

## EMPLOYMENT RELATIONS TRIBUNAL

ERT/RN 33/2016

### AWARD

Before:

Shameer Janhangeer	Vice-President
Esther Hanoomanjee (Mrs)	Member
Rajesvari Narasingam Ramdoo (Mrs)	Member
Triboohun Raj Gunnoo	Member

In the matter of: -

**Mr Bye Pharad KURREEMUN**

*Disputant*

and

**CENTRAL ELECTRICITY BOARD**

*Respondent*

The present matter has been referred for arbitration to the Tribunal 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 I, Mr Bye Pharad Kurreemun, should be reinstated in my substantive post of "Chief Internal Auditor" at the Central Electricity Board with effect from 17 June 2015.*

Both parties were assisted by Counsel. Mr Z. Rajani appeared for the Disputant. Whereas Mr R. Chetty, Senior Counsel appeared together with Miss H. Mahamoodally for the Respondent. Both parties have submitted their respective Statement of Case in the present matter.

## *THE DISPUTANT'S STATEMENT OF CASE*

Mr Bye Pharad Kurreemun has averred that he joined the Central Electricity Board ("CEB") on 22 October 1985. He set out his career history at the CEB having started as a Clerical Assistant and is presently the Budget and Management Reporting Manager as from 17 June 2015. Following a proper selection exercise, the Disputant was appointed as Chief Internal Auditor by the CEB as from 22 August 2014 by way of a letter dated 26 August 2014. He has at all times discharged his duties diligently and has always complied with the CEB's rules and regulations including all contractual obligations under his contract of employment.

Whilst being on approved leaves abroad as from 21 May 2015, the CEB via a memorandum dated 29 May 2015 unilaterally retrograded him from his substantive position of Chief Internal Auditor to the post of Budget and Management Reporting Manager effective 17 June 2015. As a result of this unilateral modification of his contract of employment, the Disputant in his present post reports to Head of the Finance Department who is a salary scale 9 Officer. Whereas the Disputant is a salary scale 11 Officer. Prior to his promotion as Chief Internal Auditor, the Disputant occupied the post of Acting Chief Financial Officer.

Mr B.P. Kurreemun has requested to be reinstated to his substantive position of Chief Internal Auditor via an inter-office memorandum dated 26 June 2015. The CEB, through its General Manager, replied via a memorandum dated 9 July 2015 that the request made would be referred to the Respondent's Human Resources Committee ("HR Committee") for consideration. The Disputant's name no longer appears on the CEB's website following the unilateral modification of his contract of employment.

The Disputant disavows the acts and doings of the Respondent and is moving for an order from the Tribunal reinstating him to his substantive / former post of Chief Internal Auditor at the CEB with effect from 17 June 2015.

Annexed to the Disputant's Statement of Case are a copy of the letter from the CEB dated 26 August 2014 (Annex A); a copy of the memorandum from the CEB dated 29 May 2015

(Annex B); a copy of the new hierarchy of work (Annex C); a copy of the inter-office memorandum from the Disputant dated 26 June 2015 (Annex D); a copy of the memorandum from the General Manager of the CEB dated 9 July 2015 (Annex E); and a print screen of the new hierarchy from the CEB's website (Annex F).

#### *THE RESPONDENT'S STATEMENT OF CASE*

The CEB, in its Statement of Case, admits that Mr B.P. Kurreemun joined on 22 October 1985. The career history of the Disputant has been admitted. It has been averred that he held the post of Acting Chief Financial Officer on three occasions, from 14 January 2011 to 9 February 2011; 21 March 2011 to 9 February 2012; and 10 October 2013 to 21 August 2014. It has also been admitted that the Disputant was appointed by the Respondent as Chief Internal Auditor by a letter dated 26 August 2014 following a proper selection exercise.

