

EMPLOYMENT RELATIONS TRIBUNAL

AWARD

ERT/RN 65/17

Before

Rashid Hossen	-	President
Marie Désirée Lily Lactive (Miss)	-	Member
Andy R Hau Kee Hee	-	Member
Yves Christian Fanchette	-	Member

In the matter of:-

ERT/RN 65/17 – Government Services Employees Association (Disputant)

And

The State of Mauritius

As represented by: The Mauritius Fire and Rescue Services (Respondent)

I.P.O. The Ministry of Civil Service & Administrative Reforms

On 1st June 2017, the Government Services Employees Association (Disputant) reported to the President of the Commission for Conciliation and Mediation, the existence of a labour dispute between itself and the Mauritius Fire and Rescue Services as per Section 64 (1) of the Employment Relations Act 2008 as amended. The Commission referred a labour dispute to the Employment Relations Tribunal for arbitration in terms of section 70 (3) of the Employment Relations Act 2008 as amended.

The State of Mauritius is the Respondent and is represented by the Mauritius Fire and Rescue Services.

The Ministry of Civil Service and Administrative Reforms has been put into cause.
(The Ministry)

The point in dispute is:-

“ Non-implementation of Recommendation 24.1.6 of Pay Research Bureau (PRB) Report 2016 from the date of effective date of the report which is 01 January 2016”.

Mr Dhananjay Ramful, of Counsel, appears for the Disputant.

Miss Annabelle Ombrasine, Senior State Counsel, appears for the Respondent.

Miss Nisha Pem, State Counsel, instructed by State Attorney, appears for the Ministry.

In its Statement of Case, the Disputant avers that:-

- The Disputant is a recognised trade union representing the Firefighters working at the Mauritius Fire and Rescue Services (MFRS) and employed by the Respondent.
- In relation to Firefighters, the Pay Research Bureau (PRB) report 2016 has recommended the following:
Paragraph 24.1.6 Firefighters should be departmentally known as “Lead Firefighter” on completing 15 years of service in the grade subject to being favorably reported on their performance, conduct, and attendance. The Lead

Firefighter should be given the authority of leading and taking charge of a team of Firefighters, whenever the situation requires and;

(ii) the Lead Firefighter, should be paid a monthly allowance equivalent to two increments at the point reached in the salary scale.

Paragraph 24.1.7: We further recommend that management should strongly consider the advisability of increasing the establishment size of the grade of Firefighter.

- The reason given by the PRB for the above recommendation is that the grade of Firefighter encounters a problem of leadership and authority when they embark on an emergency operation where the crew does not consist of an officer of a higher rank to take command.
(paragraph 24.1.5 PRB report 2016)
- In spite of several representations made by the MFRS, it initially failed to implement the above recommendations and an apprehended dispute was reported to the Conciliation Service of the Ministry of Civil Service and Administrative Reforms on 2nd of February 2017 and it ended up in a deadlock.
- Whilst proceedings were ongoing before the Conciliation Service, the MFRS issued a SPECIAL ORDER NO.23 OF 2017 for the implementation of the Lead Firefighter Scheme as recommended by the PRB but the effective date of its implementation was as from the date of the Order which was the 17th March 2017.
- On the 1st June 2017, the Disputant reported the labour dispute to the President of the Commission for Conciliation and Mediation which in turn referred the matter to the Employment Relations Tribunal.
- It has been the practise well before January 2016 for the senior most Firefighter to lead operations and this can be confirmed from entries inserted in the occurrence books of all stations.

- In fact, on the 1st April 2016 cabinet took note of the recommendations made by the PRB and has agreed to its implementation, in toto, as from 1st January 2016.
- It is to be noted that Rodrigues has implemented the recommendation as from 1st January 2016, whilst the MFRS is adamant to implement it with effect from 17th March 2017.
- The Disputant therefore avers that the effective date of the implementation of the above recommendations should be the 1st January 2016 instead of the 17th March 2017.

