

EMPLOYMENT RELATIONS TRIBUNAL

AWARD

ERT/RN 161/2015

Before:

Shameer Janhangeer	Vice-President
Raffick Hossenbaccus	Member
Denis Labat	Member
Triboohun Raj Gunnoo	Member

In the matter of: -

Mrs Sushma Devi HANADON

Disputant

and

BPML Freeport Services Ltd

Respondent

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

Whether Mrs. Hanadon should have been granted three increments on the scale of Marketing Executive (Grade 4) when she was appointed to the same post on 1st July 2014 as Management has not respected its agreement with the Union to promote her to the post of Assistant Corporate & Regulatory Affairs Officer (Grade 6) with effect from April 2011.

Both parties were assisted by Counsel. Mr José Moirt appeared for the Disputant, whereas Mr Ravin Chetty, SC appeared for the Respondent. Both parties have submitted their respective statement of case in the present matter.

THE DISPUTANT'S STATEMENT OF CASE

The Disputant joined the Respondent Company on 15 October 2001 upon a transfer from the Mauritius Freeport Authority where she held the post of *Secretary / Receptionist*. Her post was thereafter restyled as *Executive Assistant* in March 2004 following a salary review. From mid-2004 to mid-February 2010, she worked in the Marketing Department.

In September 2009, she successfully obtained her diploma in Business Studies. The Union thereafter requested that she should be granted additional increments pursuant to *section 4.7 of the Conditions of Service*. In December 2009 during negotiations, it has been averred, Management agreed to certain issues, among which were that she would act as *Assistant Corporate and Regulatory Affairs Officer*, be paid an acting allowance and be appointed to the aforesaid post upon successful completion of her course (October 2010) after a probationary period of six months (April 2011). The Union gave its agreement.

In February 2010, the Disputant was deployed to the *Operations Department*. However, she was not given any acting allowance nor was she promoted to the level of *Assistant Corporate and Regulatory Affairs Officer*. The salary report in January 2013 recommended the abolition of the post of *Assistant Corporate and Regulatory Affairs Officer*. Mrs Hanadon was promoted to the post of *Marketing Executive* in July 2014.

However, it has been averred that the end result remains the same being given that Mrs Hanadon has lost the opportunity of having a long due promotion since April 2011 and of earning a better basic salary. She therefore wishes her salary to be topped up with three increments in her new post of *Marketing Executive*.

THE RESPONDENT'S STATEMENT OF CASE

BPML Freeport Services Ltd admits that Mrs Hanadon joined on 15 October 2001 following the proclamation of the *Freeport Act 2001* being initially posted in the *Administrative Department*.

The Respondent avers that it never accented to the alleged agreement. It has been averred that it disclaimed the contents of the document titled “Request for Promotion – Management’s Views” produced before the *Commission for Conciliation and Mediation* in a meeting on 4 March 2015. The Disputant was deployed to the *Operations Department* in February 2010. There was never any agreement for an allowance nor for any promotion.

In a meeting in February 2012, the Disputant was unable to substantiate her claim that she would be promoted to the post of *Corporate and Regulatory Affairs Officer* as so informed by the previous *General Manager*. Following another meeting on 9 October 2012, Mrs Hanadon agreed to perform the duties of *Marketing Executive* in the *Marketing Department* and was paid a responsibility allowance for same in accordance with the Company’s terms and conditions of employment.

Mrs Hanadon was thereafter transferred to the *Marketing Department* on 1 November 2012 to perform the duties of *Marketing Executive* and paid a monthly responsibility allowance of Rs 2,250. The post of *Assistant Corporate and Regulatory Affairs Officer* was abolished following a recommendation made in the ‘*Review of Conditions of Service*’ as it had remained vacant and none of its employees had applied to be promoted to the said post. Neither did the Union nor the Disputant object to the abolition of the post. The Union only requested the Respondent to include Business Studies as a requirement for the post of *Marketing Executive* so as to make the Disputant eligible for the said post.

The Disputant upon being promoted to the post of *Marketing Executive* was granted three increments. It has also been averred that no formal application to the post of *Assistant Corporate and Regulatory Affairs Officer* was ever received by the Disputant. The Respondent also set out the benefits granted to the Disputant for the period November 2012 to July 2014.

THE EVIDENCE OF WITNESSES

Mrs Sushma Devi Hanadon, Marketing Executive, adduced evidence in support of her dispute. She is claiming three increments which she believes that she should have received in April 2011 when she should have been promoted to the post of *Assistant*

Corporate and Regulatory Affairs Officer. In March 2004, she was occupying the restyled post of *Executive Assistant* (formerly *Secretary / Receptionist*) on the salary scale of BFSL 8 earning Rs 16,000. She produced a salary chart for this purpose (Document A) showing the progression of her salary during the period 2010 to July 2014.

