

EMPLOYMENT RELATIONS TRIBUNAL

ERT/RN 132/2017

AWARD

Before: -

Shameer Janhangeer

Vice-President

Vijay Kumar Mohit

Member

Andy Ryan Hau Kee Hee

Member

Ghianeswar Gokhool

Member

In the matter of: -

Mr Kevin JUGROO

Disputant

and

Orange Business Services Mauritius Ltd

Respondent

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

Whether Orange Business Services- Mauritius should classify me in the job band 'Middle Management – Lead Professional (MLP)' instead of 'Professional (PRO)' following my promotion since July 1, 2015 from Level 2 Messaging & MS Exchange specialist to Team Leader and pay me 15% bonus incentive instead of 10% annually.

Both parties were assisted by Counsel. Mr Y. Ramsohok appeared on behalf of the Disputant. Whereas, Mrs V. R. Bunwaree Goburdhun appeared on behalf of the Respondent. Both parties have each submitted a Statement of Case in the matter.

THE DISPUTANT'S STATEMENT OF CASE

The Disputant has averred that he is employed by the Respondent since 27 July 2009 as Messaging & MS Exchange Specialist and has a contract of employment to this effect. The permanent jobs at Respondent are classified into five broad job bands, namely Executive Management (EXC), Senior Management/Expert Professional (SEP), Middle Management/Lead Professional (MLP), Professional (PRO) and Support/Associate (SPA). As per his contract of employment, Disputant was employed in the Middle Management/Lead Professional (MLP) grade. He is also entitled to the company's performance bonus scheme which implies that he may receive each half year a performance related bonus against company targets and personal objectives. The bonus is set at 15% of the annual base salary for on target company and individual performance.

The Disputant has averred that on 10 April 2015, he was informed, in an email from the Human Resources Department, of several internal vacancies at the Respondent. He applied for the post of SCS Service Desk Team Leader, which is higher in hierarchy to his post. On 6 May 2015, he was conveyed to an interview and the interview panel made it clear to him that if selected as Team Leader, his role and responsibilities will significantly change and be at a higher level than what he was doing. On 1 June 2015, the Disputant attended a feedback interview and was informed that he had been selected for the position of SCS Service Desk Team Leader. He was informed that if he accepted, he would be responsible for service desk activities and a team; and he would be entitled to a 24% basic salary increment as adequate compensation for joining the position. Disputant was led to believe that all his terms and conditions of employment remained the same except that his basic salary was being increased by 24%. The Disputant accepted the position on condition that a new contract of employment be communicated to him. He was told to join the position and that the new contract of employment would be communicated to him in due course.

On 21 September 2015, the Disputant received an email from the Respondent's Global Human Resources with a letter dated 21 September 2014 attached wherein he was informed of appointment as Team Leader, his new job band as PRO and that all other working conditions remain unchanged as per his employment contract. The Disputant was dissatisfied with his job band being changed from Middle Management/Lead Professional (MLP) to Professional (PRO) and did not accept the new conditions offered to him in the email dated 21 September 2015. In September 2015, Disputant discovered that his bonus was calculated on 10% of his annual basic salary instead of 15%; and he was no longer granted any shift allowance amounting to 10% of his basic salary. He requested the Human Resources Department to provide him with a written contract of employment for his new position and has not been provided with same up to date. On 22 June 2017, he received a letter via email which simply certified his annual base salary at MUR 462,991.

Disputant avers that he requested several meetings with the Head of Department of Human Resources to solve the matter internally but to no avail. Disputant has been promoted but downgraded in his job band which is completely inconsistent with company policy and common sense and his bonus has decreased from 15% to 10% despite undertaking higher responsibilities. He seeks to be classified in the Middle Management – Lead Professional (MLP) job band instead of Professional (PRO) following his promotion since 1 July 2015 to Team Leader and to receive a 15% bonus incentive instead of 10% annually.

Annexed to the Disputant's Statement of Case is the referral letter dated 21 September 2017 from the CCM; an employment contract dated 27 June 2009; an internal vacancy notice; an email dated 21 September 2015; a letter dated 21 September 2014; and a letter dated 21 June 2017.

THE RESPONDENT'S STATEMENT OF CASE

The Respondent has averred that the Disputant took employment with Orange Business Services (Mauritius) Ltd on 15 July 2009 as Messaging & MS Exchange Specialist on an MLP job band, which earns, among other benefits, a maximum 15% performance bonus. The performance bonus scheme is discretionary comprising three parts: 20% based on the business performance of Orange Business Services globally; 20% based on the business performance of

Customer Services and Operations; and 60% based on the employee's performance against objectives. The employee's performance is rated based on a performance review and this rating is then applied to a percentage payout range set by the company.

The post of Team Leader SCS was advertised internally in April 2015 listed as being on a PRO job band, earning a maximum 10% performance bonus. The Disputant applied for the post on 17 April 2015 and was selected and appointed by letter dated 21 September 2015 (mistakenly dated 2014). He accepted the new conditions of the post he was proposed. The new conditions included amongst others an increase of 24% on his then basic salary with a 5% diminution in performance bonus being consolidated as a fixed performance in his basic salary. He was also not entitled to the shift allowance. Disputant expressed his discontent with the payment of his performance bonus as from June 2017.

It is averred that the move of the Disputant is not a promotion but termed as an internal mobility within the company. The Disputant, in knowingly applying for a post on the PRO job band, has waived any right to claim a change in working conditions. The letter of offer dated 21 September 2014 clearly stipulates that the change in job band is one of the "*changes brought to your employment conditions...*". The Respondent denies that the Disputant was led to believe that all his terms and conditions of employment remained the same except for his salary. Information related to his remuneration is listed in his personal PIMS records and Disputant cannot plead ignorance of same. The Disputant does not have a guaranteed right to a fixed performance bonus as this element in his salary is variable in all job bands. The 5% diminution in performance bonus has been consolidated as a fixed component in the Disputant's salary.