The CEB has taken note, without making any admissions thereto, that Mr B.P. Kurreemun has at all times discharged his duties diligently, including that of Chief Internal Auditor; and has complied with all its rules and regulations, including his obligations under his contract of employment. The CEB has also taken note of the Disputant's averment, without making any admissions thereto, that he was unilaterally retrograded from his substantive position of Chief Internal Auditor by way of a memorandum dated 29 May 2015 to the post of Budget and Management Reporting Manager with effect from 17 June 2015.

In relation to the Disputant's averment that as Budget and Management Reporting Manager he is now being made to report to a lower in rank Officer, the CEB has averred that Mr K. Balgobin is at scale 9 but is performing as Officer-in-Charge at the level of a Head of Department (scale 11). This is similar to a scenario whereby Mr Patrick Li Yun Fong, SAP Controller (scale 8) was appointed as Officer-in-Charge of the Finance Department and at the material time Mr B.P. Kurreemun's substantive post was Senior Accountant (scale 9).

The Respondent has taken note to the averment that whilst occupying the post of Acting Chief Financial Officer, both Mr Patrick Li (a salary scale 8 Officer) and Mr K. Balgobin (a salary scale 9 Officer) were reporting to the Disputant.

The CEB has also taken note of the averments that the Disputant sent an inter-office memorandum dated 26 June 2015 requesting that he be reinstated to his prior / substantive post of Chief Internal Auditor and the response of the General Manager to the effect that the request would be referred to the HR Committee of the Respondent. The Respondent has also taken note of the averment that the Disputant's name no longer appears on its website.

The CEB has averred that it has carried out a reshuffling exercise whereby Mr B.P. Kurreemun is now Budget and Management Reporting Manager and has maintained his salary and terms and conditions of service as applicable to a Head of Department. The change is in line with the *Collective Agreement* signed with the Central Electricity Board Staff Association, namely *Paragraphs 2.5 and 3 of the Internal Regulation No. 1* thereof.

Annexed to the CEB's Statement of Case is a document titled '*Revised Internal Regulations No.1, Recruitment, Selection and Related Matters*'.

#### *THE EVIDENCE OF WITNESSES*

Mr B.P. Kurreemun was called to adduce evidence. He joined on 22 October 1985 and has held a number of positions at the CEB. He was appointed Budget and Management Reporting Manager on 17 June 2015. Before being appointed same, he was Chief Internal Auditor. He produced a copy of his letter of appointment as Chief Internal Auditor dated 26 August 2014 (Document A). Throughout the different positions he has held at the CEB, he has discharged his duties diligently and has at all times complied with the rules and regulations of the CEB, including all contractual obligations.

On 21 May 2015, he was on leave until around 16 June 2015. By way of a memorandum dated 29 May 2015 (produced as Document B), he was retrograded from the post of Chief Internal Auditor to that of Budget and Management Reporting Manager. He read out the contents of the memorandum. His consent was not sought by the CEB for appointment as Budget and Management Reporting Manager; it was a unilateral decision to which he did not

give his consent. He produced a copy of the hierarchy at the CEB as prepared by himself (Document C).

When appointed Chief Internal Auditor, he was on salary scale 11 reporting to the Audit and Risk Committee. As Budget and Management Reporting Manager, he has had to report to the Chief Financial Officer, who is the Officer-in-Charge of Finance, Mr Balgobin. He referred to circular 1954/05/2015. Mr Balgobin is on salary scale 9 and is lower in rank to him. Prior to his appointment as Chief Internal Auditor, he was Acting Chief Financial Officer; Mr Balgobin was a salary scale 9 Officer and Mr Patrick Li was a salary scale 8 Officer reporting to him as Acting Chief Financial Officer. It is not normal for him to report to a salary scale 9 Officer.

