

## EMPLOYMENT RELATIONS TRIBUNAL

### AWARD

RN 178/15

<b>Before:</b>	<b>Indiren Sivaramen</b>	-	<b>Vice-President</b>
	<b>Vijay Kumar Mohit</b>	-	<b>Member</b>
	<b>Jay Komarduth Hurry</b>	-	<b>Member</b>
	<b>Georges Karl Louis</b>	-	<b>Member</b>

In the matter of:-

**Mr Vijaye Coomarsingh Ramothar (Disputant)**

**And**

**Central Water Authority (Respondent)**

**i.p.o: The Union of Employees of the Central Water Authority (Co-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 Co-Respondent has been joined as a party in the present matter with the agreement of both the Disputant and Respondent.

The terms of reference read as follows:

*"Whether I, Vijaye Coomarsingh Ramothar, posted to the Central Water Authority sub-office of Pamplemousses should be paid the waste water allowance of 10% of my gross salary as other colleagues posted to other CWA regions for attending waste water queries and complaints in addition to my normal duties at CWA with effect from 15 October 2013."*

Mr Ramothar, an Executive Assistant, deposed before the Tribunal and he stated that he is posted at Pamplemousses sub-office and has to do certain duties besides his normal duties at the Respondent. He stated that the additional duties relate to complaints and queries from consumers pertaining to the Wastewater Management Authority (WMA). They have been doing these duties for many years. Those posted in

other sections in Port-Louis, St Paul and Rose-Hill are paid for the same nature of work that he is doing but he is not being paid for the said work. He stated that the Waste Water Authority is paying a waste water service charge to the Respondent to remunerate Respondent's employees who are involved in waste water activities. He stated that the argument of the Respondent has been that an arbitrator will be appointed to look into all claims received in relation to this issue.

In cross-examination, Mr Ramothar stated that he was aware that 60% of the service fee paid by the WMA to the Respondent was being distributed among employees of Respondent. The distribution was subject to the Heeralall Report which constitutes a binding agreement between Respondent and his trade union. In that Report, there is a list of posts whose incumbents are entitled to be paid the WMA allowance. He does not think that the Heeralall Report refers to the post of "Executive Assistant" but he stated that the Heeralall Report was drawn in 2002. The allowance paid is linked to the salary of those entitled to it and thus will increase with an increase in salary. He did not agree that as an Executive Assistant he is not entitled to the allowance. He maintained that he was being asked to do certain duties of the WMA. He added that when he was posted in Port-Louis, he was being paid the WMA allowance. There was no restyling of his job and he did not agree that he was replacing a Clerical Officer in Port-Louis.

Mrs Surfraz, the officer in charge of HR, then deposed on behalf of Respondent and she stated that Disputant came to work at the Respondent following the closure of the DWC. Then, there was no grade at the Respondent corresponding to the existing grade of Disputant. The latter was posted at Port-Louis in the PR clerical office doing the job of a PR clerical officer, that is, he had to deal with customers. Disputant was then paid the said allowance because the allowance is provided for in the Heeralall Report for 'Clerical'.

Mrs Surfraz stated that there is an agreement between Respondent and 'Waste Water' whereby a service charge is paid to Respondent for administrative aspects (in relation to waste water) handled by Respondent. There was also an agreement with the union that 60% of that charge/fee would be distributed among Respondent's employees. It was agreed between the union and Respondent that an ad hoc committee would be set up to give its findings which would be binding on parties as to how this share of 60% of the fee was to be distributed. The committee submitted its report which is known as the Heeralall Report. Not only were particular grades mentioned in the report as regards entitlement to the allowance but also the number of employees under each grade entitled to benefit from the allowance. There is no provision in the report for payment of the allowance to any Executive Assistant.

Mrs Surfraz added that in April 2008 there was a reduction of the fee (by 50%) payable by the 'Waste Water' to Respondent. She believes that Respondent now keeps only 20% of the fee whilst distributing some 80% of the fee to his employees. Mrs Surfraz stated that because the Heeralall Report dates far back, the whole issue of the allowance should be reviewed. She averred that the union and Respondent have already agreed on the terms of reference for an independent arbitrator. She referred to

ongoing negotiations with the union for the appointment of an independent arbitrator. In cross-examination, she stated that Disputant is posted in the North division as Executive Assistant which is a higher level than that of Clerical. To a question from Mr Guiness representing the union, she stated that Disputant enjoyed the waste water allowance when he was posted at the Decaen office (Port-Louis) because he was posted there as PR Clerical. She agreed that in the Heeralall Report, provision has been made for new cases which may arise in the future and that Disputant's case could fall within such new cases. A management committee had been set up to look into 'new cases' of claims for the allowance but had to be disbanded because the union requested for an independent arbitrator instead. Mrs Surfraz produced certified copies of the terms of reference issued to one Mr T Doomun (Doc A) and of a letter dated 21 August 2008 emanating from the union addressed to the Chairman of the Central Water Board (Doc B). Mrs Surfraz confirmed that Mr Doomun has produced a report which has been sent to the Board for approval but that up to now the report has not been approved because of its financial implications.

