

EMPLOYMENT RELATIONS TRIBUNAL

AWARD

Before:

Shameer Janhangeer

Vice-President

Sounarian Ramana

Member

Renganaden Veeramootoo

Member

In the matter of: -

ERT/RN/ 48/2015

Mr Paul Jean-Francois Guimbeau

Disputant

and

Medine Limited

Respondent

The present matter has been referred to the Tribunal pursuant of *section 69 (7)* of the *Employment Relations Act* by the *Commission for Conciliation and Mediation* (the "CCM"). The terms of reference of the dispute read as follows:

Whether I should have been promoted to the post of Assistant Garage Manager as from the 1st January 2014 up to the date of my dismissal, that is the 27th of April 2015 and be granted the benefits attached to the post since the core duties performed by the then Assistant Garage Manager, Mr Jean-Claude Lebon had been reallocated to me or be paid an allowance in lieu thereof for the additional duties which had been reallocated to me during that period, or otherwise.

Both parties were assisted by Counsel. Each party has submitted its respective statement of case in the present matter.

It should be noted that Mr Albert Desire Luckey, a member of the Tribunal hearing this matter, regrettably passed away on 23 January 2016. The hearing of the matter proceeded following his passing with the accord of the parties.

THE DISPUTANT'S STATEMENT OF CASE

The Disputant joined Medine Limited as an *Administrative Officer* since 18 February 2008. On 1 January 2013, he was promoted to *Administration – Co-ordinator* reporting in a direct line to the *Technical / Garage Manager* following a restructuration within the Medine Agricultural Cluster. His duties in his new post were among others to assist the *Head of Department* for follow-up of budget / revenues / recharge issues for *Garage and Irrigation Departments*. He avers that he performed all his duties with due care and to the best of his abilities.

In late March 2013, he was requested to perform extra duties by the *Technical / Garage Manager* which consisted of among others budget preparation, service charge implementation of the budget, accountancy adjustments and internal auditing. These duties were normally performed by the former *Assistant Garage Manager*, who had retired. It is averred that the former *Assistant Garage Manager* did delegate the aforesaid duties and taught the Disputant the principles of doing same. The Respondent informed and promised the Disputant that he will be promoted to the post of *Assistant Garage Manager* on several occasions. The Disputant was solely responsible for the performance of the managerial duties which he did competently improving garage procedures and management approach.

The Disputant, being a member of the *Sugar Industry Staff Employees Association* (the “SISEA”), made a complaint to management in relation to additional duties imposed on employees using the Performance Appraisal / Reward System.

The Disputant made a request for promotion in or about October 2014 after the other *Senior Assistant Garage Manager* informed management that he is leaving his post. This was refused and Disputant was informed that he should not expect any other promotion. He was also informed that his duties will be performed and relocated to other employees. He put in a formal request for promotion on 29 October 2014 to which he received an unfavourable reply at the end of January 2015. At the same time he was involved in negotiations for a new collective agreement in respect of the Performance Appraisal / Reward System.

The Disputant reported the present dispute before the CCM on 6 March 2015. Being subject to victimization, he also reported a complaint to the Rose Hill Labour Office. He was suspended from work on 7 April 2015 and thereafter dismissed for gross misconduct on 27 April 2015.

THE RESPONDENT’S STATEMENT OF CASE

Medine Limited has acknowledged that the Disputant was promoted to *Administration – Co-ordinator* with new responsibilities having principal accountability providing ‘*Regular input of Garage T&M for tractors, accessories and heavy machinery; follow up with colleagues in garage to ensure that proper codes are being given*’ as per the job description of the post annexed. It is denied that the Disputant was asked to perform extra duties by the *Technical / Garage Manager*, however he was expected to perform the duties ascribed to him following his promotion. Budgeting accounts for only 4 per cent of

the *Assistant Garage Manager's* duties. The retired *Assistant Garage Manager* attended the office occasionally to ensure a smooth transition. At no point in time was there any delegation of the *Assistant Garage Manager's* duties to the Disputant. It is denied that the Disputant was taught the principles of the aforesaid duties. However, the retired *Assistant Garage Manager* did show the Disputant how to do the necessary input in the table detailing the salaries, bonus, leave and allowances of employees on Microsoft Excel so as to facilitate the Disputant's job with regard to budgeting.

The Respondent admits that the Disputant performed his duties to its satisfaction. However, prior to his promotion the Disputant was encouraged to maintain his willingness to perform and learn new thing to innovate in his workplace. It is strongly denied that any sort of promotion was made to the Disputant at any time whatsoever. Being employed as an administrative staff, no managerial duties could have been ascribed to the Disputant. The preparation of the budget is collective requiring the contribution of the *Garage Manager*; the *Assistant Garage Manager*; the *Mechanisation Manager*; the *Workshop Supervisor*; and the *Account Clerks*.

