

EMPLOYMENT RELATIONS TRIBUNAL

AWARD

ERT/ RN 94/17 to ERT/RN 96/17

Before

Indiren Sivaramen	Vice-President
Raffick Hossenbaccus	Member
Rabin Gungoo	Member
Ghianeswar Gokhool	Member

In the matter of:-

Mrs Rookchana Jewan-Doolub (Disputant No. 1)

And

Central Electricity Board (Respondent)

Mr Danapermal Vencatachellum (Disputant No. 2)

And

Central Electricity Board (Respondent)

Mr Mohamed Moussa Emambocus (Disputant No. 3)

And

Central Electricity Board (Respondent)

The above cases have been referred to the Tribunal by the Commission for Conciliation and Mediation under Section 69(7) of the Employment Relations Act (hereinafter referred to as “the Act”). The parties were assisted by Counsel. All the cases were consolidated following a motion made by Counsel for Disputants to which there was no objection on the part of the Respondent. The terms of reference are identical in all the cases, except for the particular names of the disputants and read as follows:

“Whether I, employed as Computer Data Base Operator holding a Diploma in IT should have been upgraded to Salary Scale 7a instead of Salary Scale 5 with effect from July 2014 or otherwise.”

The Respondent has raised preliminary objections in the present matter and the Tribunal has delivered a ruling setting aside the objections. The Tribunal has proceeded to hear the whole evidence and the submissions of both counsel. Disputant No. 1 deponed on behalf of all the disputants. She stated that all the averments made in her Statement of Case and Statements of Case of the Disputants Nos. 2 and 3 are true. She stressed on the increase in the number of bills that they have to print, that is, from 230,000 in 2002 to 470,000 now and this only for domestic customers. She stated that they are involved in the operation of backup and system server library. She produced a copy of the submission of IT/MIS Department dated 31 July 2013 in relation to the Job Evaluation & Salary Review exercise then undertaken at the Respondent (Doc B).

In cross-examination, Disputant No. 1 conceded that every four years there is a collective bargaining process at the Respondent and there is a salary review where the terms and conditions of employment are reviewed every four years. A new collective agreement is signed every four years. She also agreed that the Disputants were the only officers who were appointed as Computer Database Operator on salary scale 5 on a “Personal to Holder” basis in 2005. In the salary review of 2005, it was mentioned that any new appointment as Computer Database Operator will be on the (lower) salary scale 4. In the salary review of 2009 for the period 2009 to 2013, a new post of IT Technician was created and Disputant No. 1 agreed that the IT Technician has a broader scheme of duties which includes duties they are performing as Computer Database Operators. She however stated that this was “only on paper” as the IT Technician was more often than not on remote sites dealing with computer hardware, troubleshooting and networking issues. She agreed that Disputant No. 2 has retired since the present case was lodged and added that a Trainee IT Technician has come “on and off” in their department. When confronted with the scheme of duties of the Computer Database Operator, she conceded, very reluctantly, that this was the official scheme of duties but averred that this was not in accordance with what they are actually doing. She agreed that despite the collective agreement which was signed, the scheme of duties for Data Base Operators has remained unchanged. She averred that they have not been given due consideration. She however agreed that the IT Technician with a broader scheme of duties than hers is on (lower) salary scale 4 and not on salary scale 5. She deponed in relation to the duties she has to perform as a Computer Data Base Operator, more particularly, in relation to the printing of bills, performing backups

as planned by the IT Manager, inputs pertaining to direct debit operations and assisting the help desk support services.

She agreed that as from 2005 no new Computer Database Operator has been recruited and that instead IT Technicians have been recruited. She made representations to the salary commissioner for the salary review of 2009/2013, made representations in 2013 and again made representations in 2017/2019 but these were turned down. She was referred to the duties and responsibilities of IT posts which were on salary scale 7 and asked if these could fairly be considered as being at the same level as hers. She could not answer and each time stated that she would "*leave it for the floor to answer*". She however maintained that her duties and responsibilities were those of salary scale 7 even though she admitted that one could not compare the IT posts on salary scale 7 mentioned to her, with her post.

Mr Boodhun, Acting Human Resources Executive at Respondent, then deponed on behalf of the Respondent and he solemnly affirmed to the correctness of the contents of the Statement of Reply of Respondent to the Statement of Case of (each) disputant. He produced a copy of an extract from the Collective Agreement of 2005 whereby Computer Database Operator was put at salary scale 5 on a "Personal to Holder" basis (Doc C). It was also agreed that all new recruits as Computer Database Operator would be on salary scale 4 (Doc D). For the Collective Agreement of 2009, the post of IT Technician was created on salary scale 4 (Doc E) and the said post was again mentioned in 2013 in salary scale 4 (Doc F). Mr Boodhun also produced copies of the scheme of duties for two posts at salary scale 7, that is, the post of Assistant ICT Analyst and that of Assistant IS Analyst (Docs G and G1 respectively). He stated that the Respondent will no longer recruit Computer Database Operators and that the IT Technician will eventually take the post at the Printing Section. He stated that the disputants have been upgraded because of their length of service and in order not to penalise them.

In cross-examination, Mr Boodhun agreed that currently there is no scope for promotion for the disputants but he stated that the disputants can apply for any post in a higher position in another section of the IT Department. He agreed that the posts of Chief Database Operator and Assistant Computer Operator were abolished, though he stated that this was long ago, and that their duties have been shared with the three disputants. He was questioned in relation to other posts bearing in mind the minimum qualifications required for the said posts. He stated that all recommendations made are submitted to the salary consultant and the latter does the job analysis and make his own recommendations. In re-examination, he stated that the posts referred to him require a higher level of responsibility and expertise and cannot be compared with the post *in lite*.