Mr B.P. Kurreemun wrote to the General Manager by way of an inter-office memorandum dated 26 June 2015 (produced as Document D) contending that he be restored as Chief Internal Auditor. As at today, he is not a Head of Department; Mr Balgobin is the Head of Department. He produced the reply of the General Manager dated 9 July 2015 (Document E) wherein it is stated that his concern will be referred to the HR Committee for consideration. He has not been informed of any action up to now. He also produced a screenshot of the CEB's website (Document F), wherein he wrote to the General Manager, who replied in an email dated 23 July 2015 (produced as Document G). Mr B.P. Kurreemun is therefore seeking an order reinstating him to his former substantive post of Chief Internal Auditor at the CEB with effect as from 17 June 2015.

Mr B.P. Kurreemun was questioned by Counsel for the Respondent. He was referred to Documents C and D as well as to Document B. As per the CEB memorandum dated 29 May 2015 (Document B), he agreed that the terms and conditions applicable to him are those exactly applicable to Heads of Department. Referring to the *Collective Agreement* signed between CEB and the CEB Staff Association, Mr B.P. Kurreemun agreed that the CEB has to the right to transfer employees and transfer has been defined at paragraph 3. The organigram produced as Document C represents the situation as from May 2015. He recollected that at one stage Mr C. Dabeesingh was the General Manager with Messrs Hebrard and Thannoo working under him; Mr Thanoo took over as General Manager from Mr Dabeedin on contract until December 2014. Mr Hebrard is retired and on contract; he is the General Manager with Messrs Thannoo and Dabeedin working under him. Mr B.P. Kurreemun stated that he is not aware of the salary being drawn by them. Both Messrs Thannoo and Dabeedin are still in employment at the CEB.

According to circular No. 1954/05/2015 (annexed to Document C), Mr B.P. Kurreemun agreed that the Board gave its approval to the interim management reshuffling exercise. The CEB is a statutory corporation. The duties and responsibilities as Chief Internal Auditor and Budget and Management Reporting Manager are not the same, they are different. He stated that he is doing a completely different job. Although, he was referred to several of his duties as Chief Internal Auditor and Budget and Management Reporting Manager, he did not agree that the duties and responsibilities were substantially the same. Mr B.P. Kurreemun was referred to *clause 10* of his contract of employment relating to the '*Conditions of Service and Rules and Regulations*'.

Mr B.P. Kurreemun agreed that the substantive post of Mr Balgobin is at scale 9 and that he is actually performing as Officer-in-Charge at the level of a Head of Department at scale 11. He agreed that in 2012, the Board appointed Mr Patrick Li Yun Fong as Officer-in-Charge of the Finance Department at level 11 whilst he was substantively occupying the post of Senior Accountant at level 9. His salary and terms and conditions of employment have not been changed by the interim management reshuffling. He maintained that he was qualified to be the Chief Internal Auditor of the CEB and produced a letter dated 11 December 2015 from the National Audit Office (Document H). He did not agree that he did not have any reasons to complain given that his salary and terms and conditions are still the same.

Mr Goranah Asiriah, Human Resource Executive, was called to adduce evidence on behalf of the Respondent. He confirmed that as at today (1 December 2016), Mr K. Balgobin with Mr Dabeedin and Mr Mukoon have been assigned duties in absence of the General Manager. Mr K. Balgobin over the Finance Department is looking over the HR Department, the Corporate Administrative Department, the IT Department, the Supply Chain Department as well as the Rodrigues Branch. These three Officers personify the General Manager for the day-to-day administration of the CEB. Being referred to a circular produced as Document C, he stated that the document signed by the General Manager is as if signed by these three persons, Messrs Dabeedin, Balgobin and Mukoon, today. Mr G. Asiriah produced a copy of the *Collective Agreement* signed with CEB Staff Association (Document J).

In the *Collective Agreement*, Mr G. Asiriah was referred to *Paragraph 2.5* headed '*Organisation of Activities and Staff Rotation*'. He stated that the whole issue of recruitment and staff movement is included therein and it is agreed between the parties that the CEB

reserves the right for optimum resource utilization in the best interests of the organisation and in that respect, the union recognises that the employer may for optimum utilization make rotation of employees whenever there is need for that. In that context, the Board at a meeting in May 2015 approved an interim reshuffling exercise. The document he produced is known as the '*Revised Internal Regulations No.1*'.