The Respondent denies that he was given any legitimate expectation to be appointed as *Assistant Garage Manager* inasmuch as several jobs were made redundant following restructuring and outsourcing of activities; the abolition of the post of *Assistant Garage Manager*; no vacancy for aforesaid post was ever internally or publicly advertised; the Disputant cannot, in any case, benefit from an automatic promotion to a managerial post from an administrative post.

The Disputant's request for promotion was refused following his meeting with management. The post of *Assistant Garage Manager* was abolished and its responsibilities were shared among the staff of the *Garage Department*. Despite the letter sent by the Disputant for promotion, the Respondent is under no obligation to consider same.

Regarding the Disputant's role with the *SISEA* in being dissatisfied with the Performance Appraisal / Reward System, the Respondent has averred that the Disputant is not in a position to question the Respondent's integrity towards negotiating with the *SISEA* simply because the Respondent refused to promote the Disputant. It is denied that management changed their attitude towards the Disputant following the report of the present dispute.

ANSWER TO PARTICULARS / DISCLOSURE OF DOCUMENTS BY THE RESPONDENT

The Respondent confirmed that prior to May 2012, there were two *Assistant Garage Managers* employed at Medine Limited. The Disputant was also communicated with a table of the Labour Budget 2014; the job profiles of the *Garage Manager*, the *Assistant Garage Manager*, the *Mechanisation Manager*, the *Workshop Supervisor* and the *Accounts Clerk*. No document was available in respect of the Respondent's policies, rules or guidelines in respect of its promotion exercise. Three employees shared the duties of the former *Assistant Garage Manager*, namely the *Garage Manager*, the *Garage Officer (Workshop Supervisor)* and *Garage Administrative Officer*.

DISPUTANT'S REPLY TO THE STATEMENT OF CASE

The Disputant has further averred that the duties mentioned (at paragraph 5 of the Respondent SOC) ceased to be his responsibility since 1 January 2013 and were allocated to the *Administrative / Payroll Officer* of the *Garage Department*. Following a request, he was paid arrears for extra duties and responsibilities performed between June 2012 to October 2012. He does not agree that there was no delegation was made to him of the duties of the *Assistant Garage Manager*. However, he did receive the Microsoft software file from the

Assistant Garage Manager despite denying that he was taught how to do the necessary input.

In denying that he was never asked to perform extra duties, it has been averred that the one *Assistant Garage Manager* in post in 2014 specialised in sugar cane mechanical harvest and was never closely involved / associated in core budget duties. The *Assistant Garage Manager* responsible for core budget duties has left employment. He applied for the vacancy of *Harvesting Assistant Garage Manager* beginning March 2013 by way of an email to the *HR Manager*. Following his application, he was assigned extra duties and informed on several occasions that he would be promoted anew. He maintained that his involvement with the *SISEA* lead to a change in attitude from the Respondent and eventually to his suspension and dismissal.

The Disputant's request for promotion is distinct from the proper functioning of the Performance Appraisal System and that the former issue was not canvassed during the negotiating process for a new agreement. He maintained that abusive tactics were used against him during working hours in particular the *Technical Garage Manager* and amongst others the Performance Appraisal Exercise. He was promised two options by the *Technical Garage Manager*, namely to be automatically promoted to as *Budgeting Assistant Garage Manager*; automatically promoted to *Assistant Garage Manager*, with the core duties of *Budgeting Assistant Garage Manager* and *Harvesting Assistant Garage Manager*. An interesting package was also promised upon the departure of the *Harvesting Assistant Garage Manager*.

THE EVIDENCE OF THE WITNESSES

Mr Paul Jean-Francois Guimbeau was employed with Medine Limited since 2008, first as an *Administrative Officer*, contract of which he produced (Document A). His core

duties as *Administrative Officer* were to do the payroll for the *Department of Construction and Irrigation* with administrative duties annexed thereto. He was promoted to *Administration – Co-ordinator* on 1 January 2013 in a direct reporting line to the *Technical Garage Manager*, Mr Hughes Charoux. He produced a contract of employment dated November 2012 with the scheme of duties attached thereto (Document B). His job description as *Administration – Co-ordinator* was to ‘assist HOD for follow up of budget/revenues/expenses/recharge issues for Garage & Irrigation departments.’ The job was confined to querying and reporting budget items, only for assistance in the mere follow up.

