

# EMPLOYMENT RELATIONS TRIBUNAL

## AWARD

Before: -

Shameer Janhangeer	Vice-President
Raffick Hossenbaccus	Member
Karen K. Veerapen (Mrs)	Member
Ghianeswar Gokhool	Member

In the matters of: -

**ERT/RN 133/18**

**Mr Rajesh KHOODEERAM**

*Disputant*

and

**AIR MAURITIUS LTD**

*Respondent*

**ERT/RN 135/18**

**Mr Steve ANTOINE**

*Disputant*

and

**AIR MAURITIUS LTD**

*Respondent*

**ERT/RN 136/18**

**Mrs Sonia APPADU**

*Disputant*

and

**AIR MAURITIUS LTD**

*Respondent*

**ERT/RN 137/18**

**Mrs Anupama ASKURN**

*Disputant*

**and**

**AIR MAURITIUS LTD**

*Respondent*

**ERT/RN 138/18**

**Miss Maria Patricia Brinda DHOORAH**

*Disputant*

**and**

**AIR MAURITIUS LTD**

*Respondent*

**ERT/RN 141/18**

**Mr Burt VENPIN**

*Disputant*

**and**

**AIR MAURITIUS LTD**

*Respondent*

**ERT/RN 142/18**

**Mr Jean Claude T K TOUNG CHEONG**

*Disputant*

**and**

**AIR MAURITIUS LTD**

*Respondent*

**ERT/RN 143/18**

**Mr Alain Seen Voon TO CHOON KWEE**

*Disputant*

**and**

**AIR MAURITIUS LTD**

*Respondent*

**ERT/RN 145/18**

**Mrs Waheda Bibi NAZEER**

*Disputant*

and

**AIR MAURITIUS LTD**

*Respondent*

**ERT/RN 147/18**

**Mr Veekashsing Harris MAGHUN**

*Disputant*

and

**AIR MAURITIUS LTD**

*Respondent*

The present matters have been referred to the Tribunal by the Commission for Conciliation and Mediation (“CCM”) for arbitration pursuant to *section 69 (7)* of the *Employment Relations Act (“Act”)*. The ten disputes have been consolidated upon a joint motion of the two parties. The identical Terms of Reference of the 10 consolidated disputes read as follows:

*Whether Air Mauritius Ltd should have promoted me as Flight Purser further to the internal vacancy notice dated 1 August 2017.*

Both parties were assisted by Counsel. Mr N. Henry appeared for the Disputants instructed by Mr M. Mardemootoo, SA. Whereas, Mr K. Colunday appeared for the Respondent. The Disputants as well as the Respondent have submitted their respective Statements of Case in the present matter.

#### *THE DISPUTANTS’ STATEMENT OF CASE*

The Disputants are employed as Cabin Crew Members at Air Mauritius Ltd. They are among the most senior Cabin Crew Members in service with no adverse record as to

disciplinary or performance issues. The Disputants are aggrieved by the decision of the Respondent not to have promoted them to the grade of Flight Purser.

It has been averred that Air Mauritius Ltd did not carry out any promotion exercise to appoint Flight Pursers among Cabin Crew since the past 17 years. The Disputants have for several years been assigned the position of Flight Purser when no Flight Purser was operating. Reference has been made to the Respondent's memorandum dated 27 September 2017. An internal vacancy notice was issued to the Flight Operations Business Unit for the position of Flight Purser on or about 1 August 2017 with prerequisite '*Permanent and confirmed Air Hostess/Steward with 20 years' service as Air Hostess/Steward*'. The Disputants submitted their application for same. 83 Cabin Crew Members, including the Disputants, were short-listed for the selection process, which comprised a 45-minutes multiple choice exercise and a face-to-face interview. In or about end November 2017, the Disputants learnt that 27 Cabin Crew Members were selected and appointed as Flight Pursers. Out of the appointed Flight Pursers, 18 of them are junior to the Disputants be it as per Cabin Crew Log Number and/or years of service. The appointed Flight Pursers have less experience as Acting Flight Pursers as compared to the Disputants.