The Respondent has averred that it disputes that the Disputant has been downgraded in his job band as he knowingly applied for the post in the PRO band and that a 24% increase was given to make up for those allowances for which a post in the PRO band had no entitlement. The Disputant cannot request the Tribunal to classify his present job in the MLP band as he was fully aware that the post was in the PRO band when he applied. The Disputant's request has repercussions on the whole company and concern other employees not involved in the present dispute. The Disputant has not suffered from any loss in salary. It has also been averred that Disputant has no valid claim and that the dispute should be set aside.

THE EVIDENCE OF WITNESSES

Mr Kevin Jugroo, Team Leader at Orange Business Services, was called to adduce evidence. He affirmed as to truth of the contents of his Statement of Case and the veracity of the annexes attached thereto. He identified his contract of employment issued to him when he started work at Orange Business Services (“OBS”) as Annex B to his Statement of Case. As per his contract, his job band was MLP and his bonus was set at 15% of his annual basic salary payable in two terms after six months. The bonus is made up of three parts: one part is made up of the individual performance accounting for 60%; the second part is the collective part which is divided into two further sub parts which is made of 20% each. This is accounted for in the calculation of the 15% bonus at the end of six months. When in the MLP job band, he has always touched a 15% range bonus. According to the Corporate Bonus Plan, MLP can range between 10 to 20% same as PRO. He produced a copy of the Corporate Bonus Plan (Document A). He elaborated on how he has upgraded his qualifications. He is currently occupying the post of Team Leader since 1 July 2015, being currently responsible for a team of 10 members and this involves more responsibility compared to his previous post of Level 2 Messaging and MS Exchange Specialist.

Mr Jugroo explained how he got an advertisement, which he identified as Annex C to his Statement of Case, and he contacted the Manager Mr Arnaud Quirin on the local messaging application asking for a Personal Information Management System (“PIMS”) ID. He applied for the vacancy of SCS Service Desk Team Leader by mail. There needed to be a PIMS ID for referencing the job advert. He was not given much information about the job. On 29 April, he received an invite for an interview on 6 May. At the interview, Mrs Deeya Nursimloo, Head of Department of Expertise and Solution Centre, and Mr Arnaud Quirin, the Hiring Manager, were present. The interview was mostly centered on how he could bring his contribution and was presented to him as a promotion as he will be leading a team. After the interview, he received an invite for a feedback interview on 1 June 2015, wherein he was informed that he was selected; not much was discussed during the feedback interview apart from the fact that he would be having the responsibility of people under him. He did not accept on the spot and asked for a day to give his decision. He asked for a contract addendum which he was not given. He received a letter from Human Resources on 21 September 2015 to which was attached a letter dated 21 September 2014. He identified these two letters as Annexes D and E to his Statement of Case. In the letter (Annex E), it is mentioned that his job band will become PRO and he understood that his other employment conditions would remain the same including his bonus. He did not agree to his job band being reviewed to PRO as MLP is above PRO in the

organisation. He went to his Line Manager and Head of Department as he did not agree to his job band being reviewed. He never approved to this in writing or verbally. The bonus he is now receiving is at 10%.

Mr Jugroo also stated that his move to Team Leader from Level 2 is a promotion as he was now accountable for 20 people, their career development, day to day performance of their duties, the facilitation of their duties and so on. He produced a screenshot from PIMS from 15 September 2017 (Document B) highlighting "*OOO (Out of Cycle) Promotion/Position Change*". He referred to the Mauritius Major Service Centre Mobility guidelines, producing an extract of same (Document C) referring to "*Section 5.4 Continuity of Service*". According to this, his job band MLP is accrued and should be preserved whenever he was effecting a mobility or job promotion. The bonus component is to be preserved as well, it is an accrued right. He also referred to the global transfer policy of the group and produced an extract of same (Document D). He is being caused prejudice with his bonus at 10% as he is losing money and was earning more in his previous post. He is asking the Tribunal to restore his job band and his corporate bonus plan to 15%.

Mr Jugroo was lengthily questioned by Counsel for the Respondent. He notably stated that he did not look through PIMS at the time he applied for the job although he was aware that it was present on the PIMS tool. He requested the PIMS reference for the vacancy but did not look into the PIMS system. He produced a copy of the application for the post of Team Leader email dated 17 April 2015 (Document E) containing a reference of the PIMS ID. He agreed that from the PIMS advertisement for the post for Team Leader SCS, the job band is PRO. He was not officially aware that post was in PRO before receiving the mobility letter in September 2015. The job band was mentioned to him during the feedback interview and he contested same. Mrs Deeya Nursimloo, during the initial interview on 6 May 2015, told him that it was a promotion. He opted to wait for an official document to start grievance procedures which he mentioned to Mrs Nursimloo in a meeting on 2 June 2015 with Mr Arnaud Quirin not present. He started the grievance procedure on 2 June 2015. His first email regarding grievance is dated 13 April 2017. From the start of his duties as Team Leader, he went verbally every time he had the occasion to speak to his Line Managers so as not to spoil his relationship, during the course of 2015, 2016 and early 2017. He asked his Line Manager Mr Arnaud Quirin for a contract addendum and exposed all the facts and figures he had in his possession and that he is losing money. None of the meetings he had with Mr Arnaud Quirin were documented. When paid the bonus in March 2016 and September 2016, he contested verbally. In March

2017, he contested in writing as his grievances were not followed up accurately. He applied for a job in 2017 asking for a higher salary which was not agreed to by the company.

Mr Jugroo went on further to state that the mobility letter arrived a day before the payroll date which is 22 September and that it is only then he discovered that his bonus was reduced to 10%. He was not aware that PRO earns 10% bonus. He was not aware since 6 May 2015 that there would be a change in his job band. He contested verbally with his Line Manager and contested in writing on 17 April 2017. In an email dated 25 July 2017 (produced as Document F), he wrote "*I accept the fact that I have been briefed during a feedback meeting, with HOD and Manager though, where the conditions for the position were laid down.*". He is asking for his job band to be restored as it is an *acquis*. He applied for the post voluntarily. The 60% part of the bonus is discretionary upon management's assessment of his performance. For six years, he received the bonus at 15%. After the mobility, there was a 24% increase to his basic salary. He was only given a breakdown of the 24% at the CCM and not at the feedback interview. 6% of his shift allowance was brought back into his new salary added in the 24% increase of his basic salary. He did not agree that the difference of 5% in bonus is added to his basic salary as a fixed component. He did not agree that he is not suffering from any financial loss.

