

EMPLOYMENT RELATIONS TRIBUNAL

AWARD

ERT/ RN 18/18

Before

Indiren Sivaramen	Vice-President
Vijay Kumar Mohit	Member
Abdool Feroze Acharauz	Member
Yves Christian Fanchette	Member

In the matter of:-

Mr Soobeeeraj Porowtee (Disputant)

And

National Transport Corporation (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”). The Disputant was assisted by a negotiator whereas the Respondent was assisted by counsel. The terms of reference of the points in dispute read as follows:

1. *“Whether the National Transport Corporation (NTC) should pay me the mileage allowance in lieu of travel grant for period June, August, September and October 2016 and January to June 2017.”*
2. *“Whether the National Transport Corporation should pay me responsibility allowance for shouldering additional responsibilities namely, for being responsible for NTC payroll.”*

The Tribunal proceeded to hear the parties and the Disputant deposed to the effect that he had sent his claims for payment several times and queried why he was not being paid but to no avail. He averred that he has always informed his superior about his official displacements. He stated that he is the “only qualified IT personnel” at the Respondent where there are five depots and that there are servers and IT systems installed at the depots. Even the ticketing machine which bus conductors use fall under his responsibility and when there are problems, he has to attend. He averred that he has always fulfilled his responsibility and informed his superiors about his whereabouts. He maintained that if he does not attend to the depots, there may be a situation where buses will not be able to operate because of the non-availability of the ticketing machine.

Disputant stated that it is the Respondent’s Finance Department which pays his mileage allowance and that he has never given instructions to pay himself mileage allowance. He stated that in 2012 there was no full-fledged Human Resource Manager or Financial Controller and that the then General Manager appointed him to shoulder the responsibility of payroll. He stated that he was eligible to 80% overtime over his basic salary and that whenever he needed to work for the “management of payroll” he was paid overtime. Respondent recruited a Human Resource Manager in October 2015 and a Financial Controller in December 2015. Despite his request to stop shouldering the responsibility for payroll, he was requested to continue with the payroll. An ‘Officer in Charge’ was then appointed at the Respondent and Disputant requested in vain for an allowance for the extra responsibility in relation to payroll. He averred that he is still shouldering the responsibility for payroll. He explained the specificities in relation to payroll at the Respondent.

Disputant confirmed that input of information like leaves are done by the HR department and data are input by the Finance department. Disputant states that he verifies the amount which the payroll generates and compares the amount with amounts generated for previous months. He checks the rosters and if manual adjustments are required these are then computed. Disputant then referred to what he termed as “negative pay” where he would decide what has to be done. Disputant avers that he verifies and checks items like passage benefits, end of year bonus and so on and then he has to sign before payment is made by the Finance Department. He added that what he has to do is different from “system errors” which falls within his responsibility.

In cross-examination, Disputant agreed that up to April 2015, he had opted for a travel grant and that as from April 2015 he sought approval to get a mileage allowance instead of a travel grant. As from May 2015, the Respondent started paying him mileage allowance and he earned his mileage allowance every month. He stated that the “commuted allowance” is a fixed allowance and that mileage allowance is paid for attending duty and for official travelling if one performs at least once in a month official

travelling. Disputant stated that in his case he has to be ever ready to attend any problem since one cannot say when a computer will have a problem.

Disputant then suggested that in fact he had not been paid the mileage claimed for the month of May 2016 and that instead he had been paid a travel grant of Rs 4085 for the month of May. He now suggested that he had been paid fully for the month of June. He then averred that it is only after the Statement of Case of Respondent that he indeed went to see what had been paid exactly. When confronted with a document, Disputant stated that the document is indeed his payslip for the month of August 2016 but that the payment was in relation to his mileage claim for the month of July 2016. Disputant then stated that in August 2016 he received instructions that the date for mileage claims has changed and mileage allowance will henceforth be paid in the payroll (as opposed to payment by cheque previously).

Disputant suggested that he is eligible for overtime and that all his overtime were approved by the General Manager or Management. He stated that he was not aware if Mr Pursun would have informed him in September 2016 that he has to obtain management's prior approval before performing any official travelling. He however averred that even before that date, he was obtaining approval. He was aware of the notice issued by the Financial Controller in January 2016 on the need for prior approval before engaging on any official trip. He averred that in October 2016 he was paid a travel grant of Rs 4085. When shown a document purporting to be his payslip, he then averred he was paid travel grant for the months of May and August 2016, i.e Rs 4085 x 2. He stated that though he opted for mileage allowance, he was paid travel grant. Then, he stated that on his payslip for October 2016, he was paid a commuted allowance of Rs 3165 for the month of October itself and Rs 8170 representing travel grants for two months, that is, May and August 2016.

