

EMPLOYMENT RELATIONS TRIBUNAL

ERT/RN 96/2016

AWARD

Before: -

Shameer Janhangeer	Vice-President
Raffick Hossenbaccus	Member
Rabin Gungoo	Member
Kevin C. Lukeeram	Member

In the matter of: -

Mrs Naseema Banon Carim Bacor

Disputant

and

Mauritius Institute of Training and Development

Respondent

In presence of: -

The Union of Staff of the Mauritius Institute of Training and Development

Co-Respondent

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

Whether I, working as Instructor at the Mauritius Institute of Training and Development should be upgraded to the grade of Training Officer.

The parties in the present matter were assisted by Counsel. Mr B. Ramdenee appeared for the Disputant, whereas Mrs M. J. Lau Yuk Poon, Assistant Solicitor General, together with Mrs A. D. Daby, State Counsel, appeared for the Respondent instructed by the Senior State Attorney. Miss K. Servansingh appeared for the Co-Respondent. The parties have each respectfully submitted a Statement of Case in relation to the dispute.

THE DISPUTANT'S STATEMENT OF CASE

It has been averred that the Mauritius Institute of Training and Development ("MITD") is a body corporate established under the *Mauritius Institute of Training and Development Act 2009* and took over the activities of the Industrial and Vocational Training Board ("IVTB") and the Technical School Management Trust Fund ("TSMTF"). The MITD runs courses at various levels from National Trade Certificate Foundation to National Diploma/Diploma/Higher National Diploma. The organisation of the MITD comprises *inter alia* the posts of Training Officers and Instructors. The Scheme of Service of the two posts are annexed to the Statement of Case.

It has been averred that the Disputant started employment at the MITD on 22 June 2011 as Instructor B and has held the post to date. The MITD is administered through a Board which is responsible for the conditions of service of its employees. Instructors can be and have been promoted to the post of Training Officer, but the MITD has no clear or written policy covering aspects of promotion or upgrade of its employees. The MITD has in the past upgraded Instructors to the post of Training Officer and examples of same are given. The Disputant understands that higher levels of education and qualifications compared as to what is required of the post of Instructor leads to an upgrade as Training Officer as a sign of recognition and motivation to employees. The case of Mr Waterstone has created a legitimate expectation that possession of higher qualifications to what is required leads to an upgrade. The Disputant when starting had a School Certificate, Higher School Certificate and BSc (Hons) in Information Technology. She has subsequently been awarded a Masters in IT Enterprise Management in October 2014. The Disputant has wide experience as Instructor in the field of Information Technology and was appointed as paper setter/marker and jury for National Certificate in IT Level 4, National Certificate in IT Level 5 and National Diploma in IT. The Disputant has not been upgraded despite her higher qualifications and experience and this is in breach of the legitimate expectations created by the MITD via precedents.

It has also been averred that the posts of Instructor and Training Officer are remunerated differently as per the Pay Research Bureau (“PRB”) Report 2016 at MITD 19 and MITD 28 respectively. In practice at the MITD, both Training Officers and Instructors are doing the same or broadly the same work; the work carried out by both posts is of same and equal value; by not being upgraded to the post of Training Officer, the Disputant is being deprived of the higher remuneration scale of Training Officer despite doing the same work as Training Officer; and the Disputant’s right to be remunerated equally for work of equal value is being breached by the MITD in not upgrading her. Since the Disputant joined the IVTB, now MITD, there is no clear policy as to the procedure to replace a Training Officer who has retired or left employment. The practice of the MITD is to make Instructors undertake the responsibilities of Training Officers. Due to her additional aptitude, skills, experience and higher qualifications, the Disputant is able to undertake the responsibilities of Training Officer without being recognised or remunerated as same. This amounts to unfair labour practice as the MITD is taking undue advantage of her higher education, skills and experience without giving recognition for same; and her dignity is being affected for not having received due recognition. The Disputant therefore prays for an award that she be upgraded to the grade of Training Officer at the MITD.

