

EMPLOYMENT RELATIONS TRIBUNAL

ERT/RN 104/17

AWARD

Before: -

Shameer Janhangeer	-	Vice-President
Marie Désirée Lily Lactive (Ms)	-	Member
Abdool Feroze Acharauz	-	Member
Ghianeswar Gokhool	-	Member

In the matter of: -

Mr Roopesh RAMBURN

Disputant

and

Irrigation Authority

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, Roopesh Ramburn, should be posted back to Souvenir Sub-Office of the Irrigation Authority or otherwise.

Both parties were assisted by Counsel. Mr Y. Ramsok appeared for the Disputant. Whereas, Miss A.M.O. Ombrasine, Acting Principal State Counsel, appeared together with Mrs C. Green-Jokhoo, Assistant Parliamentary Counsel, for the Respondent instructed by Ms S. Angad, Senior State Attorney. Both parties have respectively submitted a Statement of Case in the present matter.

THE DISPUTANT'S STATEMENT OF CASE

The Disputant holds the post of Irrigation Operation Officer (“IOO”) at the Irrigation Authority. He resides at Quatre Bornes and was, until February 2014, posted at the Headquarters of the Respondent at Port Louis. There are five posts of IOO, each for a different site/region or Sub-Office. The post of Irrigation Supervisor (“Supervisor”) is the immediate subordinate to the post of IOO and whenever an IOO is on leave, the most senior Supervisor is conferred the duties of IOO in an acting capacity. The Disputant, in his 19 years of career, has been exposed to all systems of irrigation and had the opportunity to work on all the irrigation projects managed by the Respondent throughout the island. He is also an active trade unionist and is actually Vice-President of the Irrigation Authority Staff Association.

It has been averred that following a request for transfer from IOO Mr Kundhai, the Disputant was transferred to Plaine des Papayes Sub-Office. The intervention of the Ministry of Labour, Industrial Relations, Employment and Training was solicited on this issue and on 22 November 2016, an agreement was reached for the Disputant to be posted at Souvenir as from January 2017. Disputant received a memorandum of transfer dated 8 December 2016 (annexed to the Statement of Case) and started to work at Souvenir as from January 2017. In February 2017, IOO Mr Sawmy, who was posted at Plaine des Papayes as from January 2017, applied for a two years’ leave without pay and the Head of Operation & Maintenance Mr Kong verbally instructed Disputant to report to Plaine des Papayes Sub-Office with immediate effect to replace the former. Mr Kong also informed Disputant that the most senior Supervisor Mr Nallan was to replace him in an acting capacity at Souvenir; and that his initial proposal to management for the most senior Supervisor to be given actingship as IOO to replace Mr Sawmy at Plaine des Papayes was turned down. Mr Kong later provided a memorandum dated 2 March 2017 to Disputant from the Acting Head of Administration (annexed to the Statement of Case) regarding the transfer to Plaine des Papayes. Another memorandum dated 15 March 2017 was also given to the Disputant by Mr Kong (annexed to the Statement of Case).

It has also been averred that the Disputant, on 9 May 2017, addressed a memorandum to the Head of Operation & Maintenance requesting to know the reasons for his transfer. Since there was no reply, the Disputant reported the matter to the CCM, where no agreement was reached. Disputant avers that he is the only employee that has been transferred three times between March 2014 to March 2017. The Disputant considers the decision to transfer him to Plaine des Papayes Sub-Office to be irrational, arbitrary, unreasonable, discriminatory, aimed at victimisation, in bad faith and most unfair. Disputant was instructed to report back to Plaine des

Papayes after having worked at Souvenir for only two months, despite the agreement dated 22 November 2016. Disputant has to travel 80 km every day to attend work at Plaine des Papayes when Souvenir is nearer to his residence. No other IOOs have been shifted by the Respondent. The most senior Supervisor should be conferred actingship of IOO upon the approval of the leave without pay, which has not been done. The proposal of Mr Kong to confer actingship on the most senior Supervisor at Plaine des Papayes was rejected although he is the best placed to take decisions about mobility of staff working in his department. There has been a deliberate action by management to give the impression that the decision to transfer the Disputant was a decision of the Respondent's Board. Management's argument that the Plaine des Papayes project needs to be managed by a full-fledged IOO, whereas the Souvenir project can be managed by a Supervisor implies that the two projects are not comparable; and management's insistence to impose responsibility of the Plaine des Papayes project on Disputant for years and years without a transparent roster for IOOs on all the projects smacks of victimisation against the Disputant.