Following questions in re-examination from his Counsel, Mr Jugroo notably stated that there is a culture that things are discussed verbally and he wanted to preserve a good employment relationship. He has not received any formal communication as to his new terms and conditions of employment. When on the MLP job band, he was consistently receiving a 15% bonus every six months. He has not received any document explaining the breakdown of the 24% raise in his basic salary although he was verbally told, by Mrs Deeya Nursimloo and Mr Arnaud Quirin, around 22 September 2015 that there was a buy out of his bonus at 5%, 10% for his shift allowance and the rest for his mobility. The Corporate Bonus Plan mentions the range of the bonus for PRO and MLP and there is nothing on paper setting a bonus rate of 15% for MLP and 10% for PRO. He produced a document showing the loss he has suffered with his bonus now at 10% (Document G). The Disputant also stated that the 24% increase in salary is not inclusive of the bonus and is compensation for the post of Team Leader.

Mr Akshay Servansingh Muckoon, Technical Operations Owner, was called as a witness on behalf of the Disputant. He notably stated that he joined OBS at Level 2 in 2009 in the MLP job band with a bonus of 15%. Since 2015, he is currently a Technical Operations Owner, which

is a promotion compared to what he was previously doing. The post of Team Leader is higher to his in the hierarchy. He was given the responsibilities of his present post verbally and in January 2015, the post was advertised and he applied. He is still on the MLP job band but his bonus is now 10%. He has not been communicated anything in writing nor was he given a new contract. He considers becoming a Team Leader from Level 2 to be a promotion as a Team Leader manages a team.

In reply to questions from Counsel for the Respondent, the witness notably stated that unofficially he manages a team. As he has previously managed a team, he understands the responsibility of Team Leader and can say that appointment to same is a promotion. He has no issues for which he has had to go to Human Resources for. He does not agree that his move to his present post is a mobility. He was informed on PIMS that MLP carries a 15% bonus. He is in the same situation as the Disputant regarding the reduction in bonus but has never made a complaint.

Mr Noowanjay Seeballack, Technical Operations Owner, was also called as a witness on behalf of the Disputant. He joined OBS in 2009 at Level 1 in the PRO job band and in 2010 became Messaging Specialist at Level 2 in the MLP job band. On 1 July 2015, he moved to Technical Operations Owner. He applied for the post of SCS Team Leader on 1 June 2015. The post of Team Leader has more responsibilities than the Level 2 post. If ever he became Team Leader, he would see it as a promotion with the job band remaining the same or better. He was not selected for the post of Team Leader and management verbally proposed him his present post. The post was formalized in September 2015 and was in the PRO job band with a 10% bonus. Management verbally informed him that the 5% of bonus he lost would be added to his basic salary.

Pursuant to questions from Counsel for the Respondent, the witness notably stated that it was around September or October 2015 that he was informed that 5% of the bonus will be added to his basic salary. He undertook the post of Technical Operations Owner on 1 July 2015 although the post was advertised on PIMS in September 2015. According to the system, he assumed the post as from November 2015. The post of Team Leader is a management post and his present post is a technical one having technical responsibilities. It does not mean that because he is not managing a team that his post has less responsibilities than a management post.

The representative of the Respondent, Mrs Jennifer Kevan, Head of Human Resources, was called to depose on behalf of OBS Mauritius Ltd. She has worked for the Respondent since 2012 being originally in the UK, where she was the Human Resources Business Partner. She confirmed that the contents of the Respondent's Statement of Case is the truth. She stated that the move of Mr Jugroo to Team Leader is an internal mobility, explaining that there are three streams which are technical, project management and people management; it depends where somebody is in each of these streams as to whether there is a promotion or mobility. A mobility is always reviewed within the group. Mr Jugroo was given a compensation of 24% when he moved to Team Leader. There was a 5% buyout of the bonus, which was put into basic pay; there was a 6% change added to basic pay which is the difference between how overtime is calculated and how inconvenience hours are calculated; the remainder 13% is the mobility amount. The bonus entitlement is discretionary as theoretically the company may not be able to afford to pay the bonus at some point. She produced a document regarding the payment of the bonus (Document H). The payment of the bonus is budget dependent and management has to use its discretion to come within the budget. Mr Jugroo is not at loss with his bonus being brought from 15% to 10% as he is receiving the 5% in his basic pay. In theory, there is a discretion for the bonus to be increased to a maximum of 20% from 10%. A decision was made for all Team Leaders to be placed on 10% bonus. Information about the bonus can be found on the HR portal called IRIS.

Mrs Kevan also stated that the PIMS system holds personal data for all employees in terms of birthdate, spouse, remuneration and recruitment. There was a description of the job of Team Leader SCS, for which Mr Jugroo had applied, on PIMS. She produced an extract from PIMS for the post Mr Jugroo applied (Document J). From this document, the job band is clearly PRO. The PIMS ID for the job matches the reference as noted by Mr Jugroo in his email of 17 April 2015 produced as Document E. With reference to the MMSC guidelines and the global policy (produced as Documents C and D), Mrs Kevan stated that every effort has been made to maintain or preserve the benefits especially in relation to the bonus Mr Jugroo was earning as MLP upon his move. The information on the job band for Team Leader was already on PIMS. The company does not give addendums to the contract when there is mobility and there is an automated generated letter, which is what Mr Jugroo received and is also the mobility letter. The company has acted on the mobility letter as Mr Jugroo's title has been changed to Team Leader, he reports to the Head of Customer Technical Support, his job band is PRO, he has been paid a bonus on PRO of 10% and the effective date of his contract is 1 July 2015. It has been communicated to Mr Jugroo in a meeting that he had been compensated for the difference in bonus as had the difference in overtime pay. When someone has an issue, he can write to his

Manager or it can be verbal; if they do not get a response within two days, they can escalate either in writing or verbally to a member of management. There is also an online system called HR whereby an employee can raise any issue for human resources related queries and there is a two-day response time.