Although the Disputants acknowledge that years of service is not the sole criteria for promotion, seniority has been a major consideration in relation to Cabin Crew Members; the more so that the Respondent's Cabin Crew Standard Operating Procedures provide that the most senior Cabin Crew Member, determined by the Cabin Crew Log Number, shall assume command of the aircraft. Despite that due weight was not given to the Disputants' seniority and experience, the appointment exercise had disturbing elements, namely family and/or personal relationship of the appointed Flight Pursers with Managers; several former and/or current executive officers of the Union; and two of the appointed Flight Pursers not having clean disciplinary records – one having been dismissed for gross misconduct and re-employed in 1997. The appointments made by the Respondent are unfair, unjust, discriminatory and/or unlawful. The Disputants, being as least as competent and qualified as any of the appointed Flight Pursers, had the legitimate expectation that their numerous years of loyal and unblemished continuous service would be recognised and valorised as is the case for others within the Respondent's undertaking.

The Disputants caused a *Mise en Demeure* dated 20 December 2017 to be served on the Respondent on 31 December 2017. Another group of 11 unsatisfied unsuccessful Cabin Crew Members also caused a *Mise en Demeure* to be served on the Respondent. In taking cognizance of the latter *Notice*, the Disputants realised that persons who sat on the interview panel did not possess sufficient experience and job knowledge pertaining to the

Cabin Crew Members, one of them admitting that she was a novice in the department and was not acquainted with the work environment; and there was no transparency in the conduct and assessment of the selection process. Disputes were thereafter reported to the CCM under *section 64 (1)* of the *Act* and have been referred to the Tribunal under *section 69 (7)* of the *Act*. The Disputants humbly pray to the Tribunal to find that the appointments made by the Respondent are unfair, unjust discriminatory and/or unlawful; and to promote them to the grade of Flight Purser.

#### *THE RESPONDENT'S AMENDED STATEMENT OF CASE*

The Respondent has notably admitted that the Disputants are among the most senior Cabin Crew and avers that all eligible crew had 20 or more years of service. Disciplinary records and/or adverse reports were not matters taken into account in the selection exercise. The Respondent denies that it has been unfair, unjust, discriminatory or unlawful in its decision and avers that the question of promotion never arose inasmuch as the Flight Pursers were appointed following an internal vacancy notice.

It has been notably been averred that vacancies are filled as and when there are requirements, procedures to be followed in case of such vacancies are well-established and the question of automatic promotion does not arise; Cabin Crew, according to their seniority numbers, are requested to replace Flight Pursers on flights when required and the Disputants have never been appointed and/or rostered on a flight as Flight Purser albeit in a temporary capacity; and it is denied that the prerequisite of the internal vacancy notice issued in August 2017 was based on seniority and avers that the criteria spelt out therein was to restrict the number of candidates eligible to apply in order to have a fair selection. The Respondent reiterates that seniority is not a criteria for appointment to a higher grade and takes note of the Disputants' admission regarding the weight to be attached to seniority in the recruitment process. The reference to seniority in the Cabin Crew Standard Operating Procedures – Safety and Emergency Procedures Manual relating to Succession of Command procedures are meant for operational and safety requirement purposes only.

The Respondent denies the Disputants' averments regarding disturbing elements in the selection exercise and avers that this was carried out in a fair and objective manner. The one appointed Flight Purser was re-hired following an appeal and has not had any adverse records since and the Respondent is not aware of the second appointed Flight Purser who allegedly does not have a clean disciplinary record. The Respondent avers that the *Notice*

*Mise en Demeure* served by the 11 other Cabin Crew Members is irrelevant and has no bearing on the Disputants' case. The Panel Members appointed were competent to carry out interviews and the Disputants have no competence to determine the competency and experience of the Interview Panel. The Respondent denies that there was no transparency in the conduct and assessment of the selection process. The Respondent strenuously objects to the prayers sought by the Disputants.

#### *THE EVIDENCE OF WITNESSES*

Mr Veekashsing Harris Maghun, Cabin Crew at Air Mauritius Ltd, deposed on behalf of the Disputants. Mr Maghun swore as to the correctness of his Statement of Case. He notably stated that he has 26 years' service at Air Mauritius, is among the most senior of the Cabin Crew members and has no adverse record regarding discipline and performance. The post of Flight Purser is at a higher level, earns more and has more responsibilities than a Cabin Crew member. According to him, becoming Flight Purser is a promotion although it is not automatic. He is not asking for an automatic promotion. He wishes to be promoted as he is competent, more senior, has much more experience and has put in extra work at Air Mauritius. He has even flown as Flight Purser several times over the years. According to a memorandum from the Respondent dated 27 September 2017, the most senior Cabin Crew member must be assigned the Flight Purser working position when there is no Flight Purser on board a flight. This is also according to the Succession of Command Procedures.