The Respondent avers *inter alia* in its Statement of Case that:-

- following the publication of the PRB Report in April 2017, a Department Implementation and Monitoring Committee was set up to look into the recommendation concerning Lead Firefighters, among others. A list of officers reckoning 15 years' service was drawn and clarification on the relevant recommendation was sought with the Ministry of Civil Service and Administrative Reforms in a letter dated 20 May 2016. Respondent further avers that as no mention was made on this issue in the Addendum Report, the Ministry was requested again in a letter dated 19 October 2016 to confirm as to whether all firefighters reckoning 15 years' service would be paid the monthly allowance subject to being favourably reported upon. No reply was received and the Ministry was requested to convene a meeting for clarification and has subsequently in a letter dated 06 February 2017 informed that the Disputant has reported an Apprehended Dispute against MFRS on the issue of non-implementation of the relevant Recommendation 24.1.6 of the PRB Report 2016. An apprehended dispute was reported to the Conciliation Service (Ministry of Civil Service & Administrative Reforms). However, in the meantime the Mauritius Fire and Rescue Services (MFRS) had already embarked on the implementation of Lead Firefighter with effect from 17 March 2017.
- in view of the date of implementation of the Order dated 17 March 2017, the representative of the Disputant was not agreeable to the effective date of

implementation of the PRB Recommendation which according to him should have been as from 01 January 2016. Since the Disputant was maintaining its stand on the effective date of the implementation of the recommendations of the PRB, the Chairperson of the Conciliation Service informed that a conciliation could not be reached and announced a deadlock in relation to the issue in dispute.

- the fire fighters have never been designated by any special order/circulars to lead operations. At emergencies, Station Officers or Sub Officers lead the group. There is no self-designation/self-assignment to any role or task in a discipline organisation.
- the MFRS has initiated action in line with Circular No. 6 of 2016 from the Ministry dated 07 April 2016.
- following the issue of the Circular dated 07 April 2016 mentioned above, a Departmental Implementation and Monitoring Committee was set up in April 2016 to look into the recommendations and approval of the Ministry was sought on the payment of Lead Firefighters allowance. In a letter dated 16 December 2016 addressed to Respondent, a decision was conveyed. Consequently, a Special Order was issued on 17 March 2017. The designate position of Lead Firefighter has been recommended in PRB Report 2016 which was issued in April 2016. Therefore, prior to April 2016, the designated position did not exist. It is only after the issue of Special Order No.23 of 2017 dated 17 March 2017, that Lead Firefighter could have been designated and authorized to lead and take charge of team of Firefighters whenever the situation required.

In reply to the averments of the Disputant and the Respondent, the Ministry put in a Statement of Case in which it avers that:-

- paragraph 24.1.6 of the Pay Research Bureau (PRB) Report should be read together with paragraph 24.1.5 of the 2016 PRB Report, where it has been stated that:

“Union Members have highlighted that at times officers in the grade of Firefighter encounter a problem of leadership and authority when they embark on an emergency operation where the crew does not consist of an officer of a higher rank to take command. Moreover, in the absence of a Sub-Officer, Firefighters are called upon to assume responsibilities of the higher rank without any additional compensation. The Bureau has carefully examined the issue and strongly views that the elements of rank and command are very critical in the smooth running of operations in the Disciplined Forces. In this context, after consultation with Management and Unions, we are providing for a designate position of Lead Firefighter to address these issues which are impeding service delivery”;

- no authority had been sought from the Ministry by the Rodrigues Regional Assembly regarding implementation of paragraph 24.1.6 of the PRB Report;
- the Ministry has been informed that recommendation 24.1.6 of the PRB Report has been implemented with effect from 17 March 2017 following the Special Order No 23 of 2017 setting out the criteria on which the allowance should be paid to the Lead Firefighters.