Mrs Kevan was thoroughly cross-examined by Counsel for the Disputant. She notably stated that the contract of employment annexed to the Disputant's Statement of Case is a true copy and that the clause under the heading of remuneration allows for a salary review. She confirmed that vacancies are sent to employees by email and the job vacancies are also posted on PIMS, which gives the full job description. It is possible to apply for a job from the PIMS system. Mr Jugroo applied for the post of SCS Team Leader via email but she cannot track whether he opened PIMS and looked up the position. The normal interview process involves the Recruiting Manager interviewing internal candidates; for external candidates, the Recruiting Manager will see them and there is usually a second interview. The Recruiting Manager and the Manager interviews either at the same time or at two separate moments. A Recruiting Manager is one who recruits for a member of their own team. Mr Jugroo being a Team Leader can be a Recruiting Manager. The job advertisement sent by email does not mention anything, people have to refer to PIMS for more details. PIMS shows the post of Team Leader to be on PRO and it is known in the business that PRO pays 10% in Mauritius. There is no document to the effect that PRO pays at a rate of 10%.

Mrs Kevan was referred to the Corporate Bonus Plan produced as Document A. The range for PRO is 10% to 20% same as for MLP. Interviewers use an interview sheet, which covers standard questions and information which is there to provide a guideline to the Recruiting Manager at the interview. Terms and conditions of employment have been determined at the level of the Human Resources Department and the Head of Business but most Managers, during interview, will confirm those to the internal candidate and certainly gets to explain same to the external candidates. She disagreed that there is a flaw in the interview process at OBS and believes that their Managers are very competent at interviewing. Mrs Kevan was referred to Annexes D and E of the Disputant's Statement of Case. She confirmed that Mr Jugroo was asked whether he accepts the change in his employment conditions by replying 'read and approved'. If there is no document to evidence that Mr Jugroo has approved the change in job band, he has accepted the increase to his pay which means he has accepted the job with all the conditions. She does not know if there is any document stating that the Disputant has been given a salary increase and of changes therein. The job band MLP is higher than PRO. The post of Team Leader is a people management position not just a technical

position. She did not agree that the move made by Mr Jugroo from MS Level 2 Specialist to the post of Team Leader is a promotion. There is no document which sets out the differences between internal mobility and promotion. Movements can be upwards, downwards and lateral. The move made by Mr Jugroo was a horizontal move. A lateral or horizontal move is not necessarily within the same job band.

Mrs Kevan, being referred to Annex E of the Disputant's Statement of Case, confirmed that it is written "*all other working conditions remained unchanged as per your contract of employment*"; the contract of employment states that the bonus is set at 15% and when read in conjunction with the mobility letter, this has not been altered and nor has the salary been altered. However, there is a clause which permits the review in salary. Referring to the Mauritius Mobility Guidelines produced as Document C, Mrs Kevan did not agree that the target bonus of 15% given to Mr Jugroo consistently since 2009 is an accrued right as it is what was agreed in his contract he was doing for the period; had he remained in the job, he would have continued to receive his previous salary with a 15% bonus. She did not agree that it is unfair for Mr Jugroo, being a Team Leader, for his job band to be lower than someone who reports to a Team Leader. She could not say if there is nothing mentioned in the PIMS of Mr Jugroo about the breakdown to the 24% increase in salary and was advised that he was informed of same by his Manager Mr Quirin. She is not aware of any complaint made by Mr Jugroo to his immediate superior Mr Quirin or Mrs Nursimloo when offered the post of Team Leader. She did not expect a grievance to take two years before bringing it formally as there is an HR system on which a formal complaint can be made online and the person can also see the Head of Business. She disagreed that the income of Disputant has decreased since his job band has been lowered to PRO. The bonus is performance related. Mr Jugroo was compensated for the change in job band and this was explained to him by his Manager.

Under re-examination from her Counsel, Mrs Kevan produced a document showing the breakdown of the 24% increase in the Disputant's salary (Document K). The first part of the document is an extract of her view in PIMS. The PRO job band bonus is fixed at 10% in Mauritius and this was fixed by the Head of Department, Head of Business, the HR Manager and the HR Business Partner some years ago. Mrs Kevan also stated that the Document mentions "*promotion/position change*" which is not necessarily just promotion, it could be a lateral movement. The breakdown of 24% increase was clearly communicated to Mr Jugroo by the Managers.

Mr Arnaud Quirin, Senior Operations Manager at OBS, was called to adduce evidence on behalf of the Respondent. He stated that he is the direct superior of Mr Jugroo. On 26 March 2015, he opened the post of Team Leader SCS by making a demand in the PIMS tool, which was validated on 10 April. A communication was sent to the employees of the company inviting them to apply. The communication was identified as Annex C to the Disputant's Statement of Case. Employees could apply through the PIMS tool, or directly by sending an email to the Hiring Manager. Mr Jugroo applied on 17 April 2015 by mail mentioning the job ID, the details of which can be found on PIMS. He identified Document E as the application email sent by Mr Jugroo as well as the job description to be found on PIMS (Document J) which corresponds to job ID 537238. The job advert does not mention the PIMS reference and logically the postulant must access PIMS to obtain this information. Mr Jugroo was interviewed on 6 May 2015 and he took notes of the interview, which he produced (Document L). Mrs Deeya Nursimloo was also present during the interview. Salary conditions were not discussed during the interview.

Mr Quirin also goes on to state that it was decided to select Mr Jugroo as Team Leader and they met with him to inform him of same on 1 June 2015. Salary conditions attached to the post of Team Leader were the principal subject of this meeting. It was explained to Mr Jugroo that he will benefit from an increase of 24% with a breakdown of 13-6-5, including the 5% which corresponds to the absorption of transferring from MLP to PRO, the loss of the bonus from 15% to 10%. He identified Document K as containing a table illustrating the breakdown of the 24% increase in salary. An increase of 13% which corresponds to the assumption of the new post on his basic salary, 5% which corresponds to the compensation of the MLP bonus to PRO and 6% compensation as Mr Jugroo was drawing a shift allowance, the difference between the inconvenience allowance which is available in this post. The breakdown was clearly explained, however Mr Jugroo asked for time to decide. Three days later, on 4 June 2015, he met Mr Jugroo who was motivated to take up the new post. On 4 June, there was no issue regarding whether Mr Jugroo agreed or not with this or that. Mr Jugroo took up the new post officially on 1 July 2015.