The Disputant went on to explain that there were two *Assistant Garage Managers* in the *Garage Department* at Medine Limited – the *Budgeting Assistant Garage Manager* and *Harvesting Assistant Garage Manager*. The former retired in 2012 and the latter remained in the company until 31 December 2014. The *Garage Manager* started to assign him extra duties of the *Budgeting Assistant Garage Manager* Mr Jean Claude Lebon in late March 2013, who came in on specified days to teach him the core duties. These duties involved the budget preparation of more than Rs 100 million, the service charge implementation which meant spreading and balancing the budget for the whole year. He did not agree with the job description of *Assistant Garage Manager* annexed to the Disclosure of Documents submitted by the Respondent. He did not also agree to the content of the job description of the *Harvesting Assistant Garage Manager*.

Mr Guimbeau applied for a vacancy for the post of *Harvesting Assistant Garage Manager* when advertised in March 2013. He produced a copy of the job vacancy as well as his application for the said post (Documents C and D respectively). He was informed, a week after his application, by the *Technical Garage Manager* that the advertisement for the job was cancelled and that he would be given two options to take all the core duties of the *Budgeting Assistant Garage Manager* and he would be promoted forthwith to the job; or else he has to wait for the departure of the *Harvesting Assistant Garage Manager*, being asked to shoulder the core duties of both posts following which he would then be given the

title of *Assistant Garage Manager*. On 1 January (2013), he was promoted for a mere follow up to the post of *Administration – Co-ordinator*. The Disputant was carrying out the core duties of the *Budgeting Assistant Garage Manager*, whose duties were being performed by the *Harvesting Assistant Garage Manager* prior to his departure. The Disputant was promised to be given the core duties of the latter, a good promotion and a good recognition at his departure.

The Disputant made a formal request to be promoted as *Assistant Garage Manager* in a letter dated 29 October 2014. He received a reply dated 11 November 2014 from Mr Lennon acknowledging receipt of his letter. He sent a reminder on 13 December 2014 and another on 17 January 2015. He received an undated letter end of January or beginning February by post wherein he was informed that the job was revamped and that the request could not be considered. He produced a copy of the correspondences (Documents E, E₁ to E₄).

As a representative of the *SISEA*, the Disputant made a complaint to management and produced a memorandum on the Performance Appraisal System (Document F). He believes that because of his individual dispute and the collective dispute, he was dismissed from the company. He also produced a copy of a reply from management (Document G). He also produced his letter of suspension from the Respondent as well as the letter of dismissal (Documents H and J).

The Disputant also stated that the budgeting duties he performed for the sub-department which was a tenth of the budget. As from later March 2013, the extra duties he performed were the core budget preparation. He was assigned the extra duties by the *Technical Garage Manager* after the cancellation of the vacancy for the post of *Assistant Garage Manager*. He was also doing the service charge implementation, the accountancy adjustment and the internal auditing for the *Garage Department* as the extra duties assigned to him. He did not agree that the duties of the former *Assistant Garage Manager*

were being carried out by the *Garage Manager*, the *Garage Officer* and the *Garage Administrative Officer*. He was solely responsible for the core duties and the *Technical Garage Manager* even told him '*Tu est Jean Claude*' referring to the former *Budget Assistant Garage Manager*. He understood that it became his sole duty and as from 1 July 2014, he was the solely responsible for the core duties for which he was called for from another department. However, there is nothing in writing in relation to the assignment of the additional duties although the job description does state assist for follow up.

Mr Guimbeau also produced a letter addressed to the President and Members of the *CCM* (Document K). He also went onto describe how he was promoted in 2013. He sent an email to the *Technical Garage Manager* who is also the *Manager* of the *Construction and Irrigation Department* giving him all the duties for which he was not paid. He was given Rs 2,000 as increment and arrears of Rs 10,000. The *Technical Garage Manager* took the opportunity to tell him to add '*assist the HOD for a mere follow up*' and this is why he was paid Rs 5,000 as from 01 January 2013. He produced to emails dated 22 October 2012 and 20 October 2012 sent to Mr Charoux (Document L) as proof of that the person has to ask for his promotion.

Mr Kevin Lennon, former Human Resources Manager at Medine Ltd, was called to adduce evidence on behalf of the Respondent. He stated that the Disputant started off as an *Administrative Officer* and was promoted to the post of *Administration – Co-ordinator* in January 2013 following a restructuration exercise at the company and its *Garage Department*. His new job gave him specific tasks related to garage activities. At the same time, the *Voluntary Retirement Scheme* (the "*VRS*") was being applied entailing a reduction of the number of employees. The *Garage Department* was reorganised. The *VRS* was meant to reduce costs, to re-examine the structure as the activities were not the same. A lot of the activities were outsourced and many of the employees were not needed.