The Disputant believes that Respondent's management is victimising him and behaving in a discriminatory manner by refusing to transfer him back to Souvenir Sub-Office as the Disputant is an active trade unionist and because of his trade union related activities. The Disputant is praying for an award to be posted back to the Souvenir Sub-Office of the Respondent.

THE RESPONDENT'S STATEMENT OF REPLY

The Respondent has admitted that the Disputant was transferred to Plaine des Papayes Sub-Office (Stage 1) in March 2014. The Disputant was transferred to Souvenir Sub-Office in January 2017 and Mr M. Sawmy, IOO, was transferred from Souvenir Sub-Office to Plaine des Papayes Sub-Office (Stage 1). On 27 February 2017, Mr Sawmy was enlisted as Trainee Engineer in another organisation and he proceeded on two years' leave without pay. The Disputant was transferred back to Plaine des Papayes Sub-Office (Stage 1). Mr P. Nallan, the senior-most Supervisor at Respondent replaced Disputant at Souvenir Sub-Office in an acting capacity as he is well versed in Drip Irrigation System which has been implemented in respect of the Souvenir Project. Stage 1 at Plaine des Papayes Sub-Office is a big project and two IOOs are needed to handle same. At present, there are five IOOs and one of them (Mr Sawmy) is on leave without pay. All IOOs are transferred from one project to another on a rotational basis and according to a schedule prepared by the Head of Operation & Maintenance. Management is willing to consider the Disputant's transfer back to Souvenir Sub-Office upon the resumption of duty of Mr Sawmy.

The Board of the Respondent took up the issue of Mr Sawmy's leave without pay on 28 February 2017 and also approved the Disputant's transfer to Plaine des Papayes as replacement for the former. An agreement was to be signed at the CCM but the Disputant did not wish to do so. It has been averred that the first transfer of the Disputant to Plaine des Papayes was following a dispute declared by IOO Mr Kundhai; his second transfer to Souvenir Sub-Office was following the dispute declared by himself in 2016; and Disputant was transferred back to Plaine des Papayes Sub-Office (Stage 1) as Mr Sawmy has been enlisted as Trainee Engineer in another organisation proceeding on two years' leave without pay as from 27 February 2017. The Respondent denies the Disputant's averments that the decision to transfer him to Plaine des Papayes Sub-Office is irrational, arbitrary, unreasonable, discriminatory, aimed at victimisation, in bad faith and most unfair. There is another IOO posted at Plaine des Papayes Sub-Office (Stage 1) who travels further distance than the Disputant. All IOOs have been transferred. The decision of management is based on quality service to be provided to planters and the main objective of Respondent is to provide an efficient and quality service to the satisfaction of the planter's community. The Respondent moves that the matter be set aside.

THE EVIDENCE OF WITNESSES

The Disputant, Mr Roopesh Ramburn, was called to depose in the matter. He solemnly affirmed as to the truth of the contents of his Statement of Case and its Annexes. In 2014, he was transferred to Plaine des Papayes, despite his direct superior Mr Kong recommending that he be transferred to Souvenir, which is relatively closer to his residence compared to Plaine des Papayes. In terms of distance, there is a difference of 20 km between Plaine des Papayes and Souvenir. An agreement was reached on 22 November 2016 for him to be posted at Souvenir as from January 2017, referring to a memorandum dated 8 December 2016 enclosed as Annex B to his Statement of Case. He started to work at Souvenir as from January 2017 and in February 2017, the IOO posted at Plaine des Papayes, Mr Sawmy, applied for two years' leave without pay. Instead of giving an actingship to a Supervisor, management transferred him back to Plaine des Papayes and gave actingship to a subordinate at Souvenir. As a matter of normal practice, when an IOO is on holiday or is absent, it is the subordinate Irrigation Supervisor who replaces the IOO where the vacancy occurs. There are three Supervisors in post, namely Messrs Hallooman, Ramphul and Nallan. It is the senior most Supervisor which replaces. Mr Nallan is the senior most Supervisor and he is posted at Souvenir. The other two Supervisors were working under Mr Sawmy at Plaine des Papayes between January to February 2017.