Mr G. Asiriah has gone on to explain how the appointment of Messrs Balgobin, Mukoon and Dabeedin as caretaker General Manager has taken place stating that the latter has had to go for personal reasons for two months abroad and the Board has taken a decision to grant three high ranking Officers to perform the day-to-day administration of the CEB in absence of the General Manager. Following the decision, a memo dated 16 November 2016 was sent to Mr Balgobin informing him of his new responsibility and his new capacity. He produced a copy of the memorandum dated 16 November 2016 (Document K).

On being referred to the memorandum dated 29 May 2015 produced as Document B, Mr G. Asiriah confirmed that it states that Mr Kurreemun has retained the salary applicable to Head of Department on a personal-to-holder basis following the reshuffling exercise and was asked to assume the post of Budget and Management Reporting Manager. There has been no change as regards his salary and benefits. Referring to Annexes A, B, C and E of the Disputant's Statement of Case (produced as Documents A, B, C, and E), he confirmed that they emanate from the Office of the General Manager and their heading is either '*Interim Management Reshuffling*' or '*Interim Management Reshufflement*'. By the word interim, he understood temporary, that is a temporary arrangement. Referring to Annex C, he stated that the second paragraph contains the reasoning for this interim reshuffling.

Referring to Annex E, Mr G. Asiriah confirmed that Mr Dabeedin was at a certain moment General Manager at the CEB and Mr Gerard Hebrard was working under the former. Mr Thannoo was also in employment and working under Mr Dabeedin. Mr Dabeedin's contract as General Manager was terminated and Mr Thannoo became Officer-in-Charge and then General Manager. Messrs Dabeedin and Hebrard worked under Mr Thannoo. Now, both Messrs Dabeedin and Thannoo are working under Mr Hebrard. Mr G. Asiriah also explained that at scale 8 they have the middle management, at scale 9 they have the Senior Accountants and at scale 11, they have the Heads of Departments. In the past, the Board granted Officer-in-charge of the Finance Department to Mr Patrick Li Yun Fong who was at scale 8 and not to Mr Kurreemun who was at scale 9. Mr G. Asiriah also produced the complete report of the National

Audit Office dated 11 December 2015 (Document L). He confirmed that the observations at page 3 of both Documents H and L are the same. Mr G. Asiriah also stated that the Disputant has no case against the CEB.

Mr G. Asiriah was also questioned by Counsel for the Disputant. He notably stated that the Disputant was a salary scale 11 Officer at the time of the transfer and still is today; Mr Balgobin in May 2015 was substantively on scale 9. *Paragraphs 2.5 and 3 of the Internal Regulations* should be taken together. Under *Paragraph 3.1*, the concurrence of the employee would be required. It has not been able to obtain the concurrence of Mr Kurreemun as he was not present, he was on vacation when he transferred from Chief Internal Auditor to Budget and Management Reporting Manager. Although, the Disputant was on vacation, a decision had already been taken by the CEB Board about how to optimally utilize available resources at the CEB and the Board took a decision to rotate employees. There has been no change in the salary of the Disputant. Referring to *Paragraph 6.1 of the Internal Regulations*, he is not aware if Mr Kurreemun received a salary increment in April 2016 and has to check the reason why he has not been paid same. He is not aware if the CEB informed Mr Kurreemun in writing that the increment was stopped or withheld. He is not aware that Mr Kurreemun's thirteenth month bonus for 2016 was paid in 2017.

