

EMPLOYMENT RELATIONS TRIBUNAL

AWARD

Before: -

Shameer Janhangeer	-	Vice-President
Francis Supparayen	-	Member
Abdool Feroze Acharauz	-	Member
Kevin C. Lukeeram	-	Member

In the matters of: -

ERT/RN 72/17

Mr Udesh EMRITH

Disputant No.1

and

CASELA Limited

Respondent

ERT/RN 73/17

Mr Luckhun DOMAH

Disputant No.2

and

CASELA Limited

Respondent

ERT/RN 74/17

Mr Mike Ryan LASERINGUE

Disputant No.3

and

CASELA Limited

Respondent

The present matters have been referred 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 disputes read as follows:

Whether my Employer, Casela Limited will re-instate back my normal daily starting time of work which was 06.30 in the morning and my daily ending time of work which was 15.00 hours in the afternoon.

The Disputants were assisted by their Trade Union representative Mr L. Dewnath. Whereas the Respondent was assisted by Counsel Ms V. Mayer. The Disputants and the Respondents have each respectively submitted their Statements of Case. It must be noted that the three disputes were consolidated at the hearing of the matter.

THE DISPUTANTS' STATEMENT OF CASE

The Disputants have averred that they joined Casela Limited on 23.03.2011, 20.02.2014 and 01.07.2013 respectively. The first two Disputants joined as Gardener and their job title was eventually changed to Animal Keeper. The third Disputant joined as an Animal Keeper. As Animal Keepers, they wash, clean aviaries and feed the birds. Of the labour force of about 200 at Casela Limited, only the working time of the Disputants has been changed. Their working hours per week was 48 hours as per the *Catering Industry (Remuneration Order) Regulations* and this is now 45 hours per week with the amendment brought to the *Regulations* in 2014.

It has been averred that the Disputants were informed, during the end of February 2017, that their daily starting and ending time would be altered as from 1 March 2017. The Disputants' daily starting time has been changed from 0630 hours to 0830 hours; whereas their daily ending time has been changed from 1500 hours to 1700 hours. This change has been imposed unilaterally upon them without their consent and their trade union, the Artisans and General Workers' Union, has not been consulted. As Animal Keepers, the Disputants have nothing to do with visitors and their tasks consist of feeding, bathing and providing general care to animals; maintaining cleanliness of the sheds at all times; and treating animals in cases of minor injury. The Disputants wish to be reverted to their former daily starting and ending times.

THE RESPONDENT'S STATEMENT OF CASE

It has been averred that the Disputants are employed at Casela Limited in the Aviary section of the Operations Department. The Respondent re-organised its different departments. A full time Animal Curator / Veterinary Manager, who is responsible for the Zoology Department, was appointed further to the restructure of the company and the increase in animals. The Zoology Department has been created for the welfare and wellbeing of the animals. There are 7 employees in the Aviary section. Casela Limited operates from 0830 to 1700 hours and almost all of the employees work from 0830 to 1700 hours. More than 80% of 260 employees start duty as from 0830 hours to cater for visitors' needs up to 1700 hours. Following the amendment to the *Catering Industry (Remuneration Order) Regulations* to 45 working hours per week, the Disputants refused to sign a new contract. However, the Respondent is applying the statutory regulations to all its employees.

It has also been averred that the Respondent held several meetings with the reporting line supervisors to inform them of the change in pattern of work. All the Animal Keepers were informed prior to the change and a roster was circulated to all as per normal practice. The change in the working hours was discussed with the Union, whose attention was also drawn to the contract (of employment) where only the number of hours per week is mentioned and the pattern of work is not defined.

It has further been averred that given the role of the Animal Keeper in feeding animals at any point in time, maintaining cleanliness of sheds at all times and treating injury, it is abundantly clear that they should cater for the needs of animals and stay up to the closure of the park at 1700 hours. The Respondent needs its employees to start with the business operations. The main reason for the change is the feeding of animals at 16 hrs; in case of animal escape; medical emergencies; and monitoring in the park for the safety of animals and visitors. The preparation of animal feed has been centralised whereas in the past each Animal Keeper had to prepare the feed. The change in the pattern of work does not affect the terms and conditions of the employees which includes remuneration, number of hours worked and nature of the work.