Following the departure of the *Assistant Garage Manager*, Mr Lebon, the tasks performed by him were redistributed, to a certain Mr Guimbeau. These were specific tasks relating to the budget, administrative tasks formerly performed by Mr Lebon, follow up relating to expenses, entries into the system, expenses on vehicles, tractors, etc. which arrive at the Garage that had to be followed. The job performed by Mr Lebon has never been replaced. Following the *VRS* and the restructuration, there was no need for an *Assistant Garage Manager*. The idea was to restructure certain tasks that remained and which had to be done. Mr Guimbeau was given certain administrative tasks.

Mr Guimbeau received his letter of promotion and signed to the new job description wherein it was clearly specified what he was expected to do. He received a salary paid according to the additional functions he had to perform. Mr Guimbeau was never promised the post of *Assistant Garage Manager*. Following a letter from Mr Guimbeau in 2014, there was a meeting between the former, Mr Charoux and himself whereby he stated that the *Garage Department* was going to be restructured following the *VRS*, that the post (of *Assistant Garage Manager*) will no longer exist and there is no possibility of promoting Mr Guimbeau to the post. He did not agree that Mr Guimbeau performed additional tasks outside his scope of duty; he had a well-defined job description which stated what was expected of him for his tasks at the *Garage Department*.

As *HR Manager*, Mr Lennon recommends a promotion but does not authorise same; he does so in collaboration with a *Head of Department* and the decision is taken by the *Managing Director*. He wrote to Mr Guimbeau to tell him that they restructured, that the post does not exist and that it has been abolished. By revamped, he meant restructured. Two posts of *Assistant Garage Manager* were abolished following the *VRS* in 2012.

Upon questions by Counsel for the Disputant, Mr Lennon notably stated that in promoting Mr Guimbeau on 1 January 2013, he acceded to a request made in an email dated 22 October 2012 addressed to Mr Charoux (produced as Document L). The

qualifications needed for the post of *Assistant Garage Manager* would be at least a Diploma in Mechanics. He agreed that Mr Guimbeau has a Diploma and has 3 – 4 years' experience in the *Construction Department*. The Disputant made a request for promotion in writing via a letter dated 29 October 2014. Subsequently, the Disputant wrote in a letter dated 17 January 2015 stating that he is considering reporting a dispute to the *CCM*. The Disputant was told in the meeting on 10 October 2014 that the Department has been restructured, that post will no longer exist and they replied officially to his letters.

The post of *Assistant Garage Manager*, formally held by Mr Jean Noel Dominique, was internally advertised and was later retracted. He has always asked employees to perform correctly and if someone performs well, they have always encouraged the person. Mr Lebon came to do the handing over with Mr Guimbeau for certain specific tasks; namely, transport and management duties relating to the budget and follow-up of the budget. The *Assistant Garage Manager* was formerly the *Workshop and Garage Administrator*. He confirmed that figures entered in the job description of the *Workshop and Garage Administrator* were entered by the former *HR Manager*.

Mr Lennon went on to state that the job description states that the budget amounts to 4 per cent and this has not evolved. The budget aspect is the least important aspect of the post of *Assistant Garage Manager* held by Mr Lebon. He agreed that certain tasks are linked to the budget, i.e. calculating the hourly cost per employee, creating adequate statistical tables, operating closure of accounts, distributing reports to Departments, receiving invoices, controlling information and codes. On whether it is correct to state that the budget only amounts to 4 per cent, he stated that has not made the analysis but maintained that the budget is the least important part for section of the *Garage Manager*, who is not employed to prepare the budget.

There is the *Accounting / Finance Department* outside the garage which also does this work. What are being asked of the *Assistant Garage Manager* are simply basic things.

The *Finance Department* submits a template requesting information and there is collaboration between the Departments and Finance to submit certain information. Mr Guimbeau was suspended on 7 April 2015 before the labour dispute was heard before the CCM; however, the two issues are not linked at all.

Mr Lennon further stated that the work of the former *Assistant Garage Manager* was redistributed among the *Garage Officer*, maybe the *Mechanisation Manager*, the *Workshop Assistant* and colleagues of the *Garage Department*. Tasks such as the follow-up and maintenance of vehicles were outsourced to an external company. Half of the mechanical harvest was outsourced to external companies. The *Garage Manager* has to follow the organisation, structure and planning of the strategy of the enterprise in relation to its needs and manage the personnel. The responsibility for the budget rests with the *Garage Manager*. The Disputant provided certain information for the budget, but it would not be him who would submit the budget to accounting and finance. Mr Charoux has the duty to validate the input and assure. There are others who provide input in relation to the budget of the *Garage Department* and Mr Charoux has to consolidate the information in his role as *Manager*.

Mr Hughes Charoux, Technical Manager, was also called on behalf of the Respondent. He gave a picture of the working of the *Garage Department*. The department consists of three sub-departments, namely mechanization, workshop and harvesting. Each of these three sub-departments has a person responsible for the budget, for the labour, for the personnel and for the operations of the three sub-departments. Mr Guimbeau's input was to help administratively. He had to help in preparing the budget and there were queries made in relation to expenses, equipment and certain items. Mr Lebon was responsible for the *Workshop*.

