EMPLOYMENT RELATIONS TRIBUNAL

AWARD

ERT/ RN 13/17

Before

Indiren Sivaramen	**Vice-President**
Raffick Hossenbaccus	**Member**
Rabin Gungoo	**Member**
Kevin C. Lukeeram	**Member**

In the matter of:-

Mr Iswarduth Guness (Disputant)

And

Central Water Authority (Respondent)

i.p.o: 1. Ministry of Energy and Public Utilities

2. Ministry of Civil Service and Administrative Reforms

(Co-Respondents)

The present matter has been referred to the Tribunal by the Commission for Conciliation and Mediation (hereinafter referred to as "the CCM") under Section 69(7) of the Employment Relations Act (hereinafter referred to as "the Act"). The Disputant, Respondent and Co-Respondent No 2 were assisted by counsel whereas Co-

Respondent No 1 was not assisted by counsel. The amended terms of reference of the dispute read as follows:

"Whether the date of implementation of the post of Office Management Assistant, as per Recommendation EOAC 3 (15A) of Errors, Omissions and Anomalies Committee Report 2013 should be 01.07.2013."

Respondent had raised two points *in limine* and the Tribunal after hearing arguments delivered a ruling setting aside the points taken. Mr Imrith, the President of the Federation of Public Sector and Other Unions (FPSOU), deponed before the Tribunal and he stated that the Pay Research Bureau (PRB) Report 2013 was released on or about October 2012 and implemented as from January 2013. He stated that the Errors, Omissions and Anomalies Committee Report 2013 (EOAC Report 2013) forms an integral part of the main report and that when one accepts the main report by signing the option form, this will include the anomalies report that follow. He referred to the streamlining of procedures and consolidation of schemes of service and averred that there should be a gradual reduction in the processing time for the prescription of schemes of service from six to four months. This would be in line with a recommendation of the PRB Report 2013. Mr Imrith also stated that when the effective dates for the implementation of certain recommendations are not complied with, there are negotiations whereby some form of compensation is granted for the prejudice suffered by the workers. He referred to a previous case involving the Rodrigues Regional Assembly where workers who suffered a similar 'prejudice' were given two increments instead of one increment.

In cross-examination, Mr Imrith agreed that when a new grade is created, the worker must accept to join the new grade. In this case, he added that the option did not tally with the relevant recommendation and that Disputant's acceptance was conditional to Disputant having an option to join as from July 2013. He stated that in the civil service, the Office Management Assistants did not wait for the prescription of the scheme of service since there was a restyling of the post.

Disputant then deponed and he solemnly affirmed to the truthfulness of the contents of his statement of case. He stated that he satisfied the conditions mentioned in Recommendation EOAC 3 (15A) of the EOAC Report 2013. He stressed on the fact that the recommendation constituted a binding contract between his employer and himself and that he had to be given the option to join the grade of Office Management Assistant on 1 July 2013. He also suggested that there was an agreement between the relevant trade union and management for the effective date to be 1 July 2013.

Disputant suggested that the Respondent referred the matter to Co-Respondent No 1 (the parent Ministry) which would have taken much time to seek advice from Co-

Respondent No 2. He maintained that he had accepted the post of Office Management Assistant (by way of a letter, the copy of which was at Annex 7 to his statement of case). He argued that if he had instead accepted the date mentioned as per Annex D to the Reply of Respondent to his Statement of Case, this would have been irrevocable and he would then have had no ground at all for disputing the date of implementation. Disputant stated that he cannot be prejudiced for the delay taken to prescribe the scheme of service. He also suggested that there was a previous "same" case where an additional increment was paid for the delay to implement a recommendation.

In cross-examination, he confirmed that he is still an Executive Officer. He agreed that he had to exercise the option to join the grade of Office Management Assistant but he maintained that the effective date should have been 1 July 2013. He agreed that it was only in August 2015 that the Board of the Respondent approved the post of Office Management Assistant.

Mrs Surfraz deponed on behalf of the Respondent and she solemnly affirmed that the contents of the Reply of Respondent to the Statement of Case of Disputant are true. She stated that the said post of Office Management Assistant did not exist at the Respondent and there was no scheme of service for that post. The scheme of service for the post was finalized on 6 May 2014 in the civil service. Respondent obtained a copy of the scheme of service and from then on, the Respondent embarked on a process which she described to prescribe its own scheme of service for the grade of Office Management Assistant. She stated that all other officers concerned exercised the option except for Disputant.

In cross-examination, Mrs Surfraz agreed that as per Recommendation 15A of the EOAC Report 2013, the employer must give the qualified officer the option to join the new grade of Office Management Assistant on 1 July 2013. This was not done in this particular case. She was then cross-examined on the time taken for the different steps leading to the prescription of a scheme of service. She averred that it was not possible for the Respondent to start drafting his scheme of service first and then later align same with that of Co-Respondent No 2. She stated amongst others that the scheme remained at the parent Ministry for some eight months and that she would not be able to say what they did there. She stated that they did send reminders and that at the level of the Respondent, they tried to act as promptly as possible.

The representative of Co-Respondent No 1 chose not to adduce evidence before the Tribunal.

Mr Ramsooroop, Assistant Manager, Human Resources at Co-Respondent No 2 then deponed on behalf of Co-Respondent No 2 and he stated that Co-Respondent No 1 sought an advice as to whether Disputant could be compensated by the provision of two

increments. Co-Respondent No 2 then advised that the question of compensation by way of two increments did not arise since the scheme of service for the post at the Respondent was prescribed in 27 August 2015.