Mr Mohit, Principal Analyst, deponed as a witness for the Respondent and he explained that the Computer Database Operators run computer programs, do backup of IT systems and print bills. He added that they have to open the program, enter the parameters and schedule it for running. He explained the duties the Computer Database Operators have in relation to direct debit and for backup of IT systems. He

confirmed that as per the list of duties, the duties of the IT Technician are broader than the duties of the Computer Database Operator. He stated that the Assistant ICT Analyst and Assistant IS Analyst have more responsibilities than the Computer Database Operator. He stated that when an IT Technician is posted in the Printing Section, he is doing all the duties of a Computer Database Operator. Over and above these duties, the IT Technician may be called upon to perform other duties. Mr Mohit also stated that the duties listed in Annex 11 to Disputants' Statements of Case are in fact duties already contained in their scheme of duties. In cross-examination, he agreed that there is a Trainee IT Technician in the Printing Section. The latter has to go on "site" on very rare cases and on demand.

The Tribunal has examined all the evidence on record including the submissions made by both counsel. Counsel for Disputants, very fairly, conceded in his submissions that he does not deny the finality of the salary consultant report. Right from the stage of the preliminary objections, Counsel for Disputants conceded that there was a collective agreement which was signed. He argued, and rightly so, that a collective agreement applies to the (relevant) bargaining unit and has *préséance* over individual contracts. There was no objection to production of copies of extracts of the collective agreement for the period 2013 – 2017 (Docs A and A1). As per Doc A, the salary review report, subject to the Errors and Omissions Report referred to therein, amongst other documents mentioned, forms part of the Collective Agreement between the parties. The report of the salary consultant (subject to any Errors and Omissions Report) thus forms part of the collective agreement signed between management and the recognised trade union for the bargaining unit which includes the disputants (irrespective of whether they are actually members of that union or not). As per this report, Computer Database Operator (just like IT Technician) was classified at salary scale 4 whereas Computer Database Operator (Personal to Holder) was classified at salary scale 5 (extract produced as Doc F). All this is not disputed before us.

Whilst, section 67 of the Act, upon which Counsel for Respondent has relied in his preliminary objections to move that the disputes be set aside without even hearing evidence, catered strictly for the stage when the matter was at the level of the Commission for Conciliation and Mediation, it is important to bear in mind that the Tribunal, when delivering an award, may have regard to various principles listed under section 97 of the Act. These principles will include, for example, "the principles and best practices of good employment relations". The Tribunal also has to bear in mind relevant international treaties ratified by the Republic of Mauritius to ensure that its award does not go against any such treaties but instead uphold principles enshrined in such instruments. Part III of the Collective Bargaining Convention, 1981 (No. 154) (ratified by Mauritius) relates to the promotion of collective bargaining. Article 5 under the said Part III reads as follows:

“1. Measures adapted to national conditions shall be taken to promote collective bargaining.

2. The aims of the measures referred to in paragraph 1 of this Article shall be the following:

(a) ...

(d) bodies and procedures for the settlement of labour disputes should be so conceived as to contribute to the promotion of collective bargaining.”

In the present case, there was a collective agreement reached between management and the relevant recognised trade union which related to a salary report drawn by a salary consultant. The present issues were raised with the salary consultant who in his wisdom decided to keep the post of Computer Data Base Operator on grade 5 on a “Personal to Holder” basis. The unchallenged evidence is to the effect that new entrants in the grade of Computer Data Base Operator (if any) would be at grade 4. Also, it has not been challenged before us that the IT Technician has a more comprehensive list of duties than the Computer Data Base Operator, and which may even include the duties performed by the Computer Data Base Operators. Yet, the IT Technician has been graded only at grade 4.

The Tribunal will be failing in its duties if it were to grant the prayers of the disputants in the present matter. Indeed, we are dealing with an organisation where there has been successive collective agreements including the latest one for the period 2013 – 2017 and which agreement *“shall thereafter be deemed to have been renewed by ‘tacit reconduction’ until a new Collective Agreement in line with the provisions of the Employment Relations Act 2008 – section 55 (3A) is entered into”* (Doc A). The disputants have made representations to the consultant who did not deem it fit to upgrade the post of Computer Data Base Operator to grade 7a or to any other higher grade than grade 5. Based on all the evidence before it, the Tribunal finds absolutely nothing wrong in the grading of Computer Data Base Operator on grade 5 on a “Personal to Holder” basis. New entrants as Computer Data Base Operators, if any, and IT Technicians would, instead, be graded at the lower grade 4. The comparison made in relation to a few other grades which have, allegedly, been upgraded has not impressed us neither since there needs to be a proper job evaluation exercise in terms of duties and responsibilities before one can jump to any conclusions. The simplistic approach of relying excessively on basic qualifications requirements instead of evaluating properly duties and responsibilities attached to the particular posts (after a proper job analysis) has not helped at all to buttress the case of the disputants.

For the reasons given above, the Tribunal finds that, not only there is absolutely nothing on record which would warrant the Tribunal upgrading the disputants to grade 7a (or to any other grade) but there is nothing which shows that they have been unfairly or wrongly treated which would warrant the intervention of the Tribunal. In fact, any conclusion to the contrary in the light of the facts of this particular case would, in our mind, necessarily create anomalies in relation to other grades. Also, any other conclusion in the particular circumstances of this case may affect basic principles of

collective bargaining. For all the reasons given above, the disputes are purely and simply set aside.

SD Indiren Sivaramen

Vice-President

SD Raffick Hossenbaccus

Member

SD Rabin Gungoo

Member

SD Ghianeswar Gokhool

Member

26 July 2019