Mr Guiness, the representative of Co-Respondent, did not depose before the Tribunal. The Tribunal has examined all the evidence on record including the submissions of counsel and the statement made by Disputant. A copy of the Heeralall Report has been annexed to the Statement of Case of the Co-Respondent and the provisions relevant to the present case read as follows:

**Major Points noted by the Ad Hoc Committee**

*1.20 During the in-depth study of the submissions made, both in writing and orally, by all parties, the Ad Hoc Committee meticulously noted the salient points made in argument. As these significant points necessarily formed the basis of the Committee's conclusions, spelling them out would undoubtedly lead to a more informed understanding of the Committee's Award. The more important points are the following:-*

- a) Only those who shoulder additional responsibilities, in relation to wastewater management, should be eligible for the WMA allowance.*
- b) Senior staff, whose junior staff has to handle wastewater work, should in principle be eligible for the WMA allowance, depending on the degree of responsibility assumed in relation to wastewater management.*
- c) As a corollary, if the roles of the staff at (b) are reversed, the same principle should apply in a few cases as, for example, in the case of a Confidential Secretary to a Division Manager.*
- d) The Management of the CWA has itself, in its wisdom, sympathetically considered a few proposals for change before the appointment of this Ad Hoc Committee.*

- e) *In certain Divisions, the initial workload clearly justified a much higher rate of WMA allowance at the introductory stage of the scheme. However, that higher rate should obviously have been re-assessed downwards at an appropriate stage when normal cruising speed was attained.*
- f) *In consideration of the services rendered by the CWA to the WMA, the latter pays a fee of 5% of the revenue collected as wastewater charges or taxes. Of that amount of 5%, the CWA retains 40% as the Authority's Revenue; the remaining 60% is earmarked for the payment of the WMA allowance to eligible staff.*
- g) *In this connection, the Management of the CWA has provided the Committee with a detailed financial statement of the revenue collected and the WMA allowance paid as from February 2000 to October 2002. The highlights of this statement, which are quite instructive, are reproduced below:*

<b>F/Year</b>	<b>Net Commission</b>	<b>Amount for WMA Allowance 60%</b>	<b>WMA Allowance Paid</b>	<b>Balance Remaining</b>
	<b>Rs</b>	<b>Rs</b>	<b>Rs</b>	<b>Rs</b>
<u>1999-2000</u> Feb-June	688, 011	412, 807	Nil	412, 807
<u>2000-2001</u> July-June	2, 721, 501	1, 632, 906	1, 563, 255	69, 651
<u>2001-2002</u> July-June	6, 093, 539	3, 656, 123	1, 710, 071	1, 946, 052
<u>2002-2003</u> July-Oct.02	2, 474, 301	1, 484, 581	456, 315	1, 028, 266

*The Committee noted from the above figures that the 60% earmarked for the payment of the WMA allowance tend to be on the increase, thereby leading the "Balance Remaining" to follow a similar pattern. The Committee was advised that this increasing trend was due mainly to an increasing number of wastewater subscribers.*

- h) *The allowance at the uniform rate of 5% of salary presently payable to "Managers" irrespective of their specific responsibility does not reflect reality. The actual responsibility of each Manager has therefore been reassessed and reflected in the Award.*

- i) *Increase in workload as of now should be regarded as normal CWA activity. Recourse to additional staff should, therefore, be had in the usual manner, and not to an increase in any allowance.*
- j) *The Committee has also observed that in respect of a number of grades, there are only a few or a certain number that are actually involved in WMA activities and these are known to the CWA Management. Wherever such grades have been included in the Appendix, the actual person who is doing this work should be identified by Management as indicated in the Award. In the cases where officers are transferred, they should be paid on a pro rata basis.*
- k) *The Committee has further noted that in a few cases, the designation of posts listed in the Agreement dated 14 September 2000, does not exist on the approved establishment of the CWA and they are known under different titles (e.g. Operator, Technician in the Information Technology Division). In respect of Operators, they are in fact Clerks and are drawing salary as such. The allowance of 30% presently paid to them is therefore on the basis of their salary as Clerk and not as Operator which is in a higher scale in the PRB Report. As the latter post does not exist, the 15% allowance in the Award should continue to be calculated as now on the basis of their salary as Clerk. Since, however, these staff are operating at a higher level, they should be compensated by the payment in the normal manner of an extra duty allowance.*

...

### **Conclusions and Award**

...

