

EMPLOYMENT RELATIONS TRIBUNAL

AWARD

ERT/ RN 65/18

Before

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| Indiren Sivaramen | Vice-President |
| Vijay Kumar Mohit | Member |
| Jeanique Paul-Gopal | Member |
| Kevin C. Lukeeram | Member |

In the matter of:-

Mr Mahendranath Bonomaully (Disputant)

And

Municipal Council of Curepipe (Respondent)

i.p.o Ministry of Local Government and Outer Islands (Co-Respondent)

The present matter has been referred to the Tribunal by the Commission for Conciliation and Mediation under Section 69(7) of the Employment Relations Act (hereinafter referred to as "the Act"). All parties were assisted by counsel and the Tribunal proceeded to hear the matter. The terms of reference of the points in dispute read as follows:

"Whether the Municipal Council of Curepipe should have paid me:

- (i) return trip by taxi from Curepipe to Riviere du Poste as I finished work at 10.00 p.m when no public transport is available. (April 2015 to January 2017);*
- (ii) responsibility allowance for performing duties of Gangman from April 2015 to January 2017;*
- (iii) Overtime for work performed from April 2015 to January 2017 on a 30-hour basis instead of a 40-hour basis."*

The Disputant deponed before the Tribunal and he solemnly affirmed as to the truthfulness of the contents of his Statement of Case. He stated that in the year 2000 he was appointed Driver in the Health Department at the Respondent and in 2004 he was appointed Driver, Heavy Mechanical Unit (HMU). He averred that since the year 2000 up to now he has been working in the Health Department. He is working in the refuse collection section and as from July 2013, he has been working in the 4p.m to 10 p.m shift. He explained how the work for refuse collection is organized and he stated that there were some seven to eight refuse collectors and himself. He averred that in his team he would be basically the one to give orders as to the work to be carried out.

Disputant suggested that he had instructions that in the absence of a Gangman in a team, the driver was the one who was supposed to be in charge. He stated that he could not be paid travelling as per the bus rate since at the time he returned to his place of residence there was no bus available. He averred that he complained through one Health Inspector Mr Maniacara. It was only in 2016 that he received a reply and he was requested to stop working in that section. He produced a copy of a letter he would have sent to the Chief Executive of Respondent (Doc A), a handwritten letter which he would have made in duplicate and a copy of another letter, both addressed to the Permanent Secretary of the Ministry responsible for Labour, Industrial Relations, Employment & Training (Docs B and C respectively).

Disputant averred that he was the one responsible in relation to the attendance of the workers and that he was the one to recommend any application for leave. He averred that he had the responsibility to see to it that rubbish was duly collected as instructed. He then added that a Gangman was appointed in the team only on Sunday mornings.

Disputant averred that he works in the "team collection" and that they work on a 30 hours basis. He stated that this is a team work and that if the refuse collectors are not there, the garbage cannot be collected and vice versa if the refuse collectors are present but the driver and lorry are not available, the garbage cannot be collected. He would return to the Municipality at about 9.30 - 10 pm after coming back from the dumping area.

In cross-examination, Disputant suggested that he sent a "registered copy" of Doc B to the Respondent. He agreed that it is the Pay Research Bureau (PRB) which decides on his conditions of work. He however stated that he could not remember well if he signed the option form to be governed by the PRB Report 2016. He suggested that he was not aware if he could lodge a complaint if he was not happy with the report. He was however member of a trade union. He did not agree when it was put to him that he could not seek to change something in the PRB report now if he had not made any representations against the report. Disputant averred that he sent forms for 'travelling' on several occasions but yet he was not paid. He produced a copy of a letter dated 27 May 2018 which he sent to the Respondent (Doc D). He

stated that he was not paid travelling by bus from 2015 for Saturdays and Sundays. Disputant did not agree that he was coming to work in a car which he was driving to go back home.