With the restructuration, certain activities were outsourced, but Mr Lebon did most of the work of the *Workshop*, a bit of its administrative side and helped others in the *Garage* a bit. It would not be true to say that Mr Guimbeau was delegated all the duties of

Mr Lebon as it is Mr Canal, another employee, who looks after the *Workshop* and Mr Guimbeau was doing a bit of the budgeting side and a bit of the administrative side that Mr Lebon did at the *Garage*. Mr Guimbeau helped to input the figures for the payroll. There were other people involved in the preparation of the budget. Each *Head of Department* has to assure that his budget was correct. The preparation starts beginning of April and submitted around April / May. It must be submitted to the Management and Directors in mid-May. The build-up and gathering of figures starts as from April. A monthly follow-up must be done for the budget, the items, the different items of expenditure to see if it matches with what they have planned for.

Mr Charoux stated that the Disputant, as part of his duties, had to assist the *Head of Department*. He could not see what extra duties Mr Guimbeau could have been attributed which were already included in the post he occupied. He denied having told Mr Guimbeau that he had assume the role of Mr Lebon or having told him '*tu est Jean Claude*'. He never made any promise of promotion to Mr Guimbeau nor proposed that Mr Guimbeau would take over the post of Mr Lebon or the core duties of the two *Managers* and that he in turn would be *Manager*. It is not his job to promise promotions or increases to anyone. He may propose a promotion, but it is not him who decides.

Mr Charoux also stated that Mr Guimbeau's profile did not correspond to a *Budgeting or Harvesting Assistant Garage Manager*; to be a *Manager*, one must be able to manage a team, have a bit of leadership and have a certain attitude. One must need certain aptitudes to be administrative. As a *Manager*, the budgeting proper takes about a month and a half part time and there is a follow up to be done. It involves teamwork and everyone has to contribute as each have their proposals. Mr Lebon had other major responsibilities apart from the budget item. These major responsibilities were never given to Mr Guimbeau.

Mr Charoux, in response to questions from Counsel for the Disputant, notably stated that the Disputant was proposed to be promoted to the post of *Administrative – Co-*

ordinator in 2013. Mr Guimbeau had already undertaken certain tasks prior to his promotion as from 1 January 2013. He recalled that Mr Guimbeau had already made certain queries and helped a bit in the preparation of the budget. As per the contract of the Disputant, which stated '*assist HOD for follow-up of budget revenues expenses recharge issues for Garage and Irrigation departments*', the term '*follow-up*' consist of the budget preparation. The work previously undertaken by Mr Lebon relating to the budget was shared among himself and Mr Serge Canal, who is responsible for the *Workshop* and took over most of the work undertaken by the former.

On being apprised of the tasks performed by Mr Lebon as per the job description of the *Workshop and Garage Administrator*, which was the former title of the post of *Assistant Garage Manager*, Mr Charoux stated that Mr Serge Canal had taken over most of the task and is helped by himself and Mr Guimbeau to '*Gère le volet administratif*' and some other tasks were undertaken by Mr Gouges who is an administrator of the *Garage Department*. According to the job description of the Disputant, there were certain tasks which were performed by Mr Lebon. He confirmed that Mr Lebon used to come about once every two months to delegate tasks to Mr Guimbeau. The table filled in by Mr Guimbeau was based on figures obtained from queries. Mr Guimbeau had to assure, he did not insert all the figures; the major figures are inserted by the *Heads of Department* according to a formula.

Mr Charoux also stated that he is responsible for preparing the final budget. Mr Guimbeau is not responsible for the preparation of the budget, which is not his work, and helps in preparing the budget. Referring to the letter dated 29 October 2014 written to him, he stated that there are many exaggerations made therein; what Mr Guimbeau is referring to is made by the *Accounting Department* of Medine Limited. He was aware of the meeting on 10 October 2014. On 17 January 2015, Mr Guimbeau wrote anew stating that should he not receive any reply he would be going before the *CCM*. The company sent a reply; however, he agreed that it was not stated that Mr Guimbeau's letter is an exaggeration and that they do not agree with what was stated.

Mr Charoux went on to state that Mr Lebon, being responsible for the *Workshop*, prepared the budget and performed the tasks related thereto as per the job description of the *Workshop and Garage Administrator*. Mr Guimbeau did the follow-up to the budget revenues as from 2013. Only the item '*Effectuant divers relevés pour le comptable*' which falls under queries may fall under the budget, depending on the nature of the queries sought. The budget preparation amounts to 4%. The budget is a list of items which have to be budgeted to assure that the expenses correspond over a certain period of time. Mr Guimbeau does the payroll for the *Irrigation Department* and Mr Bouges does the same for the *Garage Department*.

