* of the *Act*, Mr R. Chetty SC submitted that what the employer has paid is for the period July 2013 to December 2013 and not for the whole year of 2014. Once the *Collective Agreement* is signed, it is deemed to take effect from July 2013 and covers the period January to June 2014 as per *paragraph 8.3*. He did agree however that at a superficial level the period is not the same as has been stated in *section 3 (3)* of the *Act*. However, the deeming provision is very important and goes back to July 2013.

#### *THE MERITS OF THE DISPUTE*

The Tribunal, in the present matter, is being asked to enquire as to whether the CEB is justified in having reduced the cost of living allowance 2014 as from 1<sup>st</sup> July 2013 in favour of the Disputant.

The Disputant, a pensioner at the CEB, draws a pension in the sum of Rs 17,795.30 which included compensation for the years 2004 to 2013 paid pursuant to various *Additional Remuneration Acts* for the corresponding periods.

As per the *Act*, the Disputant was due to be paid a 3.7 % increase on his pension which would amount to Rs 659 as from 1<sup>st</sup> January 2014. He was so paid this increase as from January 2014. However in July 2014, the increase was revised to Rs 320. As per his emoluments of August 2014 and January 2015, the Disputant was paid the amount of Rs 359 as compensation for the year 2014.

On 27<sup>th</sup> June 2014, the CEB and the CEBSA entered into a *Collective Agreement* whereby it has notably been provided that there would be an increase the monthly pension of its pensioners:

#### **8.3 Re-computation of monthly Pension of retired employees**

*The monthly pension of CEB pensioners on the payroll as at 30<sup>th</sup> June 2013 shall be revised with effect from 01<sup>st</sup> July 2013 to compensate for the cumulative inflation during the period 01<sup>st</sup> July 2009 to 30<sup>th</sup> June 2013. Consequently, the pension obtainable by the pensioner on 30<sup>th</sup> June 2013 shall be increased by 17*

*% representing the cumulative inflation, less compensation paid over the period 2009 to 2013.*

With the application of the revision as from 1<sup>st</sup> July 2013, the Disputant was given a back-pay in July 2014 relating to *paragraph 8.3* above in the sum of Rs 18,909 as well as a pension increase in the sum of Rs 1,611. The former amount representing the retrospective application of the *Collective Agreement* as from 1<sup>st</sup> July 2013 to 30<sup>th</sup> June 2014 less the statutory compensation adjusted to Rs 339 per month for the period January 2014 to June 2014. The total of the 17% increase on the Disputant's pension would be Rs 3,026 which includes Rs 1,415 representing the statutory compensation from 2009 to 2013.

It has not been disputed that the monthly pension increase pursuant to *paragraph 8.3* of the *Collective Agreement* amounts to Rs 1,611. However, it must be borne in mind that this sum represents an increase covering the period 01<sup>st</sup> July 2009 to 30<sup>th</sup> June 2013 adjusted for the statutory compensation already paid for the period 2009 to 2013.

It may clearly be seen that the given period of the pension increase would overlap for a period of 6 months from 1<sup>st</sup> January 2013 to the 30<sup>th</sup> June 2013 with the statutory compensation payable under the *Act*.

It would be apposite to note that the obligation of an employer to pay for a wage increase to its employees, which also includes a person who has worked under a contract of service, is as per *section 3 (1)* of the *Act*:

**3. *Payment of additional remuneration***

*(1) Subject to subsections (4) and (5) and to section 9, every employer shall, as from the appointed date, pay to every employee in his employment, in addition to the actual wage or salary earned by the employee, the additional remuneration.*

The CEB is relying on the provisions of the *Act* to justify the reduction in the cost of living allowance 2014. *Section 3 (3)* of the said *Act* reads as follows:



### 3. **Payment of additional remuneration**

(3) *Where an employer has paid during the period 1 January 2013 to 31 December 2013 an increase in wage or salary –*

- (a) *otherwise than –*
  - (i) *by virtue of the Additional Remuneration (2013) Act 2012; or*
  - (ii) *by way of an increment or increase on promotion; or*
- (b) *pursuant to a collective agreement or an award of the Employment Relations Tribunal,*

*and such increase was agreed upon by the employee, in writing, or specified in the collective agreement or award, as being an increase in wage or salary designed specifically to compensate the employee for an increase in the cost of living in respect of the above-mentioned period, there shall be sufficient compliance with subsection (1), in case such increase is less than the additional remuneration specified in subsection (1), if the employer pays the difference.*

(The underlining is ours)

A close reading of the above *sub section* requires that the increase agreed upon to have been '*specified in the collective agreement*' as '*as being an increase in wage or salary designed specifically to compensate the employee for an increase in the cost of living in respect of the above-mentioned period*'. The above mentioned period being 1<sup>st</sup> January 2013 to 31<sup>st</sup> December 2013.

Is there any such clause pertaining to the *Collective Agreement* where it is specified that the increase in wages or salaries is designed to '*compensate the employee for an increase in the cost of living in respect of the above-mentioned period*'?