Mr G. Asiriah also stated in cross-examination that the purpose of the interim management reshuffling was necessary to give opportunities to Heads of Department to take charge of other Departments and at the same time to broaden their knowledge. Other Heads of Department were reshuffled to other Departments and they remained Head of Department. With the reshufflement, Mr Kurreemun was made to report to the Officer-in-Charge of the Finance Department Mr Balgobin who was a salary scale 9 Officer. In the past, General Managers at the CEB have been appointed on contract. The functions of Chief Internal Auditor and that of Budget and Management Reporting Manager are substantially different. They are different types of jobs with different responsibilities. Mr Kurreemun can perform the job of Budget and Management Reporting Manager as he has already performed the job in the past.

Referring to the report of the National Audit Office, Mr G. Asiriah stated that the report states that a Management Accountant cannot perform auditing duties. The reshuffling exercise was done earlier in May/June 2015 and the Audit report is dated in December 2015. At the time of the interim reshuffling, the qualification of the Disputant was not a matter of concern. The CEB responded to the observations of the National Audit Office and Mr G. Asiriah produced a



copy of the reply titled '*Extract of Management Letter 2014*' (Document M). From the reply, the CEB is defending its position that the Disputant had all the necessary qualifications when appointed Chief Internal Auditor. The Disputant holds a qualification recognised by the Mauritius Institute of Professional Accountants. Mr G. Asiriah is not aware of any matters of concern raised in the final report of the National Audit Office regarding the reply of the CEB. Mr G. Asiriah denied that the Disputant has been retrograded in being transferred to the post of Budget and Management Reporting Manager; he denied that there was a substantial change in terms and conditions of employment particularly in the Disputant's scope of work; and he denied that the Disputant should be reinstated in his position of Chief Internal Auditor.

Mr G. Asiriah was re-examined by Counsel for the Respondent. He notably stated that the Disputant was not paid a salary increment in April 2016 as he was under disciplinary proceedings and referred to *clause 9.15.3* of the *Collective Agreement* (produced as Document N) as giving authority to the CEB to withhold the increment when an employee is suspended from duty. The practice at the CEB is not to inform the employee of the increment withheld as there is a provision in the *Collective Agreement*. Mr G. Asiriah also stated that the Audit Department and the Finance Department are two different Departments. Mr Thannoo was appointed General Manager in a substantive capacity and was reverted to the level of Head of Department with the appointment of Mr Hebrard in 2015. A new acting General Manager Mr Shamshir Mukoon was appointed some ten days ago.

#### *THE SUBMISSIONS OF COUNSEL*

Counsel for the Disputant has notably referred to *paragraphs 2.5 and 3* of the *Internal Regulations* in his submissions. He submitted that as the functions of the Disputant as Budget and Reporting Management Manager and as Chief Internal Auditor are different, the concurrence of the employee ought to have been obtained. As this was never obtained, this is in breach of the *Internal Regulations*. Counsel stated that the substantive effect of the Disputant's transfer is akin to a *rétrogradation*. Counsel referred to the case of *Guckhool v Somags Ltée (2015 IND 18)* and to authorities referred to therein on the issue of *rétrogradation*. Counsel also referred to the Supreme Court judgments of *Vacoas Transport v Pointu [1970 MR 35]* and *A.J. Maurel Construction Ltée v Froget [2008 SCJ 164]* on the issue of modification of essential conditions of the contract of employment. Counsel also referred to the award of the Tribunal in *Hosany and Cargo Handling Corporation Ltd [ERT/RN 40/13]* with regard to the

interpretation to be given to the reinstatement of a worker. Counsel for the Disputant went on to submit that the Disputant has proved his case before the Tribunal and that his prayer should be acceded to.

Counsel for the Respondent has put in written submissions in the present matter. He submitted that there are substantial similarities between the duties of Chief Internal Auditor and Budget and Management Reporting Manager. The *Collective Agreement* provides for the rotation and transfer of a worker and the Respondent has the power to do this. The Disputant now reports to the Officer-Charge of the Finance Department. Although this Officer may be lower in salary scale to the Disputant, he is treated as the Head of Department at the appropriate salary scale. It is peculiar to the CEB for Officers in higher positions to be reverted to lower positions because of the exigencies of the CEB's policy. Counsel also submitted that the complaint before the Tribunal is about reinstatement and not about breach of a condition of contract as has been pleaded.