Mr Charoux was aware that the Disputant is a member of the *SISEA* and that he made a complaint on working more than he earned. Referring to the application made by Mr Guimbeau to the post of *Assistant Harvesting Manager*, he stated that all the employees were aware of the restructuration and of the *VRS*. Following the restructuration, the activities of Mr Lebon were contracted out and were not replaced. He always encourages his co-workers to form themselves. He does not believe that Mr Guimbeau could have aspired to the post of *Assistant Garage Manager*, if it still existed.

THE MERITS OF THE DISPUTE

The present matter has been referred for the Tribunal to enquire into whether Mr Paul Jean-Francois Guimbeau should have been appointed to the post of *Assistant Garage Manager* during the period 1 January 2014 to 27 April 2015. The terms of reference is also asking for the benefits of the said post to be attached to the Disputant in as much as the core duties of the incumbent to the post had been reallocated to him. Alternatively, the terms of reference are asking as to whether Mr Guimbeau should be paid an allowance *in lieu* for the additional duties reallocated to him during the aforesaid period.

Mr Guimbeau joined Medine Limited as an *Administrative Officer* in the *Irrigation & Construction Department* where he was concerned with payroll duties pertaining to that department. In 2012 Mr Jean Claude Lebon, who held the post of *Budgeting Assistant Garage Manager*, retired from the company.

The Disputant was thereafter promoted to the post of *Administration – Co-ordinator* on 1 January 2013 where he reported directly to Mr H. Charoux, the *Technical / Garage Manager* in the *Irrigation & Construction Department*. Attached to his letter of appointment dated 19 November 2012 is a job description setting out the responsibilities of the post signed by the Disputant and Mr H. Charoux.

The Disputant's promotion to the post of *Administration – Co-ordinator* was made following a restructuration exercise at Medine Limited and its *Garage Department* in particular. This restructuration coincided with the application of the *VRS* which entailed a reduction in the number of employees working with the company. According to the then *Human Resource Manager* Mr Lennon, the post of *Assistant Garage Manager* held by Mr Lebon no longer existed as was expressed to the Disputant in a meeting on 10 October 2014 with Mr Charoux being present.

Mr Guimbeau has forcefully contended that since late March 2013, he was assigned extra duties formerly performed by Mr Lebon. These involved the budget preparation of more than a Rs 100 million and the service charge implementation. It has not been denied that Mr Lebon came in at the company on specified days although it has been not been agreed as to what duties he came to impart on the Disputant for.

Indeed, it is pertinent to note that Mr Guimbeau did write to the *Human Resources Manager* on 29 October 2014 reiterating his expectation to be appointed as *Assistant Garage Manager*. The relevant aspect of his letter states:

I was really motivated with that prospect and I have performed these duties to the best of my ability. I wish to draw your attention to the fact that I have passed the scope of mere follow-up for these duties since I have been doing the budget preparation, the service charge implementation, the accountancy adjustments and internal auditing amongst others. These core managerial duties that are normally assigned to an Assistant Garage Manager. In addition, there has been no adverse report on any of these duties.

As such, I have the legitimate expectation to be appointed in a substantive capacity to the post of Assistant Garage Manager.

Mr Guimbeau was eventually told, following a second reminder dated 17 January 2015, in an undated letter from the *Human Resources Manager* that:

... the post of Assistant Garage Manager, mentioned in the said letter, has been completely revamped, in order to be in alignment with the Garage activity's business model.

The duties and responsibilities related to the said post have been reallocated among the existing Garage staff following a departmental restructuring exercise.

In light of the above, we regret to inform you that your request cannot be considered.

Could it therefore be said whether Mr Guimbeau was performing the core duties of the former *Assistant Garage Manager* whilst working as *Administration – Co-ordinator* as from 1 January 2014; the core duties which he claims were reallocated to him.

The post of *Assistant Garage Manager* was previously styled as *Workshop & Garage Administrator*. As per the job description of the post, dated 1 December 2000, the main purpose of the job reads as follows:

Gérer les pièces de rechange pour assurer la maintenance et les réparations des véhicules routiers de la compagnie et être responsable du département camions/tracteurs pneumatiques.