Mr Ramburn has also stated, in referring to the Respondent's Statement of Reply, that Stage 1 is part of a big project called the Northern Plains Irrigation Project ("NPIP") which

comprises Stage 1 and Phase 2; he is responsible for Stage 1 and IOO Mr Ramdhun is responsible for Phase 2. Stage 1 is the biggest of the projects managed by the Respondent. However, Stage 1 has been managed by Supervisors several times in the absence of the IOO. For 15 years, the most senior Supervisor at Plaine des Papayes, Mr Hallooman, had replaced the IOO. In reply to the averment that Mr Nallan is well versed in drip irrigation, Mr Ramburn stated that he has 12 years' experience in drip irrigation projects and is a full-fledged agronomist; it is not correct to say that Mr Nallan is the only one qualified to manage drip irrigation projects. He is the only Officer to have been transferred three times since March 2014. He is clearly a victim of his trade union activities and the denunciations he has made against management in several correspondences. He is Vice-President of the Irrigation Authority Staff Association. Mr Kong prepared a rotation programme, which was never been applied; his first transfer in 2014 was based on the rotation programme, the second and third were purely because of trade union victimisation. He is asking to be returned to Souvenir as three transfers in three years is causing him prejudice as well as personally at family level. As IOO, they are responsible for certain regions where irrigation is carried out and workers, working up to 8 – 9 hours at night, have to be supervised. He also has to effect afterhours site visits and returns home at 5.30/5.45 (pm). It is not practical to effect afterhours site visits when travelling 80 km per day coming and going.

Mr Ramburn was thoroughly cross-examined by Counsel for the Respondent. He notably stated that the sites of Triolet, Fond du Sac, Forbach, Riche Terre, Belle Vue and Plaine des Papayes fall under NPIP Stage 1; under Souvenir, there is only Souvenir and Solitude. There were three Supervisors at Plaine des Papayes before one retired and only one Supervisor, Mr Nallan, at Souvenir. Stage 1 comprises 3,332 acres of land and he cannot confirm the figure for Souvenir; there are more planters at Plaine des Papayes than at Souvenir; there are significantly less staff at Souvenir than at Plaine des Papayes. From 2016 to today, there are two IOOs at Plaine des Papayes, two at Port Louis and one at Souvenir. Since March 2017, Mr Nallan is acting IOO at Souvenir. With Mr Sawmy taking leave without pay, there are four substantive IOOs and one acting. He does not find rotational posting to be normal in the organisation and was never told that he would be transferred. When he joined, he was posted to sites near to his residence. He produced a copy of his Scheme of Service dated August 2008 (Document A).

Mr Ramburn, under cross-examination, also confirmed that for sixteen years he worked at Head Office and on small scheme irrigation projects; from 17 March 2014 to December 2016, he worked at Stage 1 Plaine des Papayes; from mid-January 2017 to February 2017, he was at Souvenir; and from March 2017 to now, he is at Plaine des Papayes. IOO Mr Kundhai was at Plaine des Papayes from 22 February 1996 to 16 March 2014 and is now at Port Louis. IOO Mr Beejan was at Plaine des Papayes from 10 May 2005 to 29 August 2017 and is now at Port Louis Head Quarters. IOO Mr Ramdhun was at Port Louis Head Quarters from 1 July 2009 to 29 August 2017 and is now at Plaine des Papayes. When he reported his case, there was no transfer except for

him and Mr Kundhai in 2014 and after he reported the case, there were eventual transfers. The transfers were due to his case and to the trade union activities of other IOOs. As they denounced management, they were transferred. They are paid mileage for travelling. He agreed that he has not been refused time-off for his trade union activities. The rotation programme is prepared by Mr Kong and management normally follows his recommendations; but in two cases, management did not go according to Mr Kong's recommendations. He does not agree that transfer of officers is normal practice as per a memorandum dated 8 December 2016 from Mr Kong. He was not informed of the memorandum by Mr Kong. He has been exposed to every project of the Irrigation Authority in his twenty years of service. He has worked only two months at Souvenir, that is why he wishes to return there. In March 2017, Mr Kong has explained to him that his transfer to Plaine des Papayes is temporary as Mr Sawmy has taken two years' leave without pay.

Mr Ramburn also stated that he does not agree that there is a difference of 5 km from his residence to Plaine des Papayes compared to Souvenir. He agreed that the aim of management is the smooth running of the irrigation area. He did not agree that management took the temporary decision to transfer him for the smooth running of its operations as it created frustrations in the organisation which discouraged employees and does not contribute to smooth running. He does not feel motivated having been transferred thrice in a period of three years. He has not stated the reasons why he is victimised for his trade union activities. He contests that actingship should have been given at Souvenir when it should have been conferred at Plaine des Papayes as was done in the past. He is being caused prejudice being the only one who has been transferred thrice in three years. He agreed that experience counts. He also stated that he was not told of the reasons why he was being transferred to Plaine des Papayes.