#### *THE MERITS OF THE DISPUTE*

The Tribunal in the present matter is being asked to enquire into whether the Disputant Mr B.P. Kurreemun should be reinstated to his substantive post of Chief Internal Auditor at the CEB with effect from 17 June 2015.

Mr B.P. Kurreemun has a long employment history with the CEB having joined the organisation in 1985 starting as a Clerical Assistant. As from 17 June 2015, he is the Budget and Management Reporting Manager at the CEB. Prior to that, he was the Chief Internal Auditor having been appointed same via a letter dated 26 August 2014.

The Board of the CEB at its meeting of 25 May 2015 approved an interim reshuffle exercise at management level. Mr B.P. Kurreemun was thereafter informed, in a memorandum dated 29 May 2015 (Document B), that as from 17 June 2015 he will be transferred to the Finance Department, will be assigned the duties and responsibilities of Budget and Management Reporting Manager and will report to the Head of the Finance Department. The

Disputant was also informed that that he will continue to draw the salary applicable to a Head of Department on a personal-to-holder basis.

It has not been disputed that when posted as Chief Internal Auditor, Mr B.P. Kurreemun was on salary scale 11 and reported to the Audit and Risk Committee. When assigned duties as Budget and Management Reporting Manager, he had to report to the Officer-in-charge of the Finance Department Mr K. Balgobin who is substantively a salary scale 9 Officer.

Mr B.P. Kurreemun does not agree with his transfer to the post of Budget and Management Reporting Manager and wishes to be reinstated to his post of Chief Internal Auditor. He has asserted that it was a unilateral decision to transfer him to which he did not give his consent. He is no longer a Head of Department and it is Mr K. Balgobin who is the Head of Department.

The CEB has explained its rationale behind the interim management reshufflement in a General Staff Information Circular No. 1954/05/2015 (annexed to Document C) as follows:

*The interim reshuffling of management has become necessary so as to give opportunities to the Heads of Department to take charge of other departments and at the same time broaden their knowledge and understanding of a Department and its processes in the context of a corporate succession planning strategy. This will also allow the Heads of Department to expose them to different experiences and wider variety of skills so as to improve performance and efficiency.*

It may be noted from the above quoted contents of the circular that the purpose of the interim management reshuffling is to allow Heads of Department to take charge of other Departments. It would be pertinent to note that in the case of Mr B.P. Kurreemun, the transfer was not to another post of Head of Department but to a post where he was made to report to the Head of the Finance Department.

The CEB in the present matter is relying on its internal regulations whereby the employer may make rotation of employees for optimum resource utilization in the best interest of the organisation. This according to its representative Mr G. Asiriah was the context in which the Board approved the interim reshuffling exercise.

Mr G. Asiriah notably referred to *paragraph 2.5* of the *Revised Internal Regulations No. 1* (Document J). This provides as follows:

**2.5 Organisation of Activities and Staff Rotation**

*Management reserves the right for optimum resource utilization and in the best interest of the CEB:*

- a) *to plan and organise the main functions of the CEB in departments, services, work groups or otherwise;*
- b) *to assign employees to any department, service, work groups as per their profile and skills in relation to the nature of work of department, service, work groups;*
- c) *to rotate employees as per the provisions at paragraph 3.5 or otherwise; and to transfer employees as per the provisions at paragraph 3.*

From the contents of the memorandum dated 29 May 2015 (Document B), the Disputant was informed that he is being transferred to the Finance Department and assigned the duties and responsibilities of Budget and Management Reporting Manager. Although, it may have been contended that the Disputant was rotated, it is clear from the contents of the memorandum that he was transferred.

