

EMPLOYMENT RELATIONS TRIBUNAL

AWARD

ERT/RN 51 /17

Before:-

Rashid Hossen	-	President
Vijay Kumar Mohit	-	Member
Abdool Feroze Acharauz	-	Member
Parmeshwar Burosee	-	Member

In the matter of:-

Mr Satroohun Shamloll (Disputant)

And

Mauritius Telecom Ltd (Respondent)

On 1st July 2016, Mr Satroohun Shamloll, the Disputant reported to the President of the Commission for Conciliation and Mediation the existence of a labour dispute between himself and the Mauritius Telecom Ltd, the Respondent as per section 64(1) of the Employment Relations Act 2008, as amended. The process of conciliation led to no settlement. Consequently, the commission referred the labour dispute to the Tribunal for Arbitration in terms of section 69(7) of the Employment Relations Act 2008, as amended.

The point in dispute is:-

“Should Mr. Shamloll Satroohun actually posted as Senior Accounts Officer in the Grade SS8 be upgraded to the Grade of SS9 with relevant salary alignment with peers in the Commercial Division with effect from year 2015 or otherwise.”

Statement of Case of Disputant

A. Background

1. Mr Shamloll joined Mauritius Telecom in January 1998 as Customer counter Clerk.
2. He was promoted to Accounting Technician (SS7) and joined the procurement Department.
3. He completed his Final ACCA exams in June 1999.
4. He moved to Markets & Solution in 2003 and took the post of Tariff Officer Graded SS8.
5. He obtained 2 years leave without pay in Year 2003 to work in Mozambique and returned to MT in year 2005 and joined the Residential Department.
6. Based on his work and good performance he was recommended and promoted to grade Senior Accounts Officer grade SS8 in the year 2006.

B. Facts

7. In April 2008, Mr Shamloll was assigned the responsibility to handle the controlling function in Mass Market.

Same involved dual reporting line to Senior Executive Mass Market and Senior Executive Financial Planning and Control, a new list of duties and responsibilities aligned with peer accountants and having the same level of hierarchy.

8. The post was created since MT was going to introduce a Performance Management System (PMS) as per the Appanna Report 2008.

9. At the same time, four (4) other colleagues were posted in other departments of the Commercial Division. Out of the 5 staff posted in the Commercial Division 4 of them were fully qualified accountants (ACCA). The other departments are: Marketing, Business Market, Operators Market, Executive Director Commercial Office
10. There was no change in either salary or in grade (SS8). The only change was that they were addressed as Budget Controllers. He remained Senior Accounts Officer and his colleagues kept their corresponding job titles but they had the same job description.
11. In April 2009, he was unjustly reported by the Executive Direct Sales and Customer Service, mail dated 7 April & letter dated 13 April 2009 for being unprofessional, not committed and having no "maitrise" of figures to which he had to reply in writing.
12. In May 2009 he replied explaining himself in details how committed he was, how the figures are extracted from systems and reliable information provided in a timely manner. They even had weekly meetings but never such issues were pointed out. He even had meetings with the Senior Executive Financial Planning and Control and the Chief Finance Officer regarding above and they were satisfied with his work. Eventually the Executive Direct Sales and Customer Service, did acknowledge that his negative report against him (refer to previous paragraph) was unwarranted.
13. As stated in the letter, he was the Budget Controller of the Unit that commanded some 53% of the Company Turnover. Being the one in grade SS8, he was the Budget Controller of the Unit with head count exceeding 340 employees which also had the highest operational expenditure in the Commercial Division thus even the volume of work was comparable with his colleagues in grade SS9.
14. In June 2009, Mr A. Ghoorah was replaced by Mr G. Moorooogen who became the new Senior Executive Mass Market and he remained the Budget Controller of Mass Market.
15. At the Orange Expo June 2009 he again had the chance to prove himself. Being the one stuck on grade SS8 and the least paid he was called upon to provide the Orange Expo Report in 24 hours when other colleague accountant graded at SS9 failed to provide same in 2 weeks time. Even with such tight deadline he worked out the figures and provided a concise report that was presented to Senior Executive Committee. Even at this early stage of his newly assigned responsibilities he was performing at the same level with his peers of SS9 or even better, he refers to mail dated 24 June 2009.