Disputant’s representative, Mr Mohamed Ehsan Jawaheer, himself a Lead Firefighter and posted at the Port Louis Fire Services Station, stated that recommendations in relation to the post of Lead Firefighter were made to the Pay Research Bureau regarding its 2016 Report and he produced relevant extracts of

the reports. According to him, Firefighters were already doing the job of Lead Fire Fighter although were not being remunerated and this has been done for a very long time. He has himself been in charge of a crew every now and then. This task has been delegated to him by the Station Officer and there are records kept in a book called the Special Services Record Book. He added that the newly introduced allowance for Lead Firefighter has been implemented but in Mauritius the implementation took effect only as from March 2017. He conceded that with regard to the issue of performance there seems to be a confusion. It is his belief that the criteria attached to the granting of the allowance *in lite* came only from the Special Order of the 17th of March 2017 and not from the Pay Research Bureau. He is aware that the matter was referred to the Ministry and following which a deadlock occurred. It was referred to the Commission for Conciliation and Mediation before its final referral to the Tribunal.

Mr Asok Kumar Kehlary, Deputy Chief Fire Officer, deponed on behalf of the Respondent. He has been at the Mauritius Fire and Rescue Services for 36 years and in the administrative position for the last 17 years. According to him, following the publication of the PRB Report of 2016, a committee was set up to look into the implementation of the various recommendations. It was essential that clarifications be sought from the Ministry. After various exchanges of correspondences and meetings Special Order No 23 was issued on 17th March 2017 giving effect to the implementation of the recommendation in relation to Lead Firefighters as from that date. Prior to that there was no scheme of service for the post of Lead Firefighter and there were only the posts of Firefighter, Sub Officer and Station Officer. The Lead Firefighter became a designated post in between the post of Sub Officer and that of Firefighter. The witness stressed that based on the recommendation of the PRB emanating from the Ministry, it was clearly spelled

out that Lead Firefighters should have 15 years of service and have been favourably reported on their performance, conduct and attendance and there should be an Ad-hoc Report accordingly. In relation to Rodrigues island, he stated that the Firefighter service in Mauritius has no control over Rodrigues island.

Mr Surajanand Ghumaria, Senior Human Resource Executive at the Ministry confirmed that all officers in the grade of Firefighter who have completed 15 years of service or more have opted for the PRB Report. The 2016 PRB Report was published on the 30th March 2016 and following the publication and approval of the Government, the Ministry issued a Circular (No 6 of 2016) on 7th April 2016 regarding implementation and remuneration contained in the said Report. The Circular note was addressed to Supervising Officers of Ministries/Departments/Heads of the Parastatal Bodies/Local Authorities and the Island Chief Executive for the Rodrigues Regional Assembly. The Circular specified that the implementation date of the PRB Recommendation would in principle be the 1st January 2016. Implementation for new allowances would take effect prospectively, unless, specifically stated otherwise. According to the witness in the present case, the effective implementation date has not been stated in the Report, so that its implementation could not take effect as from 1st January 2016 but a date consequent to the publication of the Report and the establishment of a proper structure to implement the recommendation. The Ministry received report from the Respondent for issues to be clarified although the PRB did not look into the matter in the Addendum Report. A meeting was held on the 16th December 2016 at the Ministry with officers of the PRB and Respondent regarding interpretation and implementation of the recommendations. Disputant referred the matter to the Commission for Conciliation and Mediation and the deadlock could

not be resolved. According to the witness a designate position requires the official appointment of someone to a position.

Tribunal's considerations

Jurisdiction

We need to address at the outset the issue of definition of labour dispute. The Ministry in particular raised the point that the present dispute does not fall within the definition of labour dispute as provided under the Employment Relations Act 2008 as amended. Counsel for the Ministry submitted that the signing of the option form in relation to the PRB Report debars the Disputant and anyone who did so from declaring a labour dispute.

We refer here to what was stated in a ruling delivered on 24th August 2010 by this Tribunal:-

“

*The Respondent, the Government of Mauritius raised a point in limine litis to the effect that this matter cannot be heard before the Tribunal as there is no industrial dispute as such. Counsel for the State submitted that it is on record that the Applicant has opted for new salary and conditions of service governed by the pay Research Bureau Report of 2003 and 2008 and they are therefore bound by what they have signed and the agreement they have entered into. Counsel stated that he was resting his argument upon the determination of the Tribunal in that case of **Cunden and 5 Others and Technical School Management Trust Fund (RN1028)** delivered on the 13th of November 2009 where according to him the*

same point was raised when an Applicant has opted for new salary and conditions as governed under the P.R.B Report and it was said that the Applicant was debarred from raising an industrial dispute once he has opted for new salary and conditions of service.