Mr Quirin also stated that in 2015, he had two individual one to one (meetings) with Mr Jugroo on 28 October and 17 November and he produced two emails containing the notes of meeting respectively (Documents M and N). He also had two one to one meetings during the first semester of 2016. He produced an email dated 15 April 2016 containing the notes of meeting for the two meetings (Document O). These emails were sent to Mr Jugroo following the meetings. During these four meetings, there was never any issue of Mr Jugroo's salary conditions raised and Mr Jugroo never mentioned that he does not agree with the shift in his

job band from MLP to PRO. The first time he hears of Mr Jugroo's issues is in about February 2017, when Mr Jugroo invokes the loss he is experiencing in his new post and produced some salary slips, saying that he does not agree to the loss in job band from MLP to PRO. Mr Jugroo had already received his bonus on a PRO basis twice in 2016 and once in 2015. Mr Jugroo complaints came following an application in December 2016 or early 2017 for another post of Team Leader, for which he did not accept the proposal of a 10% increase; Mr Jugroo was seeking an increase of 22%, which the company did not accept. There were other posts in the MLP job band which Mr Jugroo could have applied for at the company between July 2015 and today.

Mr Quirin, following questions put by Counsel for the Disputant, has notably stated that before applying for a vacancy, one must at least be informed of the expectations and for this, he refers to the PIMS tool; this is the basic thing to do before applying. He denied that Mr Jugroo asked him for the PIMS ID for the post. The PIMS ID can be found by making a search (on PIMS). He agreed that the employees can send a mail directly without consulting PIMS. No notes were taken during the feedback interview of 1 June 2015. Mr Jugroo received an increase of 24% and the breakdown was explained to him; the breakdown is not mentioned in the PIMS tool. An email was sent to Mr Jugroo's Manager stating that Mr Jugroo agreed to the new post. There are no notes of meeting of the meeting with Mr Jugroo on 4 June 2015. The one to one meetings with Mr Jugroo were in relation to progress regarding objectives, defining objectives, operations and other subjects related to the function. Given that the issues regarding the salary conditions are not in the notes of meeting, they were not invoked; if not, Mr Jugroo would have replied to the emails to say that he omitted a point. He is not aware if Mr Jugroo replied to the letter dated 21 September 2014 (Annex E to the Disputant's Statement of Case). According to their discussion, Mr Jugroo did accept the post of Team Leader and it is in February 2017 that he started to express his disaccord. He did not agree that Mr Jugroo did not accept the conditions proposed in the feedback interview and that Mr Jugroo always expressed his objections as he did not accept the conditions attached to the post. He maintained that Mr Jugroo first informed him of same in February 2017.

Mr Quirin, under re-examination from Counsel for the Respondent, produced an email dated 4 June 2015 (Document P) which was sent to Mr Jugroo's former Manager following the meeting held with Mr Jugroo when the latter agreed (to the post). Mr Jugroo was in the course of his handing over and effecting his change in post.

THE SUBMISSIONS OF COUNSEL

Both Counsel have submitted comprehensive written submissions to the Tribunal in the present matter. Mr Y. Ramsohok for the Disputant has, in essence, submitted that the point in dispute constitutes of two mutually exclusive limbs, i.e. whether the Disputant should be classified in the MLP job band instead of PRO following his promotion to Team Leader; and whether OBS Mauritius should pay the Disputant 15% bonus incentive instead of 10% annually. Counsel for the Disputant has first considered whether the move made by Mr Jugroo is a promotion and after considering the evidence in relation to same, concludes that it is so. If it is an internal mobility, it is an upward vertical move. The terms and conditions of the worker cannot therefore become less favourable than they already were. As the worker was promoted and never expressly or impliedly accepted the lower job band, same should therefore be maintained at MLP and cannot be lowered to PRO.

On the second limb of the dispute, Counsel for the Disputant has submitted that the target bonus is a right which has accrued over the years relying on the case of *The New Mauritius Hotels Group v Benoit* [1982 MR 109]. Reference has also been made to the Mauritius Mobility Guidelines (produced as Document C) to show that “*every effort should be made to maintain or preserve benefits where rights have accrued as a result of service*”. He disagrees that given that the job band is PRO, the target bonus is set at 10% as there is no document to show same; the Corporate Bonus Plan sets the bonus range for PRO between 10 – 20%; and the fact that the employer has brought off 5% of the bonus was never communicated to the Disputant. It is therefore prayed that the Disputant be classified in the MLP job band instead of PRO following his promotion since 1 July 2015 to Team Leader and he be paid 15% bonus incentive instead of 10% annually.

Counsel for the Respondent has, on the other hand, essentially submitted that the gist of the Disputant’s case is that his change in post is effectively a promotion; and secondly, that the 15% bonus incentive is a *droit acquis*, which could not be changed without his specific consent. It has been submitted that the Disputant’s move is an internal mobility as it was a move from the technical to the managerial stream and it cannot be equated to a promotion. In reviewing the evidence, the Respondent submits that as at 1 June 2015, the Disputant became aware of his new post being classified as PRO and he accepted his new conditions. There has been no unilateral modification of the employee’s contract of employment, the Disputant

having prevailed of an opportunity to apply for a new position within the company and thus engaged into a new contract with the employer.

It has also been submitted that the Disputant was offered substantial compensation so that he would not lose out on his former pay. The bonus incentive was consolidated as a 5% fixed component in his basic salary. The bonus incentive, it has been submitted, cannot be considered as an *usage* and therefore an acquired right as it does not meet the criteria of *généralité, constance et fixité*. Reference has been made to *Jurisclasseur Travail Traité Fasc 1-20: Usages 1er Mai 2012* in this regard. The employer cannot create an exception in the case of the Disputant by awarding him a 15% bonus incentive as this would open the floodgates for other employees and create a situation where employees in the same job band will not be benefiting from the same conditions of pay. The Disputant's claim is not legitimate as he has been amply compensated for the loss in his bonus incentive. The Respondent therefore submits that the dispute should be set aside.

THE MERITS OF THE DISPUTE

The Tribunal, in the present matter, is being asked to enquire into whether OBS Mauritius should classify the Disputant in the MLP job band instead of PRO following his promotion from Level 2 Messaging & MS Exchange Specialist since 1 July 2015 and that he be paid 15% bonus incentive instead of 10% annually.