16. He went through some really hard times at work with managers and colleagues but did strive hard to emerge successfully. He refers to mail dated 11 Dec 2011.
17. In the wake of the Salary Survey 2008 - A lot of emphasis was made on Performance at work, Performance Bonus and Performance Schemes. Since he was performing duties attached to the same level (SS9) as his peers on SS9, he also legitimately expected to have a reasonable salary attached to SS9 as his peers, based on his performance.
18. In order to measure the performance of Officers in Charge at Telecom Shops they had to be provided with an individual budget and he was given the responsibility to work out the Sales Revenue Budget for the individual sections and Telecom Shops under Mass Market. The sales revenue budget had to be presented in such a way that it represents a challenge, motivates and at the same time which is achievable. It is a very challenging responsibility which he assumed successfully and has been carrying till today.
19. The Salary Survey 2008 also made recommendation for Management to establish performance related schemes in areas like sales as per annex 10. Again he was given the responsibility to come up with a commission scheme that measures, promotes and rewards the sales staff.
20. Since achieving the targeted budget is the company prime objective he worked out the objectives of department at staff level and defining other dynamic elements to attain these objectives he managed to propose a commissioning scheme that was accepted and is still being used as a commissioning scheme and to select winners for different challenges. It is a matter of great pride that these two recommendations from the Salary Survey 2008 was introduced and worked out by himself under the guidance of Mr Moorooogen, the then Senior Executive Mass Market.
21. In Year 2010, after much hard work and professional achievement and proving himself time and again, he filed a grievance to be upgraded and align his salary with his peers at SS9 to a reasonable level since his salary gap was almost Rs 30k per month. His request was turned down by the grievance committee.
22. During the same period Mr A. Dwarka Acting SEHR gave him the assurance that if his Senior Executive and The Executive Director give their approval for an upgrade as HR, he will have no objection to upgrade him.

23. In August 2012, after performing for more than 4 years as Budget Controller of Mass Market he made a request to be upgraded from SS8 to SS9 based on his achievements and contributions for the department and to be at par with all his colleagues in the Commercial Division who were all on grade SS9 though we have the same list of duties. His request was fully supported by all his four superiors, Executive Indirect Sales, Senior Executive Mass Market, Executive Director Commercial and Senior Executive Finance and Planning. Not obtaining any reply he had meetings with the Executive Head commercial and Manager HR and he was made to understand that they will get back to him soon. He was still made to be stuck at SS8.
24. In July 2013, together with 2 other colleagues he made representation to be taken on board in the Salary Review 2012 negotiation but same was not taken up.
25. In Year 2014, he addressed a letter to Senior Manager HR and CEO and had positive meetings with them but still the case remained unresolved. He also made reference in his letters that staffs from Finance Department and staffs from Spice Project Team were all promoted based on recommendations from their Heads of Departments and Head of Project Team and they obtained their promotions within weeks after being recommended and in his case he is still to obtain a reply.
26. Not having any other option he again filed a grievance in January 2015, "Upgrade to SS9 + Salary alignment with colleagues based on notes from Salary Survey 2012 on change in responsibilities and job description.
27. There was no Grievance Committee Meeting held and he obtained a reply from Executive — Employee Relations and Welfare stating that his current post will be submitted for evaluation in the forthcoming Job Evaluation Exercise and it has been already two years since. This exercise was also mentioned in the Salary Survey 2012.
28. Following the reply he addressed a letter to the New CEO as per grievance procedure. He had meetings with the New HR Manager on two occasions but the result was still the same i.e his post will be subject to forthcoming Job Evaluation Exercise.
29. In April 2016 he addressed his last letter to the Manager Human Resources. Besides giving them all the details about his case and representations he also provided them with names of staff who were promoted in different departments giving as much detail as possible. Hoping that based on those facts his case will be given due consideration at last but again

his voice was unheard. He always felt being unfairly treated and a clear victim of discrimination.