THE RESPONDENT’S STATEMENT OF REPLY

The MITD has averred that it no longer runs the National Trade Certificate Foundation, Pre-Vocational Education Level 3 courses and advanced diploma course. The Scheme of Service of the post of Training Officer is annexed to the Statement of Reply. The Disputant was initially employed on a contractual basis; in 2013, she was placed on the permanent and pensionable establishment of Respondent; and holds the post of Instructor to date. There is no automatic promotion at the Respondent and posts are filled by way of selection; and the post is, in the first instance, advertised internally and in case there are no qualified candidates, the vacancy is advertised to the public at large. The examples of the upgrades that have been done at the MITD were on an exceptional basis and on circumstances of specificity and scarcity. In the past, Instructors at the Professional Drivers Training Centre were upgraded to Training Officer due to specificity and scarcity in the field of Driving of Heavy Vehicle; due to a scarcity of resource persons in Rodrigues, Mr Waterstone was exceptionally upgraded from Instructor to Training Officer and Mr Waterstone had upgraded his qualifications.

The Respondent denies that having higher qualifications leads to an upgrade as Training Officer and that the precedent of Mr Waterstone has created a legitimate expectation that possession of higher qualifications leads to an upgrade. The qualifications for the post of Instructor are set in its Scheme of Service. The Respondent denies that it is in breach of the legitimate expectations it has created via precedents. The Respondent denies that Instructors and Training Officers are doing the same work and avers that the Scheme of Service for the two posts are different; their duties are different in their respective Scheme of Service; and Instructors who are called upon to deliver training at a higher level are paid an *ad hoc* allowance equivalent to three increments. There is an established procedure for the filling of vacancies as per the HR Manual; the vacancies are advertised to the public at large in case no one in the organisation satisfies the requirements of the post and a selection exercise is carried out; and all recruitments are approved by the Board of the Respondent. The Respondent denies the averments of unfair labour practice made against it. The Respondent moves that the matter be set aside.

THE CO-RESPONDENT'S STATEMENT OF CASE

The Union of Staff of the Mauritius Institute of Training and Development has referred to the Tribunal's award in *Mustun v MITD (ERT/RN 64/16)* in relation to negotiations between the Respondent and the Co-Respondent about a new organisational structure. It has been averred that no significant progress has been made since the *Mustun* award in April 2017. The Co-Respondent wrote on 26 April 2017 to the Respondent's Board to request a meeting and on 19 May 2017, a meeting was convened whereby the Respondent proposed to advertise some posts on the basis of the existing Schemes of Service. The Co-Respondent expressed its disagreement to this proposition in a letter dated 24 May 2017. A report of dispute to the CCM was made by the Co-Respondent. A meeting was subsequently held with the Permanent Secretary of the Ministry of Education on 26 May 2017, who informed the Co-Respondent that the Respondent will not be proceeding with filling of posts based on existing Schemes of Service and that the latter would be worked out at the level of the Ministry itself.

The MITD has failed to implement an organisational structure and has been operating under the structure, and Schemes of Service, applicable to the IVTB, TSMTF and Lycée Polytechnique Sir Guy Forget. Since 2009, there have been numerous discussions, proposals

and representations by the Co-Respondent in an unsuccessful attempt to finalise a new organisational structure. The Co-Respondent is of the view that such a structure should not have an impact on the present dispute. The new structure would only bring the post of Instructor in line with the Scheme of Service proposed by the Respondent and salary scale as recommended by the PRB taking into account the duties, experience and salary related to the post. It would not tackle the live issue of whether the Disputant should be upgraded from Instructor to the grade of Training Officer.

THE RESPONDENT'S STATEMENT OF REPLY TO THE CO-RESPONDENT'S STATEMENT OF CASE

The Respondent has averred that the organisational structure and Scheme of Service have been sent to the Ministry of Education and Human Resources, Tertiary Education and Scientific Research for finalisation. The Respondent has denied that it has ignored the recommendations on Schemes of Service in the PRB Reports of 2008, 2013 and 2016 and avers that as the finalisation of an organisational structure and Scheme of Service is long overdue since 2009, Management proposed, as an interim measure and as not to penalise the staff of the Respondent, to advertise some positions internally based on the existing Scheme of Service. However, the unions were not agreeable to the proposal. The CCM decided that that it will follow up with the Ministry regarding the status of the Schemes of Service.