The Disputant, Mr Kevin Jugroo, joined OBS Mauritius in 2009 as Level 2 Messaging & MS Exchange Specialist. OBS Mauritius applies a job band policy to its posts and Mr Jugroo's post was classified in the Middle Management – Lead Professional, i.e. MLP, job band. According to his contract of employment, Mr Jugroo was also entitled to a 15% bonus of his annual basic salary provided *inter alia* that he met certain targets and depending on the company's performance. The other job bands which exist at OBS Mauritius are Executive Management (EXE), Senior Management/Expert Professional (SEP), Professional (PRO) and Support/Associate (SPA).

Upon receiving a notice regarding internal vacancies on 10 April 2015, Mr Jugroo applied for the post of SCS Service Desk Team Leader (“Team Leader”) on 17 April 2015. He was interviewed for the vacancy on 6 May 2015 and was conveyed to a feedback interview on 1 June 2015, whereby he was informed that he was selected for the post and of the salary conditions attached thereto. He did not accept immediately, but asked for time to reflect and eventually signified his acceptance for the aforesaid post a few days after. He stated work as Team Leader as from 1 July 2015. The new post afforded him an increase of 24% on his basic salary.

On 21 September 2015, Mr Jugroo received an email to which was attached an appointment letter (mistakenly) dated 21 September 2014 informing him of his appointment as Team Leader; that his job band is PRO; and that all other working conditions are unchanged as per his employment contract. Mr Jugroo also discovered that his bonus was now at 10% instead of the 15% that he previously earned in his previous post. Mr Jugroo is dissatisfied with his new working conditions, namely the change in job band from MLP to PRO and that his bonus is now at 10% instead of 15%. He therefore wishes to be reclassified in the MLP job band in his position as Team Leader and draw an annual bonus of 15%.

One of the pertinent issues which has arisen out of the hearing of the matter is when was Mr Jugroo aware of the change in job band? As per his evidence, Mr Jugroo has contended that he became aware that his new post was classified in the PRO job band when he received the appointment letter - also referred to as the mobility letter - dated 21 September 2014, which was attached to an email dated 21 September 2015. This is being disputed by the Respondent.

The Tribunal has noted that the version of Mr Jugroo is not completely coherent on this issue. In his evidence in chief, Mr Jugroo has notably stated that he became aware of the change in job band through the appointment letter dated 21 September 2014. However, when questioned by Counsel for the Respondent, he stated that the job band for the post of Team Leader was mentioned to him during the feedback interview on 1 June 2015 and that he did not agree to same. He however contended that he was officially aware that the post of Team Leader was on PRO when he received the appointment letter dated 21 September 2014.

The Tribunal has also considered the evidence of Mr Arnaud Quirin on this issue. Mr Quirin is Mr Jugroo's direct supervisor. He was present as Hiring Manager at the interview for the post of Team Leader on 6 May 2015 and also during the feedback interview on 1 June 2015. Mr Quirin has unequivocally stated that during the feedback interview, salary conditions were the principal subject discussed, whereby Mr Jugroo was explained the breakdown of the 24% increase in salary including that he will be receiving a 5% absorption in his new salary in transferring from MLP to PRO.

Furthermore, it has not been contested that the information regarding the job band for the post of Team Leader, as well as other information pertaining to the post, can be found on the PIMS tool which operates at OBS. Although, Mr Jugroo has recognised that the job band is present on PIMS, he maintained that he did not verify the PIMS prior to applying for the post. It must be noted that Mr Jugroo did in fact include the PIMS reference of the post when applying for the post of Team Leader by email on 17 April 2015.

Although Mr Jugroo stated that he obtained the PIMS reference for the post of Team Leader from Mr Quirin, the latter has denied that Mr Jugroo asked him for the PIMS reference of the aforesaid post. It is not also disputed that the PIMS reference is not required for one to apply for the post as the advertisement for the vacancy clearly mentions that one can apply "*by sending your CV and motivation letter to the Hiring Manager and copy to your Manager/Team Leader/HOD, Recruitment Consultant*". The Tribunal, however, finds it questionable for Mr Jugroo to have included the PIMS reference to the post of Team Leader while not having consulted the post on PIMS, the more so that the PIMS reference was not a requisite to applying for the post. It cannot also be overlooked that the PIMS reference may be obtained by making a simple search on the PIMS tool itself.

It should also be noted that Mr Jugroo has himself written in his grievance email dated 25 July 2017 (produced as Document F) that he "*took up the new position whilst voicing my disagreement on the job band & bonus incentive change;*" at paragraph 4. a. x. of same. It is not disputed that Mr Jugroo took up the post of Team Leader as from 1 July 2015, which is before the date he received the appointment letter on 21 September 2015.

Having considered the evidence in relation to the change in job band, the Tribunal is of the view that it is highly likely that Mr Jugroo was well aware that the post of Team Leader was

in the PRO job band prior to his application for the post on 17 April 2017 and that he was, at the very least, made aware of same during the feedback interview on 1 June 2015.

Another issue which has been disputed in the present matter is whether Mr Jugroo was actually promoted to the post of Team Leader from the post of Level 2 Messaging & MS Exchange Specialist. Although, Mr Jugroo is contending that his move to the post of Team Leader is a promotion and has found some support from the two witnesses working at OBS Mauritius who were called on his behalf, it cannot be overlooked that Mr Jugroo applied for the post of Team Leader and was thereafter selected for same after having been interviewed. He was not afforded an automatic advancement from his initial post of Level 2 Messaging & MS Exchange Specialist at OBS Mauritius to the post of Team Leader nor has it been shown that the latter post is one of selection from the former post.

Although Mr Jugroo has emphasised the different nature of the job of Team Leader compared to his previous post, it does not automatically follow that he has been promoted to the post of Team Leader merely because of its higher responsibilities. The evidence of Mrs Kevan on this issue is also of relevance, she having described the move as an internal mobility and explained that there are three streams, namely technical, project management and people management, and it depends where one is in each of these streams to know if there is a promotion or a mobility. The Tribunal has also noted that Mrs Kevan has maintained, under firm cross-examination, that Mr Jugroo made a horizontal move. It must also be noted that the email dated 21 September 2015 refers to the term "*internal mobility*" in relation to Mr Jugroo's appointment as Team Leader.