The following provision may be noted from the *Revised Internal Regulations No. 1* on the subject of transfer:

**3. Transfer**

**3.1** *Transfer means movement from one posting to another in the same grade. In the event where the official job description of the new posting is different from that of the existing posting, the concurrence of the employee would be required.*

Mr B.P. Kurreemun has contended that the duties and responsibilities of Chief Internal Auditor and Budget and Management Reporting Manager are different and that the latter is a

completely different job. Mr G. Asiriah has stated that the functions of the two posts are substantially different and that they are different kinds of jobs with different responsibilities. From the job descriptions of Chief Internal Auditor (annexed to Document A) and Budget and Management Reporting Manager (annexed to Document B), it should be noted that the duties and responsibilities of the two posts are different.

It should also be noted that despite that Counsel for the Respondent has submitted that the duties and responsibilities of the two posts are substantially the same, this is in direct contradiction with the evidence of the Respondent's own representative inasmuch as the latter has clearly stated that the functions of the two posts are substantially different and that Audit Department and the Finance Department are two different Departments.

Therefore, according to *paragraph 3.1 of the Revised Internal Regulations No.1*, the concurrence of the Disputant would have been required for his transfer to the post of Budget and Management Reporting Manager.

On this issue, it has been admitted by the representative of the Respondent that it was not possible to obtain the concurrence of Mr B.P. Kurreemun as he was on vacation leave and that although the Disputant was on vacation, a decision had already been taken by the Board about how to optimally utilize available resources at the CEB. Mr B.P. Kurreemun, for his part, never gave any concurrence to his transfer having even written the General Manager on 26 June 2015 (Document D) asking that he be reinstated in his right.

What remains to be seen is whether the CEB in transferring the Disputant to the post of Budget and Management Reporting Manager has substantially modified the contract of employment of the Disputant without having obtained his consent thereto.

The following may be noted from *Dr D. Fokkan in Introduction au Droit du Travail Mauricien 1/ Les Relations Individuelles de Travail, 2ème édition, p.303, 304* on the subject of modification of the conditions of employment by the employer:

*Le contrat de travail est un contrat à caractère successif. Un jour ou l'autre ce contrat ne correspondra plus aux besoins de l'une ou l'autre des deux parties. Du point de vue*

*de l'employé, dans la mesure où il travaille sous la subordination juridique de l'employeur, il est clair qu'il ne saurait prendre l'initiative d'une modification de celui-ci. Une modification unilatérale de la part de l'employé constituerait probablement une exécution fautive du contrat de travail qui justifierait éventuellement son licenciement. Le même principe devrait trouver son application à l'égard de l'employeur: "One of those general precepts of our law of contract is that covenants legally entered into cannot be revoked except by the mutual consent of the parties thereto (art. 1134 C.nap), and another that the failure by one party to a contract to perform his part of the agreement gives a right to the other to ask for its annulment (art. 1184 C.nap). The effect of those provisions would be that any unilateral modification by an employer of the conditions of a contract of employment of indeterminate duration may entitle the worker to treat the agreement as at an end" – Vacoas Transport Co. Ltd v Pointu.*

In the present matter, the Disputant has been transferred from one post in a Department to a post in another Department doing a different job altogether. Would this amount to a modification of an essential condition of his contract of employment? *Dr. D. Fokkan (supra), p. 306, 307*, has listed what amounts to an essential condition as follows:

*En jurisprudence mauricienne il a pu être décidé que fait partie des conditions essentielles de l'accord des parties la voiture de fonction, le lieu de travail, la durée quotidienne du travail, le poste occupé, "the conditions in which (the employee) was made to work", "transport from and to work".*

(The underlining is ours)

