

EMPLOYMENT RELATIONS TRIBUNAL

AWARD

Before:

Shameer Janhangeer	Vice-President
Sounarain Ramana	Member
Rabin Gungoo	Member
Georges Karl Louis	Member

In the matter of: -

ERT/RN 159/2015

Mrs Ghisèle Virginie ALLAS

Disputant

and

SBI (MAURITIUS) LTD

Respondent

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

Whether I should be kept in my posting of supervisor at SBI (Mauritius) Ltd – Rodrigues Branch or otherwise.

The parties have each submitted their respective Statements of Case in relation to the dispute. Both were assisted by counsel.

THE DISPUTANT'S STATEMENT OF CASE

Mrs Ghisèle Virginie Allas was born in Rodrigues and is a resident there. Her husband is a civil servant on the civil establishment of the Island and they have two children aged 7 and 10 years. She joined the employment of SBI (Mauritius) Ltd as a Clerical Assistant posted at its Rodrigues branch. On 3 January 2003, she was promoted to Senior Clerk and appointed to her present post of Supervisor in 2007.

It has been averred that her Branch Manager and Supervisor, Mr Mario Chellen, has subjected her to a persistent trend of harassment since the beginning of 2013. This caused her health to deteriorate leading to treatment at Queen Elizabeth Hospital and several sick leaves. Not being able to bear further the whims and caprices of the Branch Manager, she met with the Respondent's Human Resource Manager in 2014, while on a visit to Mauritius to consult a Doctor, to expose all the harassment issues as mentioned. Thereafter, the Human Resource Manager on a visit to Rodrigues had a meeting with the Branch Manager and herself where the latter continued with the odd verbal extrapolations towards the Disputant who fell seriously ill and was admitted to hospital. She reported the matter to the Police and caused a *mise en demeure* to be served on the Branch Manager. The Disputant was thereafter transferred to the Port Louis Main Branch.

It has also been averred that her transfer to Port Louis led to further hassles for the Disputant – being temporarily away from her family and her two children in coming to work in Mauritius. She receives a monthly disturbance allowance 50% of her normal salary. She deems this allowance as insufficient inasmuch as she cannot afford to visit her family regularly in Rodrigues; it is not enough to allow her to cope with additional lodging expenses in Mauritius; and it does not afford her family to visit her in Mauritius. This is causing hardship to members of her family especially her children. She wrote to her employer requesting travel benefits to visit her family in Rodrigues and for rent allowance.

She further asked to be transferred back to Rodrigues in the event her request would not be acceded to. She received no reply to her request and thereafter reported the matter to the *Ministry of Labour and Industrial Relations* and eventually to the *CCM*.

Attached to her statement of case is the letter of transfer dated 18 September 2014; a letter dated 29 October 2014 addressed to the Human Resources Manager of SBI (Mauritius) Ltd; and a letter dated 19 January 2015 from Disputant to the Ministry of Labour & Industrial Relations requesting a conciliation of her dispute.

THE RESPONDENT'S STATEMENT OF CASE

The SBI (Mauritius) Ltd, in its statement of case, has averred that the Disputant is an employee posted at the Main Branch in Port Louis. The Disputant's contract of employment clearly states that she will be required to work at the '*Rodrigues Office or at any Branch in Mauritius*'. Disputant herself had requested a transfer to Mauritius on 15 December 1998. By letter dated 18 September 2014, the Disputant was transferred to the Main Branch as from 1 October 2014, having taken up her post on the aforesaid date.

It has notably been averred that the Disputant never informed of any alleged harassment by Mr Chellen, however complaints were received from the latter as to Disputant's attitude towards work. A meeting was held on 5 August 2014 between the Human Resources Manager, Disputant and Mr Chellen to resolve any issues between the two concerned, however no verbal extrapolations were uttered to the Disputant. It is admitted that the matter was reported to the Police and that a *mise en demeure* was served to Mr Chellen. No sanctions were taken against the Branch Manager as same were not required; and the Disputant was not transferred to Port Louis to expedite matters.