Furthermore, although the PIMS view (produced as Document K) mentions the term "*OOO Promotion/Position Change*" to describe the "*Pay Change Action/Reason*", it does not necessarily mean that the change is exclusively due to a promotion as a position change is also mentioned. The same also applies to the PIMS screenshot, which displays "*OOO Promotion/Position Change*", produced by Mr Jugroo (Document B).

In the circumstances, the Tribunal is not wholly satisfied that Mr Jugroo's move to the post of Team Leader on 1 July 2015 can be viewed as a promotion and finds that it can, more appropriately, be termed as an internal mobility within OBS Mauritius.

Could it therefore be said that Mr Jugroo should be classified in the MLP job band instead of PRO in his post as Team Leader at OBS Mauritius? Though Mr Jugroo is now performing in a different job with higher responsibilities since July 2015, the post of Team Leader he occupies is classified in the PRO job band by the employer.

In this regard, the rights of the employer to organise its business for the efficient running of the enterprise must be considered. Indeed, the following may be noted from what was stated by the Supreme Court in *Hong Kong Restaurant Group Ltd v Manick* [1997 SCJ 105]:

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.

The following may also be noted from what was stated by the Supreme Court 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.

It must also be noted that it is settled law that the employer in organising his business should not interfere with the substantial elements of the employee's contract of employment. It would be pertinent to note what was stated by the Supreme Court in *A.J. Maurel Construction Ltee v Froget* [2008 MR 6]:

In any case, as has been stated in Dalloz, Camerlynck, Droit du Travail (ibid.), the law does not interfere with the power of the employer to do so except that when he does so he does not interfere with the acquired rights of the employees:

« L'employeur, maître selon la jurisprudence de l'organisation et du bon fonctionnement de ses services, peut librement, et sans engager sa responsabilité, apporter « dans les limites de son pouvoir de direction » des changements dans la structure de son entreprise et des aménagements dans l'exécution de la prestation de travail, ... »

However, when he does so, he should ensure that he does not interfere with the acquired rights of the employees. The exercise of the power of the employer to manage his business as he thinks fit is permissible:

« dès l'instant où il ne porte pas atteinte pour autant aux « éléments substantiels du contrat » (4) ou ne lui apporte pas de « modification essentielle (5) – concernant la qualification, les attributions principales, les conditions de travail ou la rémunération. »

In the present matter, Mr Jugroo applied to join a new post from his previous post of Level 2 Messaging & MS Exchange Specialist and has been given new terms and conditions of employment in his new post of Team Leader as is apparent from the appointment letter dated 21 September 2014. The Disputant, in this regard, has voluntarily moved from one post to another in the organisation although he does not agree to certain conditions attached to the new post. It cannot therefore be said that the employer is interfering with the acquired rights of the employee inasmuch as the latter has assumed a new role within the organisation which carries with it different terms and conditions of employment to what he previously enjoyed.

The Tribunal, having considered that Mr Jugroo ought to have been aware that the job band for the post of Team Leader was classified as PRO when having applied for same or at the very least made aware of same when conveyed to the feedback interview of 1 June 2015; that the move to the post of Team Leader was not a promotion but an internal mobility within the organisation; and that the employer is at liberty to organise the running of its business, which would include classifying its posts in different job bands, as has been considered above, can only find that there is no basis for Mr Jugroo to be classified in the MLP job band instead of PRO in the post of Team Leader at OBS Mauritius.

As per the Terms of Reference of the dispute, the Tribunal must also enquire as to whether Mr Jugroo should be paid a 15% bonus incentive instead of 10% annually. The evidence has borne out that the payment of the bonus is linked to the job band that the employee falls under. As per Mrs Kevan, the PRO job band carries a bonus of 10% at OBS Mauritius. Whereas, Mr Jugroo previously received a bonus of 15% when classified in the MLP job band in his role as Level 2 Messaging & MS Exchange Specialist. Moreover, as per the Corporate Bonus Plan produced by Mr Jugroo, the bonus ranges for the PRO and MLP job bands is between 10% and 20%. Although there is no document to show that the bonus is fixed at 10%

for the post of Team Leader or that PRO carries a bonus of 10%, the percentage bonus is within the range for the PRO job band as set in the Corporate Bonus Plan produced.

The corporate bonus scheme which operates at OBS Mauritius comprises three components, namely the personal part, which rates individual performance and accounts for 60% of the bonus; the OBS part, based on OBS objectives and which accounts for 20%; and the collective part, based on performance for the region and which accounts for 20%. The 60% component of the bonus is assessed on a performance rating scale which is matched to a corresponding payout range. The payment of the bonus is dependent on the performance of the three aforementioned components and is variable in nature. Mr Jugroo, in evidence, has not disputed that the 60% component is totally discretionary depending on performance. It should also be noted that the Disputant's employment contract describes the bonus as "*performance related*".

It may be noted that the appointment letter dated 21 September 2014 has set the new conditions of employment attached to the post of Team Leader. It has notably highlighted the changes brought to Mr Jugroo's employment conditions in his job title, reporting line and job band and further mentions that "*All your other working conditions remain unchanged as per your employment contract*".

Referring to Mr Jugroo's employment contract, it may be clearly seen that he was classified in the MLP job band and he is entitled to the company's performance bonus scheme which implies that he may receive each half year a performance related bonus against company targets and personal objectives. The contract also mentions that the "*bonus is set at 15% of your annual base salary for 'on-target' company and individual performance*".

When reading the appointment letter of 21 September 2015 in conjunction with the contract of employment to which the letter makes reference, it would therefore follow that the bonus rate has remained unchanged upon Mr Jugroo assuming the role of Team Leader. Then why is it that Mr Jugroo is receiving a bonus incentive at the rate of 10% in his new role at OBS Mauritius?