The Respondent admits that the Permanent Secretary of the Ministry informed the Co-Respondent that the Respondent would not be proceeding with the filling of posts based on the existing Schemes of Service and avers that the Ministry is working on the Schemes of Service of which around 60% have been completed. The exercise of implementing an organisational structure has been delayed due to divergent views of the unions. The Co-Respondent is not the only recognised union and the Respondent has to take into consideration the views of the other recognised unions as well.

The Respondent also avers that there is no automatic promotion at the Respondent from the grade of Instructor to Training Officer; Instructors satisfying the qualification requirements will have to apply as and when the post of Training Officer is advertised; Instructors who are called upon to teach at National Certificate Level 4 and above are granted an *ad hoc* allowance equivalent to three increments; and the Respondent is agreeable to pay

the Disputant an *ad hoc* allowance equivalent to three increments for teaching at National Certificate Level 4 and above. The Respondent also avers that most of the proposals made by the unions have been retained by management; the unions have been consulted throughout the review exercise; and there is no automatic promotion at the Respondent, all posts are filled by way of selection.

THE EVIDENCE OF WITNESSES

The Disputant Mrs Naseema Banon Carrim Bacor, Instructor, was called to adduce evidence on her behalf. Her job title is Instructor B at the MITD, which she joined in June 2011 and is on a permanent basis as from July 2013. She holds a BSc with Honours in IT, a Masters of Business in IT Enterprise Management, is also a Cisco Trainer and has also completed an IT Essentials course from Cisco. She conducts training for Diploma Level students for the post of Training Officer as she is conducting training for Level 6 students, whereas as per her scheme of duty as Instructor Grade B, she should be conducting training for Level 3 and 4 students. She is performing all the duties of Training Officer as per its scheme of duty.

As regards the first duty of Training Officer, which is *“To provide relevant theoretical and practical training in his/her field of expertise”*, she produced her time table of the present semester (Document A) and of the past semester (Document B) and the results of students for the past semester (Document C) to show that she is doing this work. She is also conducting training for Diploma Development Web application and produced a project sheet (Document D).

On the second duty, which is *“advise on matters connected with commercial/vocational/technical training at all levels and promote relevant activities”*, the Disputant stated that she is a resource person for the new curriculum that is going to be set up by the MITD and is the only Instructor among the Training Officers assigned this duty. She produced a document titled *“Resource Persons for DACUM”* and her reply thereto (Documents E and E₁).

On the third duty, which is *“To produce teaching aids for instructional purposes as required”*, she stated that in her duty as Trainer, she has to regularly prepare instructions and teaching aids and produced a teaching aid on how to install Windows 8 on a PC (Document F). As for the fourth duty, which is *“... counsel trainees as and when required”*, this is done on a verbal basis. She has conducted a class on moral values, had to solve issues following fights and is a first aid instructor.

Regarding the fifth duty, which is *“To take charge of work areas as assigned and be responsible for the maintenance and upkeep of all tools and equipment as well as safety precautions”*, the Disputant stated that she is in full responsibility of the computer workshop being qualified as an IT Essentials Trainer since 2013. She produced an email from her Acting Coordinator (Document G).

On the sixth duty, which is *“To participate in Trade Advisory Committee and other committees and take appropriate action”*, the Disputant stated that no Training Officer has been performing this duty which is only undertaken by the Acting Coordinator, the Manager and Training Centre Manager. Regarding the seventh duty, which is *“To draw up programme for various types of institutions, training centres, firms and monitor as well as supervise the execution of such programmes and training projects”*, she has conducted research on setting up a Linux System Administrator Programme for NSDV students and produced a document showing the course contents (Document H).

In relation to the eighth duty, which is *“To provide, maintain and disseminate up to date and reliable information on current trends in training at all levels”*, she stated that she undertook a course and had to disseminate that among the Trainers in her institution and produced an email (Document J). On the ninth duty, which is *“To prepare and conduct examinations, trade and regulations concerning training in the commercial/vocational/technical fields”*, she stated that she is part of the paper setting panel since June 2011, is also a paper marker and sets examinations at NDIT Level 6.

On the tenth duty, which is *“To assist in the drafting of rules and regulations concerning training in the commercial/vocational/technical fields”*, she does not perform same as it is for the Acting Coordinator to draw up rules and regulations concerning the school and Trainers do not participate in this activity. Regarding the eleventh duty, which is *“To supervise and advise*

on training curricula", she has supervised new curricula on Network Forensics Training and produced a document to this effect (Document K). She also produced an email instructing her to do a presentation (Document L) in relation to this duty.