Statement of Case of Respondent

PLEA IN LIMINE LITIS

The present dispute is time-barred and the tribunal has no jurisdiction to entertain the matter as the alleged complaint dates as far back as June 2010 in view of the following:

- On 2 June 2010, the Disputant had already filed a grievance for a salary alignment with other colleagues performing as Budget Controller duties. He complained that his salary was lower compared to his colleagues performing the same duties.
- The issue was then referred to a Grievance Committee as per the Conditions of Employment.
- On 17 August 2010, the Grievance Committee Panel concluded that the request for salary alignment was not justified. The Disputant was informed ' accordingly.
- Subsequently, the Disputant made several requests to Management on a personal basis for an upgrading from SS8 to SS9 level. However, these were not favourably considered.
- On 1 July 2016, the Disputant again filed another dispute at the Commission for Conciliation and Mediation (CCM) on the same issue namely:

"Should Mr Shamloll Satroohun actually posted as Senior Accounts Officer in the Grade SS8 be upgraded to the Grade SS9 with relevant salary alignment with peers in Commercial Division with effect from year 2015 or otherwise"
- Several meetings were then held at the CCM whereby the Disputant was represented by Counsel Ramano and the Company by Mr N. Moorooogen, HR Officer.
- On 19 April 2017, the CCM informed the Respondent that no settlement was possible.

The Respondent therefore moves that the present matter be set aside as same is in breach of the statutory delay and further constitutes an abuse of process of the Tribunal

ON THE MERITS

In April 2008, Respondent introduced Budget Control functions in various department of Mauritius Telecom. This was done by deputing existing staff from Finance Department, irrespective of their grades. The following officers were chosen:

No	Name	Job Title	Grade
1	S. Shamloll	Senior Accounts Officer	SS8 since July 06
2	R. Puholoo	Senior Account Officer	SS9 since April 12
3	V. Ramnauth	Accountant	SS9 since May 98
4	P. Bissoondoyal	Accountant	SS9 since May 98
5	S. Mohall	Head of Finance at Telecom Plus	SS9 since May 05

The assignment clearly spelt out the duties to be performed as per their respective grades and level of responsibility.

It is submitted that the list of duties of officers in SS8 and SS9 were different.

The Disputant was given a list of duties pertaining to his Job Title as Senior Accounts Officer graded at SS8, whereas other officers graded at SS9, e.g. Accountants or Head of Finance / Budgeting and Logistic of Telecom Plus, were given a more enhanced list of duties and more responsibilities pertaining to their SS9 level.

It is submitted that the Disputant's contention that all officers who were entrusted with budget controlling duties were given the same list of duties and performing the same duties is not correct.

Furthermore, it is submitted that the terms and conditions of employment do not make provision for upgrading but cater for promotion only. Relevant factors which are considered for promotion are experience, qualification, performance, merit and suitability.

As per its employment policy, the Respondent may recruit, appoint or promote, on such terms and conditions as it thinks fit, such employees as is necessary for the proper discharge of its business.

In virtue of a Procedure agreement dated November 2009, parties have agreed and ratified that the Respondent shall have the sole and absolute right to promote, transfer and layoff its employees.

Without making any admission as to the averments of Disputant as per paragraphs 6 to 29 of the Statement of Case, the Respondent takes the view that the contention of the Disputant for an upgrade to SS9 together with an increase in salary is neither founded nor justified. Furthermore, it is submitted that the Disputant has failed to establish that the Respondent or its officers have acted in an unfair or discriminatory manner towards the Disputant.

The Law

As can be seen from Respondent's Statement of Case, Counsel for the Respondent raised a preliminary objection to the effect that the present matter fails to qualify as a labour dispute inasmuch as it falls outside the three years' time limit prescribed for a "labour dispute" such that the jurisdiction of the Tribunal is ousted.

Section 2 of the Employment Relations Act ("the Act") which defines a "labour dispute" reads as such-

2. *Interpretation*

In this Act, unless the context otherwise requires -

...