Disputant agreed that he was the driver to collect refuse in the city centre (as opposed to collecting refuse in residential areas). He agreed, when it was put to him that apart from supplementary works, he would do every day the same trip and pick up refuse from the same places. He averred that he had to attend to particular requests quite often and pick up refuse following complaints received. He stated that several times he has to climb down from his lorry to tell the refuse collectors that they have to collect refuse which has been scattered around. He suggested that the refuse collectors would otherwise only collect refuse from bins. Disputant averred that at the relevant time he had to pay Rs 500 for a taxi to return to his place. He did not pay for taxi on Thursdays and Sundays. He agreed that he could have spent some Rs 10,000 monthly for taxi on the basis of 20 days per month. Disputant maintained that he was the one who was giving instructions to the refuse collectors.

Disputant stated that the attendance book was in his possession and that every day he would record the presence of the refuse collectors. He returned the book in the office every day and took it back again on the next day at 15 30 hrs when he fetches the key of the lorry. He maintained that he was signing on the application forms for local leaves for the refuse collectors and sending it to Mr Joomun for approval. He conceded that his post is Driver, Heavy Mechanical Unit but he averred that since leaving his post as Tar man he has always been posted within the Health Department and works with the refuse collection team. When confronted with his alleged scheme of service, Disputant stated that he was not aware at all that he had to drive vehicles in any department as he may be instructed. He did not agree that he did not form part of the workers contemplated by Recommendation 26 at paragraph 1.132 of the PRB Report 2016.

Disputant conceded that he was working 36 hours per week apart from Sundays on which he was paid "overtime". He agreed that for taxi fare he did not submit monthly claims.

Mr Joomun, Principal Health Inspector, then deponed on behalf of Respondent. He stated that his immediate superior is the Chief Health Inspector and beneath him, there are four Senior Health Inspectors and a dozen of Health Inspectors. He stated that at the Respondent, the Driver, HMU may be requested to work in different departments. He did not agree that he asked Disputant to perform as Gangman. He stated that he phoned the latter may be once to ask the latter to help to remove waste from a temple for a religious event. He averred that he even told the latter how to perform the task. He stated that he joined the Respondent in November 2015 and in 2016 there was an issue concerning taxi. Some employees were asking that they be paid taxi fares for their return trip to their residence. He stated that they had no instructions to pay same and he thus had to proceed with a reshuffling. He

maintained that Disputant never asked him nor submitted any claim for reimbursement of taxi fares. He stated that Disputant never performed as Gangman.

MrJoomun added that for the smooth running of the service there is an attendance book which Disputant or a refuse collector will collect from the office. The book is kept in the lorry so that the workers may record their attendance. He stated that there was no budget to pay an Inspector overtime and thus for the afternoon shift, it was on "call basis". He stated that for leave applications Disputant is not an authorized person to grant same. The latter would only come to leave the application with him. He conceded that Disputant signs on the form but suggested that the signature serves no purpose. He stated that as a responsible officer he would ask the Inspector in charge of that section if the leave applied for could be granted. Each worker would sign and make his own entry for his attendance. MrJoomun further explained that in the absence of a Gangman for the refuse collectors, the Health Inspector, as per his scheme of service performs the work of the Gangman and processes the leave application. The Health Inspector then leaves the form with his Senior Health Inspector and the latter gives his approval. The form then comes to him or the Chief Health Inspector and they approve the application. He stated that Disputant would thus very rarely bring leave forms to him and this only for the smooth running of the service.