The Respondent's Human Resources Manager received a letter from Mrs Allas as to her entitlement for travel benefits and rent allowance and avers that her request to be transferred back to Rodrigues was not dependent on her entitlement to the aforementioned benefits. The SBI (Mauritius) Ltd avers that it has acted within the confines of the contract of employment and its Human Resource Policy.

THE EVIDENCE OF THE WITNESSES

Mrs Allas has notably stated that she was the Supervisor at the Rodrigues Branch and Mr Mario Chellen was her Manager. Since 2013, she has been treated in a rough manner, e.g. as an imbecile, incompetent, etc., by Mr Chellen who also reprimanded her before junior colleagues. He at times baffles her authority and does not help out when under pressure. She felt diminished and humiliated. The situation made her sick and she had to take sick leaves on several occasions to attend hospital. She produced a photocopy of a hospital appointment card to this effect (Document A) as well as a medical certificate dated 11 August 2014 (Document B). In March 2014, she proceeded to Mauritius for medical treatment and met with the Human Resource Manager to whom she related the harassment, humiliation and problems she was facing. The Human Resource Manager thereafter visited Rodrigues whereby there was a meeting between her, the Branch Manager and the former. During the aforesaid meeting, the Branch Manager continued to diminish her and he was only talking to lower her; she then felt sick, lost consciousness and her sister had to take her to hospital. She reported the matter to the Police. After sick leave, she resumed work and it is on about 15 September 2014, she received a letter of transfer to Mauritius in 15 days' time. She had to report for duty on 1 October 2014 at the Main Branch.

Mrs Allas is married with two children. She has had to leave her children during their exams period. She has not been told up to when she will remain in Mauritius and has not been given any lodging apart from her normal salary and 50% disturbance allowance. She

has to travel to Rodrigues (to visit her family). Her husband and family also come over. She has to pay for the lodging and for other living expenses. She produced a letter dated 11 March 2015 whereby she wrote to the bank (Document C). She did not receive a positive reply and produced an email dated 26 August 2015 from the Human Resource Manager to this effect (Document D). She considers the transfer as a sanction. She is therefore asking to be transferred to Rodrigues; or if she remains in post in Mauritius with benefits such as rent and air tickets to and from Rodrigues; or if her husband could be transferred to Mauritius and her children attend school in Mauritius.

Upon questions from counsel for the Respondent, Mrs Allas notably stated that she did not make a written complaint on the issues she has raised despite being aware that problems need to be put in writing for the HR to make enquiries. She did not write as, being a human being, she thought that there would be a solution. She has no medical document to show that it is because of the issues at work that she fell ill. As per her contract of employment (Document E), it is mentioned that *'You will be required to work at our Rodrigues Office or at any Branch in Mauritius'*. She has been receiving a disturbance allowance since October 2014 upon being transferred to Mauritius from Rodrigues. She also produced an extract of the Employee Handbook pertaining to the disturbance allowance (Document F).

Mrs Allas also stated that she was transferred because of the problems she was facing. She is aware that it is the normal practice of the bank for employees to be transferred to Mauritius and vice-versa according to their posts. She does not agree that she was transferred for exposure to other sectors of the bank as it is the first Supervisor with whom they have done this. She agreed that her exposure in Rodrigues would be limited. She agreed that after 7 years as Supervisor it was time for her to be exposed to other sectors of the bank. However, she did not agree that it was the normal procedure for her to be transferred to Mauritius.

Mr Kritanand Ramklelawon, Vice-President Human Resource at the SBI (Mauritius) Ltd, adduced evidence on behalf of the employer organisation. He is not aware of any case neither of harassment against the Disputant nor of any complaint made by her against anybody at the bank. He does not recall having met with the Disputant in March 2014 or of any complaint made by her against the Rodrigues Branch Manager. As a matter of practice, the HR Manager works under his supervision and informs him of any complaint. The HR Manager made a routine visit in 2014 for the training of officers and not for the specific purpose of a complaint made by Mrs Allas.