On the last duty, which is *"To perform other duties directly related to the main duties as listed above or related to the delivery of the output and results expected from incumbents in the roles ascribed to them according to their posting"*, she stated that she is a First Aid Trainer and regularly helps students when they are hurt and produced a photocopy of a photograph showing her name as a First Aider (Document M). She also gives help to students who don't have access to computers. Regarding the note in the Scheme of Service for Training Officer stating *"The Training Officer will be expected to work outside normal working hours"*, she produced a paper from the Training Centre Manager instructing her to conduct training on Saturday which is outside normal working hours (Document N).

Mrs Carim Bacor went on to state that the duties she went over are not the duties of Instructor B and are those of Training Officer. She delivers training for Level 6 students, which is the highest at the Institution. Instructor B delivers training at Level 4. She has been doing same since she joined the MITD in June 2011 and has not received an allowance. However, in September 2017 she was paid an allowance equivalent to three increments as per her payslip and arrears for the month of August. She produced a copy of her payslips for September 2017 and August 2017 (Documents O and O₁). For the reasons put forward, she is doing the duties of a Training Officer and is asking for an order to be upgraded to the grade of Training Officer from Instructor B at the MITD. She also stated that she is doing the job of Training Officer and feels that she is totally qualified for it.

Upon questions from Counsel for the Respondent, the Disputant notably stated that there was an advertisement for Training Officer on 15 September for which she applied. This is the first time she has come across an advertisement within her field of study. There has been automatic upgrade or promotion in the past at the MITD. She is not aware of other cases of the MITD automatically upgrading people. She expects to be automatically upgraded as she is doing the duties. She agreed that Instructors are also expected to work outside normal working hours. She was not paid any extra money for working on Saturday or given any time-off. She did not agree that there is no automatic upgrade at the MITD and does not know of any cases of automatic upgrade except for three cases.

Mr Sayedaly Maudarbocus, Acting Deputy Director, was called to depose on behalf of the MITD. He stated that the posts of Instructor and Training Officer exist in the Training Grade at the MITD. Some of the Instructors have been performing some of the duties of Training Officer. The Disputant has been doing work at Level 4 and 5 for Instructor and in one module at Level 6 for Training Officer. She is being paid the *ad hoc* allowance for higher level courses. Whenever a post is vacant, the Board's approval is sought for advertising the post and the advertisement can be both internal and external at the same time. Consideration is given to internal candidates first and if no suitable candidates are found, they go outside if the advertisement is open. There has been an advertisement of a vacancy in the area of Mrs Bacor on 15 September and he hopes to have the post filled by October or November of this year. The upgrades of Messrs Seebun, Bhurtun and Luchmun and Mr Waterstone were done on grounds of scarcity and there has been no other upgrading since. There is no automatic upgrade, this is the policy of the Board. If an Instructor has been performing some of the duties of Training Officer, the latter post cannot be offered to that person as this would be against principles of selection.

Mr Maudarbocus, under questions from Counsel for the Disputant, notably stated that the scheme of duties for the post of Instructor and Instructor B are the same and they are one post. The option form signed by the Disputant mentions the post of Instructor. He acknowledged in some way that Mrs Carim Bacor has been performing duties at a higher level. The Disputant was posted at the IT section in Ebene where the Centre Manager gave her additional duties which Head Office was not aware of and it is an omission on the part of management that she should have been paid an *ad hoc* allowance since before. The Disputant has been doing the work at Level 6 since before. Whenever an officer in any grade performs higher level duties, an allowance has to be paid. All allowances that have to be paid are referred to the Board for approval based on the PRB. As the structure at the MITD has not been finalised, people are given allowances for working at higher responsibilities and this has been going on for years. The Disputant has not been doing the whole job of Training Officer; she has been doing the job of Instructor and Training Officer and teaching one module in the Higher National Diploma.