A perusal of the *Collective Agreement* reveals that *paragraph 2.2* provides that the '*statutory compensation effective as from 1<sup>st</sup> January 2014 shall cover the period 1<sup>st</sup> July 2013 to 31<sup>st</sup> December 2013*'. In this context it would be useful to consider the whole of this particular clause of the *Collective Agreement*:

- 2.2 *As the increment due to officers for the year 2013 has already been paid, conversion to the revised salaries should be as per the Conversion Table.*

*Furthermore, as the rise in the cost of living for the period 1<sup>st</sup> July 2009 to 30<sup>th</sup> June 2013 estimated as 16.4 % has already been considered in arriving at the salary recommended, the statutory compensation effective as from 1<sup>st</sup> January 2014 shall cover the period 1<sup>st</sup> July 2013 to 31<sup>st</sup> December 2013.*

Although, Mr G. Asirah stated that the reduction in compensation was pursuant to *paragraph 2.2* of the *Collective Agreement*, it should be noted that Mr D. Veeragoo, who was also called on behalf of the CEB, stated that the aforesaid paragraph applies to serving employees and not to pensioners. The CEB, in its statement of case, has averred that the aforesaid paragraph deals with the implementation of the recommendations contained in the *Collective Agreement*.

It is clear that a close reading of the aforesaid *paragraph* does not lend to the interpretation that the increase in wages or salaries provided by the *Collective Agreement* is designed to '*compensate the employee for an increase in the cost of living*' for the period 1<sup>st</sup> January 2013 to 31<sup>st</sup> December 2013. Although, the salary increase provided therein partly covers the given period, i.e. from 1<sup>st</sup> January 2013 to 30<sup>th</sup> June 2013, it has deemed the 2014 statutory compensation to cover the latter half of the year.

Nor is *paragraph 8.3* of the *Collective Agreement*, which has revised the Disputant's monthly pension as from 1<sup>st</sup> July 2013 with the aim of compensating for cumulative inflation for the period 1<sup>st</sup> July 2009 to 30<sup>th</sup> of June 2013 taking into account compensation already paid over the period 2009 to 2013.

Although the *Collective Agreement* has provided for an increase covering half of the year 2014, it also cannot be said that the employer has paid the salary increase during the year for the period 1<sup>st</sup> January 2013 to 31<sup>st</sup> December 2013. The *Collective Agreement* was effective following its signature on 27<sup>th</sup> June 2014 and thereafter applied to the specific period it intended to cover.

The *Collective Agreement* has also provided as follows in relation to the statutory compensations payable:

- 1.1 *A New Salary Structure applicable to the revised classification of posts shall be implemented as from 01 July 2013.*

- 1.2 *As all statutory compensations (costs of living allowances) payable since the last review including the one effective from January 2013 have been incorporated in the recommended salaries and taken into account in working out the conversation, they shall not be paid additionally, over and above the converted salaries.*

The abovementioned clauses of the *Collective Agreement* are not applicable to the present matter, the Disputant being a pensioner whose increase in monthly pension under the *Collective Agreement* is pursuant to *paragraph 8.3* above. The clause pertains more to the new salary structure resulting from the converted salaries. It may be noted that this particular clause has not been invoked by either party to the dispute.

It would, in the present matter, be in order to adopt a common sense approach to the dispute at hand. It cannot be conceived that the legislator would intend that the employer should overpay or re-pay the statutory compensation where payment has already been effected in respect of a certain time period of the compensation year and has adjusted the compensation figure paid accordingly.

In this context, it would be pertinent to note what has been stated by *F A R Bennion* in *Bennion on Statutory Interpretation, 5<sup>th</sup> ed., p.868-7* on the matter of time factors in statutes:

*Time factors As with all enactments, expressions relating to time are to be construed with common sense. So a strictly literal meaning will not be applied if the purpose of the enactment requires otherwise.*

The increase provided for pensioners on the payroll as at 30<sup>th</sup> June 2013 as per the *Collective Agreement* applies to the period 1<sup>st</sup> July 2009 to 30<sup>th</sup> June 2013, the CEB would therefore be under an obligation to pay the whole amount of the compensation, applicable as from 1<sup>st</sup> January 2014, as from the expiry of this period, i.e. 30<sup>th</sup> June 2013. It may also be noted that for the six overlapping months, the CEB has paid an adjusted figure of about Rs 300 less than the statutory compensation.

Although, as per *paragraph 2.2*, the Disputant does not fall within the recommended salary being a pensioner of the CEB, the *Collective Agreement* has therein recognised that the effective statutory compensation for the year 2013 would cover the second half of the

aforesaid year. It is understandable – given that the *Collective Agreement* which was signed on 27<sup>th</sup> June 2014 is applicable as from 1<sup>st</sup> July 2013 – that it would not have been possible for the CEB to have adjusted the statutory compensation due to the Disputant for the year as from January 2014, but has instead made the adjustment as from July 2014.

In the circumstances, the adjustment to the statutory compensation should only be made to be applicable for the six overlapping months representing the period 1<sup>st</sup> January 2014 to 30<sup>th</sup> June 2014 and not for any period thereafter.

The Tribunal can only therefore find that the reduction effected to the Disputant's 2013 statutory compensation, i.e. the cost of living allowance payable in 2014, as from the applicable period of 1<sup>st</sup> July 2013 is not justified.

The Tribunal therefore awards accordingly.

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**(sd) Shameer Janhangeer**  
**(Vice-President)**

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**(sd) Ramprakash Ramkissen**  
**(Member)**

.....  
**(sd) Triboohun Raj Gunnoo**  
**(Member)**

**Date: 28<sup>th</sup> April 2016**