The description of tasks as set out in the job description is grouped under 8 headings, namely:

- *Gere les commandes de pièces de rechange pour tous les véhicules routiers afin de prévenir et répondre aux besoin (40%);*
- *Gere l'allocation du travail aux ouvriers du département camions/tracteurs pneumatiques pour optimiser la performance (15%);*
- *Prépare le budget dépenses courantes du département (4%);*
- *Gere le volet administratif du garage et transport pour la bonne marche du département (40%);*
- *Gere la vente des véhicules de la compagnie;*
- *Prépare les devis pour les camions et tracteurs accidentés pour obtenir des assurances le financement des réparations ;*
- *Garde à jour les registres des moteurs refaits des camions et tracteurs pneumatiques ; and*
- *Gere les camions & tracteurs de remplacement.*

The percentage figures inserted therein indicate the percentage of time of the task. It may also be noted that these headings each regroup various sub tasks.

The Disputant having stated that the extra duties, which were formerly performed by Mr Lebon, he was performing involved the budget preparation, the service charge

implementation, the accountancy adjustment and the internal auditing. It would be essential to note whether this would fall under the duties he had signed up to in the job description for the post of *Administration – Co-ordinator*.

The letter of appointment to the post of *Administration – Co-ordinator* dated 19 November 2012 sets out the '*principal accountabilities*' of the post, the complete list of which reads as follows:

Operations

- *Assure security and safety standards.*
- *Process all payroll transactions for IRR & Construction employees on Cemis and follow-up with HR & Administrative Officer for any new / promoted / resigned / dismissed employee.*
- *Input of T & M transactions for IRR & Construction department.*
- *Optimisation of transport for workers to their site of work.*
- *Follow-up and input of rainfall data.*
- *Issuing store requisition and direct purchases for different jobs.*
- *Providing administrative solutions for billing issues.*
- *Regular Input of Garage T & M for tractors, accessories and heavy machinery. Follow-up with colleagues in garage to ensure that proper codes are being given.*
- *Reception of goods from suppliers (direct purchases) at any time of the day and issuing receipt and approval for vat invoices of the aforesaid goods. Resolving administrative problems for colleagues regarding return to suppliers.*
- *Back up IRR & Construction team in ordering goods.*
- *Creating new codes for the general repairs.*
- *Drawing reports from Cemis 'query generator' as per team's request.*
- *Act as liaison for any issues pertaining to the Quality circle 'Caramboles' and Medine Quality department.*
- *Responsible for organising transport of construction materials to various sites through lorry contractors.*
- *Proceedings to cash and cheque deposit for the department.*

- *Input and follow-up of water level records for reservoirs.*
- *Follow-up of water inflow records and calculation of mean for every canal.*
- *Rigorous control on the overtime transactions.*
- *Assist HOD for follow up of budget/revenues/expenses/recharge issues for Garage & Irrigation departments.*
- *Any cognate duties as and when required by your head of department.*

The Disputant has notably emphasized that one of his tasks as *Administration – Co-ordinator* was to assist the *Head of Department* for the follow-up of budget / revenues / expenses / recharge issues. He stated that this was confined to querying and reporting budget items; only for assistance in the mere follow-up. In fact, the Disputant has asserted that his promotion to the aforesaid post on 1 January 2013 was for a mere follow-up.

It would also be pertinent to consider the evidence of the *Technical / Garage Manager* whom the Disputant reported to at the *Irrigation & Construction Department* of Medine Limited and the *Human Resources Manager* Mr Lennon.

The *Human Resource Manager* has notably explained the context in which the Disputant was promoted to the post of *Administrator – Co-ordinator*. There was a restructuration exercise at the company whereby the *Garage Department* was being reorganised and the post of *Administrator – Co-ordinator* gave Mr Guimbeau specific tasks relating to the *Garage*. The departure of Mr Lebon into retirement in 2012 led to a redistribution of his tasks, with certain being given to Mr Guimbeau.

The *VRS* was also being applied at the same time at the company, according to Mr Lennon, and there was no need for an *Assistant Garage Manager*. Two posts of *Assistant Garage Manager* were abolished in 2012 following the *VRS*.

The *Technical / Garage Manager* Mr H. Charoux was the person to whom the Disputant reported to at the *Irrigation & Construction Department* at Medine Ltd. He did recognise that Mr Guimbeau was doing a bit of the budgeting and administrative sides formerly performed by Mr Lebon in the *Garage Department*.

Mr Charoux did however state, in explaining the preparation of the budget at his level, that there are other people involved in the budget. He pointed out that it was the Disputant's duty to assist the *Head of Department*, he could not see what extra duties were being performed by Mr Guimbeau which were not already included in his post. It is not disputed that Mr Charoux was that one responsible for the preparation of the final budget.

Both Messrs Lennon and Charoux were adamant that the budget preparation amounted to only 4 per cent of the work formally performed by Mr Lebon. Mr Charoux even stated that the budget takes a month and a half, with its preparation starting beginning of April to its submission to the Directors in mid-May. However, Mr Charoux did not discard the monthly follow-up of the figures that had to be done to ensure conformity of the expenses.