In cross-examination, MrJoomun agreed that the team of Health Inspectors up to Chief Health Inspector has a lot of work to attend to. When it was put to him that it was the Gangmen who would organise and implement the work actually being carried out, he stated that this was only in relation to refuse collection. He stated that a Gangman as per his scheme of service is in charge of a team of refuse collectors. The Gangman has to take the attendance of the refuse collectors, give instructions as to how the work is going to be done, fill in daily sheets as to the amount of work carried out and report to him any refuse collectors who have not turned up and have applied for leave. He however suggested that if the team has completed his six hours of work the Gangman has no discretion and has to stop work then and there. He maintained that each refuse collector has to make his own entry in the attendance book. MrJoomun did not agree that Disputant would be supervising the work but suggested that the latter was only driving the lorry. He stated that when he referred to the "smooth running of the service", he had in mind the attendance of workers and the rare occasions where he had to phone Disputant for specific tasks. He now suggested that when there is a complicated request, he would phone the relevant inspector who is 'on call' and the latter would report back to him. He also referred to sweepers who would sweep refuse which is blown away.

MrsDodah, Human Resource Management Officer, then deponed and she stated that the PRB Report, the Human Resource Management Manual and certain circulars would regulate the salary and conditions of work of an officer like Disputant. She stated that Disputant has opted for the PRB Report 2016 and that the post of Disputant as per the PRB Report is Driver, Heavy Mechanical Unit. According to her,

there was no representation made by Disputant following the PRB Report. The PRB Report 2016 does not make any mention of refund of taxi fare. She stated that Disputant has to put in 40 hours per week to be eligible for the payment of overtime. She explained that Disputant is paid at rate 2 for work carried out on Sundays and public holidays and that he obtains overtime only if he works more than 40 hours per week. She stated that as per the PRB Report concerning Local Authorities, Driver, HMU should put in 40 hours to be eligible for payment of overtime. Mrs Dodah stated that the 30 hours' week apply for those who work in refuse collection on a roster basis. She could not however say if Disputant formed part of the "bank system".

Mrs Dodah stated that she did not receive any claim from Disputant for refund of taxi fares but only claim for travelling by bus. She also stated that she never received any request from Disputant's department to the effect that the latter was acting as Gangman or Field Supervisor. Such a request, if received, then has to be sent to the relevant Ministry for approval. She added that the post of Driver or Driver, HMU is a "polyvalent" post and that the driver may be posted in any department as and when required. At the Respondent, there is no post of Driver, HMU Scavenging section.

In cross-examination, Mrs Dodah stated that she would not be able to answer when it was put to her that the 'bank system' had not been put into place at the Respondent. The witness was then referred to extracts of different PRB Reports. She was also shown a document which she agreed was a copy of an extract of the attendance book in the section where Disputant was working. She stated that the workers make entries in the book and normally the attendance book is then signed by the supervisor who confirms the entries made. She stated that the signature shown to her on the document appeared to be that of Disputant (document was not produced before the Tribunal). She agreed that Respondent was aware that Disputant resided at Riviere du Poste but she stated that, may be, there was an agreement between the parties and that Disputant was using his own means of transport. She added that in any event Disputant should have made a claim well before. Mrs Dodah did not agree that Disputant was working on roster and stated that roster is not a system with shifts. She also stated that Disputant was being paid both at rates 1 and 2. In re-examination, Mrs Dodah stated that the PRB Report does not provide for payment of taxi fare. She added that as per the PRB Report, a Driver, HMU has to complete 40 hours before being paid overtime.

Mr Maniacara, Health Inspector at the Respondent, then deponed and he stated that he has never given instructions to Disputant to act as Gangman nor to perform works of a Gangman. He averred that Disputant had told him that he had his own means of transport. In cross-examination, he agreed that for the refuse collectors working from 4p.m to 10 p.m there was no supervisor. He referred to the work of a supervisor which includes organizing field work, monitoring the work done and signing on the attendance book. He stated that there was no instruction given to the Disputant to sign on the attendance book but the latter did so.