The posting clause at paragraph 5 of the contract of employment applies to all employees of the bank including himself depending on the employee's position. The policy of the bank is to rotate employees after a certain number of years for them to be more exposed to the businesses and banking risk. This also helps in their career for further prospects of promotion. There are three Rodriguans posted as Supervisor at the bank, Mrs Allas and another in Mauritius. Their transfers are normal transfers for better equipping them to serve the bank and for their own career prospects. The disturbance allowance is meant for the disturbance and all the extra expenses that need to be incurred such as rent. The requests made by Mrs Allas cannot be considered as it is not within the policy of the bank and they have to be fair to all people. No one at the bank has ever benefitted from the kind of '*faveur*' being asked for.

Mr Ramklelawon following questions by counsel for the Disputant notably stated that the personal file of employees does not contain information about their personal circumstances, it is meant for the performance of their duties. Referring to a letter dated 29 October 2014, he stated that the bank must be aware of same. He denies that the transfer is punitive; it is genuine based on administrative convenience and administrative exigencies. He cannot confirm if the Disputant made a request for a transfer. He could not confirm if there was a meeting between himself, the HR Manager and the Disputant in March 2014 nor confirm the version of the Disputant in connection to same. The Rodrigues Branch Manager did report that he was served with a *mise en demeure* by the Disputant. He is not

aware of the issues that were to be resolved between the Disputant and Mr Chellen on 5 August 2014 as averred in the Respondent's Statement of Case.

Regarding complaints made by Mr Chellen as to the Disputant's attitude towards work, no disciplinary action has been taken nor was any letter of warning issued. As per the excerpt of the *Employment Handbook* produced, the disturbance allowance paid cannot be over 50% (of the salary). He was not clear as to whether it is a coincidence for Mrs Allas to have received a letter of transfer after having collapsed at the meeting in August 2014. It is not the policy of the bank to assess, a decision is taken and then the transfer is made. It is for the person to come up and make representations. On counsel apprising him of the personal circumstances of the Disputant, he stated that he was not prepared to reconsider. He also produced an email dated 10 March 2014 sent to him by Mr Chellen (Document G).

Mr Mario Chellen, Bank Branch Head at SBI Rodrigues, was called as a witness on behalf of the Respondent. He is acquainted with Mrs Allas since 2003. Upon his second posting in Rodrigues in 2010, he had a normal relationship with her. As from May 2010, their relationship became difficult following the Disputant's transfer, made at the management's request, from the back office to the front desk as Supervisor in the aforesaid Branch. In drawing her attention to mistakes in her work, she got angry and he did not say anything until the visit of the HR Manager in August 2014 who came to give an induction course.

Mr Chellen had planned a meeting with the two Supervisors of the Branch individually between the HR Manager and himself. He described that during the meeting he explained to Mrs Allas that he has a big responsibility for the work to be properly done and that the team must cooperate with him. Mrs Allas subsequently felt uneasy. After she was given a glass of water, he accordingly informed her husband by phone following which her sister eventually called into the Branch to convey her to hospital. He denied having abused her verbally during the meeting. He also denied having talked roughly, insulting her before

junior colleagues, having used harsh language, humiliated or hassled her on petty issues. The following day, a medical certificate was submitted on her behalf. She resumed work about two weeks after.

On 11 September 2014, he was informed for the first time by the police of a reported case of harassment. On 10 September 2014, he received a *mise en demeure*. He has never been informed nor conveyed by the bank with regard to any complaint against him to the effect that he is harassing Mrs Allas. He sent an email dated 10 March 2014 to which the bank did not act upon. No transfer was given to Mrs Allas despite his request made in the email. Since October 2014, he has one Supervisor at the Branch as Mrs Allas has been transferred to Mauritius. There are four staff at the Branch including himself. Only one Supervisor is needed.

Mr Chellen also explained that there is no exposure to Global Business, Corporate Banking or Trade Finance at the Rodrigues Branch. In January 2014, there were two Supervisors at the Branch, Mrs Allas being more senior of the two. When the transfer was made, he was not given any reason behind the transfer. He had no say in the transfer save for the email he wrote in May 2014.