The evidence on record has revealed that when Mr Jugroo was selected for the post of Team Leader, he was offered a 24% increase in his salary. The Respondent has asserted that this 24% increase comprises of a 13% increase for the new role of Team Leader; a 6% compensation for shift allowance in base pay considering an approximately 4% inconvenience allowance in the new role; and more importantly, a 5% compensation in base salary for the bonus incentive in transferring from MLP to the PRO job band.

Therefore, as the post of Team Leader falls under the PRO job band, which implies a 10% bonus incentive, OBS Mauritius has compensated Mr Jugroo for the 5% loss in the 15% bonus he previously received as Level 2 Messaging & MS Exchange Specialist by consolidating the percentage loss in his new salary as Team Leader. Therefore, Mr Jugroo now receives 10% bonus, which is performance related, together with *inter alia* a 5% increase in his salary of Team Leader to compensate for the 5% reduction in the bonus he previously received.

Although Mr Jugroo has stated that he was unaware of the breakdown of the 24% salary increase in the post of Team Leader until being informed of same at conciliation meetings held at the CCM, Mr Quirin has in his unflinching evidence to the Tribunal clearly stated that Mr Jugroo was explained the breakdown of the increase in salary at the feedback interview of 1 June 2015, where salary conditions of the new post were the principal subject discussed between him and Mr Jugroo. Mrs Kevan has also throughout maintained that Mr Jugroo was explained of the breakdown of the 24% increase by Mr Quirin. The grievance email dated 25 July 2017 from Mr Jugroo also mentions (at paragraph 5. b. iii. of same) that the Head of Department and Manager in a meeting on 24 July 2017 "*pointed out that the job promotion package proposed at the time was inclusive of ALL benefits & allowances "forfeited", namely shift allowance at 10% of basic salary, 5% taken off MLP bonus plan and 9% as effective job promotion increase.*", which shows that Mr Jugroo was given a notion of the breakdown prior to meetings at the CCM. Mr Jugroo also admitted that he was verbally told of the breakdown of the 24% increase in his salary by Mrs Nursimloo and Mr Quirin around 22 September 2015.

In the circumstances, the Tribunal has no hesitation in accepting the evidence of the Respondent on this issue. Thus, it cannot be said that Mr Jugroo has suffered a loss in the percentage rate of the bonus on assuming his new role as Team Leader.

Moreover, in considering that Mr Jugroo has been compensated for the loss of bonus in the post of Team Leader, it cannot be said that OBS Mauritius has not respected its own transfer policy in the case of Mr Jugroo assuming the post of Team Leader. The Global Transfer Policy, as produced by the Disputant, has notably provided:

Continuity of Service will be preserved with respect to employment rights and every effort should be made to maintain or preserve benefits where rights have accrued as a result of service with an Orange Business Services or Orange Group Company, e.g. pension, shares, etc

Counsel for the Disputant has submitted that for the bonus to be due and demandable, it must be *constance* in payment and have *fixité dans le montant* relying on the authority of *The New Mauritius Hotels Group v Benoit* [1982 MR 109]. Counsel for the Respondent has concurred that for the bonus to be considered as *usage* and therefore as an acquired right, it must possess the characteristics of *généralité, constance et fixité*. The Respondent however denies that the bonus holds these attributes.

The Tribunal in considering the nature of the bonus incentive paid to Mr Jugroo has found same to be performance related, as stipulated in the contract of employment, variable in nature as well as discretionary. It would be useful to note what *J. Pélissier, G. Auzero and E. Dockès* in *Droit du travail, Précis Dalloz, 26^e édition, note 862* have stated in relation to the criteria of *fixité*:

Fixité : cette exigence prive de caractère obligatoire des versements variables dans leur montant et leur mode de calcul parce qu'elle révèle un choix chaque fois singulier, indice d'animus donandi. Un employeur pouvait donc, en variant chaque année le montant du versement, lui conserver son caractère de gratification-libéralité.

Furthermore, the following may be noted from *Jurisclasseur Travail Traité Fasc 1-20: Usages 1er Mai 2012*, as submitted by Counsel for the Respondent, in relation to the same criteria:

d) Fixité

18. - Notion de fixité - *Pour caractériser un usage, l'avantage alloué doit être fixe dans son montant, à défaut dans ses modalités de calcul, c'est-à-dire sans référence à des facteurs subjectifs liés au comportement des salariés (comportement, aptitude*

professionnelle, etc.) ou aléatoires (l'évolution des résultats ou de la trésorerie de l'entreprise, etc.)

...

20. - Pratiques non reconnues fixes - Ne répond pas au caractère de fixité permettant de caractériser un usage :

- *une prime dont le montant était déterminé, pour partie, en fonction de l'aptitude professionnelle et de l'absentéisme de chaque salarié (Cass. Soc., 22 janv. 1981, n° 79-40.050 : Bull. civ. 1981, V, n° 56) ;*
- *une prime versée aux salariés suivant un mode de calcul défini par l'employeur en fonction de leur attitude professionnelle et de leur assiduité dont le montant était fixé par le conseil d'administration en fonction des résultats de l'entreprise (Cass. Soc., 20 oct. 1982, n° 80-41.143 : Bull. civ. 1982, V, n° 560) ;*

It cannot therefore be said that the bonus incentive scheme of OBS Mauritius meets *inter alia* the criteria of *fixité* in its payment as same depends on the performance factors relating to the three components of the bonus incentive. Although the percentage rate of the bonus may be fixed, the payment of its amount is variable according to the performance of its three components. The bonus incentive would thus fall short of being an *usage* or an acquired right as is being contended by the Disputant.

The Tribunal, having notably considered the nature of the bonus incentive, that Mr Jugroo has been compensated for the 5% loss in his bonus on assuming his new role of Team Leader in the 24% increase of salary and whether the bonus is an acquired right, cannot therefore find that OBS Mauritius should pay him a 15% bonus incentive instead of 10% annually.

In the circumstances, the Tribunal cannot award that OBS Mauritius should classify Mr Jugroo in the MLP job band instead of PRO following his move to the post of Team Leader and pay him 15% bonus incentive instead of 10% annually.

The dispute is therefore set aside.

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

**SD Vijay Kumar Mohit
(Member)**

**SD Andy Ryan Hau Kee Hee
(Member)**

**SD Ghianeswar Gokhool
(Member)**

Date: 23rd March 2018