THE EVIDENCE OF WITNESSES

Mr Luckhun Domah, Animal Keeper, was called to depose on behalf of the three Disputants. Mr Domah notably stated that he works under a contract of employment at Casela Limited. In the beginning, he started at 0630 hours and finished at 1530 hours. This changed to 1500 hours. Now they start at 0830 hours and finish at 1700 hours. The time was changed on 1 March 2017. Management only informed them of the change of the hours two to three days before. As Animal Keepers, they check the animals, look after them, clean and feed. Some animals are fed twice a day. They mainly look after the animals and stay with them up to 1230 hours. After 1230 hours, they do maintenance work. They are other people who look after the animals between 1200 and 1700 hours. Ending earlier allowed them to return home early and do other work. They are not satisfied with the change in the hours imposed on them.

Mr Domah was also questioned by Counsel for the Respondent. He agreed that his contract of employment includes his job position, place of work, duration and hours of work. Under duration and hours of work, it is written that he has to work for 48 hours, which is now supposed to be 45 hours. The contract of employment does not contain the start time and the end time. There is no change in the number of hours the company is asking him to work. Only the start time and the end time have changed. In the meetings before the change, they were informed that the hours are being changed because of the tourists. They are seven who work in the Aviary section. The animals are fed as from 1000 hours and 1600 hours which means that there must be people present at the aforesaid times. If there is any problem with the animals, the Animal Keeper has to manage the situation. All the persons in his department start at 0830 hours and end at 1700 hours. Mr Domah also stated that the change in the hours of work is not a major change.

Mrs Sunita Bikoo, Human Resource Manager at Casela Limited, adduced evidence on behalf of the Respondent. She explained that an Animal Curator / Veterinary Manager was recruited in 2015 and the department was reorganised. A new Zoology Department was created as they had more animals and more visitors. As the park closes at 5 pm, they need staff to help the Zoology team if there is an escape of animal or a medical emergency. She and the Head of Department had meetings to inform of the change in the starting time. The employees did not want to start at 0830 hours. The company went ahead with the change and the

employees informed their Union. She informed Mr Dewnath that the contract of employment did not define the pattern of work and this allows them to change it. She referred to clause 3.2 of the contract of employment, which she produced (Document A). The number of hours worked has remained the same and taking into account the 1-hour break and 15 minutes' tea time, the Disputants are working 42 hours. They work 6 days a week. The Respondent has 26 employees segregated into Aviary, Safari, Petting Farm and Administration. She produced a list of employees of the Zoology Department (Document B) which includes the Aviary section. The manpower has increased to cater for business needs. The starting times was changed without the written consent of the employees and it is not a substantial change.

THE MERITS OF THE DISPUTE

The Tribunal in the present matter is being asked to enquire into whether Casela Limited should re-instate the normal daily starting and ending times of the Disputants which was 0630 hours and 1500 hours respectively.

The Disputants are employed as Animal Keepers at Casela Limited. They previously started work at 0630 hours and ended at 1500 hours on a daily basis. However, following meetings held by management, their starting time is now 0830 hours and ending time is now 1700 hours. This change has been made effective as from 1 March 2017. The Disputants are not satisfied with the change to their daily start and ending times and wish to be reverted to their former normal working times.

It has not been disputed that the conditions of work of the Disputants fall under the *Catering and Tourism Industries Remuneration Regulations 2014 (GN 202 of 2014)*. Under these regulations, it is akin to note that the *Second Schedule* has provided that the normal working week of a worker shall consist of 45 hours of work excluding the time allowed for meal and tea breaks. The worker, on any given working day, is entitled to a meal break of 1 hour and two tea breaks of 15 minutes each. It must be noted that *GN 202 of 2014* has revoked the *Catering Industry (Remuneration Order) Regulations 2004*, which provided for a normal working week of 48 hours.

In *Hong Kong Restaurant Group Ltd v Manick* [1997 SCJ 105], it should be noted that the Supreme Court made the following observation in relation to the hours of work provided for in then then *Catering Industry (Remuneration Order) Regulations 1987*:

Whilst the Catering Industry (Remuneration Order) Regulations 1987 provides that a worker is required to work 48 hours per week excluding meal breaks, there is nothing which prevents an employer from granting more favourable conditions of employment.

It would also be apposite to note what was stated by the Supreme Court in the aforesaid case in relation to the powers of the employer:

It must be borne in mind that the employer has the inherent power of administration and he can organize his business according to the exigencies of the service but within the labour law and its remuneration orders.