Mr Maghun also stated that seniority is not a requisite for the post of Flight Purser referring to its internal vacancy notice. 83 Cabin Crew members were shortlisted and assessed through a multiple-choice exercise and an interview. He is not aware of any other assessment tools. 27 candidates were appointed and 13 among them had less experience and years of service than him. Although he agreed that seniority is not the only criteria, years of service has always been a major consideration at Air Mauritius. In the past, the post was advertised twice requiring 5 years and 8 years of service respectively but he did not meet the requirements. Seniority is essential as according to the Succession of Command Procedures, the Flight Purser comes after the Pilot and Co-Pilot; and the Flight Purser is referred to as the most senior Cabin Crew member.

Mr Maghun also referred to an email dated 12 December 2017 from Mrs Doris Ah Kay Mun, who is the Senior Cabin Crew Manager responsible for the whole Cabin Crew Operations, wherein he has noted that she had very little experience when appointed as

manager. During the interview, she knew very little about the post of Cabin Crew and its operation. During the selection process, there were different groups and different papers. He was not informed about the marking scheme and only saw '40 marks' written on the question paper when sitting for same. He is not aware of the weightage nor were the results published. Afterwards, they had an appointment with Mrs Ah Kay Mun and Mrs Purmessur (the Human Resource Manager), who did not give them any exact answers to their queries. He has 26 years of service and will retire in 7 years' time with a bad feeling. He is not asking for the cancellation of the appointment but to be appointed as Flight Purser as well.

Upon questions from Counsel for the Respondent, Mr Maghun was notably referred to the vacancy notice for the post of Flight Purser and to its eligibility criteria. According to the aforesaid document, one must have 20 years' experience to apply and not to be given the post. He agreed that even if one has 30 years' experience, he does not have priority over his colleague of 20 years' experience. He confirmed that he and the other Disputants undertook a written examination and an interview for selection to the post of Flight Purser. The written examination assessed technical knowledge. The interview assessed situational questions as well as leadership and interpersonal skills. As the Flight Purser is in charge of a team, he agreed that interpersonal and leadership skills are very important.

Mr Maghun also confirmed that the interview panel comprised Mrs Ah Kay Mun, the Head of Human Resources Mr Jean Bernard Sadien, Mrs Poonam Gya (of Cabin Operations) and the Senior Manager, Compliance and Monitoring. He is not aware of the assessment criteria nor did he previously attend a job interview. He does not know the difference between marks and weightage, which is too technical. Referring to the email of Mrs Ah Kye Mun, he stated that he did not say that the panel was void because of the email and only stated that she lacks experience. He explained that it is complicated for someone, who worked at the Head Office in Port Louis, to be transferred to the Airport and know the operations and process in a space of 3 months. He agreed that the interview panel assessed his competence but the scenario set was on board. He never said that Mrs Ah Kye Mun was not competent as a Manager. He agreed that the extra work he puts in for the company is not an evaluation criteria for the post of Flight Purser.

Mr Maghun also confirmed that it is the Senior Flight Purser who selects the most senior Cabin Crew as Flight Purser when the latter is absent according to the Succession of Command. He agreed that this does not give him any right to be treated preferably when a vacancy arises. The hierarchy as prescribed at paragraph 1.11 of the Safety and Emergency Procedures Manual does not confer any seniority, any right or any priority over any colleague except in the context of security that it refers to. The issue of seniority applies in

the context of security on board the flight. He is not aware how the markings of the selection process for the post of Flight Purser were arrived at.

Under re-examination from his Counsel, Mr Maghun notably stated that he was not informed how the weightage of the selection process were done. In 2007, there was no selection exercise in relation to a recruitment for manager. The examination papers were not the same for every candidate as his colleagues told him the questions they had in their paper.

Mrs Christine Guylaine Neu, Air Hostess at Air Mauritius Ltd, was called to depose by Counsel for the Disputant. She stated having worked at Air Mauritius for 31 years. She was shown the internal vacancy notice for the post of Flight Purser and stated being qualified for same. She also identified a letter dated 31 October 2017 whereby she was summoned for the promotion exercise on 7 November 2017. She was not cross-examined by Counsel for the Respondent.