Mr Maudarbocus also went on the state that there have been instances where there has been an upgrade on an exceptional case of scarcity. He maintained that there is no route for upgrade. The criteria of specificity and scarcity depends on the labour market. The Board is supreme and can take decisions depending on the scarcity of the area of training. Despite

having stated previously that the structure will be finalised in two months, it has still not been finalised. The Ministry of Education is finalising the structure and has not been able to finalise the document as scheduled. The advertisement was made to the public on 17 September and the internal advertisement was published on 19 September. The posts of Training Officer and Instructor will still exist once the new structure comes into play. Mr Maudarbocus also stated, when questioned by Counsel for the Co-Respondent, that the adoption of the new structure will have nothing to do with whether the Disputant should be upgraded to the post of Training Officer.

Mr Maudarbocus, in re-examination, stated that Levels 4 and 5 are taught by both Training Officers and Instructors and Level 6 by Training Officers. The Disputant is not doing all the duties of Training Officer. The post of Instructor B is based on the Scheme of Service of the IVTB Board. The salary scale and duties of Instructor are similar to Instructor B.

Mr Sailendra Makhan, President of the Union of Staff of the MITD, was called to adduce evidence on behalf of the Co-Respondent. He stated that the new structure is not complete and has been referred to the Ministry of Education, where they would finalise the whole. The negotiations have not yielded any positive outcome. The Board has stopped all negotiations and referred the matter to the Ministry of Education. The adoption of a new structure will not have an impact at the level of Training Centres and on the running of training at the MITD.

Mr Makhan, under cross examination, has notably stated that the post of Instructor B is fictitious and the MITD is still using the Scheme of Service of 2003 but using the salary scale of Instructor as given in PRB of 2013 and 2016. He produced an agreement reached before the CCM between the union and management (Documents P and P₁); extracts of the PRB Reports of 1993, 1998, 2003, 2008 and 2013 (Documents Q, Q₁, Q₂, Q₃ and Q₄) and an email from the Human Resource Management Assistant (Document R). In the new structure, the union has proposed the post of Senior Training Officer and Senior Instructor. The issue of the organisational structure will have no effect on Instructors becoming Training Officers. They have written to the Ministry of Education but the matter is staggering at the level of the Ministry.

THE MERITS OF THE DISPUTE

The Tribunal, in the present matter, is being asked to enquire into whether the Disputant should be upgraded to the grade of Training Officer at the MITD, where she is currently working as an Instructor.

Mrs Carim Bacor joined the MITD in June 2011 and has been employed on a permanent basis as from July 2013. She occupies the post of Instructor B at the MITD and trains students at Diploma Level. She holds a BSc (Hons) in IT; a Masters of Business in IT Enterprise Management; is a Cisco Trainer; and has completed an IT Essentials course from Cisco. She contends that she is performing the work of the post of Training Officer.

The Scheme of Service of the post of Training Officer has been attached to the Respondent's Statement of Reply. As per the aforesaid Scheme of Service, the post comprises various duties. The duties listed are as follows:

1. *To provide relevant theoretical and practical training in his/her field of expertise.*
2. *To advise on matters connected with commercial/vocational/technical training at all levels and promote relevant activities.*
3. *To produce teaching aids for instructional purposes as required.*
4. *To counsel trainees as and when required.*
5. *To take charge of work areas as assigned and be responsible for the maintenance and upkeep of all tools and equipment as well as safety precautions.*
6. *To participate in Trade Advisory Committee and other committees and take appropriate action.*
7. *To draw up programme for various types of institutions, training centres, firms and monitor as well as supervise the execution of such programmes and training projects.*
8. *To provide, maintain and disseminate up to date and reliable information on current trends in training at all levels.*
9. *To prepare and conduct examinations, trade and regulations concerning training in the commercial/vocational/technical fields.*
10. *To assist in the drafting of rules and regulations concerning training in the commercial/vocational/technical fields.*
11. *To supervise and advise on training curricula.*
12. *To perform other duties directly related to the main duties as listed above or related to the delivery of the output and results expected from incumbents in the roles ascribed to them according to their posting.*

According to her evidence, Mrs Carim Bacor is performing almost all of the tasks of a Training Officer despite being an Instructor B. She has been through in her account of the tasks she is performing which pertain to the grade of Training Officer and has produced various documents to illustrate that she is performing these duties. The Disputant has also clearly asserted that she is performing the duties of Training Officer since she joined the MITD in June 2011. As for the two duties of Training Officer not being performed by the Disputant, i.e. the sixth and the tenth duty as listed, it should be noted that the Disputant has clearly stated that these duties are undertaken by the Coordinator and Officers above and that Training Officers and trainers do not participate in these. It would be pertinent to note that upon being questioned by the Respondent, it was not wholly disputed that the Disputant is performing the duties of Training Officer.