In the case of *Vacoas Transport Co. Ltd v Pointu [1970 MR 35]*, the employee, a ticket examiner, was reverted to the post of bus conductor which he considered to be a demotion. The Supreme Court held that "*a reduction in rank unilaterally imposed by an employer upon a worker who is bound, to his service by a contract of undetermined duration is equivalent to dismissing him.*". In the aforesaid case, the following may be noted from what was quoted from *Planiol et Ripert, Traité Pratique de Droit Civil Français, T.xi para 840*:

*L'employeur peut décider une modification dans les conditions matérielles du travail, pourvu qu'il n'y ait pas atteinte aux éléments essentiels du contrat, ...*

Moreover, the following may be noted from *Dr D. Fokkan (supra)*, p.312, on the issue of consent with regard to the substantial modification of a contract of employment:

*La modification substantielle requiert impérativement le consentement de l'employé. Celui-ci ne peut toutefois tirer les conséquences de la modification que dans la mesure où l'employeur a non seulement pris la décision, mais le lui a également communiquée et imposée ;*

Furthermore, the following may be noted from *J. Pélissier, G. Auzero and E. Dockès in Droit du travail, Précis Dalloz, 26<sup>e</sup> édition, note 585* on the nature of the work carried out by the employee:

***La détermination de la tâche à accomplir***  $\diamond$  *Un salarié est embauché pour exercer un certain type de tâches et non pour faire n'importe quoi au gré de l'employeur. Il ne peut donc pas se voir contraindre à exécuter des tâches qui sortent de ses attributions contractuelles.*

...

*Un salarié embauché pour tel type de tâche qualifiée ne peut être muté sur une tâche qui suppose une autre qualification sans son accord, même si cette mutation équivaut à une promotion.*

...

*Si les tâches sont connexes ou de même nature, la demande fait en général partie du pouvoir de l'employeur. En revanche, dès que le type de travail diffère franchement et qu'il n'est pas habituellement associé à la tâche du salarié, c'est la qualification de modification du contrat de travail qui l'emporte.*

In the present matter, it has not been disputed that the Disputant was transferred to the post of Budget and Management Reporting Manager from that of Chief Internal Auditor without his consent. It is clear from the evidence of the Disputant and the representative of the CEB that the two posts carry different duties and responsibilities as is also apparent from their job descriptions. This would therefore amount to a substantial modification of the contract of employment of the Disputant by the CEB as employer without having obtained the Disputant's consent.

Another issue which was canvassed during the proceedings is that in the past an Officer at the CEB was General Manager and other Officers were working under him. Now, it is the case that this Officer is no longer General Manager and works under the present General Manager. However, this issue did not directly *per se* concern the Disputant. The Tribunal cannot delve into this issue as it has no bearing to the case being put forward by the Disputant as to why he should be reinstated to his former post of Chief Internal Auditor. Each case should be looked at on its own merits.

The issue of the Disputant's qualifications to be Chief Internal Auditor was also raised in light of the letter dated 11 December 2015 (Document H) from the National Audit Office. It must be noted that this was raised much after the transfer was effected to the job of the Disputant in May/June 2015 by the CEB and did not have any bearing on the decision to effect the transfer when the decision was taken by the Board of the CEB on 25 May 2015. In any case, the CEB has replied (Document M) to the letter of the National Audit Office on this issue.

The Tribunal having found that Mr B.P. Kurreemun was not transferred to take charge of another Department contrary to what has been stated in the General Staff Information Circular No. 1954/05/2015; that his concurrence in transferring him to the post of Budget and Management Reporting Manager was not sought; and that there has been a unilateral modification of his contract of employment without having obtained his consent, can only award that Mr B.P Kurreemun should be reinstated to his post of Chief Internal Auditor at the CEB with effect from 17 June 2015.

The Tribunal therefore awards accordingly.



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

**SD Esther Hanoomanjee (Mrs)  
(Member)**

**SD Rajesvari Narasingam Ramdoo (Mrs)  
(Member)**

**SD Triboohun Raj Gunnoo  
(Member)**

**Date: 13<sup>th</sup> July 2017**