

EMPLOYMENT RELATIONS TRIBUNAL

DECLARATION

Before:

Shameer Janhangeer	Vice-President
Ramprakash Ramkissen	Member
Rajesvari Narasingam Ramdoo (Mrs)	Member
Georges Karl Louis	Member

In the matter of: -

ERT/RN 21/2016

PORT LOUIS MARITIME EMPLOYEES ASSOCIATION

Applicant

and

MAURITIUS FREEPORT DEVELOPMENT CO. LTD

Respondent

The present application before the Tribunal relates to the interpretation of a provision of a collective agreement. The Port Louis Maritime Employees Association ("PLMEA") and the Mauritius Freeport Development Co. Ltd ("MFD Ltd") concluded a *Collective Agreement* on 9 June 2014.

The agreement has provided for various terms and conditions of employment. However, the parties are not agreed as to how the salary increase provided therein is to be implemented. The present application relates to the provisions concerning the payment of the salary increase that was granted to the employees of the MFD Ltd.

Both parties were assisted by counsel.

THE APPLICANT'S STATEMENTS OF CASE

The PLMEA, in its application, has averred that it signed the *Collective Agreement* on 9 June 2014 with the MFD Ltd. The agreement stipulates that '*the Agreement and any provision thereof shall come into operation on 01 January 2014*'. The agreement has introduced a new salary grid and it has been agreed between the parties as follows:

Every employee drawing more than Rs. 8,150/= per month as basic salary on the grid (Annex III) will receive their salary increment in two installments and the quantum of basic salary increase will be calculated by considering the following:

1. *The years of service of each employee to date.*
2. *The monthly basic salary drawn by each employee at Payroll December 2013.*
3. *Matching the new monthly basic salary to be obtained by each employee by virtue of, first his years of service based on his date of entry and second his current position on the salary grid (Annex III).*
4. ***The difference in monthly basic salary and any other incidental readjustments between 3. and 2. will be implemented in two stages as follows:***
 - ***40 percent of the difference to be paid with effect from Payroll January 2014; and***
 - ***the remaining 60 percent to be paid as from Payroll January 2015.***

It has been averred that at the end of the month of July 2014, the employer paid to every employee earning a basic monthly salary of more than Rs 8,150 a first installment of 40 % which represents the difference between the new monthly salary and the monthly basic salary drawn as at December 2013.

The salaries of the aforesaid employees were adjusted at the end of January 2015. However, the MFD Ltd omitted to pay the 60 % representing the difference between the new monthly basic salary which ought to have been obtained as from 1 January 2014 and the monthly basic salary drawn as at 31 December 2013.

The *Application Union* has referred to *Clause XX (f) of the Collective Agreement* relating to matters of interpretation of the agreement. The issue was raised by the

Applicant Union during official meetings of 4 June 2015 and 29 September 2015. The employer did not agree to for the matter to be jointly referred to the Tribunal.

The *Applicant Union* is therefore asking the Tribunal to make a declaration to the effect that the new salary grid is effective as from the date of application of the *Collective Agreement*, i.e. 1 January 2014 and that in conjunction with the agreed provisions in *Clause I*, the employer should back pay the remaining 60 % of the adjustment as from the effective date of application of the new salary grid.

THE RESPONDENT'S STATEMENT OF CASE

The MFD Ltd, in its statement of case, has averred that it was agreed during negotiations that every employee shall be granted a wage or salary increase following a specific grid and adjustment system.

It has been averred that the employees at the MFD Ltd have been classified into two categories: those receiving less than Rs 8,150 per month and those receiving more than Rs 8,150 per month. The salaries of employees in the former category shall be adjusted to Rs 8,150 with effect from January 2014. This adjustment would have retroactive effect as from January 2014 as the *Collective Agreement* was signed on 9 June 2014.