Counsel appearing for the Union submitted that it is not the case before the Tribunal that the option is being challenged. What is being challenged is the recommendations made in the PRB Report that must be implemented. It is the implementation of those recommendations that is in issue. He further submitted that the PRB Report is not sacro saint and that we have seen that the last report provided for payment of increases in salary up to 75% and it was the Government that decided a payment of 100%. Changes can be brought in the implementation of the PRB and the Errors and Omissions Committee exists for that purpose. The workers are not challenging the fact that they have signed and agreed with the exercise of an option but what they expected the employer to do with the implementation of those recommendations is what is the subject matter before the Tribunal.

.....

We would also demarcate from what we held in **T.S.M Cunden and Others and Technical School Management Trust Fund (RN 1028 of 13.11.2009)** to the extent that **Cunden** (Supra) was in relation to salary directly whereas the present matter relates firstly to a qualification issue regarding the first dispute and a responsibility issue with regard to the second one. Likewise, we would distinguish the present matter with the case of **Y.Ramkhelawon and Minister of Civil Service Affairs and Administrative Reforms (P.A.T Judgment RN 138 of 31.05.2006)**

where the Appellant conceded in his grounds of appeal that the dispute relates to additional increments.

A “labour dispute” is defined in the Employment Relations Act 2008 as follows:-

(a) means a dispute between a worker, or a recognized trade union of workers, or a joint negotiating panel, and an employer which relates wholly or mainly to wages, terms and conditions of employment, promotion, allocation of work between workers and groups of workers, reinstatement or suspension of employment of a worker;

(b) does not, withstanding any other enactment, include a dispute by a worker made as a result of the exercise by him of an option to be governed by the recommendations made in a report of the Pay Research Bureau in relation to remuneration or allowances of any kind.

It is our view that the disputes before us are in relation to qualification and responsibility which may have a bearing incidentally on increment.”

In endeavouring to curtail an abundance of labour disputes arising on issues upon which a Disputant has in writing agreed to initially and soon after changes his mind to contest it, parliament brought in changes to the law. Anyone challenging issues in relation to remuneration and/or allowance of any kind is debarred from doing so if he has opted for such remuneration and/or allowance of any kind. The Terms of Reference in the present matter deals specifically and only with the issue of implementation. The labour dispute relates to the implementation which incidentally has a bearing on the allowance but not directly related to it.

Chronology of events and observations

In its 2016 Report (Volume 2, Part 1) issued in April 2016, the PRB has recommended at paragraphs 24.1.5 and 24.1.6 the following:-

24.1.5

Paragraph 24.1.6 of the Pay Research Bureau (PRB) Report should be read together with paragraph 24.1.5 of the 2016 PRB Report:-

“(a) Union Members have highlighted that at times officers in the grade of Firefighter encounter a problem of leadership and authority when they embark on an emergency operation where the crew does not consist of an officer of a higher rank to take command. Moreover, in the absence of a Sub-Officer, Firefighters are called upon to assume responsibilities of the higher rank without any additional compensation. The Bureau has carefully examined the issue and strongly views that the elements of rank and command are very critical in the smooth running of operations in the Disciplined Forces. In this context, after consultation with Management and Unions, we are providing for a designate position of Lead Firefighter to address these issues which are impeding service delivery;

.....

24.1.6

- i. Firefighters should be departmentally known as “Lead Firefighter” on completing 15 years of service in the grade subject to being favourably reported on their performance, conduct and attendance. The Lead

Firefighter should be given the authority of leading and taking charge of a team of Firefighters, whenever the situation requires; and

- ii. the Lead Firefighter, should be paid a monthly allowance equivalent to two increments at the point reached in the salary scale.”

Paragraph 21.7 (Volume 1 of the Report) provides:-

“The date of implementation of this Report would in principle be 01 January 2016 in line with the EOAC Report 2013 recommendation as approved by Government. Accordingly, recommendations relating to both pay and allowances, facilities, benefits and other conditions of service shall take effect simultaneously and prospectively unless specifically stated otherwise.”