"labour dispute" –

- (a) means a dispute between a worker, or a recognised trade union of workers, or a joint negotiating panel, and an employer which relates wholly or mainly to wages, terms and conditions of employment, promotion, allocation of work between workers and groups of workers, reinstatement or suspension of employment of a worker;

- (b) does not, notwithstanding any other enactment, include a dispute by a worker made as a result of the exercise by him of an option to be governed by the recommendations made in a report of the Pay Research Bureau or a salary commission, by whatever name called, in relation to remuneration or allowances of any kind;
- (c) does not include a dispute that is reported more than 3 years after the act or omission that gave rise to the dispute (*emphasis added*);

Since this is an issue that goes to the jurisdiction of the Tribunal, the case was heard on the merits before proceeding to deliver a ruling on the preliminary objection in order to ascertain more effectively the exact point in time where that contention between the worker and the employer took place. It is as from that time that the time-limit of three years starts to run.

It is apposite here to refer to the relevant provisions of our Civil Code which deal generally with the law relating to limitation periods as that set out in the Act.

Article 2271. Le délai de prescription court à compter du jour où le droit d'action a pris naissance.

To fix the date as from which time starts to run for limitation purposes, guidance may be sought from the following views expressed in **Stuart Sime : A Practical Approach on Civil Procedure** –

Lindley LJ in *Reeves v Butcher* [1891] 2 QB 509 stated the general rule which is “... that the statute (or limitation period) runs from the earliest time at which an action could be brought” . In other words, time runs from the point when facts exist establishing all the essential elements of the cause of

action. A distinction is made between the substantive elements and mere procedural requirements.

“La prescription” is defined in the Civil Code. Two types of “prescription” are provided for, of which is the “prescription extinctive” and is of more relevance to the issues at hand and is defined as follows-

Article 2219. La prescription est un moyen d’acquérir ou de se libérer par un certain laps de temps, et sous les conditions déterminées par la loi.

Article 2219-1. La prescription extinctive est un mode d’extinction d’un droit par le non-usage pendant le temps fixé par la loi.

It is clear that the time limit of three years imposed by Section 2 of the Act is in the nature of a “prescription extinctive” that will have the effect of rendering the cause of action of a disputant unenforceable due to the lapse of three years and thus provides a complete procedural defence to a Respondent facing such a claim.

The Civil Code provides the possibility that a certain event may interrupt or suspend the “prescription” and one such possibility which may be of relevance to the issue at hand, is dealt with by the Civil Code under Article 2248.

Article 2248. La prescription est interrompue par la reconnaissance que le débiteur ou le possesseur fait du droit de celui contre lequel il prescrivait.

Analysis

In 2008, the Disputant was posted in the Mass Market Department in the Commercial Division where 4 other colleagues at SS9 were also posted, albeit with

a higher salary than the Disputant who was still at grade SS8, yet performing the same level of duties as his peers. In June 2010, Disputant filed a grievance requesting for salary alignment and upgrading but the Grievance Committee rejected same. Counsel for the Respondent submitted that the act or omission, as the case maybe, arose in 2010 and the three year time period starts running as from that date.

Counsel for the Disputant, on the other hand, submitted that the dispute arose much after, arguing that the Disputant did not appeal against the rejection of the grievance filed in 2010 and decided not to pursue it further. The point in time at which the dispute arose is, according to his submission, the year 2014 when the Disputant failed to obtain a positive reply for his upgrading following the letter sent to the Senior Manager HR and CEO and despite his request being “fully supported” by all his four superiors.

With respect to the above contentions, the Tribunal stands guided by the decision of the Supreme Court in **RAMYEAD-BANYMANDHUB D v THE EMPLOYMENT RELATIONS TRIBUNAL (2018 SCJ 252)**. The Tribunal in that case set aside a labour dispute concerning an appointment with related salary increases and which spanned over a decade or so. The Supreme Court made the following remark which is pertinent to the issue at hand-

“The respondent therefore failed to consider the possibility that the co-respondent’s (the employer’s) alleged omission could have been continuous, thereby seriously affecting the whole basis of the Tribunal’s computations whilst determining the objections related to time limits”.