In cross-examination, Mr Ramsooroop stated that the Respondent has to align the scheme of service with that of the civil service and that it is the board of Respondent which has to approve the scheme of service. He acknowledged the recommendation of the PRB to review the process for the prescription of schemes of service so that the period for prescription is reduced to four months. He however suggested that in practice and in view of the large number of schemes of service which may be involved following a PRB report, this is almost impossible. He went on to say that there is flexibility. He was not aware of exchanges between Respondent and Co-Respondent No 1. Co-Respondent No 2 was involved in the case when Co-Respondent No 2 was asked if two increments could be paid. He maintained that a post exists as from the date of prescription of that post.

The Tribunal has examined all the evidence on record including the submissions of counsel. The relevant recommendation EOAC 3 (15A) of the EOAC Report 2013 is the recommendation which is at the root of the dispute between the parties. It reads as follows:

15A The Committee further recommends that:

(a) Higher Executive Officers and Executive Officers in post as at 31 December 2012 be given the option to join the new grade of Office Management Assistant on 1 July 2013 and on joining be granted one additional increment subject to the top salary of the new grade; and

(b) the grades of Higher Executive Officer and Executive Officer be made evanescent.

The bone of contention is that the recommendation mentions specifically that the option to join the new grade of Office Management Assistant should be given to the relevant qualified officers on 1 July 2013. This date is in fact not denied at all before us and even Mrs Surfraz agreed that the option had to be given on that date and that this was not done. However, a careful reading of the terms of reference before us reveals that the dispute as referred to us does not correspond to the matter in dispute before us. Indeed, the Tribunal is, from the evidence adduced, being asked whether Disputant should be given the option to join the grade of Office Management Assistant on 1 July 2013 whereas as per the terms of reference, the Tribunal is to enquire whether the date of implementation of the post of Office Management Assistant should be 1 July 2013. The date of implementation of a post may be different from the date an option has to be given to a particular grade of employees to join the said post, and other

recommendations may come into play. We may, for instance, refer to Recommendation EOAC 1 in the same EOAC Report 2013 (Vol 2 Part II – Parastatal & Other Statutory Bodies and the Private Secondary Schools) which reads as follows:

Recommendation EOAC 1

12. The Committee, therefore, recommends the creation of the grades of Management Support Officer and Office Management Assistant on the establishment of all parastatal organisations on a needs basis and depending on operational requirements only.

Recommendation EOAC 3 (15A) (above) however does not refer to "the date of implementation of the post of Office Management Assistant" but applies only and restrictively (underlining is ours) to specific grades of "qualified" employees. The dispute which the Disputant has tried to canvass before us does not tally with the terms of reference.

The Tribunal will refer to the often quoted case of **S. Baccus & Ors vs. The Permanent Arbitration 1986 MR 272** where the Supreme Court stated the following in relation to the jurisdiction of the Permanent Arbitration Tribunal (renamed under the Act as the Employment Relations Tribunal) under the then (and now repealed) Industrial Relations Act:

Notwithstanding the provisions of section 85(1)(b) relied upon by learned Counsel for the respondent one must in order to decide whether the order complained of was ultra petita or not look at the terms of reference of the dispute.

Proceedings before the Permanent Arbitration Tribunal in respect of a dispute voluntarily referred to the Tribunal under section 78 of the Industrial Relations Act do not differ materially from proceedings before a Tribunal set up under the provisions of the Code de Procédure Civile and the rules concerning the "compétence" of the Tribunal must be the same.

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.

The Tribunal will not proceed to determine the "date of implementation of the post of Office Management Assistant" when Disputant all along referred to the date the option under Recommendation EOAC 3 (15A) of the EOAC Report 2013 had to be given. This could at the same time provide substance to the first point *in limine* taken by the Respondent to the effect that the Disputant has no *locus standi* "to pray for any order from the Tribunal as per the aforesaid Terms of Reference". The Tribunal ruled in its earlier ruling that the first point *in limine* was at best premature and it was set aside.

Also, it is clear that the Tribunal will go outside the terms of reference if it were to pronounce itself on any issue pertaining to compensation or additional increment (if applicable).

The Tribunal will thus merely highlight what is not challenged, that is, that the option under Recommendation EOAC 3 (15A) of the EOAC Report 2013 had to be given to the qualified officers on 1 July 2013. In the case of Disputant, this was not done. The date on which the scheme of service for the post of Office Management Assistant has been approved at the Respondent, that is, 27 August 2015, is also admitted. Evidence has been adduced to try to explain the delay in the prescription of the relevant scheme of service. At the same time, we have a disputant who, no doubt, could legitimately rely on the recommendations of the EOAC Report 2013. The Tribunal will draw the attention of all parties to the recommendations of the PRB Report 2013 in relation to the need to reduce the time taken for the prescription of schemes of service. The Tribunal is also confident that with effective communication and consultation among all relevant parties including trade unions, just solutions which are acceptable to all parties may yet be found in a spirit to maintain and reinforce good employment relations.

For all the reasons given above, the dispute is otherwise set aside.

SD Indiren Sivaramen

Vice-President

SD Raffick Hossenbaccus

Member

SD Rabin Gungoo

Member

SD Kevin C. Lukeeram

Member

21 February 2018