

EMPLOYMENT RELATIONS TRIBUNAL

AWARD

RN 179/15

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

In the matter of:-

Mrs Madhyawatee Rambaree (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, Mrs Madhyawatee Rambaree, Clerical Officer/Higher Clerical Officer, posted to the Central Water Authority sub-office of Pamplémousses 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."

Mrs Rambaree deposed before the Tribunal and she stated that she is working as Management Support Officer at the Customer Care Service at Pamplémousses sub-office. She is doing the job of Public Relation Officer but is not receiving any waste water allowance. She states that she does all the work such as new supply and re-opening disconnection in relation to water and waste water but is not paid the waste water allowance. She was doing the same job at Port-Louis Decaen office before that and was paid the allowance. Since 2005, she is posted at Pamplémousses office and has not been paid the waste water allowance.

She was then cross-examined in relation to a report/award known as the Heeralall Report on the allocation of a Wastewater Management Authority allowance to the employees of Respondent. She accepted that the said report specifically provides for areas within Mauritius where the sewerage water allowances should be paid. She added however that management should have known that sooner or later wastewater allowance would have become relevant at Pamplemousses office. She agreed that the Co-Respondent objected to a management committee set up by Management from proceeding with a review of the Heeralall Report. Following questions put to her by the representative of Co-Respondent, she confirmed that she was doing the same duties at Pamplemousses as compared to her duties at Decaen office (Port-Louis).

Mrs Surfraz then deposed on behalf of Respondent and she confirmed that the contents of Respondent's statement of case were correct. She stated that the Heeralall Report provided for the areas where there was then waste water connection and the grades of the eligible officers for the waste water allowance. She however conceded that there are new areas which are now covered by waste water connection. Mrs Surfraz averred that Management had set up in 2008 a management committee to look into all new cases related to waste water allowance. She stated that the union objected to same and requested for an independent committee to be set up instead. The management committee was disbanded. Respondent is agreeable to the appointment of an independent arbitrator to revise the Heeralall Report. In relation to one Mr Doomun, Mrs Surfraz stated that the latter was not appointed to review the Heeralall Report but he was to consider representations made by employees with regard to waste water allowance.

Mrs Surfraz stated that there are other areas where there are now waste water connections and the Heeralall Report has to be reviewed. To a question from Mr Guness representing Co-Respondent, she agreed that the case of Disputant constitutes 'a new case which has arisen'. When asked if management has been guided by paragraphs 1.20 and 1.26 of the Heeralall Report, Mrs Surfraz stated that management was guided to set up a management committee. Following the request from the union for an independent arbitrator, the Respondent is proceeding accordingly. She stated that though Mr Doomun was perhaps independent, the latter was not appointed to review the Heeralall Report. Mrs Surfraz confirmed that Disputant was doing additional duties when posted at Decaen office and was paid accordingly but she could not say if she was also doing additional works at Pamplemousses sub-office. She then averred that she told the supervising officer that if ever Disputant was entrusted with such additional duties without receiving any corresponding allowance, Disputant should not be performing the said duties.

The representative of Co-Respondent did not depose or adduce evidence before us. The Tribunal has examined all the evidence on record including documents produced and the submission of counsel and concluding statement made by Mr Guness. 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 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 eligible to 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:

F/Year	Net Commission	Amount for WMA Allowance 60%	WMA Allowance Paid	Balance Remaining
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	Rs	Rs	Rs	Rs
<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*

Paragraph 1.31 of the Heeralall Report provides a guide as to how management could deal with a case that would arise after the date of the report. Mrs Surfraz conceded that the case of Disputant could constitute 'a new case which has arisen'. She also accepted that there are new areas which are now covered by waste water connection. Disputant stated that she was working as Management Support Officer at the Customer Care Service at Pamplemousses sub-office where she was doing the job of Public Relation Officer. The term "Management Support Officer" is not used in the Heeralall Report and we assume, following a statement made by Mr Guiness before us, that this is a new appellation. In the terms of reference, there is mention of "Clerical Officer/Higher Clerical Officer". Here again, we do not have this grade in the Heeralall Report. Bearing in mind the rate of waste water allowance being claimed by Disputant, and only for the purposes of giving our reasoning, we will assume that Disputant intended to refer to "Clerk (PRU/Customer Service)" or "Senior Clerk (PRU/Customer Service)" at page 2 of the Appendix to the Heeralall Report. These grades were granted a wastewater management authority allowance of 10%. However, very importantly, specific numbers (of such grades) have been laid down in the Appendix by the side of each of these grades, that is, 4 and 5 respectively.

In fact, throughout the Heeralall Report, it is clear that the makers of the Report carried out an in-depth study and meticulous scrutiny of the actual procedures and steps involved in the implementation of the scheme for the payment of wastewater allowance to staff of Respondent for Wastewater Management Authority work. Thus, the makers of the Report even carried out a number of site visits. They considered who are the staff involved in the process and “the degree of involvement of each staff” (underlining is ours). There is no indication in the Report that a “Clerical Officer/Higher Clerical Officer” or Clerk posted to Respondent’s sub-office of Pamplémousses should be paid a waste water allowance of 10% of his gross salary. Paragraph 1.31 of the Report (above) 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 calculation of this fee has changed since the Heeralall Report (as per paragraph 7 of the Statement of Case of Respondent which has been confirmed by Mrs Surfraz).
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. Now, 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.

It is not denied that the Heeralall Report does not cater specifically for Disputant. 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 she should be paid a waste water allowance of 10% of her 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