Mr Joomun was called anew with the leave of the Tribunal to enlighten the Tribunal on the issue of 'bank system'. He stated that before the PRB Report 2013, it was difficult to have refuse collectors to work on public holidays and on special occasions. With the PRB Report 2013, this problem was solved as Municipalities could set up a bank of refuse collectors to cater for refuse collection on these days. This applied also for general workers and handy workers entitled to protective equipment. He stated that the Driver, HMU is not entitled to any protective equipment and did not form part of the bank system. He suggested that the bank system was implemented in all municipalities. In cross-examination, he maintained that in 2013, the bank system was implemented but in 2016 there was no more the bank system. He stated that there was no need to have actually all the posts mentioned in the relevant recommendation in relation to the bank system to have the said system in place. He stated that he did not need a Driver/Scavenging Supervisor (Roster) since there was the grade of Driver, HMU.

The Co-Respondent did not adduce any evidence before the Tribunal and is abiding by the decision of the Tribunal.

The Tribunal has examined all the evidence on record including the submissions of all counsel. As regards point in dispute (i), it is unchallenged that section 26(2) of the Employment Rights Act does not apply in the present case since we are dealing with Disputant who is an employee of Respondent (as per paragraph B(i) of Disputant's Statement of Case) and thus a local government officer. Section 3 of the Employment Rights Act indeed provides the following:

3. Application of Act

(1) Subject to subsections (2) and to any provisions to the contrary in any other enactment, this Act shall apply to every agreement.

(2) This Act shall not apply to –

(a) a public officer or a local government officer, except for sections 4, 20(1), 54, 61(1)(a) and (d) and (4), 62, 63 and 67(1)(e)(i) in so far as it applies to such public officer or local government officer, (2) and (3) of this Act;

(b) a worker of a statutory body who is governed by the recommendations made by the Pay Research Bureau, except for Parts VIII and XI and sections 4, 20(1), 46(1), (2), (3), (4), (5), (5B), (7), (8), (9), (10), (11) and (12), 48, 61, 62, 63, and 67(1)(e)(i) in so far as it applies to that worker (2) and (3) of this Act.

There was no mention of any recommendation of the PRB which provides specifically for the payment of taxi fares. Though Disputant did not answer clearly when asked if he had accepted the terms and conditions recommended in the relevant PRB Report/s, the case for Disputant was at the same time based on recommendations of successive PRB Reports and extracts of these documents were even filed before the Tribunal on behalf of Disputant. Evidence has been adduced by Mrs Dodah that

Disputant opted for the recommendations of the PRB Report 2016 and we have no reason in the light of all the evidence before us to doubt her version. Disputant, on the other hand, has cut a poor figure in trying to avoid answering whether he accepted the recommendations of the PRB Report 2016.

After perusing the copies of the different letters produced, we find nothing which would suggest that Disputant asked therein the Respondent for refund of taxi fares allegedly incurred or for payment of “return trip by taxi from Curepipe to Rivière du Poste”. Clearly, one would have expected Disputant to express his concern as soon as possible if indeed he was incurring the cost of taxi fares almost every night for his return trip and was not being appropriately compensated for same. The Tribunal is not in possession of any credible evidence which would suggest that the Respondent was made aware at the relevant time of the alleged serious impediment faced by Disputant. In fact, copies of the letters produced before the Tribunal tend to show that Disputant was complaining about other things namely overtime and refund of travelling expenses for Saturdays, Sundays and public holidays (Docs A and B). It is only in one letter (the said copy was not very legible and appeared to be dated 8 February 2017 -copy marked Doc C) addressed to the Ministry of Labour, Industrial Relations, Employment and Training that Disputant referred to not being refunded his travelling expenses when he was working at night since 2012. Even this letter does not mention specifically that refund of alleged taxi fares was being sought and is silent about whether travelling by bus had been paid by the Respondent. Doc D, which is a copy of a letter dated 27 May 2018 (that is after the case was referred to the Tribunal) emanating from the Disputant, does not refer, very surprisingly, to refund of travelling expenses when Disputant was working at night but refers specifically to a request for the refund of travelling expenses on Saturdays and Sundays from August 2015 to January 2017.