As for employees in the latter category, it has been averred that it was agreed that the salary increase for these employees would be calculated on the years of service and the basic salary drawn at payroll December 2013. The *Collective Agreement* has stipulated that such salary increase would be implemented in two steps.

It has also been averred that the Respondent during negotiations made it clear that the full salary increase would not be granted as from January 2014 as per the notes of meeting dated 9th May 2014 (Annex A to the Statement of Case). It was decided that the salary increase would be implemented in two instalments as per *paragraph I (b) 4* of the *Collective Agreement*. At no time was it stated that the remaining 60 % of the salary increase shall be retroactive.

THE EVIDENCE OF THE WITNESSES

Mr Ashok Subron, Negotiator of the PLMEA, was the sole witness of the *Applicant Union* in the present matter. The PLMEA represents workers of the port sector working in port and maritime companies. The union represents 250 workers at MFD Ltd and has sole negotiating rights to represent workers in the bargaining unit. He was fully involved in the negotiations relating to the *Collective Agreement*. The two parties agreed to a new salary grid effective as from 1 January 2014. Referring to *paragraph XX (a)* of the *Collective Agreement*, he understands that the agreement and all its provisions, including the salary grid at Annex 1, will come into effect as from 1 January 2014. The agreement was signed on 9 June 2014 and its conditions would start to apply retrospectively as from 1st January 2014. According to *paragraph I (a)*, a monthly basic salary of a minimum of Rs 8,150 shall be implemented and the payment would be made in one go starting January 2014.

Mr A. Subron went onto state that it is concerning the interpretation of *paragraph I (b)* that the union has come before the Tribunal in the present matter. He understands the paragraph to give the workers of MFD Ltd an adjustment effective from 1 January 2014 which takes into account their years of service and the pay they were drawing in December 2013. The salary is then adjusted and based on the grid mentioned in Annex 1.

A first proposal was made by the employer during negotiations to apply the salary adjustment in three stages. The workers were not agreeable and voted on the matter on 1 May 2014. He produced a copy of a letter dated 25 April 2014 from MFD Ltd detailing the proposal (Document A). Thereafter, the two parties reached an agreement to effect the payment in two stages, a first 40 % payable in January 2014 with incidental adjustments. A third draft proposal was sent by management following a meeting on 27 May 2014 and he produced a copy of the draft in an email dated 27 May 2014 from the employer (Document B). The management sent another proposal '*fourth draft Collective Agreement*' on 3 June 2014 via email (Document C). Finally, the *Collective Agreement* was signed on 9 June 2014.

In relation to *paragraph 1 (b) 4* of the *Collective Agreement*, Mr A. Subron gave an example of a worker who is paid Rs 10,000 and receives an increase of Rs 1000. The worker will receive Rs 400 as from January 2014 representing the 40 % increase. The Rs 600 will be owed to the worker and will be applicable as from January 2015. In January 2015, the worker's pay will be Rs 11,000 as the worker is owed Rs 600 and the Rs 600 that is owed as from since January will have to be paid as the salary is effective as from January 2014. He

did not agree with the management's saying that the 60 % will be paid as from the year 2015 as the *Collective Agreement* clearly states that the salary grid shall be applicable as from January 2014 and the adjustment will be made in two stages. The workers will never accept to forgo a year's salary increase when negotiations bore on the application of a new salary grid as from 1 January 2014. The workers will never agree to receiving part of the increase after signature of the *Collective Agreement* and another part in January thus losing a year's salary increase.

Mr A. Subron also stated that he was present during all the negotiations. The management explained that they were in difficulties and will not be able to account for the salary adjustment in one go; they will therefore pay in two stages. This is what the accountant who was present explained. The 40 % increase would be paid as from the signature of the agreement and the 60 % with incidental readjustments will be paid in January 2015. Mr A. Subron also spoke of his experience being involved in other collective agreements. The workers are extremely angry; they all see that there is a remaining 60 % to be paid and were asking where is their 60 %? The union made representations before management. The workers protested, went to see the management and the parties agreed that the matter be taken before the Tribunal for interpretation.