Mr Jean Bernard Sadien, Head of Human Resources at Air Mauritius Ltd, was called to depose on behalf of the Respondent. He stated being responsible for human resources aspects with a team in a hierarchical structure. When a vacancy arises, an internal vacancy notice is worked out and published internally within the company with an eligibility criteria. He identified the internal vacancy notice for post of Flight Purser along with the prerequisites and the candidate profiles mentioned therein. The exercise was one of internal promotion as the candidates were cabin crew and the level asked was for that of Flight Purser, which is a level above the former. There was a two-tiered selection exercise, which was a written examination and a face-to-face interview before a panel. More than 80 persons applied for the post of Flight Purser. He was involved in the selection interview and not in the initial process of the vacancy process.

Mr Sadien went on to state that the selection process was initiated by the Human Resources Department which is concerned with Cabin Crew. The written examination was set by the Cabin Operations Department and consisted items of procedure, technical knowledge for the job as well as basic elements for flying personnel. 40 marks were allocated for the examination and 60 marks for the selection interview. The interview comprised the evaluation of three behavioural competencies and leadership; each competence is evaluated on a scale of 1 to 5 by each panel member, which gives a total of 60 marks. The exercise was not an automatic promotion exercise; it consisted of a selection with established criteria in order to establish who shall be promoted to the post of Flight Purser in this particular case.

Mr Sadien also stated that he was part of the interview panel with three other colleagues, namely the Senior Manager Compliance Mr Raghoobar, the Cabin Operations Manager Mrs Gya and the Senior Manager Cabin Operation Mrs Ak Kay Mun. The panel members each have different posts with differing experience. The objective of the panel was to identify candidates in respect of the competencies identified for the post so as to assess the level of the candidates in relation to the competencies. The three competencies evaluated in the interview were that of leadership; of communication; and customer focus and drive decisiveness.

The candidates were invited to the interview by the Human Resources Department and the interview was carried out individually with each candidate by the panel. The panel based itself on the definition of each competence, which were predefined before the selection was made with regard to the post concerned. Documentation exists in relation to the competencies. The candidates were questioned according to the competencies and their answers were evaluated with a rating, from 1 to 5, from the panel for each candidate in relation to each competence. The rating is defined as follows: 1 – Don't meet requirements; 2 – Meet requirements with stretch; 3 – Meet requirements; 4 – Exceeds requirements; and 5 – Set standards for excellence.

Mr Sadien went on to explain that after the interview, each panel members gave his evaluation for each candidate and the whole file was transmitted to Human Resources concerned with Cabin Operations, who compiled the marks for the written examination and the ratings in respect of the interview. Each panel member gave a maximum of 5 marks per competence and this led to a maximum of 60 marks for the interview. Then there was a weightage whereby 20% was allocated for the written examination and 80% for the interview. The weightage for the interview was much higher as the post of Flight Purser consists of *inter alia* managing a team and a leadership profile was thus sought. The final weightage, which was also the candidate's final score, was calculated by the Human Resources Department. A selection report was also prepared and approved at different levels of the Respondent's hierarchy. The report gives each candidate's score, the rating for each stage, the computation with the weightage and the final score which gives a ranking in relation to the ratings.

Mr Sadien further stated that the exercise was conducted in a fair manner for all the candidates who applied. It was transparent as far as possible in relation to the internal procedure. The candidates were aware of the marks of the written examination but not of

the weightage as per practice and internal procedure. The same weightage was applied to all candidates in the selection exercise. The panel is not aware of the outcome as the Human Resources Department compiled the marks allocated by the panel members. The outcome comes after the compilation and the final report. The candidates ranked as per the required number were recommended for appointment to the post in question.

Mr Sadien was questioned by Counsel for the Disputants. He notably replied that the exercise was one of selection for a promotion as the person selected would be promoted. As per the internal vacancy notice, 20 years' seniority is required as per the '*Prerequisites*'. Seniority is important but is not a determining factor for promotion. It is important as a criteria of eligibility in this case. In relation to the chain of command, according to procedure, it is the most senior who takes responsibility of the flight. Although, the most senior cabin crew member would take charge of the flight, it does not mean he would be the most competent and this has not been stated in the procedures. Despite two *Mises en Demeure* being served in relation to the selection exercise by 37 candidates, they did not find any problems as they followed all the procedures in the selection.