Mr Chellen was lengthily questioned by counsel for the Disputant. He explained that phrases were taken out of context of the conversation in denying how he might have treated Mrs Allas. The allegations made in the *mise en demeure* have not been proved. He informed the Head Office of the *mise en demeure* served upon him and gave his version directly to the management. He informed his employer of the case reported against him and the allegations made by Mrs Allas against him. Management did not take any action and could not answer as to the decision taken at the level of management.

Mr Chellen went on to state that the decision to transfer Mrs Allas was taken by management not him. The medical certificates submitted by Mrs Allas were forwarded to the HR Department of the bank. Referring to his email, there was an incident between the other Supervisor at the Branch Ms Jessica Roussety and a relative of Mrs Allas. Since the former was promoted, the relationship between herself and Mrs Allas also deteriorated and he has had to call them several times. This situation was visible in the bank. Mrs Allas was always angry with Ms Jessica. He in good faith made representations being a Branch Head. He has no privileged relationship with staff at the bank or any preference among his staff. Although he is aware of the personal circumstances of Mrs Allas, he cannot pronounce himself on the private circumstances of the person. He could not state as to whether the bank should make a special effort over and above the disturbance allowance paid to Mrs Allas.

SUBMISSIONS OF COUNSEL

Mr D. Ramano, counsel for the Disputant has notably submitted that Mrs Allas has been the victim of a trend of harassment referring to the offence against same at *section 54* of the *Employment Rights Act*. He delved lengthily on the facts relating to the issue of harassment at work and that she is the victim of same. It is his humble submission that it is a punitive transfer and that it is no coincidence that she was transferred a week after the service of a *mise-en-demeure* upon the Rodrigues Branch Manager. The sanction taken was against the Disputant in the form of the transfer to Mauritius instead of taking action against the alleged harasser. Counsel also submitted that the terms of reference do also allow the Tribunal to consider what should be done if she were to remain in Mauritius. On the issue of the mobility clause, Mr Ramano submitted that this is not being contested in the normal course of employment and that it must be properly applied.

Mr K. Colunday, counsel for the Respondent, on the other hand, submitted that all employees at the bank are treated in the same way wherever they may be posted. It would be discriminatory to grant Mrs Allas what she is asking vis-à-vis employees of the same

category. He also submitted that the issue of harassment has not been established before any forum. An employee being harassed for such a span of time should have officially made a complaint to the employer. No complaint was made against Mr Chellen to the bank. The issue of harassment is a concoction on behalf of the Disputant to build up a case against the transfer or to settle scores with the Branch Manager. As for her transfer, her terms and conditions of employment clearly provide that she may be required to work in any branch in Rodrigues or in Mauritius. The circumstances of her transfer have been explained, namely exposure to other sectors of the bank and not because of harassment. Referring the letter of transfer dated 18.09.2014, counsel did recognise that with hindsight the bank should explained fully to the person why she is being transferred.

On the issue of the *clause de mobilité*, counsel for the Respondent submitted it should be precise, clear and that the person must be aware of the geographical zone of its application. He submitted a decision of the French *Cour de cassation* dated 9 July 2014, where a decision of the *Cour d'appel* of Nancy regarding the geographic extent of the mobility clause was reversed; as well as a decision of the *Cour de cassation* dated 28 March 2006 wherein it was held that '*qu'une mutation géographique ne constitue pas en elle-même une atteinte à la fondamentale du salarié quant au libre choix de son domicile et, si elle peut priver de cause réelle et sérieuse le licenciement du salarié qui la refuse lorsque l'employeur la met en œuvre dans des conditions exclusives de la bonne foi contractuelle, elle ne justifie pas la nullité de ce licenciement ;*'.

THE MERITS OF THE DISPUTE

The Tribunal, in this matter, is being asked to enquire as to whether Mrs Allas should remain as a Supervisor of the Rodrigues Branch of the SBI (Mauritius) Ltd or otherwise.