On 7th April 2016 a Circular note (No 6 of 2016) emanated from the Ministry and was addressed to Supervising Officers in charge of Ministry/Departments/Heads of the Parastatal Bodies/Local Authorities and the Island Chief Executive for the Rodrigues Regional Assembly. It referred to the salient features regarding the general terms and conditions of service.

A departmental implementation committee was set up at the Respondent service and it sat for 5 sessions until May 2016 when it was decided at that departmental level to seek clarification from the Ministry.

The Chief Fire Officer wrote a letter on 20th May 2016 addressed to the Senior Chief Executive of the Ministry and submitted the following for the Ministry’s consideration:-

“(i) Recommendation 1 – Paragraph 24.1.6:

There is a need to clarify whether all Firefighters should be departmentally known as “Lead Firefighter” on completing 15 years of service in the grade, subject to being favourably reported on their performance, conduct and attendance and accordingly be paid a monthly allowance or they should be paid the allowance only when they are called upon to lead or take charge of a team of Firefighters.

(ii) Recommendation 4 – Paragraph 24.1.15

The Mauritius Fire and Rescue Service is an emergency service whereby officers in the Firefighter cadre intervene in all cases of fire and rescue. Consequently, ‘normal intervention’ is not an appropriate term in the MFRS. All officers irrespective of rank have the duty to respond to emergencies as and when required.

Payment of on call allowance should be extended to all officers in the Firefighter Cadre.”

Mrs Indranee Reega, Assistant Manager Human Resource, on behalf of the Senior Chief Executive of the Ministry, referred the query to the Pay Research Bureau on 27th May 2016 for examination.

Failure on the part of the Senior Chief Executive of the Ministry to at least inform the Chief Fire Officer of same led to the latter having to write to the Ministry again to know where matters stand. On the 28th August 2016, the

Senior Chief Executive informed the Chief Fire Officer that the matter had been referred for consideration in the Pay Research Bureau's Addendum Report.

On 19th October 2016, the Chief Fire Officer wrote to the Senior Chief Executive of the Ministry, informing him that no mention had been made on the relevant issue in the Addendum Report.

The Pay Research Bureau having turned a deaf ear to the representation made, the Chief Fire Officer decided that all Firefighters who have completed 15 years of service in the grade and subject to being favourably reported on their performance, conduct and attendance will be paid a monthly allowance equivalent to two increments at the point reached in the salary scale in December 2016 notwithstanding that Firefighters who are not posted in Fire Stations but in other Divisions/Units, are not called upon to lead or take charge of a team of Firefighters. The Chief Fire Officer sought for clearance to proceed accordingly.

On 16th December 2016, the Senior Chief Executive of the Ministry, informed the Chief Fire Officer in writing that following a meeting held on the very day at the Ministry with officers of the Pay Research Bureau and the Mauritius Fire and Rescue Services on the interpretation and implementation of paragraphs 24.1.5 and 24.1.6, the highlights of the deliberations were as follows:-

- “ (i) paragraph 24.1.6 should be read with the motivation factor as spelt out in the recommendation at paragraph 24.1.5;*
- (ii) “Lead Firefighter” is a designate position; and*
- (iii) to be designated as “Lead Firefighter”, Firefighters should*

- (a) *have completed 15 years of service in the grade; and*
- (b) *have been favourably reported on their performance, conduct and attendance;*
- (c) *be given the authority of leading and taking charge of a team of Firefighters, whenever the situation requires;*
- (d) *the designated Lead Firefighter, should be paid a monthly allowance equivalent to two increments at the point reached in the salary scale subject to the officer leading at least one operation in the month;*
- (e) *the “Lead Firefighter” should be designated, as far as possible, on the basis of seniority and it should be ensured that there is regular rotation in a spirit of providing equal opportunities to all employees.”*

On 13th February 2017, the Chief Fire Officer wrote to the Senior Chief Executive of the Ministry, informing of his intention to proceed with the implementation of the said scheme as follows:-

“ (i) The number of lead firefighter position be determined in relation to the number of crews normally required at each station to provide effective emergency response and ensure efficient incident management for a typical situation with a wide range of incidents to attend within the same interval.