In September 2009, she successfully obtained a diploma in Business Studies. She produced the syllabus of the diploma course (Document B) having obtained 60 credits for the diploma. She then made a demand to Management for an additional increment according to *section 4.7* of the *Conditions of Service*. She produced a letter dated 30 September 2009 whereby she was refused the additional increment (Document C). She also produced her Scheme of Service as *Executive Assistant* (Document D). She referred the matter to the Union whereby a meeting between Management and the former was held in December 2009.

Mrs Hanadon was not present at the aforesaid meeting and was later informed by the Union that she would be transferred to the *Operations Department* to work as acting *Assistant Corporate and Regulatory Affairs Officer* upon completion of her degree course in October 2010. After a probationary period of six months, she will be automatically appointed to *Assistant Corporate and Regulatory Affairs Officer* in April 2011. She was also informed that the grant of the increment was not accepted. The Union accepted the proposal.

A memo dated 19 February 2010 from Management transferring her to the *Operations Department* was produced (Document E). According to her, the duties nos. 1 to 6 listed therein are the tasks of *Assistant Corporate and Regulatory Affairs Officer* and she produced a copy of the Scheme of Service of the said post (Document F). She completed her degree course successfully in October 2010. She was not promoted to the post of *Assistant Corporate and Regulatory Affairs Officer* and the post was still vacant in April 2011. She was earning Rs 16,600 and if she had been promoted she would have earned Rs 18,400.

Mrs Hanadon produced a copy of the notes of meeting dated 10 February 2012 to show that the issue of promotion was raised with Management (Document G). In July 2011, she was earning Rs 17,200. Had she been promoted she would have been earning Rs 19,000. In January 2013, a new report (on terms and conditions of service) was made by Mr Appanah in which the clause of relevancy for additional qualifications was removed. She was thereafter granted three increments for additional qualifications. In January 2013, as *Executive Assistant* she was earning Rs 28,200 following the new report and the grant of the

additional increment. If she had been promoted her salary would have been Rs 30,600. Prior to the report she was earning Rs 25,200.

In July 2014, she was promoted to post of *Marketing Executive* earning Rs 30,600 instead of Rs 33,300 had she been promoted to *Assistant Corporate and Regulatory Affairs Officer*. She was not granted three increments in April 2011 and this will adversely affect her salary till her retirement and her pension. The three increments are those she would have obtained had she been appointed as *Assistant Corporate and Regulatory Affairs Officer* in April 2011.

Upon questions from Counsel for the Respondent, Mrs Hanadon notably stated that she was given a memo dated 19 February 2010 by the Manager (Document E) in relation to an alleged agreement made in December 2009 whereby she would act as *Assistant Corporate and Regulatory Affairs Officer* for six months and be automatically appointed to the post thereafter. She stated that the duties listed in the memo are that of *Assistant Corporate and Regulatory Affairs Officer* and not those of *Executive Assistant*; it is not written in the memo that the duties are those of the former post.

On 9 October 2012, she agreed to being posted in the *Marketing Department* as a *Marketing Executive*. The post of *Assistant Corporate and Regulatory Affairs Officer* was abolished in 2013 and she did not apply for same as there was an agreement with the Union. Neither did she nor the Union object to the abolition of the aforesaid post. She did not agree that the Union requested the employer to include Business Studies as a requirement of the post of *Marketing Executive* in order to make her eligible for the post.

Mrs Hanadon also confirmed that she was given an acting allowance for the post of *Marketing Executive* from November 2012 to July 2014; three additional increments for the additional qualification; a thirty percent general increase in salary in January 2013 as for all employees; one increment in July 2013 as for all employees; one increment in January 2014 as for all employees; and she was appointed *Marketing Executive* in July 2014 at grade 4 being promoted from *Executive Assistant* at grade 8. She agreed to having received three increments as *Marketing Executive* at level 4 and three increments for additional qualifications. She did not agree that all dues and increments were paid to her.

Mrs Hanadon also added that if she had been doing the same duties as *Executive Assistant* upon being transferred to the *Operations Department*, the duties listed in the

memo dated 19 February 2010 (produced as Document E) would not have been listed. In clarifying why she did not apply for the post of *Assistant Corporate and Regulatory Affairs Officer*, she cited the agreement for a promotion in April 2011 following the meeting of the Union with Management in December 2009. She also contended that the Union requested that the qualification for the post of *Marketing Executive* be aligned with that of *Assistant Marketing Manager* as there was an anomaly in the qualifications and she produced an extract from the BPML Freeport Services Ltd terms and conditions of service highlighting *paragraph 2.16* of same (Document H). She also produced a photocopy of her degree certificate in Business Studies from the University of Mauritius (Document J).

Mr Moussa Ibrahim, former negotiator with the Maritime Transport and Ports Employees Union, was also called on behalf of the Disputant. He is aware of Mrs Hanadon's dispute and had negotiated on her behalf in relation to the issue of additional increments for qualifications. There was a first negotiation in December 2009 in which he was present. During the meeting, the former Director, Mr Seeneevassen, made a counter proposal stating that there is a vacant post of *Assistant Corporate and Regulatory Affairs Officer*, that over a period of time, he will transfer the Disputant to the *Operations Department* on six months' probation as from October 2010 when she would finish her degree course; after six months, she would be automatically appointed to the post of *Assistant Corporate and Regulatory Affairs Officer*. After the meeting, having received a better proposition than what they were asking, they advised Mrs Hanadon and she gave her approval. At that moment, the dispute as to additional increments for additional qualifications was resolved. There are no minutes in relation to the meeting as at the time no minutes were officially made. It is as from February 2011 that official minutes have been available. The negotiations were in good faith.