Mrs Allas has been in the employment of the SBI (Mauritius) Ltd since 29 September 1994 having joined as a Clerical Assistant. The facts of the present dispute have revealed

that Mrs Allas has been the alleged victim of persistent harassment from her Branch Manager when posted at the Rodrigues Branch. Although the latter has denied any harassment, it is clear that their relationship was not cosy. The culmination of this relationship was at a meeting in August 2014 in presence of the visiting HR Manager which resulted in her collapse and subsequent hospitalisation. Thereafter, following her resumption of work she received a letter from Mr Ramkhelawon stating that she would be transferred to the Main Branch of SBI (Mauritius) Ltd as from 1st October until further notice.

The transfer is causing her and her family hardship. Her two children attend primary school and her husband is a civil servant in Rodrigues. She never consented to her transfer which she described a “sanction”. She has to foot for the air tickets to Rodrigues to visit her family and can barely cater for her additional expenses on the disturbance allowance she is being currently paid.

The Respondent, on the other hand, has denied that the transfer is other than normal. It is the policy of the bank to rotate its employees giving them more exposure to other aspects of the banking profession and their prospects for promotion. The representative of the Respondent Bank was categorical that the requests made by the Disputant cannot be considered. He did however recognise that the policy of the bank is to assess, make a decision and then transfer; it is for the transferee to make his or her own representations.

The Rodrigues Branch Manager has also given his views on the allegations of harassment made against him and the events, which notably included the meeting of 5 August 2014, which lead to Mrs Allas being posted in Mauritius. Although he had previously sent an email dated 4 February 2015 requesting that action be taken against Mrs Allas and that she no longer be posted at the Branch, he contended that he had no say in the transfer and was not given any reasons for same.

The contract of employment entered into by Mrs Allas upon joining the SBI (Mauritius) Ltd has notably provided as to where the employee is required to work as follows:

(5) *You will be required to work at our Rodrigues Office or at any Branch in Mauritius.*

The aforesaid clause of the contract is termed a mobility clause. The following passage by *Dr D. Fok Kan* in *Introduction au Droit du Travail Mauricien, 1. Les Relations Individuelles de Travail, 2^{ème} édition, p.245, 309* amply describes the nature of the mobility clause in relation to the contract of employment:

On retrouve souvent de telles clauses sous la forme d'une clause de mobilité. Dans un arrêt en date du 11 juillet 2001 la Cour de cassation affirme que la mise en œuvre d'une clause de mobilité à titre disciplinaire n'entraîne pas de modification de contrat. Bien qu'approuvé par certains auteurs, cet amalgame entre l'exercice du pouvoir de direction et du pouvoir disciplinaire est critiqué par d'autres. Pour le Prof Mouly cette contractualisation du pouvoir disciplinaire se fait ici au détriment de l'employé alors même qu'elle avait originalement pour but de protéger celui-ci. La cour suprême mauricienne, comme la Cour de cassation, sera-t-elle ainsi prise à son propre piège? Il semblerait que la cour de cassation elle l'ait évité car dans un arrêt de 16 décembre 2005, elle devait faire marche arrière et décider que la décision de mutation de l'employeur, prise suite à divers reproches, devait s'analyser en une rétrogradation alors même qu'elle avait été prise sous couvert de la mise en œuvre d'une clause de mobilité. Ainsi le consentement de l'employé était requis.

...

En vue de la difficulté de savoir par avance si une modification sera jugée substantielle ou non, un employeur prudent inclura dans le contrat de travail une clause qui l'autorise expressément à le faire. On retrouve de telle clause, par exemple, par rapport au changement du lieu de travail, la clause dite de mobilité. La modification ici ne constituera que l'exécution du contrat et sera opposable à l'employé sauf cas d'abus ou d'intention de nuire. La mise en œuvre de la clause doit toutefois se faire dans le respect de la bonne foi contractuelle. C'est ainsi que l'employeur doit, par exemple, respecter un délai de prévenance et ne pas procéder à la modification de façon précipitée.