The Tribunal drew the attention of Counsel for the Disputant to the fact that the grievances filed in 2010 and 2015 were the same inasmuch as both were with respect to Disputant's request for "salary alignment" and "upgrading to SS9". But Counsel for the Disputant averred that the former asked only for salary alignment although the Statement of Case of the Disputant mentions both salary alignment and upgrading to SS9 so that one finds a single act or omission traced to the year 2010 that gave rise to two identical grievances filed and which culminated in the present matter being referred to this Tribunal. From this observation, it is clear that the present matter is time-barred under Section 2 of the Act.

However, there is one act on the part of the Respondent which has not been addressed by Counsel on either side and which is capable of effecting the cause of action to be reported to a later date, subsequent to the filing of the grievance in 2010, thus cancelling the time period of three years which has already run as from 2010. This is in relation to the fact that in August 2012 all four superiors of the Disputant fully supported his request to be upgraded to SS9. This has not been disputed by the Respondent. It is to our mind necessary to determine whether such admission made by the Respondent in favour of the Disputant does fall within the meaning of Article 2248 (*supra*) and thus waive the time that has lapsed as from 2010 and set another limitation period on as from 2012. To that end, it is pertinent to note the following notes from **Repertoire Civil Dalloz** (mars 2011):
Prescription Extinctive-

368. L'interruption efface le délai de prescription acquis. Elle fait courir un nouveau délai de même durée que l'ancien (emphasis added).

...

374. La règle concerne toutes les prescriptions extinctives: celles qui éteignent les droits réels, comme celles qui éteignent les droits de créance et, pour ces dernières, quelle que soit la durée du délai (emphasis added).

375. La reconnaissance doit bien entendu émaner de celui qui est en voie de prescrire ou de son mandataire. L'auteur de cette reconnaissance doit par ailleurs avoir la capacité, soit de disposer, quand il s'agit de l'extinction d'un droit réel, soit d'administrer, quand il s'agit de l'extinction d'un droit de créance, puisqu'un paiement partiel, suffisant pour interrompre la prescription, ne requiert que la capacité d'administrer (emphasis added).

376. Si la reconnaissance peut évidemment se réaliser au moyen d'une convention passée entre le débiteur et le créancier, cela n'est pas une nécessité. Elle peut en effet résulter d'un acte émané du débiteur seul, même ignoré du créancier (Grenoble, 26 janv. 1855, DP 1855. 2. 206. – Civ. 27 janv. 1868, DP 1868.1. 200. – Poitiers, 30 juill. 1877, DP 1877.2.60. – Douai, 28 nov. 1879, S. 1881.1.32) (emphasis added).

377. Encore faut-il, cependant, que la reconnaissance soit certaine (Req. 6 janv. 1869, DP 1869.1. 224. – AUBRY et RAU, t. 2, par ESMEIN, § 216, texte et note 41. – PLANIOL et RIPERT, t. 7, par ESMEIN, n° 1366. – COLLIN et CAPITANT, t. 2, par JULLIOT DE LA MORANDIERE, n° 1623 – BAUDRY-LACANTINERIE et TISSIER, op. cit., n° 530)

378. Cela étant, aucune forme n'est imposée pour que la reconnaissance puisse produire son effet interruptif. Celle-ci peut donc avoir lieu verbalement (PLANIOL et RIPERT, t. 7, par ESMEIN, n° 1365. – AUBRY et RAU, t. 2, par ESMEIN, § 215, texte et note 39. – BAUDRY-LACANTINERIE et TISSIER, op. cit., n° 529) ou par écrit (RIPERT et BOULANGER, t. 2, n° 2026. – MARTY et RAYNAUD, op. cit. n° 336-b). Et, en ce dernier cas, un écrit quelconque suffit : une lettre missive, par exemple. (Req. 11 mai 1842, Jur. gén., v° Prescription civile, n° 573. – Montpellier, 15 mai 1872, DP 1874. 2. 165. – Req. 12 mars 1883, DP 1884.1.111. – Paris, 14 juin 1899, S. 1900.2. 15. – Civ. 25 janv. 1954, S.1954.1. 199), pourvu qu'elle ne laisse aucun doute sur l'intention de celui

qui l'a rédigée (Req. 21 déc. 1830 et 11 mai 1842, Jur. gén., v° Prescription civile n°573. – T.civ. Seine, 1er juin 1900, DP 1902. 2. 160. – Civ. 4 oct. 1972, Gaz. Pal. 1973. 1. 68, note H.M. – 24 oct. 1984, D. 1985. IR 131) (emphasis added).