Following the meeting, Mrs Hanadon was transferred to the *Operations Department* in February 2010 by way of a memo (Document E). When analyzing the duties stated in the memo, they realised that the duties do not pertain to those of *Executive Assistant* but to those of *Assistant Corporate and Regulatory Affairs Officer*. The *Operations Department* also comprise the posts of *Traffic Officer*, *Senior Traffic Officer* and *Accounts Officer*. He also stated that Mrs Hanadon was entitled to an acting allowance for performing higher duties as per the terms and conditions of service. She was not paid same.

Mr Ibrahim also stated that Mrs Hanadon went on to obtain her degree in October 2010 and she remained in the *Operations Department*. The Union received a document titled '*REQUEST FOR PROMOTION MANAGEMENT'S VIEWS*' dated March 2010 in their postbox. He produced a copy of same (Document K). Referring to paragraph 12 of the

document received, it confirmed the agreement aforementioned. The document emanated from the former Director of the company and was submitted to the Chairman for the Board to take a decision. At the time in October 2010, Mrs Hanadon was drawing a salary on the scale of *Executive Assistant*, salary which she was drawing before her transfer. She was not receiving any acting allowance nor did her salary base change.

According to Mr Ibrahim, the Union had several meetings with Management. He produced the notes of meeting of 23 February 2011 referring to the 6th heading (paragraph) '*Regarding the request for promotion of Mrs Hanadon, ...*' (Document L). He produced another notes of meeting dated 7 July 2011 (Document M) where the issue of the promotion was raised with Management. He also referred to the notes of meeting dated 10 February 2012 (Document G). He stated that every time that the issue of promotion was dealt with by the employer, it was under the heading '*Additional increment for additional qualifications*'. No solution was reached in February 2012 and the next meeting was held in January 2013. He produced a copy of the notes of meeting dated 16 January 2013 (Document N) referring to the paragraph under the heading of '*Additional increment for additional qualifications*'. The next meeting was in August 2014. He produced the notes of meeting dated 22 August 2014 (Document O) referring to '*Mrs Hanadon's request for 3 increments*'. There was another meeting in September 2014, of which he produced the notes of meeting dated 12 September 2014 (Document P).

In July 2014, Mrs Hanadon was promoted to the post of *Marketing Executive*. There has been no solution reached and the matter was reported to the *Commission for Conciliation and Mediation* before coming before the *Tribunal* on the issue of increments for the promotion. He stated that there has been a breach of the agreement and that the Disputant has been financially penalised. If she had received her promotion at the relevant time in April 2011, she would have received three increments. Today, she would have been three points ahead in her salary scale. He stated that the Disputant is due Rs 900 based on the salary scale of *Marketing Executive* which is at BPSL 4. The Report of the Job Evaluation Appeals Committee (JEAC) dated April 2011 to which the Union made representations was also produced (Document Q).

Mr Ibrahim was also questioned by Counsel for the Respondent. He notably confirmed that the Management did not accept the document titled '*REQUEST FOR PROMOTION MANAGEMENT'S VIEWS*' and that the document was not signed. He confirmed a bundle of sixteen letters between the Union and the *General Manager* dated 11 June 2008, 12 July 2007, 10 February 2006, 29 March 2009, 1 June 2009, 3 June 2009, 4 June 2009, 11 March 2008, 3 October 2008, 25 June 2007, 7 August 2006, 25 October 2008, 27

October 2008, 10 October 2008, 18 August 2008 and 5 June 2008 to be genuine and produced same (Document R, Documents R₁ to R₁₆). He did also state that there were other items on which the Union did negotiate on which are not to be found in any correspondence.

Mr Ibrahim upon being questioned also related that the Mauritius Freeport Authority was split in two, with a part becoming BPML Freeport Services Ltd and the other becoming the Board of Investment (“BOI”). The staff on the Operations side went into BPML Freeport Services and the rest with the BOI. The *General Manager* looks after the day to day running and decisions are made by the Board. All correspondences were addressed to the *General Manager* and they never received any letter from the Board. As far as promotions are concerned, it is the prerogative of the *Manager* to prepare and submit to the Board. The final decision rests with the Board. The interaction in December 2009 was between the Management and the employee. BFSL 6 also refers to grade 6 in 2009.