Moreover, it is important to note that as per the job description of the post of the *Workshop & Garage Administrator* dated 1 December 2000, the budgeting responsibilities performed by Mr Lebon were grouped under the heading '*Prépare le budget dépenses courantes du département*'. This notably involved the following sub-tasks:

- *Faisant des tableaux de rémunération par employé*
- *S'accordant avec le comptable sur les paramètres pour les projections*
- *Opérant ces projections*
- *Soumettant un rapport au Garage Manager*

- *Calculant des dépenses combustible, assurance, dépréciation, déclaration par véhicule*
- *Décidant avec le Garage Manager du budget réparation en fonction de l'usure, de l'état des véhicules*
- *Communiquant les renseignements dont les annexes et sections ont besoins*
- *Opérant les saisies de données appropriées.*

The post of *Administrator – Co-ordinator* held by Mr Guimbeau, on the other hand, comprises the task of *'Assist HOD for follow up of budget/revenues/expenses/recharge issues for Garage & Irrigation departments'* as well as *'Any cognate duties as and when required by your head of department'*.

Could this therefore be equated to the actual preparation of the budget pertaining to the *Garage Department* at Medine Limited? It must be noted that in his letter dated 29 October 2014, Mr Guimbeau stated that he was doing the budget preparation, the service charge implementation, the accountancy adjustments and internal auditing.

Although the Disputant has contended that the duties he was given were not within the ambit of his job description, it must be noted that he was very well aware that he had the task of assisting the head of the *Garage & Irrigation Department* in the *'follow up of budget/revenues/expenses/recharge issues'*. It cannot also be overlooked that the Disputant had to assist in related tasks being required to perform *'any cognate duties as and when required by your head of department'*.

Moreover, in this context it must be noted that the job purpose of the post of *Administrator – Co-ordinator* states as follows:

Act in support to the Technical/Garage Manager in any administrative tasks and payroll of employees pertaining to the IRR & Construction department.

The issue which would therefore remain is whether the assumed extra work performed by Mr Guimbeau was in fact the core duties of the former *Assistant Garage Manager* Mr Lebon.

It has been noted that the tasks involving the budget of his respective department was not the only task undertaken by Mr Lebon as per the job description of his post. The job description as reproduced above, it is pertinent to note, involved several other tasks and/or duties.

Indeed, Mr Lebon's job description dated 1 December 2000 has listed eight main tasks under the job title of *Workshop & Garage Administrator*, with the preparation of the budget of the *Garage Department's* current expenditure being only one of these main tasks.

It may also be noted that the job description has also listed this task as making up 4 per cent of the time of the job while the other tasks, namely '*Gere les commandes de pièces de rechange pour tous les véhicules routiers afin de prévenir et répondre aux besoin; Gere l'allocation du travail aux ouvriers du département camions/tracteurs pneumatiques pour optimiser la performance ;*' and '*Gere le volet administratif du garage et transport pour la bonne marche du département*', take up 95 per cent of the time of the post.

This is moreover consistent with the evidence of Messrs Charoux and Lennon on the issue of the time taken of the preparation of the budget of the department. Mr Lennon even went as far as describing the budget preparation as the least important aspect of the work performed by Mr Lebon as *Assistant Garage Manager*. The Disputant despite not

agreeing to the description of the post of *Assistant Garage Manager* dated 25 November 2013 did nevertheless recognise that the budgeting duties he performed were a tenth of the budget.

Furthermore, according to the extra tasks that Mr Guimbeau stated that he was performing, it cannot be said that Mr Lebon was carrying out the internal audit as per job description of the *Workshop & Garage Manager*. In fact, it would not be appropriate for Mr Lebon's post to be labelled as *Budgeting Assistant Garage Manager* in view of the small proportion of time allocated to this task.

The job description of Mr Lebon makes it amply clear that the budgeting duties were only an element of tasks he performed as *Assistant Garage Manager*. The evidence of the Respondent's witnesses does furthermore support the fact that the budgeting duties were not the core duties of the post held by Mr Lebon.

The Tribunal cannot therefore reasonably come to the conclusion that Mr Guimbeau was in fact performing the core duties of the former *Assistant Garage Manager* Mr Lebon whilst working as *Administrator – Co-ordinator* in the *Irrigation & Construction Department* at Medine Limited.

The Tribunal cannot therefore award that Mr Guimbeau should have been promoted to the post of *Assistant Garage Manager* as from 1 January 2014 to the date of his dismissal on 27 April 2015 nor be granted the benefits attached to the post.

The matter is therefore set aside.

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Shameer Janhangeer
(Vice-President)

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Soumarain Ramana
(Member)

.....
Renganaden Veeramootoo
(Member)

Date: 15th June 2016