Mr Trilok Purryag, Senior Manager Administration and Human Resources, was called on behalf of the MFD Ltd. He notably stated that the *Collective Agreement* was signed after almost 8 months of negotiations. A minimum salary of Rs 8,150 was discussed and agreed. In the spirit of negotiations, they wanted to introduce a minimum salary and give everybody at one go an increment of Rs 8,150 and the sub sections enumerated after in *paragraph 1* giving a clear indication of how it would be paid. During the negotiations, they have been open, upfront and clear about the intentions they have.

Referring to the letter dated 25 April 2014 from the MFD Ltd, Mr T. Purryag explained what it meant to '*take effect from*' and '*as from*'. Referring to *paragraph 1 (b) 4* of the *Collective Agreement*, the representative of the company stated that the first part of the payment would be done as from 1 January 2014. The payment is in two phases, phase one over phase two starts '*with effect from*' and '*as from*'. He did not agree with the Union's contention that the remaining 60 % is to be paid as from January 2014 and this is not mentioned in the minutes or in the *Collective Agreement*. The agreement will expire at the end of the year and negotiations will have to start again. Both parties will start to work on a new collective agreement.

Upon questions from counsel for the *Applicant Union*, Mr T. Purryag stated that according to the minutes dated 9 May 2014, it was stated that a special request was made for two workers to have their salary increase at one go to which a representative from the MFD Ltd stated that he agreed. However, this was not implemented in the *Collective Agreement*. Upon being questioned that the employees forfeited their 60 % for the year 2014, Mr T. Purryag stated that what was discussed has been clearly spelled out and implemented.

Referring to *paragraph XX (a)*, Mr T. Purryag stated that the section says that it comes into effect as from 1 January 2014 even though it does not say that it excludes whatever paragraph, but *paragraph I* spells out the conditions. The *Collective Agreement* does not state the words '*retroactive*' or '*retrospective*' but states '*with effect from*'. He does not agree that the company has failed to honour its obligation on the *Collective Agreement* by not paying the 60 % due for the year 2014 as from January 2015.

Mr Sheo Gujadhur, Chief Finance Officer, was also present during the negotiations. He notably elaborated on the capacity of the company to pay to clarify why the company could not pay at one go. The company made accumulated losses of Rs 393 million to the year 2008. From 2008, small profits of Rs 17 million, Rs 14 million, etc. were being made. From the start of the company to 2008, the company only had losses. In 2013, the company made a profit of Rs 48 million.

As they are operating on a bank overdraft, it was decided at the meeting of 9 May 2014 to pay the salary increase 40% - 60% to allow the company 6 months. It was clear to his mind that the balance would be paid as from January 2016 and it would only be 6 months that people would have had to wait for the second part of the increase. The whole of the increase in basic salary, overtime increases, end of year bonus increases would cost the company Rs 26 million.

Mr S. Gujadhur also stated that Mr A. Subron said so many times that they will not just sign. It was proposed to make an increase in 3 stages, 40 % paid in June; 30 % in January 2015 and 30 % in January 2016. The balance of 30 % became 60 %.

THE MERITS OF THE APPLICATION

The *Applicant Union* in the present matter wishes to have the declaration of the Tribunal on the interpretation of the *Collective Agreement* on the payment of the remaining 60 % representing the difference between the new monthly basic salary the employee would have obtained as from 1st January 2014 and the monthly basic salary drawn by each employees as at December 2013.

The PLMEA and MFD Ltd signed a *Collective Agreement* on 9 June 2014 after about 9 months of negotiations. According to the representative of the union, it is the first collective agreement reached between the workers of the MFD Ltd.

The agreement has notably provided for a minimum wage of Rs 8,150 to the employees and an increase in salary, as set out in the Annexed salary grid to the agreement. The payment of the increase, however, was to be made in two stages. This is where the difference between the two parties has arisen.