Mr Sadien also replied that as per the final report, it is possible to know if his markings have been followed as the final report gives the rating of each panel member in detail before it is compiled and computed to arrive at the final score. Each panel member has to verify if the rating was correctly reported and accordingly signs the report. Mrs Ah Kye Mun had certain years of experience as Senior Manager Cabin Operations and long years of experience as a Senior Manager at Air Mauritius. He never stated that Mrs Ah Kye Mun was not well acquainted with Cabin Operations. She was appointed after having lengthily served as Senior Manager but did not have a career in Cabin Operations. Mr Sadien is not aware of any promotion without any interview or written examination. The weightage was not disclosed to candidates. As there were 83 candidates, the company could not ground them all to take the written examination on the same day for operational reasons. Thus, the examination was set over several days. The exam papers were different over the days for the different groups taking the examination.

Pursuant to re-examination, Mr Sadien notably stated that the written examination papers were set over three days. The exam papers were of the same level but did not contain the same questions for obvious reasons. The criteria evaluated was also the same.

#### *THE SUBMISSIONS OF COUNSEL*

Learned Counsel for the Disputants notably submitted that once an averment of the pleadings is taken note of, it is deemed to be admitted relying on the decision in *Sugar Insurance Fund Board & Anor. v Seagull Insurance Co. Ltd* [1997 SCJ 47]. Counsel also stated that promotion cannot be the sole province of the employer as the law provides that promotion is a labour dispute as per the *Act*. The case for the Disputants is that they should have been promoted because the whole exercise was unfair and unjust. Relying on *section 97* of the *Act*, Counsel submitted that the Tribunal can apply the principles of natural justice and put in the decision of *Phagoo v Assessment Review Committee & Anor.* [2013 SCJ 458] in support. The principle of fairness was applied in the case of *Dalwhoor and The Residence Mauritius (ERT/RN 77/18)*.

Counsel further submitted that the Disputants are the most senior cabin crew members and they did not have any adverse record, either regarding discipline or performance. The Disputants have been assigned the position of Flight Purser where there was none on the flight. It has not been disputed that they have more experience in the duties of Flight Purser than many of the persons appointed. The Disputants had the legitimate expectation that their years of loyal services and unblemished record would have been recognised and valorised. Seniority is important, be it as a prerequisite for the exercise or for security. There was no transparency and the weightage were not given. Mr Sadien did not compile or prepare the report. Reference was also made to the letter of Mrs Ah Kay Mun. Counsel therefore submitted that this is a fit and proper case for the Tribunal to apply *section 97* of the *Act* and to declare that the Disputants ought to have been appointed as the exercise was unfair, unjust and inequitable.

Learned Counsel for the Respondent, on the other hand, submitted that there is no evidence of any unfairness, breach of natural justice or lack of transparency. Counsel referred to the Terms of Reference of the dispute and stated that the prayers of the Disputants are neither here nor there. It is incumbent on the Disputants to establish that they have to be promoted on a balance of probabilities. There is confusion regarding eligibility to apply for the post of Flight Purser with seniority in the security manual in the chain of command. The promotion is one through a selection exercise and is not automatic. Those who meet the eligibility criteria will go through the selection process where their competencies will be assessed.

Counsel also expounded upon the stages of the selection exercise in great detail. He notably submitted it would be unfair for a Cabin Crew to have a right to be selected just

because he has replaced his colleague as Flight Purser onboard a flight several times previously. Counsel submitted that the Disputants have not been able to establish how the Respondent should have promoted them on the basis of the internal vacancy notice.

#### *THE MERITS OF THE DISPUTE*

The Terms of Reference of the present matter is asking the Tribunal to determine whether Air Mauritius Ltd should have promoted the Disputants as Flight Purser pursuant to the internal vacancy notice dated 1 August 2017.

The Disputants form part of the Cabin Crew at the Respondent airline working as either Steward or Air Hostess. An internal vacancy notice for the post of Flight Purser was advertised on or about 1 August 2017. The relevant aspect of this notice can be noted as follows:

#### ***INTERNAL VACANCY NOTICE***

***BUSINESS UNIT*** : ***FLIGHT OPERATIONS***

***DEPT/SECTION*** : ***Cabin Operations***

***POSITION*** : ***Flight Purser***

***SALARY SCALE*** : ***AMC.3***

#### ***PREREQUISITES:***

*Permanent and confirmed Air Hostess/Steward with 20 years' service as Air Hostess/Steward.*

***CANDIDATE PROFILE*** :

- *Leadership abilities*
- *Good Written & Oral communication skills*
- *Good Interpersonal skills*

It has not been disputed that 83 Cabin Crew members, among those who applied, were shortlisted for the selection process for the post of Flight Purser following the

aforesaid internal vacancy notice. The selection process *inter alia* comprised a written examination and an interview of each candidate carried out by a panel of four. In November 2017, the Disputants came to know that 27 Cabin Crew members were selected and appointed as Flight Purser. The Disputants being aggrieved by the selection exercise caused a *Mise en Demeure* to be served upon the Respondent airline and thereafter reported a dispute to the CCM.