Mr Kong Thoo Lin, Head of Operation & Maintenance, was called as witness on behalf of the Disputant. He has 38 years' experience at the Irrigation Authority and the Divisional Irrigation Officer, who supervises the IOOs, reports to him. It is established practice that when an IOO, at the NPIP, goes on leave or does not come to work, the most senior Supervisor at Stage 1 replaces him as he knows the project. Mr Hallooman is the most senior Supervisor at Stage 1 Plaine des Papayes and has occupied the post of IOO on several occasions on an acting basis. Mr Nallan has also occupied the post of IOO at Stage 1 but not for long. As Head of Operation & Maintenance, he is the one who can make the best choice as to where to place whom. He told management that an IOO should be recruited to replace Mr Sawmy and to give actingship to Mr Hallooman until the recruitment is made. He suggests but it is up to management to agree or not. He also stated that Mr Ramburn has been transferred more than other IOOs between 2014 and 2017.

Mr Kong Thoo Lin, under cross-examination, agreed that Stage 1 is a much bigger project than Souvenir when looking at the number of acres of land, the number of planters and number of staff. He produced a memorandum from himself dated 8 December 2016 (Document B). His main objective and that of the organisation is the smooth running of the sites. He was given an instruction by management to transfer Mr Ramburn in March 2017; there was only one IOO in Plaine des Papayes as there should be two. He recommended that Mr Hallooman be acting IOO at Stage 1. It is management who decides, but he has to answer when there is a problem. He has a case against management for an additional increment but has no grudge and is factual. He agreed that experience is gathered in different kinds of size, regions, exposure to different problems and different kind of planters. Transfer is normal provided you have the quantity of Officers. Mileage is normally paid when an Officer is transferred. There could be 5 km in distance between Souvenir and Stage 1.

Mr Oodesh Hallooman, Irrigation Supervisor, was also called to depose on behalf of the Disputant. He works as a Supervisor since 31 years presently based at Stage 1 Plaine des Papayes since 1 September 1981. When an IOO is absent or on leave, it is the senior most Supervisor working at Plaine des Papayes who replaces him. Since Mr Sawmy is on leave, it is the most senior Supervisor who has to replace him, which is himself. Since 2003, he usually replaces at Stage 1, for about two months in a year. Stage 1 is a big project. A supervisor is not sufficient to replace, an IOO is needed. He has had no complaints when replacing as IOO. He was demoralized when he did not replace Mr Sawmy and wrote to the Director on the subject. This has spoilt the working environment.

Under cross-examination from Counsel for the Respondent, Mr Hallooman notably stated that Mr Nallan is his senior. He replaces the IOO when a leave of over seven days is taken for vacation, sick or injury. He has not replaced consecutively. He cannot say anything about the Souvenir project as he has been based at Plaine des Papayes. He agreed that given that Stage 1 has more acres of land, planters and staff, there is need for a substantive IOO for a long period of absence.

In re-examination, Mr Hallooman has notably stated that he agreed that he stated that an IOO has to replace an IOO on leave. He clarified that it is normally a Supervisor who replaces the IOO who is on vacation leave. If the senior most Supervisor has replaced at Plaine des Papayes without any complaint, he believes that the senior most Supervisor should replace even for a long period. He is capable of replacing the IOO for a period of two years.

Mr Avikash Sharma Beejan, Irrigation Operation Officer, was called to depose on behalf of the Disputant. He stated that he has worked for 12 years at the Irrigation Authority presently posted at Port Louis Head Quarters, being attached to the sites of St Felix, Belle Ombre, Plaisance, Bel Mare and Trou d'Eau Douce. When a post of IOO is temporary vacant, the IOO is normally replaced by the senior most Supervisor.

Upon questions in cross-examination, Mr Beejan stated that senior most Supervisor does not necessarily only replace when the IOO is on vacation, injury or sick leave; if there is no IOO to replace, then the senior most Supervisor can replace the IOO for a long period. He is only aware that there are above 600 planters in Block 2 and Block 3 at Plaine des Papayes. There may be 3000 acres of land in the NPIP and more manual workers are attached to the Stage 1 project. He does not agree that rotating is a normal practice as there is no mobility clause attached to their agreement. Experience for promotion is based on qualification, interview, etc. When recruited, management did not explain that he may be transferred anytime anywhere. The Head of Operation & Maintenance has never indicated to Officers that transfer is the normal practice. There are four IOOs in post when they should have been six.