Mr Ibrahim also stated that Mr Seeneevassen made the condition that if Mrs Hanadon successfully obtains her qualification, he would then nominate her. Mr Ibrahim confirmed that she was deployed in the *Operations Department* in February 2010. He agreed that a promotion is like an appointment, it needs to go through the Board. Referring to the notes of meeting dated 10 February 2012 (Document G), Mr Ibrahim stated that the minutes should refer to the post of *Assistant Corporate Regulatory Affairs Officer* instead of *Corporate Regulatory Affairs Officer*. Referring to a notes of meeting dated 9 October 2012 (produced as Document S), he confirmed what was stated by Mr Ramoo therein.

Mr Jayenanand Ramoo, Finance Manager, was called on behalf of the Respondent Company. He explained why the Disputant was deployed to the *Accounting and Marketing Department* as secretaries were redundant in the *Administration Department* and some had left the company. Upon being shown a letter from BSFL dated 30 September 2009 (Document C), he stated that he stood by same. He also stated that the document titled ‘*REQUEST FOR PROMOTION MANAGEMENT’S VIEWS*’ (Document K) is not recognised, it was never in their records and they do not believe in the truthfulness of this document. Paragraph 12 of the aforesaid document is completely false.

Mr Ramoo stated that the promise or representation that the Disputant would be promoted to post of *Corporate and Regulatory Affairs Officer* (Grade 5) was never made. For payments of increment, promotion and appointments, Management has to refer to the items to the Board; Management cannot take its own decisions on these three points. He

confirmed that the Disputant was posted to the *Marketing Department* to perform the duties of *Marketing Executive* referring to the notes of meeting dated 9 October 2012 (Document S) and was paid a responsibility allowance. He also confirmed that no applications were received for the post of *Assistant Corporate and Regulatory Affairs Officer* which remained vacant for several years and neither was there a representation from the Union to fill the post. The post was subsequently abolished during the revision of conditions at the company. The Union never objected to same as there was never an issue of promotion to the aforesaid post.

There was an agreement for the recognition of qualification and subsequently Mrs Hanadon was promoted *Marketing Executive* in July 2014. In January 2013, she was given three increments for additional qualifications as the conditions of service changed the element of relevancy as from 1 January 2013. He recognised that the Disputant obtained a thirty per cent increase in her salary in January 2015 amounting to Rs 5,580; an increment in July 2013; and another increment in January 2014. In all she benefitted from eight increments, six of which were directly linked to her qualifications – three increments in January 2013 and three increments in July 2014. From December 2012 to July 2014, her salary has moved from Rs 18,870 to Rs 30,600. She has been paid all increments she is entitled to. The duties listed in Document E in his opinion relate to those of *Executive Assistant*. Mrs Hanadon was holding the post of *Executive Assistant* and was transferred to the *Operations Department* as *Executive Assistant*. He produced a BFSL memo dated 14 September 2006 (Document T). Issues of increment, promotion and appointment have to go to the Board for decision. The *General Manager* cannot appoint, promote or give an increment to somebody.

Mr Ramoo also stated that there was no agreement that the Disputant would act as *Assistant Corporate Regulatory Affairs Officer* and be paid an acting allowance in December 2009. There was no agreement that she would complete her course by October 2010 and be automatically appointed *Assistant Corporate Regulatory Affairs Officer* after a six-month probationary period. The aforesaid post of was abolished during the review of the conditions of service as from January 2013. Nobody occupied the post between April 2011 and 2013 and it remained vacant. There was no need to fill the post and no issue of anybody applying for the post, but if somebody would have wished to apply for the post they were free. The Union did not object to the abolition of the post. The post was never advertised. The Union never informed Management that the post had been earmarked and promised to Mrs Hanadon.

Mr Ramoo was thoroughly questioned by Counsel for the Disputant. He confirmed that matters of payment of increment, promotion and appointment must be dealt by the Board and the Chairman. He did not agree that this can be done by the *General Manager* who has the authority to give allowances, but in practice this must be approved by the Chairman and the Board is informed accordingly. This has also been done for every promotion and every item concerning salaries. Referring to paragraph 10.1 of a document on terms and conditions of employment (produced as Document U), he agreed that the *General Manager* can approve subject to the approval of the Chairman and the Board.

Referring to a letter dated 30 September 2009 (Document C), Mr Ramoo agreed that that it was open for the Disputant to make further representations. He could not conclude that there were further negotiations on the issue of additional increments for additional qualifications. He agreed that the notes of meeting dated 10 February 2012 (Document G) was regarding the request for promotion of Mrs Hanadon to the post of *Corporate and Regulatory Affairs Officer* and not *Assistant Corporate and Regulatory Affairs Officer*. The Board took a decision in September 2010 that Mrs Hanadon cannot be promoted. The minutes do not mention *Corporate and Regulatory Affairs Officer*.