On the other hand, the Respondent, through its representative, has recognised that Instructors have been performing some of the duties of Training Officer and that the Disputant has been teaching students at Level 6 since before. The representative has not disputed that the Disputant is performing the duties of Training Officer as elaborated upon in her deposition. He has also stated that the Disputant delivers training at Levels 4 and 5 which is for both Instructors and Training Officers and at Level 6 which is for Training Officer.

Moreover, the Respondent has contended that the Disputant receives an *ad hoc* allowance for delivering training at a higher level. The receipt of the *ad hoc* allowance must however be put in its proper context. The Disputant, in this regard, has clearly demonstrated that she has only recently been receiving same as per her payslip of September 2017 and was paid arrears for same for August 2017. It cannot also go unnoticed that the Disputant has been performing duties at a higher level since before August 2017 and since she joined the MITD in June 2011. It cannot also be discarded that the Disputant has not been informed in writing that she would be paid an *ad hoc* allowance and for what reason she is being paid same.

It must also be noted that the post of Training Officer as per its Scheme of Service requires as qualifications the Cambridge Higher School Certificate or GCE "A" Level in 2 subjects or equivalent and a degree in the relevant field from a recognised institution or equivalent. It would be useful to note that the qualifications of the Disputant for the post of Training Officer have not been questioned and on the contrary, it has even been put to her by Counsel for the

Respondent that she would stand a good chance of being selected for the post of Training Officer, which has been advertised since 15 September 2017, with the skills she possesses and the work she has been doing.

The MITD is a statutory body established under the *Mauritius Institute of Training and Development Act (Act 12 of 2009)*. It has among its objects the promotion of excellence in technical and vocational education and training and is administered and managed by a Board. The Board has the power to appoint employees and to govern their conditions of service. This may be gleaned from *sections 13 and 14* of the aforesaid Act:

13. Appointment of employees

(1) *The Board may appoint, on such terms and conditions as it thinks fit, such employees as may be necessary for the proper discharge of its functions under this Act.*

(2) *Every employee referred to in subsection (1) shall be under the administrative control of the Director.*

14. Conditions of service of employees

The Board may make provision to govern the conditions of service of its employees and in particular to deal with—

- (a) *the appointment, retirement, dismissal, discipline, pay and leave of, and the security to be given to, employees;*
- (b) *appeals by employees against dismissal and any other disciplinary measures; and*
- (c) *the establishment and maintenance of provident and pension fund schemes and any other scheme, and the contributions payable to and the benefits recoverable from those schemes.*

It is trite law that matters of appointment and promotion of employees are within the realm of the powers of the employer. 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. 216* on this subject:

Le pouvoir de direction reconnu à l'employeur permet à celui-ci de prendre toutes les décisions concernant la gestion de l'entreprise, y compris les mesures ayant trait aux

employés. Il décide ainsi du choix de ses employés, de la carrière de ceux-ci et éventuellement de leur licenciement. Il décide également de l'exécution du travail, de l'ouverture ou de la fermeture de tel ou tel atelier et éventuellement de celle de l'entreprise.

However, it cannot be overlooked that the power of the employer is open to abuse and that the employee must be safeguarded against any abuse of this power. In this context, the following may be noted from what was stated by the then Permanent Arbitration Tribunal in *Mrs D.C.Y.P and The Sun Casino Ltd (RN 202 of 1988)*:

There is no doubt that employers do have a discretion and powers in matters of appointment and promotion. Such discretion and powers must, however, be exercised in such a way as not to cause prejudice and frustration to employees whose only 'fault' would seem to be loyalty, expertise and efficiency.

Whenever, as in the above case, officers are recruited and employed to work, they are entitled to expect a normal reward for their good work and acquired experience, and this necessarily includes access to promotion upon the occasion arising.

Unless such a basic concept of employer/employee relations is present in modern enterprises, industrial disputes and bad blood are bound to be the order of the day.

...

After considering all the facts of this case, we have no hesitation in finding that the fundamental principles of fair employment have not been followed and that, as a result, one employee is feeling justly frustrated because of what she considers, and is considered, an 'injustice' with consequences affecting her not only materially, but morally.