(ii) All eligible officers will be paid a monthly allowance on the condition that they are effectively called to act as lead firefighters in accordance to an annual roster which ensures that there will be equitable assignment of that role to every eligible officer.

(iii) Cases of discipline, misconduct, poor performance or poor attendance will immediately lead to automatic debarment from the scheme. Reinstatement will be subject to the outcome of any discipline proceedings or the re-assessment of the capability of the officers to lead after a 3 months on the job remedial training program.

(iv) All eligible officers be required to follow an intensive short duration training programme to equip them with the necessary knowledge and skills to allow them perform effectively.”

In a final correspondence forwarded on 1st March 2017 by the Senior Chief Executive of the Ministry, the Chief Fire Officer was informed that the Ministry took note of such implementation.

We need to emphasize the provision laid down in paragraph 21.7 (Volume 1) of the Pay Research Bureau Report 2013:-

“ The date of implementation of this Report would in principle be 01 January 2016 in line with the EOAC Report 2013 recommendation as approved by Government. Accordingly, recommendations relating to both pay and allowances, facilities, benefits and other conditions of service shall take effect simultaneously and prospectively unless specifically stated otherwise.” (The underlining is ours).

The word ‘prospectively’ is defined in the Oxford Dictionary as *“expected or likely to happen or be in future.”*

There is nothing specifically stated in the Pay Research Bureau Report relating to the timing of implementation of recommendations made for the Lead Firefighters. If in principle the Report is to be implemented as from 1st January 2016, clearly the Bureau is fully aware that some recommendations can only be implemented in a prospective manner.

Following the publication of the said Report, the Ministry informed all Heads of Ministries/Departments amongst others and that as early as the first week of April that should there be any difficulty in relation to the implementation of recommendations in the Report other than salary, this should be referred to the Central Implementation and Monitoring Committee of the Ministry. We have seen the chronology of events which is a self-explanatory exercise. Indeed, the Respondent had difficulties in proceeding to the implementation of the Report and sought clarification from the Ministry. It is only through various exchanges of documents and a meeting held in December 2016 that a proper structure has been set up in relation to the “designate post”. The Lead Firefighters must be designated and there are certain conditions that need to be met for it to take effect. It is not a situation whereby the Respondent could rush and start effecting payment without the proper structure having been set up. Much has been said with regard to Lead Firefighters having already engaged themselves in such task. They are currently required to perform as Lead Firefighters. However, we are not in presence of sufficient evidence that would justify that certain officers are deemed to have been designated Lead Firefighters. The mere fact of stating that some Firefighters have been doing the task before is far from satisfying the standard of proof for us to conclude that those officers are “designated” officers. The representative of Firefighters referred to documents that could show the task effected by some

Firefighters but did not produce any of those documents for the Tribunal to examine.

We wish to add that the granting of this Special Allowance for designated Lead Firefighters is to avoid confusion in recognizing the person in authority to do such task and also to motivate all those who are called upon to perform such task. It emanates from the union members (paragraph 24.1.5 of PRB Report 2016), “that at times officers in the grade of Firefighters encounter a problem of leadership and authority when they embark on an emergency operation where the crew does not consist of an officer of a higher rank to take command.” In the same breath, the Senior Chief Executive requested representatives of the MFRS at the meeting held on the 16th December 2016 to explain the underpinning when they put up a request to the Pay Research Bureau. The notes of meeting at the Ministry revealed that the request was made in a bid to motivate the Firefighter leading a team. The MFRS noticed that previously Firefighters were not giving quality services and submitting proper reports and were not showing commitment as they were not paid for same. We see therefore that they were not willing to lead a team of Firefighters as required and which called for the granting of the Special Allowance. It appears to us that the application of the Allowance Scheme on a retrospective basis would not satisfy the criteria of performance.

After considering all the documentary and testimonial evidence, the Tribunal finds no reason to intervene.

The dispute is set aside.

SD Rashid Hossen
President

SD Marie Désirée Lily Lactive (Miss)
Member

SD Andy R Hau Kee Hee
Member

SD Yves Christian Fanchette
Member

11th August 2017