It may be noted that this dicta of the Supreme Court has subsequently been cited with approval in the case of *L'Ingénierie v Baie du Cap Estates Ltd*. [2000 MR 38]. Furthermore, the following may also be noted on the powers of the employer as cited by the Supreme Court in *A.J. Maurel Construction Ltee v Froget* [2008 MR 6]:

*In any case, as has been stated in **Dalloz, Camerlynck, Droit du Travail (ibid.)**, the law does not interfere with the power of the employer to do so except that when he does so he does not interfere with the acquired rights of the employees:*

« L'employeur, maître selon la jurisprudence de l'organisation et du bon fonctionnement de ses services, peut librement, et sans engager sa responsabilité, apporter « dans les limites de son pouvoir de direction » des changements dans la structure de son entreprise et des aménagements dans l'exécution de la prestation de travail, ... »

However, when he does so, he should ensure that he does not interfere with the acquired rights of the employees. The exercise of the power of the employer to manage his business as he thinks fit is permissible:

« dès l'instant où il ne porte pas atteinte pour autant aux « éléments substantiels du contrat » (4) ou ne lui apporte pas de « modification essentielle (5) – concernant la qualification, les attributions principales, les conditions de travail ou la rémunération. »

The following may also be noted from what was stated by the Supreme Court in *Dyers and Finishers Ltd. v Permanent Arbitration Tribunal & Ors.* [2010 SCJ 176]:

It is settled law in France, from which country we inspire ourselves in matters of labour law, and in Mauritius, that the employer is at liberty to organise his enterprise in the best interests of that enterprise. But he must also comply with the law of the country with respect to the rights of the employees.

In the present matter, the employer has not modified the number of hours of work but has only shifted the daily starting and ending times of the Disputants. This cannot be deemed to be a substantial modification to their contract of employment. It should also be noted that neither the Disputants nor the Respondent has deemed the change to be substantial in their evidence adduced before the Tribunal.

It also cannot be said that the change in the daily starting and ending times is against the contract of employment of the Disputants in as much as the contract of employment has not specified same and has only expressed the number of hours to be worked in a week in relation to hours of work.

As has been seen, there is nothing which prevents the employer from modifying the daily starting and ending times of the Disputants pursuant to its powers of management of the enterprise provided that the employer acts within the labour law and its remuneration orders.

The employer, in the present matter, has put forward as reasons for the change in the daily starting and ending times of the Disputants, the reorganisation of its business notably with the creation of a Zoology Department and the appointment of an Animal Curator / Veterinary Manager. This is to cater for the increase in visitors and for an increase in animals at the Respondent's park. It has also been stated that the park closes at 1700 hours and that the Disputants are required up to the closure time.

It would be pertinent to note that it has not been suggested by the Disputants that the change in their daily starting and ending times is against the law. The Disputants currently work 42 hours per week when meal and tea breaks are taken into account. Nevertheless, it is for

reasons best known to them that the Disputants do not agree with the change. Mr Domah, who deposed on behalf of the three Disputants, stated that the previous ending time allowed him to return home earlier. This however cannot be taken to be a valid reason against the change made to the daily starting and ending times of the Disputants. Furthermore, the Disputants have not demonstrated how they are being prejudiced by the change.

It would be in the interests of good and harmonious employment relations for the Disputants and the Respondent to have a good and proper understanding. This can only lead to an improvement of employment relations at the workplace. In this vein, it would be appropriate to note what was stated by the Tribunal in *G. Rousseau & Ors and Le Warehouse Ltd (RN 1013 of 2010)*:

On the principles of good practices of good industrial relations as provided for in section 97 of the Employment Relations Act, it is essential that there should be an 'entente' between the Employers and the Employees. Good human relations between Employers and Employees are essential to good industrial relations. Indeed, changing the number of hours of work has an impact on the workers' life in general. One should not lose sight of the fact that both Employers and Employees have a common interest in the success of the undertaking.

In the circumstances, the change effected by the Respondent to the daily starting and ending times of the Disputants is well within its power as an employer. Hence, the Tribunal cannot find any reason to intervene in the present matter.

The disputes are therefore set aside.

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

**(SD) Francis Supparayen
(Member)**

**(SD) Abdool Feroze Acharauz
(Member)**

**(SD) Kevin C. Lukeeram
(Member)**

Date: 17th August 2017