In the notes of meeting dated 7 July 2011 (Document M), Mr Ramoo stated that the request for promotion was for *Corporate and Regulatory Affairs Officer* and is not mentioned in the notes. Document N refers to the title '*Additional increment for additional qualifications*' and her claim for additional increments in the last sentence. The notes of meeting dated 22 August 2014 (Document O) refers to the title '*Mrs Hanadon's request for 3 increments*' and mentions her case of promotion. Document P dated 19 September 2014 states that the company never received any application from Mrs Hanadon for the post of *Assistant Corporate and Regulatory Affairs Officer*. Document S dated 9 October 2012 has a heading '*Additional increment for additional qualifications*' at the 2nd page. Referring to Document K, Mr Ramoo stated that no statement was made to the Police regarding the false document and he does not recall if they did enquire into the letter dated 23 March 2010 referred to. The personnel file of any employee is a confidential document and he stated that there is certain information which should be in Mrs Hanadon's personnel file in Document K.

Mr Ramoo agreed to the Scheme of duties listed in Documents D and F and that there is a difference between the duties of *Executive Assistant* and *Assistant Corporate and Regulatory Affairs Officer*, which is higher. He did not agree that a list of duties was according to the Scheme of Service and not the feeling of the Board and explained that when an employee is transferred to a department for certain specific assignments to help

the department, he is given a list of tasks which is not necessarily related to the duties in the Scheme of Service. Document T is a list of tasks. Mrs Hanadon was transferred as an *Executive Assistant* to support the *Operations Department* under the same post of *Executive Assistant*. It is normal for her to report to another Head. The list of duties in her memo of transfer (Document E) relate mostly to the tasks of *Executive Assistant*. The first task in Document E is that of *Executive Assistant*.

Mr Ramoo also stated that anybody doing higher duties or acting in a higher post will get an acting allowance. On being asked whether there was any adverse report against Mrs Hanadon when she was in the *Operations Department*, Mr Ramoo stated that there was nothing in writing as a report but it was clear she was doing nothing over there as admitted by the Union itself. If the employer goes against the terms and conditions of employment there will be disputes. Unless it is in the interest of the company, then Management can go beyond the terms and conditions of employment. Mrs Hanadon was deployed in the *Operations Department* between February 2010 to September 2012 for more than a year and this can only be done in the interests of the company. She was occupying the same post of *Executive Assistant* in the *Operations Department* and reporting to the *Senior Traffic Officer*. The post of *Assistant Corporate and Regulatory Affairs Officer* never existed in the *Operations Department*. Employees can be transferred from one department to another and the employer has to inform them before a transfer.

Mr Ramoo denied that Mrs Hanadon was transferred to the *Operations Department* to make optimum use of her new qualifications. Nor was she transferred as there was a vacant post of *Assistant Corporate and Regulatory Affairs Officer* as there is no such post in the *Operations Department*. No agreement was made with Mrs Hanadon for her transfer to the *Operations Department*. She was not doing the duties of *Assistant Corporate and Regulatory Affairs Officer*. The three increments she was paid for additional qualifications in January 2013 applies to all employees. Mrs Hanadon was given three increments for promotion to Marketing Executive in July 2014 as is normal practice.

In re-examination by Counsel, Mr Ramoo was referred to the notes of meeting dated 10 February 2012 (Document G) whereby it is noted that Mrs Hanadon stated that she was informed that she will be promoted from BFSL 8 to BFSL 5, which is *Executive Assistant to Corporate and Regulatory Affairs Officer*. The Scheme of Service (Document F) refers to *Assistant Corporate and Regulatory Affairs Officer* who reports to the *Corporate and Regulatory Affairs Officer*. The *Assistant Corporate and Regulatory Affairs Officer* does not report to the *Traffic Officer*.

Mr Jayabarlen Seeneevassen was called to depose by the Tribunal in the present matter. He stated that he worked at BPML Freeport Services Ltd from October 2001 until November 2011 and left in January 2012 as General Manager. He knew the disputant as an employee of the company. He did not have any recollection of a meeting in December 2009. He has no recollection of any agreement; if there were any agreement, this has to be followed by a letter from the Union or the company. On being shown Document K titled '*REQUEST FOR PROMOTION MANAGEMENT'S VIEWS*', he stated that he has no recollection of same nor is it signed by him as General Manager of the company. He stated that the agreement must have the approval of the Board.

Upon questions from Counsel for the Disputant, Mr Seeneevassen notably stated that he recognised his signature at the bottom of Document E, which is the memo dated 19 February 2010, wherein he transferred the Disputant to the *Operations Department* in February 2010. When there is a transfer of any employee, there must be consultations between Management and the employee prior to the transfer. Document E lists six duties the Disputant had to do which is over and above her Scheme of Service as an *Executive Assistant*. He had no recollection that Disputant was transferred to the *Operations Department* because there was consultation and an agreement in December 2009.

Mr Seeneevassen recognised the letter dated 30 September 2009 (Document C) whereby Mrs Hanadon was refused an additional increment and wherein he invited her to make further representations on the issue. There was a request for promotion. In Document M which is the notes of meeting dated 7 July 2011, he confirmed that Management proposed to the Union to make a case on the issue of promotion. He also said it is a substantive matter and is for the Board to take a decision. The General Manager makes recommendations to the Board. He had no recollection of Document K, it is not signed by him. Document K, according to the document, is about a request for promotion. Payment of an acting allowance is as per the terms and conditions of employment. He could not recollect of any meeting wherein there was an agreement in December 2009.