At the outset, the Tribunal notes that the Disputants are asking to be promoted as Flight Purser. However, as per the evidence adduced from both sides, it has been made clear that promotion to the post of Flight Purser is not automatic. Mr Maghun, who deposed on behalf of all the Disputants, clearly stated that it would be a promotion even if it is not automatic and nor is he asking for an automatic promotion. Same was also confirmed by Mr Sadien, who stated that the selection exercise was one of internal promotion to Flight Purser, which is a level above that of Cabin Crew.

The internal vacancy notice has notably set out as prerequisites '*Permanent and confirmed Air Hostess/Steward with 20 years' service as Air Hostess/Steward*'. It has not been challenged that the Disputants have 20 years' or more experience. However, this does not imply that a candidate would automatically qualify for appointment to the post of Flight Purser on the basis of having at least 20 years' experience. As rightly stated by Mr Maghun, when cross-examined, 20 years' experience allows one to apply for the post. Moreover, the Disputant agreed that even if one has 30 years' experience, he would not have priority over his colleague of 20 years' experience.

During the hearing of the matter, the issue of the Succession of Command Procedures also cropped up. It was not denied that aboard a flight, it is the most senior Cabin Crew member who is assigned the role of Flight Purser when the latter is absent. This has also been evidenced by a memorandum dated 27 September 2017 annexed to the Disputants' Statement of Case. However, a distinction must be made with regard to the vacancy for the post of Flight Purser and the procedure of the most senior Cabin Crew member being assigned the position of Flight Purser onboard a flight.

The internal vacancy notice has listed as a prerequisite 20 years' experience to be eligible to apply for the post of Flight Purser. This should not be confounded with the Succession of Command Procedures prevailing at Air Mauritius Ltd whereby there is a chain of command onboard a flight which has to be respected with the position of Flight Purser being present in the flight's crew composition. Thus, it would be incumbent on the most

senior Cabin Crew Member to assume the position of Flight Purser in the absence of the latter. It should also be noted the internal vacancy notice does not make any reference to seniority with regard to the Succession of Command or otherwise.

In the same vein, the Tribunal has noted that Mr Maghun did admit that although he may have assumed the position of Flight Purser onboard a flight in the past, this does not give him any right to be treated preferably when a vacancy arises. Likewise, despite the Disputants contending that they have more experience as acting Flight Purser onboard a flight, this does not necessarily confer them any preference in relation to a vacancy. Mr Maghun also confirmed that the hierarchy at paragraph 1.11 of the Safety and Emergency Procedures Manual (as annexed to the Disputants' Statement of Case) does not confer any seniority or any right over a colleague except in the context of security that it refers to.

As submitted by their Counsel, the case of the Disputants rests on the unfair and unjust selection exercise to the post of Flight Purser. The Tribunal has however noted that this aspect of the Disputants' case does not expressly form part of the Terms of Reference of the dispute. However, in all fairness to the Disputants, the Tribunal shall endeavour to uncover any unfairness, unreasonableness or inequity present in the selection exercise, if any.

Although, the Disputants have notably allegedly disturbing elements in the appointment exercise in their Statements of Case, such as family and/or personal relationship of appointed Flight Purser with management, it should be noted that no evidence was adduced during the course of the hearing raising or substantiating same.

Moreover, the Disputant when adducing evidence has notably pointed to an email dated 12 December 2017 from the Senior Cabin Crew Manager Mrs Ah Kay Mun, whereby he has noted that she had very little experience when appointed as Manager. Despite the fact that Mrs Ah Kay Mun was a panel member interviewing the candidates during the selection exercise, the Tribunal has noted that she was one among four in the panel. The Tribunal also finds it farfetched to find that, during the interview, she knew very little about the post of Cabin Crew and its operation, when it was the panel members who were questioning the candidates and not the other way around.

The Tribunal has further noted that Mr Maghun stated, in cross-examination, that he did not mean to say that the panel was void because of the email nor did he state that Mrs

Ah Kay Mun was not competent as a Manager. The Tribunal would however be reluctant to reach any conclusion regarding the suitability or competency of Mrs Ah Kay Mun as Senior Cabin Crew Manager or as a panel member in the selection process based solely on an email from her and in the absence of her version on the allegations being drawn from the aforesaid email.