(The underlining is ours)

It is also apposite to note what *J.M. Verdier, A. Coeuret and M.A. Souriac in Droit du travail Volume 2 Rapports individuels, Dalloz, 16^e édition – 2011, p.135* have stated on the *clause de mobilité*:

B. Les modifications prévues d'avance

*Certains contrats de travail prévoient expressément la possibilité pour l'employeur de procéder à des modifications ultérieures que rendraient nécessaires l'organisation de l'entreprise et les fonctions du salarié : horaires, attributions et, plus souvent encore, lieu de travail. L'exemple le plus fréquent est celui de la **clause de mobilité** par laquelle le salarié accepte par avance toute modification de son lieu de travail. Lorsque le changement du lieu est demandé en application de la clause celui-ci s'impose au salarié. La jurisprudence considère en effet que, dans ce cas, l'employeur ne fait qu'exercer son pouvoir de direction parce que la mutation fait alors partie du domaine des conditions de travail. Encore faut-il que la clause définisse de manière précise sa zone géographique d'application (Soc. 7 juin 2006, Grands arrêts no. 52) et que la modification décidée corresponde à la modification prévue par le contrat.*

*On notera cependant l'existence de **deux réserves**. **La première est** que, dans l'utilisation de cette extension contractuelle de son pouvoir, l'employeur ait un comportement loyal. À défaut il commettrait un détournement de pouvoirs ou un abus de droit contraire à la **bonne foi contractuelle**. Par ailleurs, la Cour de cassation a décidé que le salarié pouvait refuser la mise en œuvre de la clause de mobilité lorsque la mutation entraîne une baisse de rémunération ou le passage d'un horaire de nuit à un horaire de jour. La seconde réserve, plus récente, est que, lorsque le salarié le demande, les juges du fond doivent rechercher si la mise en œuvre de la clause de mobilité ne porte pas une atteinte du droit du salarié à une vie personnelle et familiale et si une telle atteinte peut être justifiée par la tâche à accomplir et proportionnée au but recherché (Soc. 14 oct. 2008. RDT 2008. 731). Prise en compte accrue des droits fondamentaux.*

*Sur le plan probatoire, il y a lieu de considérer que **la bonne foi contractuelle est présumée**, ce qui a pour conséquence que les juges n'ont pas à rechercher si la décision de l'employeur de faire jouer une clause de mobilité stipulée dans le contrat de travail est conforme à l'intérêt de l'entreprise.*

Il incombe donc au salarié de démontrer que cette décision a en réalité été prise pour des raisons étrangères à cet intérêt, ou bien qu'elle a été mise en œuvre dans des conditions exclusives de la bonne foi contractuelle.

Tel est le cas de la situation d'une salariée informée seulement un mois avant le déménagement de l'entreprise dans une nouvelle localité alors que la décision a été prise plusieurs mois auparavant et que ce bref délai n'avait pas permis à cette dernière de s'organiser dans les meilleurs conditions. Le licenciement consécutif au refus est alors sans cause réelle et sérieuse.

Si en revanche, le salarié allègue que l'exécution de la clause porte atteinte à son droit à une vie personnelle et familiale, il incombe à l'employeur de démontrer que l'atteinte est justifiée et proportionnée (art. L. 1121-1, C. trav.)

(The underlining is ours)

In this context, it would be pertinent to reproduce the wording of *article L. 1121-1* of the French *Code du travail*:

Nul ne peut apporter aux droits des personnes et aux libertés individuelles et collectives de restrictions qui ne seraient pas justifiées par la nature de la tâche à accomplir ni proportionnées au but recherché.

Indeed, the importance of this article in the context of the mobility clause has been emphasised by *J. Pélisser, G. Auzero and E. Dockès* in *Droit du travail, 2012 26^e édition, Dalloz, n.596* as follows:

b) Conformité aux droits fondamentaux : l'article L. 1121-1 du Code du travail a vocation à limiter toute atteinte aux droits fondamentaux. Il s'applique naturellement aux clauses du contrat de travail. C'est sur lui que s'appuie, par exemple, la jurisprudence sur la validité des clauses de non-concurrence ou celle sur les clauses d'exclusivité. C'est encore lui qui peut fonder la nullité d'une clause de mobilité imposant, au-delà du changement du lieu de travail, celui du domicile du salarié, en violation de la liberté de choix du domicile.