Disputant agreed that he received only his commuted allowance and no mileage allowance for the period January to June 2017. He did not agree however that this was because he failed to obtain prior approval before his displacements. He agreed that for the payroll all data are input by two Senior Computer Operators, one Clerical Officer and one Data Input Clerk. Disputant maintained that he then does the 'processing' whilst 'Finance' transfers the wages to the employees' respective bank accounts. He explained what he meant by 'processing' referring to processing of overtime, PAYE and even verifying attendance of workers. He does not agree that he controls the data prepared by the officers mentioned above. His job stops at control of throughput but he avers that in this case he has to verify that wages are processed correctly. He did not agree that he was merely implementing the work of the clerks and operators and is not eligible for overtime.

In re-examination, Disputant referred to duties which would pertain to other officers. He stated that in the National Audit report, it is clearly mentioned that the responsibility of payroll should be segregated from him to the concerned department.

Mr Pursun, the Human Resource Manager of Respondent, then deponed and he stated that up to April 2015, Disputant was being paid a travel grant. Then he applied for mileage allowance and approval was as per eligibility as per the Pay Research Bureau report. Mr Pursun stated that the Disputant has to carry out official travelling to be paid mileage and in that case he would be paid even for attending duty. On other days when he does not do official travelling, only the commuted allowance would be applicable.

Mr Pursun stated that Disputant has been paid Rs 12967 plus commuted allowance of Rs 3165 for the month of May 2016. He stated that the pay period at the Respondent is from 19th of a month to the 18th of the next month whilst for mileage it was paid from 1st to 31st of the month. Mileage thus, at that time, did not appear on the payslip and was paid separately by cheque. In June 2016, Disputant was paid Rs 9672 as mileage and a commuted allowance of Rs 3165 in his payslip. Mr Pursun produced a document purporting to show mileage allowance payments made to Disputant by cheque (Doc B). He stated that Disputant was just computing mileage for approval at the end of the month. All mileage claims where there was no indication where Disputant was going have been "held". He stated that from January 2016 up to September 2016 there have been several communiqués where officers have been informed that mileage will be monitored and that prior approval is required before any official travelling. Mr Pursun stated that there has always been failure on the part of Disputant to comply with the above.

Mr Pursun then stated that the General Manager does not have the power to delegate to anybody higher duties at that level. This is within the province of the Board of Directors. He stated that the officers in the IT department put all the data and compute all the salaries. Disputant, as head of the IT department, has a password and he merely implements the process when all tasks have been completed for the month. He also referred to noticing huge sums which were being claimed for overtime whenever there was an increase in the CPI. He at the same referred to the maintenance contract fee which was being paid yearly to the supplier of the software. He stated that he has now put some order and that since 2016, there is no overtime for this item of salary adjustments. He also produced a copy of a letter dated 10 October 2017 from Disputant whereby the latter expressed his very deep concern to note major restructuring in the management of payroll by HR (Doc C).

In cross-examination, Mr Pursun stated that it is the HR department which controls the claims for mileage allowance and the Finance department makes the payment subject to the approval of the HR department. He conceded however that in the past there was no control mechanism in place before the claim went to the Finance department.

The Tribunal has examined all the evidence on record including the submissions of Counsel and statement made by the negotiator. The Disputant has deponed before us but the Tribunal has not been impressed by his testimony at all. When it was put to him that he was informed that he had to obtain prior approval before making any official displacement, Disputant initially stated that he was not aware of same. Later when confronted with Doc A which was a notice dated 19 January 2016 addressed among others to the “Head IT Supp. Serv.” and which related to claims for mileage allowance and which specifically provided that “Prior approval should be sought from Line Managers before engaging on any official trips”, Disputant conceded that he was aware of the said notice. Disputant in cross-examination answered in a very vague manner that he was already getting approval from his superior without mentioning whether it was prior approval before he engaged on an official trip (underlining is ours). At paragraph 7 of the Statement of Case of Disputant we have the following: “*Whereas on 19 December 2016, Plaintiff requested the new Management Team for the payment of the Mileage Allowance. Plaintiff also informed the Defendant that he has been attending to urgent issues which requires official travelling. No reply was received from the Defendant.*”

Disputant, who alleged that he was responsible for payroll, came up with a fairly detailed Statement of Case with particulars of the months for which he was paid and not paid mileage allowance and he even submitted in a tabular form at paragraph 15, details of amounts claimed, amounts paid and amounts allegedly due for the period from June 2016 to June 2017. Before the Tribunal however, Disputant sought to come back on averments he had made in relation to payments he had received and he stated, for instance, that he has not been paid the amount he claimed for the month of May 2016. He went further and stated the following before us “... *after what I have read in the Respondent’s Statement of Case, I have updated the claim ...*”. At paragraph 4 of his Statement of Case, Disputant had averred that “... Plaintiff was paid the mileage allowance for the Month of May 2016.” This was accepted by Respondent at paragraph 2 of Respondent’s Statement of Case since Respondent in turn averred that there was no longer any issue in relation to the said paragraph 4 as the mileage allowance for May 2016 had been paid. However there is more to it, and copies of the payslips of Disputant for the months of June and August 2016 annexed to Respondent’s Statement of Case do not tally at all with the figures put forward by Disputant in his Statement of Case and more particularly at paragraph 15 of the said Statement of Case. Also, the Tribunal has not been impressed by Disputant’s explanation in relation to the figure of Rs 8170 put to him as appearing in his payslip for October 2016 and which Disputant stated referred to “travel grant” of Rs 4085 for months of May and August 2016.