- 1.26 *In the determination of the quantum of the allowance that may be paid to each and every eligible officer, the Committee has applied the known criteria (e.g. level of responsibility, volume of work, complexity, skills/knowledge required) to arrive at its conclusions. In a general way, the Committee's assessment has tended to join the ones that must have been applied and reflected in the figures listed in the in-house agreement of 14 September 2000 between the CWA Management and the UECWA.*

### **General**

- 1.31 *The Committee also recommends that in dealing with any other case that may not have been covered in this Award or that may arise in future, the CWA*

*Management could stand guided by the points enunciated at paragraphs 1.20 and 1.26*

The Tribunal also notes paragraph 1.4 of the Heeralall Report which provides as follows:

*1.4 The Committee noted with singular appreciation that the Central Water Authority (CWA) and the Union of Employees of the CWA (UECWA) had reached agreement not only on the assignment of the Committee, but also for its Award to 'be final and binding on both parties and not subject to appeal.'*

This provision was indeed highlighted in the award delivered in the case of **G. Runghasawmi & Ors And CWA, RN 784**. The Disputant when deposing confirmed that he is an Executive Assistant. This post is nowhere mentioned in the Appendix to the Heeralall Report or in the report itself. The Tribunal however bears in mind the evidence of Mrs Surfraz that the grade of Executive Assistant did not exist initially on the establishment of Respondent and that Disputant was posted at Decaen office as PR Clerical. She also stated that the post of Executive Assistant, which is now on the establishment, is at a higher level than that of Clerical. This has not been challenged. Though Disputant maintained that he was doing duties relating to the Wastewater Management Authority regarding complaints and queries from consumers, yet there is no evidence as to the volume of work involved. There is also no evidence before us of the specific duties of an Executive Assistant.

The Heeralall Report dates back to 2002 and may not reflect the reality in terms of areas which are now connected with the waste water system. Paragraph 1.31 of the Heeralall Report (vide above) provides guidance to management as to how to approach 'new cases' which may arise. It provides that CWA Management could stand guided by the points enunciated at paragraphs 1.20 and 1.26 of the report.

Paragraph 1.31 of the Report (above) however cannot be of assistance to the Tribunal in this particular case for the following reasons:

1. That paragraph applies to the "CWA Management" and provides how the latter can be guided.
2. The points enunciated at paragraph 1.20 of the same report (see above) include sub-paragraph (f) which specifically refers to the fee (5% of revenue collected as wastewater charges or taxes) paid by the Wastewater Management Authority to the Respondent in consideration for the services rendered by Respondent to the latter. Sub-paragraph (f) even goes further and includes the apportioning of the sum received as fee among the Respondent (40%) and eligible staff of Respondent for the wastewater allowance (60%). There is unchallenged evidence before us that the fee paid

by the Wastewater Management Authority to Respondent has been reduced by some 50% since the Heeralall Report.

3. The makers of the Report relied on revenue figures for the period from the years 2000 to 2002 and deliberately included these figures in the report under paragraph 1.20 (g). The Tribunal may safely conclude that these figures as well as other matters for the same period 2000 to 2002 dealt with in the said paragraph 1.20(g) were “significant points [which] necessarily formed the basis of the Committee’s conclusions” (as per the first part of paragraph 1.20).

Also, paragraph 1.26 of the Report which should guide Management in a decision makes reference to various criteria which the Tribunal has not been appraised of in this particular case. The Tribunal notes that paragraph 1.26 of the Report refers to the quantum of allowance that may be paid to each and every eligible officer (underlining is ours). The criteria mentioned include level of responsibility and volume of work. The Disputant referred to the Decaen office in Port-Louis but there is no evidence as to whether the volume of work or additional workload in relation to wastewater duties (if wastewater duties are indeed being attended to by the Disputant at Pamplémousses) will be the same at Pamplémousses sub-office as at Decaen office in Port-Louis. Also, paragraph 1.26 refers to an in-house agreement between CWA Management and the Co-Respondent and this document has not been produced before us.

The Heeralall Report does not cater specifically for the grade or person occupying the grade of Executive Assistant. The Tribunal notes that the Report has been adopted following an agreement between Management and Co-Respondent and is binding on the parties. The Tribunal may here refer to paragraph 1.4 of the Heeralall Report which provides as follows:

- 1.4 *The Committee noted with singular appreciation that the Central Water Authority (CWA) and the Union of Employees of the CWA (UECWA) had reached agreement not only on the assignment of the Committee, but also for its Award to ‘be final and binding on both parties and not subject to appeal.’*

This provision was indeed highlighted in the award delivered in the case of **G. Runghasawmi & Ors And CWA, RN 784**. Any change contemplated to the contents of the Heeralall Report may only be made with the consent of the parties to the agreement or as provided by law.

For all the reasons given above, the Tribunal finds that the Disputant has failed to show that he should be paid a waste water allowance of 10% of his gross salary.

The dispute is thus set aside.

**(Sd) Indiren Sivaramen  
Vice-President**

**(Sd) Vijay Kumar Mohit  
Member**

**(Sd) Jay Komarduth Hurry  
Member**

**(Sd) Georges Karl Louis  
Member**

**15 July 2016**