Likewise, in *E. Cesar and C.W.A. (RN 785 of 2005)*, the Permanent Arbitration Tribunal held the following in relation to the employer's powers:

*The Tribunal holds that, subject to an abuse of powers on the part of management (**Mrs D.C.Y.P. and Sun Casinos RN 202 of 1988**), matters regarding appointment and promotion of employees are essentially within the province of management (**M. Pottier and Ireland Blyth Ltd RN 279 of 1994, A. Ayrga and Tea Board RN 575 of 1998**).*

In the present matter, it has not been strenuously challenged that the Disputant has been performing the duties of Training Officer although she is an Instructor at the MITD. The Respondent has even admitted that the Disputant is performing some of the duties of Training Officer and has recognised that she is performing at a higher level in paying her an *ad hoc* allowance for same. The Disputant has contended that she has been performing these duties since she joined the MITD in June 2011 and the Respondent has admitted that she has been doing same since before she has been paid the allowance.

It is also apposite to note that the representative of the Respondent has explained that the Disputant was given additional duties by her Centre Manager and did not make Head Office aware of same. It is admitted that this is an omission on the part of management. It cannot be overlooked that the grade of Training Officer is higher in rank and salary to that of Instructor and it is unfair on the part of management to have the Disputant performing at this level when she is being employed at the level of Instructor B. Although it may be argued that she is now being paid an *ad hoc* allowance, the payment of same only dates back to August 2017, whereas the present dispute predates its payment having been reported on 15 October 2015.

The Respondent has also contended that there is no automatic promotion at the MITD and that upgrading which have been effected in the past have been done on grounds of scarcity and specificity. The Tribunal has however noted that the Respondent was uncertain as to the source of the criteria of scarcity and specificity. The Disputant has not denied this policy although she is aware of examples of automatic upgrading. Despite the policy of no automatic upgrading which operates at the MITD, this cannot be taken for a pretext to allow an employee to perform higher duties as compared to what she is supposed to do. It may also be noted that despite the present dispute, the Disputant has applied to the advertisement made by the MITD on 15 September 2017 for the post of Training Officer.

The Tribunal can only therefore find that there has been an abuse on the part of the employer and its management in assigning duties higher to her grade of Instructor B to Mrs Carim Bacor inasmuch as the evidence adduced before the Tribunal has clearly borne out that she has been performing the duties of Training Officer at the MITD.

It has also come to light during the hearing of the dispute that the Disputant holds the post of Instructor B whereas, as per the Terms of Reference of the dispute, she is asking to be

upgraded from the post of Instructor. The Tribunal has however noted that the evidence of the representative of the Respondent was clearly to the effect that in practice the grades of Instructor and Instructor B are one post having the same scheme of duties. The representative has even ushered evidence to the effect that the Disputant signed her option form opting for the PRB in relation to the post of Instructor.

The hearing of the present dispute has also raised the issue of a new organisation structure to be implemented at the MITD. It has been borne out that the new structure and Schemes of Service has yet to be finalised and that this is apparently staggering at the level of the Ministry of Education and Human Resources, Tertiary Education and Scientific Research.

Although, as noted previously by the Tribunal in the dispute of *Mustun and Mauritius Institute of Training and Development (ERT/RN 64/16)* that the Tribunal would be cautious not to intervene in a matter where there are ongoing discussions between management and the unions with the goal of achieving a new management structure for the organisation, the present Tribunal is satisfied from the evidence of the Respondent and Co-Respondent adduced before it that the finalisation of the new organisation structure should have no bearing on the present dispute.

The Tribunal would, however, wish to remind the parties to assure themselves that the aim of reaching a new organisation structure at the MITD, which is since long being awaited, is attained without any undue delay in the interest of the persons immediately concerned and in a spirit of good and harmonious employment relations.

The Tribunal therefore awards that the Disputant Mrs Carim Bacor be upgraded to the post of Training Officer as per the Terms of Reference of the present dispute.

The Tribunal awards accordingly.

Sd Shameer Janhangeer
(Vice-President)

Sd Raffick Hossenbaccus
(Member)

Sd Rabin Gungoo
(Member)

Sd Kevin C. Lukeeram
(Member)

Date: 26th October 2017