The Disputant also complained about the marking scheme. He stated only having seen '40 marks' written on the examination paper when sitting for same. He was not also aware of the weightage nor were the results published. In this context, it should be noted that as per the internal vacancy notice, the Disputants were informed that '*... the selection exercises which may involve aptitude/situational test, presentations/interviews or any other assessment tools.*' (as per Note 1 of the internal vacancy notice).

Moreover, during the course of the hearing, the Respondent's witness, Mr Sadien, lengthily deposed on the selection process for the post of Flight Purser. It was stated that the selection process consisted of a written examination and a face-to-face interview with each of the candidates by a panel of four members. The written examination consisted a maximum of 40 marks and the interview carried a total of 60 marks. Each panel member could allocate a maximum of 15 marks. A rating of 1 – 5 was given for each of the three competencies being assessed of the candidate. The file was thereafter transmitted to the Human Resources Department who compiled the marks of the written examination and the marks given by the panel members for the interview. A weightage exercise was carried out whereby 20% was allocated for the written examination and 80% for the interview. The final weightage was also the candidate's final score. The candidates were then ranked according to their score and the required number for the post are recommended for appointment according to their rank.

Mr Sadien unequivocally stated that the exercise was transparent as far as the internal procedure was concerned. However, the candidates were not aware of the weightage as per the internal procedure but were aware of the marks on the written examination paper (i.e. 40 marks). It was also borne out that for operational reasons, the written examination was held over three days as it was not practical to ground 83 Cabin Crew candidates at one go. Obviously, the exam papers were different but were of the same level as per the Respondent's witness, who also stated that seniority is important as a criteria for eligibility for the post of Flight Purser.

Although the Disputants have complained about transparency in the process, the Tribunal has, when examining same, noted that the selection exercise for the post of Flight Purser was conducted in a thorough and rigorous manner and has found nothing to suggest that the candidates were treated differently from each other nor did it find that some candidates were favoured over others.

Moreover, despite the Disputants claiming that there were as competent or qualified as any of the Flight Purser appointed, the evidence has borne out that the appointments to the post of Flight Purser was made pursuant to the thorough selection process as expounded upon by Mr Sadien. Appointment to the post of Flight Purser would therefore rest on the candidate's performance in the selection exercise set by the Respondent whatever the candidate's competencies, experience or qualifications may be.

The Disputants have also, in their Statements of Case, averred the facts of their colleague Mrs Christine Guylaine Neu in an attempt to demonstrate alleged unfairness in the selection exercise for the post of Flight Purser. In this regard, the Tribunal has noted that Mrs Neu has a separate dispute of her own (which was not consolidated with the present disputes) bearing identical Terms of Reference (*vide* ERT/RN 144/18). Although, it appears that the facts in relation to her dispute are not the same, it cannot be said that these would apply to the facts of the present Disputants and nor it been demonstrated to be so.

In matters of promotion and appointment, the powers of the employer cannot be overlooked. In this regard, it is pertinent to note what *Dr D. Fokkan* in *Introduction au Droit du Travail Mauricien 1/ Les Relations Individuelles de Travail, 2ème édition, p. 216* has stated on this subject:

*Le pouvoir de direction reconnu à l'employeur permet à celui-ci de prendre toutes les décisions concernant la gestion de l'entreprise, y compris les mesures ayant trait aux employés. Il décide ainsi du choix de ses employés, de la carrière de ceux-ci et éventuellement de leur licenciement. Il décide également de l'exécution du travail, de l'ouverture ou de la fermeture de tel ou tel atelier et éventuellement de celle de l'entreprise.*

(The underlining is ours.)

Likewise, the following may be noted from *Dalloz, Répertoire de Droit du Travail, Tome III, Entreprise, 30 avril 1991*, on the powers of the employer:

*SECT. 1<sup>re</sup>. – Pouvoirs du chef d'entreprise.*

## ART. 2 – FORMES DU POUVOIR PATRONAL

### § 1<sup>er</sup>. – Pouvoir de direction

...