Mr Seeneevassen was also questioned by Counsel for the Respondent. He stated that it is for the Board to take the decision for promotion and not the General Manager. In Document L, which is the notes of meeting dated 23 February 2011, he was reporting the Board's decision regarding the request for promotion. In the letter dated 30 September 2009, he had already informed Mrs Hanadon that she was disqualified for an additional increment on the basis of relevancy. In Document M, which is the notes of meeting dated 7

July 2011, he informed the parties that the matter is closed, that the Board has given its ruling and it is the end of the matter as far as the employer is concerned.

THE SUBMISSIONS OF COUNSEL

Counsel for the Disputant submitted on the issue of whether there was an agreement to promote the Disputant. He stated that the Disputant was doing duties over and above an *Executive Assistant* when transferred. Her actingship in the *Operations Department* lasted from February 2010 to October 2012. It is not being disputed that it is for the Board to approve a request for promotion, but it is being submitted that there was an agreement for the promotion. He submitted that the Disputant's testimony stood the test of cross-examination and was fully supported by the Union's representative Mr Ibrahim and also by Mr Seeneevassen. Counsel also pointed out to the inconsistencies in the Respondent's evidence pointing to Document K which the Respondent's witness stated to be false and admitted that no statement was given to the Police nor were any internal enquiries carried out thereto. Whoever performs higher duties than his post is entitled as per terms and conditions to an acting allowance. He submitted that the Disputant's evidence remained unchallenged on the issue of whether there was an agreement; the Disputant contending that there was an agreement in December 2009.

On the issue of the whether the Disputant was entitled to three increments for promotion, Counsel for the Disputant submitted that had the agreement made in December 2009 been respected, the salary of the Disputant would have been more than what she is earning. Thus, if the situation is not remedied the Disputant's salary would be indefinitely affected thus impacting negatively on her pension and even retirement. Counsel relied on the Job Evaluation Committee report whereby an employee, who was due to be promoted but was not, was granted three increments for the loss of opportunity.

Counsel for the Respondent has on the other hand based his submission on three core points. He first submitted, bearing in mind the terms of the dispute, that the Tribunal is confined to the terms of the dispute and cannot travel outside same. Thus the Tribunal cannot investigate into the new post of Marketing Executive trying to elicit the basic salary, scales and any promotion that warrant increments. He submitted that the Disputant's prayer is *ultra vires* the terms of the reference of the dispute.

The second point made by Counsel is that the Respondent is not the General Manager, but the entity which has got a Board at its apex. The final decision rests with the Board and the Board has never approved of the promotion or of the increments. If the Disputant feels that the General Manager has misrepresented to her that she would be appointed, she should get a redress for *faute* before another forum.

The third point made by Counsel for the Respondent is the good faith of the Respondent. The Respondent reformulated the required qualifications for the post of Marketing Executive which allowed Disputant to be eligible for same. The Disputant has even benefitted from six increments based on the same additional qualifications. The Respondent has been in good faith and has left no stone unturned to give Disputant her due.

THE MERITS OF THE DISPUTE

The terms of reference in the present matter is asking the Tribunal whether Mrs Hanadon should receive three increments in her post as *Marketing Executive* at Grade 4 when appointed same on 1 July 2014. This for the reason that the Management of the Respondent had not respected its agreement with the Union to promote her to *Assistant Corporate and Regulatory Affairs Officer* at Grade 6 from April 2011.

In the present matter, it has not been disputed that Mrs Hanadon joined the Respondent company in 2001. In mid-2004, she was working in the *Marketing Department* as an *Executive Assistant*. In September 2009, she obtained a diploma in Business Studies. Following this, the Union requested that she be granted additional increments for her additional qualifications. This request was not acceded to on 30 September 2009 (letter produced as Document C) and thereafter further representations were made on the issue.

The evidence adduced by the Disputant and Mr Ibrahim has revealed that there was a meeting in December 2009 between the Union and Management whereby an alleged agreement was reached between the two parties. According to Mr Ibrahim, who was present at the aforesaid meeting, the agreement involved Mrs Hanadon being transferred to the *Operations Department* and she would be automatically appointed to the post of *Assistant Corporate and Regulatory Affairs Officer* in six months after completion of her

degree course. It may be noted that Mrs Hanadon was not present at the meeting but gave her consent to the alleged agreement upon being informed of same by the Union.

Subsequently, a memo dated 19 February 2010 (Document E) witnessed the transfer of Mrs Hanadon, who was still an *Executive Assistant*, to the *Operations Department*. The memo also contained a list of duties and specified that she would report to the *Senior Traffic Officer*. The duties according to Mrs Hanadon were those of *Assistant Corporate and Regulatory Affairs Officer*. The representative of the Respondent Mr Ramoo contended that Mrs Hanadon was still an *Executive Assistant* and the duties related mostly to those of the aforesaid post.

Whilst still being in the *Operations Department*, Mrs Hanadon obtained her degree in Business Studies from the University of Mauritius in October 2010. However, she was not promoted to the post of *Assistant Corporate and Regulatory Affairs Officer*.