Mr A. Subron, in support of the union's contention, has based himself on the grid which is annexed to the *Collective Agreement*. Although, the representative of the PLMEA did recognise that the MFD Ltd will not be able to implement the salary adjustment at one go, he insists that the remaining 60 % is payable in January 2015 and that the workers have to be paid this remainder as from January 2014. Mr A. Subron has also relied on *paragraphs I (b) 4* and *XX (a)* of the *Collective Agreement*, which relates to the duration of same.

On the other hand, the MFD Ltd through its representative has categorically denied that the payment of the remaining 60 % of the new salary grid is to be effected as from January 2014. To them the wordings of *paragraph I (b) 4* are crystal clear and cannot be read to infer that the payment of the remaining 60 % of the salary increase/adjustment should be paid as from January 2014.

The representative of the MFD Ltd, Mr T. Purryag also pointed out that nowhere during the course of negotiations was it stated that the payment of the remaining 60 % would be effected as from January 2014. The employer during the course of negotiations has always been open, upfront and clear on this issue.

The contested provision of the *Collective Agreement* is to be found at *paragraph I (b)*. This reads as follows:

I. Salary Increase

Every employee shall be granted a wage or salary increase on the conditions laid down in Annex III on the following conditions:

....

(b) Every employee drawing more than Rs. 8,150/= per month as basic salary on the grid (Annex III) will receive their salary increment in two installments and the quantum of basic salary increase will be calculated by considering the following:

....

4. The difference in monthly basic salary and any other incidental readjustments between 3. and 2. will be implemented in two stages as follows:

- 40 percent of the difference to be paid with effect from Payroll January 2014; and*
- the remaining 60 percent to be paid as from Payroll January 2015.*

The *Applicant Union* is also relying on *paragraph XX (a)* of the *Collective Agreement* in support of its understanding. This states as follows:

XX Duration of the Agreement

(a) The Agreement and any provision thereof shall come into operation on 01 January 2014 and expire on the 31 December 2016.

The issue in the present matter bears on the interpretation of *paragraph I (b) subparagraph 4* of the *Collective Agreement*. This clause of the agreement clearly spells out the modalities of payment setting out a two-staged model whereby a wage increase has been agreed with an initial 40 % of the increase payable as from January 2014 and the remaining 60 % of the increase would be paid as from January 2015.

The wordings of *paragraph (b)* of the aforesaid paragraph also clearly state that the worker's new basic salary on the grid shall be received in two instalments. This is consistent with the modalities of the two-staged payment model agreed upon in *paragraph I (b) subparagraph 4*. There is no written suggestion contained in the whole of this clause of the

Collective Agreement to the effect that the remaining 60 % is applicable as from January 2014.

Although, *paragraph XX (a)* of the *Collective Agreement* has clearly stated that the '*Agreement and any provision thereof shall come into operation on 1 January 2014*', it cannot be understood to mean that the second instalment of the salary increase would be payable as from January 2014.

This particular clause can only give effect to the coming into operation of the *Collective Agreement* and the provisions contained therein. It cannot supersede what has been already provided for in any particular clause of the agreement and is of general application to the *Collective Agreement*.

THE DECLARATION OF THE TRIBUNAL

The Tribunal therefore declares that remaining 60 % of the increase of wages provided for in the salary grid (Annex 3) contained in the *Collective Agreement* dated 9 June 2014 is to be paid, in addition to the 40 % already paid, as from January 2015 in accordance with the terms of *paragraph I (b) sub-paragraph 4* of the *Collective Agreement*.

The application is otherwise set aside.

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(sd) Shameer Janhangeer
(Vice-President)

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(sd) Ramprakash Ramkissen
(Member)

.....
(sd) Rajesvari Narasingam Ramdoo (Mrs)
(Member)

.....
(sd) Georges Karl Louis
(Member)

Date: 20th April 2016