Mr Arun Achambit, Administrative Assistant at the Irrigation Authority, was called to depose on behalf of the Respondent. He confirmed that what is in the Respondent's Statement of Reply is correct. Souvenir is a very small project with 1190 arpents of land, 360 planters and 6 staff and uses drip irrigation. Stage 1 at Plaine des Papayes is a big project with approximately 3332 arpents of land, approximately 3043 planters and around 150 staff. He produced a copy of the Scheme of Duties for the post of Irrigation Supervisor (Document C). An IOO is a qualified person while a Supervisor does not require a degree. It was more appropriate to have the Disputant posted at the relevant site so as not to disrupt operations. The issue of trade union activities was not relevant to the decision of the Respondent. From Souvenir to Stage 1, there is a difference of 5 km. The Disputant, as IOO, is entitled to duty free facilities and has availed himself of same. IOOs also receive travel grant mileage, which fluctuates depending on the distance they travel.

Mr Achambit went on to state that the Irrigation Authority is mandated to work over the territory of Mauritius and to provide quality service to the planting community wherever a project is instituted. The Irrigation Authority also has the objective of identifying new projects. He confirmed, referring to a memorandum dated 8 December 2016, that transfer of Officers is normal practice within the organisation. Taking into account the ranking and experience of Mr Ramburn, the Respondent deemed it appropriate that he would be better placed at Stage 1. Actingship is given to the senior most Supervisor for short periods of time, but two years is a long period. Two years is the period for which Mr Sawmy has taken leave and is considered a long

period. With the departure of Mr Sawmy, the next IOO at Stage 1 is less experienced than the Disputant and lower in hierarchy. Northern Plains Stage 1 is more complex compared to Souvenir hence the decision to have a more experienced officer there rather than giving an actingship. Stage 1 Plaine des Papayes is the Respondent's biggest project. The Disputant is granted time-off facilities for trade union activities.

Mr Achambit, following questions from Counsel for the Disputant, notably stated that it was a management decision to transfer the Disputant from Souvenir to Plaine des Papayes. Mr Kong Thoo Lin made a recommendation for the transfer but it is the Authority who takes the decision. He did not agree that Mr Kong Thoo Lin is well placed to determine who should be posted where at the Respondent. Actingship is not given to Supervisors for a long period of time. Actingship is given to the most senior Supervisor for a short period. He is not aware that in the past a Supervisor has replaced an IOO for a long period. Mr Hallooman did state that he spent two months in a year on an actingship basis. It is the version of the Respondent that transfers are done on a rotational basis. He however could not answer if Mr Ramburn was given a rotational transfer.

Mr Achambit also stated, in cross-examination, that Mr Ramburn has been transferred four times from 2016 till date. Mr Nallan was being supervised by Mr Ramburn when at Souvenir and the latter should be well-versed in drip irrigation. Stage 1 is a big project and needs an IOO for the benefit of planters. Mr Ramburn was transferred because Mr Sawmy was given leave without pay. He denies that Mr Ramburn was suffering the repercussions of his trade union activities. He maintained that the transfer arrangements made at the Respondent since 2017 are in the interests of the organisation. Although half of the IOOs are not happy about transfers, they are not the whole of the staff.

In re-examination from his Counsel, the Respondent's representative has notably stated that Mr Kong Thoo Lin can only recommend and that the decision is taken at the level of management. Actingship can be given to a Supervisor for injury leave, a month or two weeks; two years is a long period and it might disrupt operations, hence an IOO is preferred. Although there is a practice of transfer on a rotational basis, ultimately the decision rests with management. For transfers, management recommends and the Board (of the Respondent) approves.

THE SUBMISSIONS OF COUNSEL

Both Counsel have put in written submissions in the present matter. Counsel for the Disputant has notably submitted on the main issues that the Tribunal would have to decide. Firstly, can a Supervisor be conferred the post of IOO on an acting basis for two years? It has been admitted by the Respondent that the most senior Supervisor is conferred the duties of IOO in an acting capacity. The Respondent's version that Supervisors only replace IOO for a short period of time does not stand. Secondly, is it imperative that an IOO, and not a Supervisor, should handle the Plaine des Papayes Stage 1 project? Again, the Disputant is contending that it is the most senior Supervisor Mr Hallooman who should be given actingship as IOO, the more so in view of Mr Kong Thoo Lin's recommendation to this effect.

As regards the third issue, that whether the Disputant's transfer was unreasonable, discriminatory, an act of victimisation, in bad faith and most unfair, Counsel for the Disputant has not denied that IOOs can be transferred from one region to another but the discretion to do so must be exercised in good faith and to preserve harmonious employment relations. It has been submitted that the Disputant is the only employee who has been transferred thrice in three years; that the Disputant was sent back to Plaine des Papayes barely a month after being posted at Souvenir; and that the Respondent contends that IOOs should be rotated. The Respondent has failed to come up with any valid and good reason to justify the Disputant's transfer, and in the absence of same, the motive of transfer can be attributed to victimisation and discrimination as a result of the Disputant's trade union activities. It has also been submitted that the Disputant's transfer is not conducive to harmonious employment relations. The Disputant is therefore praying that he be transferred back to Souvenir Sub-Office.