In the light of the evidence adduced before us and for the reasons given, the Tribunal finds that there is nothing on record which would suggest that Disputant ought to be paid “return trip by taxi from Curepipe to Riviere du Poste” for the period in lite. There is no single evidence on record in terms of receipts or otherwise to substantiate the taxi fares allegedly incurred by Disputant. This was important in the light of the version of Respondent in relation to Disputant using his own means of transport to travel to and from his place of work.

It is apposite to note that even as per the terms of reference, there is no reference at all in dispute (i) that the claim was because Disputant had(underlining is ours) incurred taxi fares.

For the reasons given above, the point in dispute under limb (i) of the terms of reference is thus set aside.

As regards limb (ii) of the points in dispute, the Tribunal has examined carefully the evidence on record. There is, according to us, sufficient evidence on record to show

that Disputant did perform, at least occasionally, a few tasks which we believe would not fall squarely under his duties as Driver, HMU (though the Tribunal was not favoured with a copy of his scheme of duties). The Tribunal records the statements made by Mr Joomunthat “mo dire li rend un service nek faire li” or still that Disputant was helping “for the smooth running of the service”.

Mr Maniacara did however concede and we believe he is right to admit that for refuse collection, a ‘Supervisor’ performs a series of tasks on the actual work site. The need for proper supervision, control and also efficiency and effectiveness in performing the task of refuse collection, be it, in the city centre, cannot be seriously challenged. Allowing a team to work without a ‘Supervisor’, without someone who is actually on site as opposed to health inspectors who are not and cannot physically be on site during the shift of 4 p.m to 10 p.m has been the root cause of the present dispute. The Respondent is to look seriously into the organisation of refuse collection especially for those whose hours of work run till late so that such a situation does not arise again. However, responsibility allowance is not to be granted merely because a worker is shouldering a few additional responsibilities. Responsibility allowance may only be given as per the recommendations of the PRB Report. Paragraph 18.10.3 of the PRB Report 2016 (Vol 1), for instance, provides as follows:

18.10.3 A Responsibility Allowance is paid to an officer, who for administrative convenience, has been assigned duties of a higher office by the appropriate Service Commission or by the Responsible Officer/Supervising Officer, as delegated.

The Tribunal thus cannot intervene in the present matter since it is not satisfied at all on the basis of the evidence before it that Disputant was formally and properly assigned duties of Gangman by the appropriate Service Commission or by the Responsible Officer/ Supervising Officer, as delegated for the 4 p.m to 10 p.m shift or any other shift. Also, to be eligible for a responsibility allowance, evidence must be adduced to the effect that an officer has been assigned duties of a higher office. There is no evidence on record that Gangman, ‘Supervisor’ or ‘Field Supervisor’ constitutes a higher office when compared to the post of Driver, HMU.

For the reasons given above, the dispute under limb (ii) is set aside.

As regards dispute under limb (iii), the Disputant wants to be paid overtime during the relevant period on a 30-hour basis instead of a 40-hour basis. Here again, we will be guided by the PRB Report the more so that Counsel for Disputant relied on the averment that the “Refuse Collection Service” operates on a system of “task work” as per the relevant PRB Report.

Given the period for which the claim is being made, the PRB Report 2016 and the previous report of 2013 will be relevant.

The relevant provisions under the PRB Report 2013 (Vol 2, Part III) read as follows:

“Refuse Collection Service

1.89 In the last Report, we have introduced a new system of task work among employees in the Refuse Collection Service to provide an efficient and effective service to the local communities. The Refuse Collection Service operates on a team basis. Each team is allocated a region for the collection of waste from private households and also from the precincts of economic operators. The task mode of operation entails working five hours daily for six days a week or six hours daily for those working on a five-day week.

1.90 Very often, functions and other activities such as trade fairs, etc are held in each town. These activities normally generate additional refuse, the collection of which necessitates an extension of the normal service provided. In the circumstances, a team is set up to perform the extra tasks against the payment of overtime for the additional hours put in.