On 9 October 2012, she was posted to the *Marketing Department* as a *Marketing Executive* and received an acting allowance for same between November 2012 to July 2014. Following the removal of the requirement of relevancy in the terms and conditions of service at the Respondent company, Mrs Hanadon received three increments for her additional qualification in January 2013. The post of *Assistant Corporate and Regulatory Affairs Officer* was abolished in 2013. In July 2014, she was promoted to the post of *Marketing Executive* and received three increments as a result of this promotion.

Mrs Hanadon contends that she is earning three increments less as she was not appointed *Assistant Corporate and Regulatory Affairs Officer* in April 2011 as per the alleged agreement with Management. The Respondent company strongly denies that such an agreement was ever made. The agreement being the basis of Mrs Hanadon's claim for three increments, it would be pertinent to ascertain whether such an agreement was ever made or ever existed.

The agreement was said to have been made in a meeting between the Union and Management in December 2009. The meeting was held in the context of representations for the claim of increments for the diploma obtained by Mrs Hanadon. Mrs Hanadon was not present at the meeting.

The direct evidence forthcoming in support of an agreement at the meeting in December 2009 came from Mr Ibrahim, a negotiator of the Union. It must be noted that there are no notes of meeting witnessing the meeting or what was discussed therein. Notes of meeting for meetings between Union and Management have been available as from February 2011.

Mr Ibrahim related that there was a first meeting with Management in December 2009 wherein the then General Manager Mr Seeneevassen counter proposed that the Disputant would be transferred to the Operations Department and put on six months' probation in October 2010, when she would finish her degree course. Thereafter, she would be appointed *Assistant Regulatory Affairs and Corporate Officer* after six months (in April 2011). The Disputant was advised accordingly by the Union and she gave her approval to same.

Mrs Hanadon, although not present at the aforesaid meeting, has relied on the notes of meeting dated 10 February 2012 (Document G) in support of her contention that she should have been promoted. A perusal of the aforesaid notes of meeting shows the item '*Additional increment for additional qualifications*' under which the request for promotion of Mrs Hanadon is discussed with Mrs Hanadon stating 'during a meeting with Mr J. Seeneevassen, she was informed that she would be promoted from BFSL 8 to BFSL 5'.

Clearly, although the item of promotion has been discussed therein, it should be noted that BFSL 5 is not the grade of the post of *Assistant Corporate and Regulatory Affairs Officer* which is at Grade 6 as per its Scheme of Service (produced as Document F). It is not disputed that the post of *Executive Assistant* is at Grade 8. It has been confirmed by Mr Ibrahim that the aforesaid notes should refer to *Assistant Corporate and Regulatory Affairs Officer* and not to *Corporate and Regulatory Affairs Officer*. Mr Ramoo also confirmed that the request for promotion was to *Corporate and Regulatory Affairs Officer*.

Mr Seeneevassen's evidence on the account of an agreement in a meeting in December 2009 would also be relevant. The more so it was said that he was present at the meeting and made the proposal coming from Management. On this issue, the witness stated that he did not have any recollection of any meeting in December 2009 nor of any agreement. He did, however, point out that promotion is a matter for the Board to decide upon being a substantive matter.

Mr Ramoo, as representative of the Respondent in the present matter, was adamant that no promise was made to the Disputant for her to be promoted to the post of *Corporate and Regulatory Affairs Officer*. According to him, this is an item which should be referred to the Board and it is not for Management to make a decision. Mr Ramoo has also denied that there was any agreement for the Disputant to act as *Assistant Corporate and Regulatory Affairs Officer* and be appointed to same upon completion of her course in October 2010 after a six months' probationary period.

It has not been disputed that Mrs Hanadon, pursuant to a memo dated 19 February 2010 (Document E), was transferred to the *Operations Department* where she would report to the *Senior Traffic Officer*. The said memo lists her duties in the *Operations Department* as covering principally:

- *Assist the Operations Department in administrative matters, more specifically documentary control and compliance.*
- *Assist in the proper tracking of daily operations and maintain records.*
- *Assist in the review and drafting of operational procedures and processes.*
- *Ensure that daily operations run smoothly and efficiently.*
- *Provide secretarial support.*
- *To prepare notes of meeting.*

Although she was given a list of duties upon her transfer, can it be said that these duties pertain to those of *Assistant Corporate and Regulatory Affairs Officer*? A perusal of the Scheme of Service (produced as Document F) of the post shows that the holder of the job is to report to the *Corporate and Regulatory Affairs Officer* and has set a list of 17 duties related to the post. However, save for the duties of '*To prepare notes of meeting*' and '*Ensure that daily operations run smoothly and efficiently*', none of the duties coincide with the list of duties to be found in the memo dated 19 February 2010. It cannot therefore be safely concluded that the list of duties in the aforesaid memo pertain to the post of *Assistant Corporate and Regulatory Affairs Officer*.