Counsel for the Respondent, on the other hand, has respectfully submitted that the following issues need to be considered in inviting the Tribunal to find in the Respondent's favour. The Disputant is second in seniority as IOO; the Scheme of Service of an IOO comprises the duty of *'plan and organise and manage irrigation operations for irrigation schemes'* and that the statutory mandate of the Respondent covers Mauritius and seeks to identify and develop new schemes and projects; the Disputant has not produced any documentary evidence that when he joined the Respondent that it was agreed that he would not be transferred at any point in time; the Plaine des Papayes project is much larger when compared to the Souvenir project, which is a much smaller one; and the Disputant benefits and has availed himself of duty free facilities and mileage allowance provided to IOOs for the performance of his duties.

THE MERITS OF THE DISPUTE

The Tribunal is being asked to enquire into whether Mr Roopesh Ramburn should be posted back to the Souvenir Sub-Office of the Irrigation Authority or otherwise.

The Irrigation Authority is a body corporate established under the *Irrigation Authority Act (Act 39 of 1978)* (the “Act”). Among its statutory objects is to ‘*implement and manage irrigation projects in every irrigation area and do all other acts incidental thereto;*’. The staff of the Authority fall under the administrative control of the General Manager. Moreover, the following may be noted from *section 11* of the Act in relation to the conditions of service of the Respondent’s staff:

11. Conditions of service of staff

The Board may make provision, in such form as it may determine, to govern the conditions of service of the staff of the Authority, and in particular, to deal with—

- (a) the appointment, dismissal, discipline, pay and leave of, and the security to be given by, staff;*
- (b) appeals by staff against dismissal and other disciplinary measures.*

Mr Ramburn is employed at the Irrigation Authority since October 1998 and is presently an IOO. There are five posts of IOO at the Respondent, each for a different site/region or sub-office. In 2014, he was posted at the Headquarters of the Irrigation Authority in Port Louis. In March 2014, however, the Disputant was transferred to Plaine des Papayes Sub-Office. Not being satisfied with the transfer, the intervention of the Ministry of Labour, Industrial Relations, Employment and Training was sought. This resulted in an agreement dated 22 November 2016, reached before the Conciliation and Mediation Section, for the Disputant to be posted at Souvenir Sub-Office as from January 2017. The Disputant started to work at Souvenir Sub-Office as from January 2017 following a memorandum dated 8 December 2016.

Mr Sawmy, another IOO at the Irrigation Authority, was posted at Plaine des Papayes Sub-Office as from January 2017. In February 2017, he applied for two-years’ leave without pay to enable him to undertake pre-registration training, which was approved by the Respondent’s Board on 28 February 2017. The Board, in a memorandum dated 2 March 2017, also approved that the Disputant be transferred to Stage 1 Sub-Office (at Plaine des Papayes) as from March 2017 as replacement for Mr Sawmy.

The grade of Irrigation Supervisor falls under the grade of IOO at the Irrigation Authority. It is pertinent to note that it has been admitted by the Respondent, at paragraph 3 of its Statement of Reply, that whenever an IOO is on leave for a long period, the most senior Supervisor is conferred with the IOO's duties in an acting capacity.

The Disputant, not being satisfied with his transfer to Plaine des Papayes (Stage 1) since March 2017, is now praying from the Tribunal that he be posted back to Souvenir Sub-Office. During the course of the hearing of the present matter, the Disputant has put forward certain reasons as to why he should be transferred to Souvenir.

The Disputant contends that the proposal of Mr Kong Thoo Lin to the effect that Supervisor Mr Hallooman be given actingship as IOO at Stage 1 upon the leave without pay of Mr Sawmy was not acceded to by the Respondent. Although this proposal was made by the Head of Operation & Maintenance and was not acceded to, Mr Kong Thoo Lin has himself recognised, in his evidence, that he can only suggest and that it is up to the management of the Authority to agree or not.

Mr Kong Thoo Lin furthermore did not dispute that it is management who takes the decision. Indeed, it is pertinent to note that the *Irrigation Authority Act* has conferred administrative control regarding staff to the General Manager. Same may be gleaned from *section 10* of the aforesaid Act:

10. Appointment of staff

(1) The Board may employ, on such terms and conditions as it may determine, such staff as may be necessary for the proper discharge of its functions under this Act.

(2) All staff of the Authority shall be under the administrative control of the General Manager.