1.91 To cope with the increasing work load and to palliate the shortage of employees, we are introducing a "Bank System" to curb excessive overtime. The Bank System would comprise Refuse Collectors, Drivers/Scavenging Supervisors and other employees of the Workmen's group of any Local Authority who are eligible for protective equipment.

Recommendation 23

1.92 We recommend the setting up of a Bank System for the Refuse Collection Service, comprising Refuse Collectors (Roster), Driver/Scavenging Supervisors (Roster), Supervisor, Refuse Collection (Roster) and all employees of the Workmen's group who are eligible for protective equipment.

1.93 We also recommend that an allowance of Rs 255 should be paid to each employee for up to three hours and on pro-rata basis for all additional hours of work put in.

1.94 We further recommend that employees involved in task work should complete their daily task to qualify to work under the Bank System."

The PRB Report 2016 (Vol 2, Part III) contains a sub-heading entitled "Special Provision for Refuse Collection Service" and paragraphs 1.127 to 1.132 (that is, including Recommendation 26) read as follows:

"Special Provision for Refuse Collection Service

1.127 The Refuse Collection Service operates on a system of task work which entails working five hours daily for six-days a week or six hours daily for those working on a five-day week. This mode of operation eases the provision of an efficient and effective service to the local communities.

1.128 In the last Report, a Bank System was introduced for the Refuse Collection Service comprising Refuse Collectors (Roster), Driver/Scavenging Supervisors (Roster), Supervisor, Refuse Collection (Roster) and all employees of the Workmen's group who are eligible for protective equipment. The philosophy behind the introduction of such a system was to: cope with the increasing workload; palliate the shortage of employees; and to curb excessive overtime. Under this System, employees are paid an allowance of Rs 255 for up to three hours and on pro-rata basis for all additional hours of work put in.

1.129 During consultations, Management pointed out that: Refuse Collectors are reluctant to work under the bank system considering that they would have earned more had they been paid the overtime rate; the workforce is limited in the Local Authorities and as such it is difficult to constitute the pool of Refuse Collectors in advance; it is only at the last moment that the HR Department is apprised of absentees; and to provide continuous service for good sanitation and healthy environment, the Chief Executives have to avail the services of those Refuse Collectors who are already working on a particular site to complete the work against payment of overtime at hourly rate.

1.130 The Staff side, on its part, have requested for the payment of overtime to Refuse Collectors after they have completed their task work which is of 30 hours duration a week.

1.131 After examining the arguments put forward by both the official and staff side and considering, among others, the difficulties faced to constitute the Bank System for Refuse Collection Service and its resultant impact on public health and service delivery, the Bureau views that there is need for some inducement to ensure a continuous Refuse Collection Service to the population.

Recommendation 26

1.132 We recommend that:

(i) employees working under the Bank System for the Refuse Collection Service, comprising Refuse Collectors (Roster), Driver/Scavenging Supervisors (Roster), Supervisor, Refuse Collection (Roster) and all employees of the Workmen's group who are eligible for protective equipment should EXCEPTIONALLY be paid at applicable overtime rate for all additional hours of work put in above 30 hours; and (ii) employees involved in task work should complete their daily task to qualify to work under the Bank System."

MrJoomun maintained that the Bank System was implemented at some point in time at the Respondent. However, the Disputant is not in the grade of Driver/Scavenging Supervisor (Roster) nor in the grade of Supervisor, Refuse Collection (Roster). According to the unchallenged evidence on record, Disputant is not eligible, as Driver, HMU, for protective equipment. The Disputant will thus clearly not qualify

under Recommendation 26 (paragraph 1.132) of the PRB Report 2016 to be exceptionally(underlining is ours) paid at applicable overtime rate for all additional hours of work put in above 30 hours.

For the reasons given above, the Tribunal finds that the Disputant cannot benefit from Recommendation 26 (see above) of the PRB Report 2016.