Although, it may be contended that pursuant to the memo dated 19 February 2010 the Disputant was performing higher duties than she previously did as an *Executive Officer*, it must be borne in mind that it is not for the Tribunal to enquire whether she was working in a higher capacity other than that of *Assistant Corporate and Regulatory Affairs Officer*

following her transfer to the *Operations Department* inasmuch as this issue does not come within the terms of reference of the present dispute.

It is not also clear whether the post of *Assistant Corporate and Regulatory Affairs Officer* existed in the *Operations Department*. The Scheme of Service for the said post mentions that the holder is to report to the *Corporate and Regulatory Affairs Officer*. On the other hand, the memo transferring Mrs Hanadon to the *Operations Department* saw her reporting to the *Senior Traffic Officer*. Mr Ramoo, on this issue, stated that the post of *Assistant Corporate and Regulatory Affairs Officer* never existed in the *Operations Department*.

Having therefore considered the evidence of the witnesses and examined and compared the tasks performed by Mrs Hanadon in the *Operations Department*, it cannot be safely concluded that there was an agreement reached in a meeting in December 2009 whereby Mrs Hanadon would be transferred to the *Operations Department* and act as *Assistant Corporate and Regulatory Affairs Officer*.

The Disputant has also relied on the document titled '*REQUEST FOR PROMOTION MANAGEMENT'S VIEWS*' (Document K) dated March 2010 in support of the contention that there was an agreement for her to be promoted. This document was produced by Mr Ibrahim who stated that same was found in the postbox of the Union. However, the Respondent has refuted this document and denies that it emanates from them. Despite Mr Ibrahim also stating that it emanates from the former General Manager of the company, it should be noted that Mr Seeneevassen stated that he had no recollection of the document pointing out that it did not bear his signature. Although, it has not been disputed that the aforesaid document mentions the alleged agreement in issue, its origins are at the very least dubious and the Tribunal cannot safely base itself on such a document or its contents thereof to find that there was an agreement in the present matter.

Another matter which would be pertinent to consider is the approval of the Board as regards the alleged agreement to promote Mrs Hanadon. It has not been disputed that Management cannot take it upon itself in promoting an officer and that the approval of the Board must be sought in such matters. This has even been confirmed by Mr Ibrahim who stated that as far as promotions are concerned, the Manager must prepare and submit to the Board with whom rests the final decision. It should be noted that there has been no mention of the role of the Board in the meeting of December 2009.

Thus, even if one is to believe that there was an agreement between Management and the Union for the promotion of Mrs Hanadon made in December 2009, same would not have been effective as it is apparent that the approval of the Board would have been required for any promotion to have effect.

As regards the various meetings held between Management and Union as evidenced by the notes of meeting produced during the hearing of the matter, although it has been shown that the issue of Mrs Hanadon's promotion was raised, the meetings have not seen Management acknowledge that there was an agreement for Mrs Hanadon to act as *Assistant Corporate and Regulatory Affairs Officer* and that she would be appointed to the said post in six months' time after having obtained her degree.

In the circumstances, the Tribunal cannot find that there was an agreement between the Union and Management for Mrs Hanadon to be promoted to the post of *Assistant Corporate and Regulatory Affairs Officer* with effect from April 2011.

As the Tribunal has not been satisfied there has been an agreement, the issue of whether Mrs Hanadon should be granted three increments on the scale of *Marketing Executive* because of the agreement does not therefore arise.

Moreover, on the issue of the three increments being sought as per the terms of the dispute, it should be noted that the Tribunal has not been satisfied as to the basis for the grant of the increments. As per the terms of reference, the three increments are being asked because Management had not respected its agreement to promote the Disputant. However, it has not been established under what terms and conditions prevailing at BPML Freeport Services Ltd would the increments be due to the Disputant.

It must be noted that the Tribunal when making its award must do so within the terms of reference of the dispute. The Supreme Court in *S. Baccus & Ors v The Permanent Arbitration Tribunal* [1986 MR 272] stated the following with regard to the then Permanent Arbitration Tribunal:

An award of the Permanent Arbitration Tribunal which goes outside the terms of reference will be ultra petita and may be quashed just as any other award.

More recently, the Supreme Court in the matter of *Air Mauritius Ltd v Employment Relations Tribunal* [2016 SCJ 103] has stated:

Under section 70 (1) the Tribunal is required to enquire into the substance of the dispute that is referred to it and to make an award thereon and it is not empowered to enquire into any new matter that is not within the terms of reference of the dispute.

The Tribunal, having found that there was no agreement between Management and the Union to promote Mrs Hanadon to the post of *Assistant Corporate and Regulatory Affairs Officer*, cannot award that she should be granted three increments in the scale of *Marketing Executive* as from her date of appointment to the latter post on 1 July 2014.

The dispute is therefore set aside.

**SD Shameer Janhangeer
(Vice-President)**

**SD Raffick Hossenbaccus
(Member)**

**SD Denis Labat
(Member)**

**SD Triboohun Raj Gunnoo
(Member)**

Date: 9th March 2017