It cannot also be overlooked that the General Manager has the responsibility for the control and management of the Authority's day-to-day business. Same may be amply noted from *section 8 (2)* of the Act:

8. General Manager

...

(2) *The General Manager shall—*

(a) *attend every meeting of the Board;*

(b) *be responsible for the execution of the policy of the Board and for the control and management of the Authority's day-to-day business.*

In view of the aforementioned statutory provisions of the *Act*, it must be noted that there is no obligation for the General Manager to follow the recommendations of the Head of Operation & Maintenance as the *Act* places the responsibility of the running of the organisation and the administrative control of its staff upon his shoulders.

The Disputant has also contended that he has been transferred three times in three years since March 2014. In fact, Mr Ramburn was transferred to Plaine des Papayes Sub-Office in March 2014; to Souvenir in January 2017; and back to Plaine des Papayes (Stage 1) in March 2017. This has not been disputed by the Respondent, who has explained why the Disputant has been transferred thrice over three years.

The first transfer of the Disputant in March 2014 was following a dispute declared by another IOO, namely Mr Kundhai. This led to the Disputant's transfer to Plaine des Papayes Sub-Office. The Disputant's second transfer to Souvenir in January 2017 was following an agreement reached by the Disputant with the Respondent at the Conciliation and Mediation Section of the Ministry of Labour, Industrial Relations, Employment and Training. The third transfer to Plaine des Papayes Sub-Office is due to IOO Mr Sawmy having taken a two years' leave without pay. Although, the Disputant is clearly not satisfied with being transferred thrice over three years, it must also be taken into account that he is not the sole IOO who has been transferred but that the other IOOs in post have also been transferred.

Furthermore, it has to be noted that the process of transfer is a normal practice at the Respondent. Same has been confirmed by the Disputant's own witness, Mr Kong Thoo Lin, and is clearly stated in a memorandum dated 8 December 2016 under Mr Kong Thoo Lin's signature (produced as Document B):

- 1. Transfer of officers/workers is a normal practice within our organization. The main objective of any transfer is to allow the officers/workers to get acquainted with different sites.*

It cannot also be overlooked that the posting of the Disputant at Plaine des Papayes Sub-Office (Stage 1) is not of a permanent nature but is temporary as has been put forward by the Respondent. The Disputant has himself admitted that he was informed in March 2017 by Mr Kong Thoo Lin that his transfer to Plaine des Papayes is temporary. Moreover, it is the stand of the Respondent that it is willing to consider the Disputant's transfer back to Souvenir upon the resumption of duty of Mr Sawmy.

The Tribunal has also noted that the Disputant, as per his Counsel's submissions, has not disputed that the Respondent has the discretion to transfer IOOs from one region to another. However, Counsel has submitted that such discretion must be exercised in good faith and must preserve harmonious employment relations.

The Disputant has also put forward the distance he now has to travel as a reason why he wishes to be posted back to Souvenir Sub-Office. Although Mr Ramburn has stated that there is a difference of 20 km between Plaine des Papayes and Souvenir, it must be noted that Mr Kong Thoo Lin has recognised that there could be some 5 km in distance between Stage 1 and Souvenir. This has also been confirmed by the evidence of the representative of the Respondent who stated that there is a difference of 5 km between Souvenir and Stage 1. In any event, it has not been disputed that the Disputant is given a mileage allowance for the distance he travels and has also benefited from duty free facilities.

The Disputant has also relied on the practice that whenever an IOO is on leave for a long period, the most senior Supervisor is conferred with the duties of IOO in an acting capacity. It is pertinent to note that this practice has been admitted by the Respondent in its Statement of Reply. Despite the admission, the Respondent's representative has explained that actingship is not given to Supervisors over long periods of time, but for short periods; if granted for long period, it might disrupt operations.

The Tribunal has also noted that Mr Hallooman, who was called as a witness on behalf of the Disputant, was uncertain as to whether he being the senior most Supervisor at Stage 1, he should have replaced Mr Sawmy as IOO upon the latter's leave without pay. In fact, Mr Hallooman has clearly stated that given the size of the Plaine des Papayes Irrigation Project at Stage 1, there is a need for a substantive IOO for a long period of absence. However, Mr Hallooman did go on to clarify that he is capable of replacing the IOO for a period of two years.