The Disputant has the burden of proof in cases like the present one and clearly the Disputant has failed lamentably to prove any of the figures allegedly claimed by him as mileage allowance for the relevant months. There is absolutely no supporting document

at all for the figures Disputant has put in his Statement of Case. As per the terms of reference, he is even claiming mileage allowance for June 2016 whereas now he is stating that he has in fact been fully paid for June 2016. The Tribunal finds that the Disputant has failed to show that Respondent should have paid him mileage allowance as claimed in the Statement of Case or as he tried to 'update' unilaterally in evidence before us for the period June, August, September and October 2016 and January to June 2017. There is also no sufficient evidence before us to suggest that Disputant performed official travelling during that period which had been duly authorized as required by Respondent.

The Tribunal also observes that no evidence was adduced as to whether Disputant did sign the option form pertaining to the PRB Report 2016 and the Tribunal can thus only assume that this was the case based on the Statements of Case before us. The Tribunal will thus refer to Recommendation 26 at paragraph 18.2.69 of the PRB report 2016 (extract annexed to the Statement of Case of Respondent) which provides as follows:

Recommendation 26

18.2.69 We also recommend that:

(i) ...

(iii) officers eligible for a travel grant and performing official travelling should be paid either a monthly travel grant of Rs 7250 or, subject to the approval of the Supervising Officer, a monthly commuted allowance of Rs 3165 together with mileage for attending duty and for official travelling at the rate of Rs 6.50 per km, whichever is higher. The latter provision would be applicable only in case the officer performs official travelling during the month; (underlining is ours).

From the above, it appears that if there is no official travelling during the month, the monthly travel grant of Rs 7250 should be paid to the relevant qualified officer. It is not envisaged in any case that only commuted allowance may be paid during a month save and except in the case contemplated by Recommendation 26 (paragraph 18.2.96 (i)) of the same report where the beneficiary was, for example, on approved leave with pay during the whole calendar month.

For all the reasons given above, the dispute under limb 1 is otherwise set aside.

As regards the dispute under limb 2, the Disputant is relying on the recommendation at paragraph 18.7.7 of the Pay Research Bureau (PRB) Report 2016 (as laid down at paragraph 20 of the Disputant's Statement of Case) which reads as follows:

18.7.7 We recommend that senior officers not eligible for the payment of overtime or extra duty allowance or any other form of compensation for additional hours of work put in for the completion of an assignment/report by set time-frame as per

mandatory/administrative requirements and, who have to work unusually long hours over an extended period of a minimum of three months and put in exceptional effort on a sustained basis for the timely production of planned output, within the normal scope of their schedule of duties, may, on the recommendation of the Responsible Officer, be granted a monthly allowance of up to a maximum of two thirds of a month's salary based on the duration of the work and the extent and quality of the contributions.

Though there is again no direct evidence to that effect, we will assume that Disputant agreed to the terms of the relevant PRB Report and signed the relevant option form. It is clear that the above recommendation cannot be of much help to the Disputant. Indeed, there is no evidence before us that Disputant's involvement in relation to the payroll required him "to work unusually long hours over an extended period of a minimum of three months and [to] put in exceptional effort on a sustained basis for the timely production of planned output, within the normal scope of [his] schedule of duties". Also, Disputant agreed that the payroll is prepared by two Senior Computer Operators, one Clerical Officer and one Data Input Clerk who all work under his responsibility. The Tribunal also understands from Annex 1 to the Statement of Case of Respondent that the Disputant (the "only qualified IT personnel" at Respondent) was responsible among others for the control of data throughput and to design, maintain and develop software programs. Good governance certainly requires less use of manual intervention and discretion (to minimize the risk of mistakes, abuse and corruption) and more reliance on appropriate IT systems which can also deliver relevant reports (Disputant has stated that the system in place has all the reports and that he can generate new reports as requested) which can assist in verifications and to minimize mistakes in the payroll.

The Tribunal is not satisfied at all that Disputant was shouldering such additional responsibilities which would warrant payment of a responsibility allowance as claimed by Disputant in his Statement of Case (and more particularly at its paragraph 20) and before us.

For all the reasons given above, the Tribunal finds that the Disputant has failed to show that the Respondent should pay him a responsibility allowance in relation to the payroll. The dispute under limb 2 is thus also set aside.

SD Indiren Sivaramen

Vice-President

SD Vijay Kumar Mohit

Member

SD Abdool Feroze Acharauz

Member

SD Yves Christian Fanchette

Member

11 May 2018