379. Sur le fond, la reconnaissance résulte de tout fait qui implique sans équivoque l'aveu de l'existence du droit du créancier (Req. 28 janv. 1885, DP 1885. 1. 358. – 13 avr. 1899, DP 1902. 1. 12). Elle peut donc être tacite et, par exemple, s'évincer : d'offres de paiement, pourvu qu'elles n'aient pas été faites à titre de transaction ou sous forme conditionnelle (Req. 3 juin 1835, Jur. gén., vo Prescription civile, no 595-4o. - 4 janv. 1842, ibid., eod. vo, no 486. – 6 janv. 1869, DP 1869 1. 224. – Montpellier, 15 mai 1872, DP 1874. 2. 165. – Paris, 31 janv. 1946, D. 1946. 249) ; ou encore d'offres réelles, suivies ou non d'une consignation (Req. 29 déc. 1813, Jur. gén., vo Prescription civile, no. 256. – Paris, 18 août 1820, ibid., eod. vo, no. 583), même si elles n'ont pas été acceptées par le créancier (T. civ. Seine, 28 août 1875, Jur. gén., suppl., vo Douanes, no. 752) ou si elles ont été ensuite retirées par le débiteur faute d'acceptation (Req. 30 janv. 1865, DP 1865. 1. 235. – T. civ. Seine, 28 août 1875, prec.) (emphasis added).

In the light of the above notes, the limitation period running from 2010 has well been interrupted by an unambiguous concession on the part of Disputant's immediate supervisors who were the "mandataire" of the Respondent as they were those ones responsible for assessing the performance of the Disputant at Mauritius Telecom, the more so as far back in 2010, the Acting Senior Executive Human Resource, one Mr A. Dwarka himself gave Disputant the assurance that he will have no objection to upgrade him if his supervisors recommend same.

But even if we were to accept that the clock starts ticking as from 2012, the present matter will still be time-barred inasmuch as the three year limitation period has already lapsed before the reporting of the matter to the Commission for

Conciliation and Mediation on 1 July 2016. Furthermore, although such admission that took place in 2012 is a “reconnaissance” that produces an “effet interruptif”, the above finding still falls foul of **Article 2220** of the Civil Code according to which-

On ne peut, d’avance, renoncer à une prescription; on peut renoncer à une prescription acquise (emphasis added).

That article provides that there can only be “interruption” of a limitation period if the whole limitation period has lapsed. In the present matter, the “reconnaissance” of the Respondent intervened in 2012 when the three year limitation period that started in 2010 was still running; in other words, the “prescription” was not “acquire”. Had one found that the act or omission which gave rise to the dispute arose in 2008, the above finding would not be caught by the principle under Article 2220; but even based on that finding, the present dispute would be time-barred as noted in the previous paragraph. Therefore, there was no “interruption” of the limitation period as to report it to a later date than 2010.

Conclusion

Consequently, that distinct act or omission which appears more correctly to have sown the seeds of that contention which is before this Tribunal, that is, the “act or omission which gave rise to the dispute”, for the purpose of Section 2 of the Act occurred in 2010 when the disputant felt aggrieved by his salary and grade being inferior to that of his peers despite all of them having the same level of duties. The present matter is for the reasons set out above, accordingly time-barred and the Tribunal has no jurisdiction to hear the matter so that the preliminary objection must be upheld and the dispute set aside.

SD Rashid Hossen
President

SD Vijay Kumar Mohit
Member

SD Abdool Feroze Acharauz
Member

SD Parmeshwar Burosee
Member

25th of January 2019