Despite the fact that in the present case, the senior most Supervisor was not given acting duties to replace the IOO on leave at Plaine des Papayes, the powers of the employer to organise its business cannot be overlooked. In *Hong Kong Restaurant Group Ltd v Manick* [1997 SCJ 105], the Supreme Court notably stated:

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

Moreover, the following should also be noted of what the Supreme Court stated in *Dyers and Finishers Ltd. v Permanent Arbitration Tribunal & Ors.* [2010 SCJ 176]:

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

Although, it appears that the Respondent in replacing the on-leave IOO at Plaine des Papayes Sub-Office (Stage 1) has not followed its own practice, it cannot be denied that it bears the inherent power of administration being the employer. In fact, the Respondent has put forward its own reasons as to why Mr Ramburn has been transferred to Plaine des Papayes Sub-Office from Souvenir upon the leave without pay of Mr Sawmy.

The Respondent has notably emphasised the size of the project to justify the present posting of the Disputant. Indeed, it has not been disputed that the irrigation project at Plaine des Papayes Sub-Office (Stage 1) is a much larger project than that of Souvenir, having a much larger acreage of land (about 3,332 acres) with about 3,043 planters and 150 staff. The size of the aforesaid project has also been confirmed by the evidence of Mr Kong Thoo Lin, Head of

Operation & Maintenance. The Disputant himself has recognised that Stage 1 is the biggest of the projects managed by the Respondent. In view of the size of the Plaine des Papayes Stage 1 project, the Respondent has deemed it appropriate to have a fully-fledged IOO posted thereat instead of a Supervisor performing acting duties.

It cannot also be overlooked that the Disputant's witness Mr Hallooman has, in his evidence, acknowledged the complexity of the Stage 1 project and even recognised that there is need for a substantive IOO to cover for a long period of absence. He also admitted that a Supervisor is not sufficient to replace the IOO on leave, but that another IOO is needed.

The Respondent has also averred that its decision to transfer the Disputant was based on quality service to be provided to the planters' community and its main objective is to provide an efficient and quality service to the satisfaction of the planters' community. In this vein, it should be noted that Mr Kong Thoo Lin has stated that his main objective is the smooth running of sites, which is also the main objective of the organisation. The Disputant himself agreed that the aim of management is the smooth running of the irrigation area and that according to the law, one must ensure that day-to-day business runs smoothly. It is also apposite to note that the Respondent has the statutory obligation of implementing and managing irrigation projects in every irrigation area and do all other acts incidental thereto (*vide section 4 (b) of the Act*).

The Disputant's has also put forward his trade union activities as a reason for why he is being unfairly treated by the Respondent in refusing to transfer him back to Souvenir. He notably stated that his transfer is due to his trade union activities although he has not expressly elaborated on how this is so. The Disputant has however not denied that he receives time-off for his trade union activities. It must also be noted that he has even recognised that he has not stated the reasons why he is being allegedly victimised for his trade union activities. Although, the Disputant stated that there have been impediments, he has not related them in his Statement of Case as it is not relevant.

The Tribunal cannot rely on the mere sayings of the Disputant to find that there is a link between his trade union activities and his transfer to Plaine des Papayes Sub-Office. Nor can the Tribunal find that his evidence to the effect that his second transfer (to Souvenir Sub-Office) was due to his trade union activities to be true as same was following an agreement reached at the Ministry of Labour, Industrial Relations, Employment and Training on 22 November 2016. Although, the Disputant is the Vice-President of the Irrigation Authority Staff Association and has

stated having made denunciations against management in several correspondences, it has not been disputed that he receives time-off for his trade union activities. Moreover, there is no substantive evidence to show that the Disputant is being victimised because of his trade union activities.

In the circumstances, having considered the evidence on record and, in particular, the grounds upon which the Disputant is seeking to be transferred back to Souvenir Sub-Office, the Tribunal does not find any need to intervene into the matter. The Tribunal cannot therefore award that Mr Ramburn should be posted back to Souvenir Sub-Office.

The Tribunal has noted, in the course of the hearing of the present dispute, that the IOO cadre at the Irrigation Authority is operating below capacity in view of the irrigation projects within the geographical area of the whole island that have to be covered. In fact, there are currently only four IOOs in post when they were previously six in number. This situation appears to be a source of frustration among the IOOs who were present before the Tribunal and, to some extent, the Supervisors.

It cannot be overlooked that both the employer and the workers have a common interest in the success of the undertaking and that good employment relations are the joint responsibility of management and workers as well as the trade unions representing them. The Tribunal would therefore strongly urge that the Irrigation Authority, in view of the statutory powers conferred under the *Act*, take appropriate measures to remedy this situation for the smooth operation of its irrigation schemes and in the interest of good and harmonious employment relations with its staff.

The dispute is therefore set aside.

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

**SD Marie Désirée Lily Lactive (Ms)
(Member)**

**SD Abdool Feroze Acharauz
(Member)**

**SD Ghianeswar Gokhool
(Member)**

Date: 30th April 2018