**103.** Pour se limiter aux prérogatives sociales affectant la situation du personnel, on peut en relever deux séries de manifestations. D'abord, le pouvoir de direction comporte la maîtrise de l'emploi salarial ; en principe, c'est l'employeur qui choisit la personne du salarié et le Conseil constitutionnelle a reconnu que « ... l'employeur..., responsable de l'entreprise, doit pouvoir, en conséquence, choisir ses collaborateurs... » (Décis. n°88-244 DC du 20 juill. 1988, D.1989. 269, note F. Luchaire) ; il embauche le salarié, l'affecte à un emploi qu'il peut modifier, gère la carrière du salarié par des promotions, des déclassements, des déplacements, se sépare de lui par le licenciement, qui est l'expression la plus forte et la plus grave du pouvoir de direction.

The following may be also noted from what was stated by the then Permanent Arbitration Tribunal in *Mrs D.C.Y.P and The Sun Casino Ltd (RN 202 of 1988)* in relation to the powers of the employer:

*There is no doubt that employers do have a discretion and powers in matters of appointment and promotion.*

Although, it has not been challenged that a dispute as to promotion does constitute a labour dispute (*vide* definition of 'labour dispute' in section 2 of the Act), the Tribunal has previously decided that matters of promotion and appointment are essentially within the province of management subject to an abuse of powers by the latter. In this context, it would be pertinent to note what was held by the then Permanent Arbitration Tribunal in *E. Cesar and C.W.A. (RN 785 of 2005)*:

*The Tribunal holds that, subject to an abuse of powers on the part of management (Mrs D.C.Y.P. and Sun Casinos RN 202 of 1988), matters regarding appointment and promotion of employees are essentially within the province of management (M. Pottier and Ireland Blyth Ltd RN 279 of 1994, A. Ayrga and Tea Board RN 575 of 1998).*

The following may also be noted from *JurisClasseur Travail Traite, Fasc. 18-1 : Droits Et Obligations Des Parties, 1er Décembre 2016* on recruitment of personnel by an employer:

### **1 Pouvoirs de direction et de gestion**

**a) Lors de la formation du contrat du travail**

**8. – Etendue de la liberté de choix des salaires – La liberté d'entreprendre implique la liberté d'embauche.** Si l'employeur n'est pas libre de poser toutes les questions qu'il souhaite, notamment des questions relevant de la vie privée sans aucun rapport avec l'éventuelle prestation de travail à venir, il n'en demeure pas moins que cette liberté est fondamentale. Sous réserve des dispositions légales protectrices des candidats à l'embauche (V. JCI. Travail Traité, fasc. 17-10), l'employeur recrute qui il veut.

(The underlining is ours.)

In relation to the issue of natural justice, *section 97* of the *Act* allows the Tribunal to have regard to *inter alia* the principles of natural justice in the exercise of its functions with regard to a matter before it. The Tribunal has however noted from the Supreme Court case of *Phagoo v The Assessment Review Committee & Anor.* [*supra*], as submitted by the Disputants' Counsel, that the complaint of breach of natural justice supposedly related a failure to inform the appellant of her right to legal representation, to call witnesses and cross-examine witnesses. This mostly pertained to a matter of procedure before the Assessment Review Committee in the aforesaid decision and is separate from the duty to apply natural justice in the Respondent's conduct of the selection exercise in selecting candidates to the post of Flight Purser pursuant to the internal vacancy notice dated 1 August 2017.

Furthermore, although Counsel for the Disputants has contended that the principle of fairness was applied by the Tribunal in the case of *Dalwhoor (supra)*, the dispute in the aforesaid matter related to terms and conditions of employment, notably on whether the employee could wear a '*tikka*' during work hours, and is different from the disputes at hand which is one of promotion to the post of Flight Purser. It would therefore be inappropriate for the Tribunal to apply the facts of *Dalwhoor* to the present disputes.

The Tribunal having notably examined the complaints of the Disputants in relation to the selection exercise for the post of Flight Purser, the process of the selection exercise itself and also having considered the powers of the employer in relation to matters of promotion, appointment and recruitment cannot come to the conclusion that the selection exercise was unfair, unjust, unreasonable or inequitable vis-à-vis the Disputants. The Tribunal cannot therefore find that the Disputants should have been promoted as Flight Purser further to the internal vacancy notice as per the identical Terms of Reference of the disputes.

The consolidated disputes are therefore set aside in each case.

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

**SD Raffick Hossenbaccus  
(Member)**

**SD Karen K. Veerapen (Mrs)  
(Member)**

**SD Ghianeswar Gokhool  
(Member)**

**Date: 20<sup>th</sup> November 2019**