Counsel for Disputant has suggested that since Disputant was in any event doing “task work”, then as per the relevant PRB Reports, he should be paid overtime for work performed (during the relevant period) on a 30-hour basis instead of a 40-hour basis. Disputant averred that he has been working in the Health Department since 2000 and for the period in lite he was working as driver in the “Refuse Collection Section”. It is agreed that there is no Driver/Scavenging Supervisor at the Respondent. Disputant is in the grade of Driver, HMU. An extract of the submissions of Counsel for Disputant on this issue is reproduced below. He argued(at page 23 of the last sitting) that:

“It’s true that MrBonomaully has got Driver’s benefit HMU. They get what we call a common rate in the jargon, falls under the administration department but this is only for administrative purposes. All Drivers are collected in a pool and then they are being posted whenever required, that is the Drivers HMU are posted in departments where their services are required, be it Health Department or Public Work’s Department mainly. These are the main departments in the Local Government. Once they are posted, their hours of work will vary from department to department depending on what the PRB says their specific operational requirements.(...)”

I submit to the Tribunal, it cannot be that in one team all the workers will work for 30 hours a week to be eligible for overtime and there is only one because the HMU Driver, it could be another Driver it would be calculated on the 30 hours but just because his appellation is HMU Driver, he is subjected to a system of work, conditions of work which are alien to the team work recommended by the PRB itself. The better view would be that the Driver is a member a part entière of the team.(...)”

However appealing the submissions of Counsel may appear, the fact remains that Disputant is in the grade of Driver, HMU which falls under the Administration Department at the Respondent (as per the relevant and successive PRB Reports).After perusing the extracts of the relevant PRB Reports and in the absence of the scheme of service for Driver, HMU at the Respondent, the Tribunal finds nothing which would suggest conclusively that the PRB had in mind the Driver, HMU (even though working in the refuse collection section) when it provided that “The Refuse Collection Service” operates on a system of task work. All the difficulties which the PRB highlighted in its 2016 Report, that is reluctance of refuse collectors to work under the bank system, difficulty to constitute a pool of refuse collectors in advance and the need for Chief Executives to avail the services of refuse collectors who are already working elsewhere to complete the work against payment of

overtime relate to refuse collectors. The Tribunal will refer once more to paragraph 1.130 of the PRB Report 2016 (Vol 2 Part III) which reads as follows:

1.130 The Staff side, on its part, have requested for the payment of overtime to Refuse Collectors after they have completed their task work which is of 30 hours duration a week. (underlining is ours)

It is apposite to note also that Recommendation 26 (see above) of the PRB Report 2016 does not include grades such as Driver, HMU (Roster) (that is even if a Driver, HMU has opted to be on roster) but instead extends to “all employees of the Workmen’s group who are eligible for protective equipment” working under the bank system for the Refuse Collection Service. In our mind, emphasis is on actual refuse collection which is an intensive and demanding task.

In the absence of a clear intention to extend the 30-hour regime to Driver, HMU, the Tribunal is not prepared to find that the Driver, HMU which falls under the Administration Department at the Respondent should also be entitled to overtime for all additional hours of work put in above 30 hours. Disputant by working in the refuse collection section is only working as per the operational requirements in that section. Disputant was (normally) completing 36 hours of attendance per week (not challenged before us) during the relevant period, that is, less than the relevant normal 40 hours of attendance. The Disputant has failed to show that as Driver, HMU he will be entitled, as per the relevant PRB Reports and his terms and conditions of employment, to overtime for work performed during the relevant period on a “30-hour basis”. The dispute under limb (iii) is also set aside.

For all the reasons given above, the case is set aside.

SD IndirenSivaramen

Vice-President

SD Vijay Kumar Mohit

Member

SD Jeanique Paul-Gopal

Member

SD Kevin C. Lukeeram

Member

19October2018