It is not in doubt that we follow French jurisprudence in relation to our labour law. It would be akin to note what was stated in *The United Bus Service v Gokhool* [1978 MR 1]:

Our common law being derived from the French Codes, we have no doubt that the same principles should apply here – the more as they appear to us more realistic, more consistent with the spirit of our labour law (under which an employee should be dismissed only in the last resort) and more likely to conduce to a harmonious development of our law.

Most recently, the *Judicial Committee of the Privy Council* in *Seetohul v Omni Projects Ltd* [2015] UKPC 5 stated as follows:

Employment Law in Mauritius is based upon French law, but with statutory modifications.

In the present matter, the Disputant has lengthily related the facts which have led to her being posted away from her home and family in Rodrigues. The evidence adduced has revealed that the transfer of the Disputant was a unilateral one. Although the Respondent's representative described the transfer as normal being based on administrative convenience and exigencies, he clearly stated that the decision to transfer was taken by the bank as per its policy and it is for the employee to make his or her representations. He was unaware of the personal circumstances of the Disputant which was not contained in her personnel file.

Mrs Allas did not deny the practice of employees of the bank being transferred to and from Mauritius. She however contends that her transfer was a result of the troubles she was facing and not for the reason to have exposure to other sectors of the bank; given that according to her it was the first Supervisor with whom they have done this.

Upon being transferred, she has had to leave her children of young age during their exams period to take up her post in Mauritius. She has to pay for the air tickets to visit her family in Rodrigues. She only additionally receives a disturbance allowance of up to 50% of her normal salary and has not been given any lodging. She has to pay for her lodging and for other living expenses.

The reason of being exposed to other areas of the banking business was not advanced at the time of the transfer as per the letter dated 18th September 2014 she received. Furthermore, this was not the reason put forward by the Respondent in its statement of case which notably states that the Respondent has acted within the confines of the contract of employment and its Human Resources Policy.

The evidence adduced has clearly demonstrated that the transfer, which was given at short notice, has affected her family life. Despite this, the employer has denied being aware of the personal circumstances of the Disputant and that it was for her to make her own representations. It cannot also be overlooked that the consent of the employee is lacking in relation to her transfer to the Main Branch in Mauritius.

Could it therefore be said that the Disputant's transfer to the Main Branch is proportional and justified in light of the grounds put forward by her as to why she should have remained in her post at the Rodrigues Branch?

The Tribunal, in having examined the reasons put forward by the Disputant as to why she should have remained in post as Supervisor in Rodrigues and the events preceding the transfer in October 2014, can only find that the Respondent did not wholly act in good faith in unilaterally transferring the Disputant to Mauritius.

In this context, it would be appropriate to note what was stated by the Permanent Arbitration Tribunal in *Mrs. D.C.Y.P. and The Sun Casinos Ltd.* [GN No. 1390 of 1988]:

After considering all the facts of this case, we have no hesitation in finding that the fundamental principles of fair employment have not been followed and that, as a result, one employee is feeling justly frustrated because of what she considers, and is considered, an 'injustice' with consequences affecting her not only materially, but morally.

Although it cannot be denied that the employer has the right to manage the business for the efficient running of the enterprise provided that he acts within the employment laws, the employer has a duty to respect the rights of the employee within the framework of the employment contract and to act in good faith in a spirit of good and harmonious employment relations. It cannot also be overlooked that good human relations between employers and workers are essential to good employment relations.

In the circumstances, the Tribunal can only find that Mrs Allas should have been kept in her posting of supervisor at the Rodrigues branch of SBI (Mauritius) Ltd.

The Tribunal therefore awards accordingly.

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(Sd) Shameer Janhangeer
(Vice-President)

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(Sd) Sounarain Ramana
(Member)

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(Sd) Rabin Gungoo
(Member)

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(Sd) Georges Karl Louis
(Member)

Date: 9th March 2016