

EMPLOYMENT RELATIONS TRIBUNAL

AWARD

Before: -

Shameer Janhangeer	Vice-President
Vijay Kumar Mohit	Member
Karen K. Veerapen (Mrs)	Member
Teenah Jutton (Ms)	Member

In the matters of: -

ERT/RN 114/18

Mr Hansraj ADAYA

Disputant

and

MAURITIUS PORTS AUTHORITY

Respondent

ERT/RN 115/18

Mr Amohammad A. ATCHIA

Disputant

and

MAURITIUS PORTS AUTHORITY

Respondent

ERT/RN 116/18

Mr Ashley COOPPOOSAWMY

Disputant

and

MAURITIUS PORTS AUTHORITY

Respondent

ERT/RN 117/18

Mr Roshan KOMKOON

Disputant

and

MAURITIUS PORTS AUTHORITY

Respondent

ERT/RN 118/18

Mr Yograj NURKOO

Disputant

and

MAURITIUS PORTS AUTHORITY

Respondent

ERT/RN 119/18

Mr Saminaden MINIANDÉE

Disputant

and

MAURITIUS PORTS AUTHORITY

Respondent

ERT/RN 120/18

Mr Dian Iswar RAJKOOMAR

Disputant

and

MAURITIUS PORTS AUTHORITY

Respondent

ERT/RN 121/18

Mr Shunmuga Sundaram MURUGESAN

Disputant

and

MAURITIUS PORTS AUTHORITY

Respondent

The present matters have 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 “Act”). The eight disputes have been consolidated. The common Terms of Reference of the disputes read as follows:

Whether work performed by me on Sundays at the Port Control/Harbour Radio, while overseeing/monitoring shipping operations/movements inside and outside harbour as an essential communication link with the different units of the Marine/Shipping operations falling under the responsibility of the Port Master at the Mauritius Ports Authority, should be remunerated at the same rate (i.e. double rate) of the different units falling under the Marine/Shipping operations falling under the Mauritius Ports Authority or otherwise.

Both parties were assisted by Counsel. Mr R. Rault appeared for the Disputants instructed by Mrs F. Maudarbocus-Moolna, SA. Whereas, Mrs P. Ramjeawon Varma, Principal State Counsel, appeared for the Respondent instructed by Ms S. Angad, Principal State Attorney. The Disputants as well as the Respondent have submitted their respective Statements of Case in the matter.

THE DISPUTANTS’ STATEMENT OF CASE

The Disputants are posted at the Harbour Radio Unit of the Mauritius Ports Authority (“MPA”) and are all members of the Mauritius Ports Authority Maritime and Other Staff Union (“MPA MAOSU”), which is a registered trade union recognised by the MPA. In 2010, a Human Resource Development (“HRD”) Plan prepared by KPMG was implemented at the MPA and introduced a new shift system and shift allowance was now payable in lieu and stead of overtime. Prior to this report, work on a Sunday was remunerated at double rate.

It is averred that the Consultant recommended that all employees working on the first two Sundays will be remunerated at a single hourly rate and at the double hourly rate for the third Sunday. The HRD Report 2010 states that it was agreed with the Maritime Transport and Port Employees Union (“MTPEU”) that shift employees engaged in Shipping operations would be paid at double rate as from the first Sunday. However, this recommendation only applied to Pilots, Skippers and Tug Services. The Disputants’ trade union made representations to the Respondent for Harbour Radio Operators for shift

allowance to be paid on the same basis as Pilots, Skippers and Tug Services as they also form part of Shipping operations and the HRD Report 2010 did not give any reason for their exclusion. The Respondent informed that the matter will be considered by the next Consultant whose report would be effective January 2016.

The Disputants', through their trade union, submitted written representations to the Respondent and the Consultant and had a meeting with the latter. The report was published in April 2017 and maintained the same rate of Sunday Allowance as per the HRD Report 2010. It makes no mention of the representation nor why Radio Operators should not be paid at double rate as from the first Sunday.

The Disputants aver that the Harbour Radio Unit is a major component of Marine/Shipping operations as they monitor ships of less than 100 tons; surveillance is made by way of the Vessel Traffic System; they are at all times visually in contact with ships; they act as liaison between Pilot/Skipper/Tug whenever a ship is in difficulty; they guide ships for navigation in cases of obstruction and no visibility; they monitor all ships that anchor at the outer harbour; and their Unit is the first command and control centre in cases of incident within the Port. There is no valid reason why they are being discriminated against and should be remunerated at double rate as from the first Sunday's work same as other employees involved in Shipping operations. The Disputants' aver that they are entitled to be paid shift allowance at double rate as from the first Sunday.

THE RESPONDENT'S AMENDED STATEMENT OF CASE IN REPLY

The Respondent has raised a two-fold Preliminary Objection in its amended Statement of Case in Reply.

On the merits, the Respondent has notably averred that the HRD Report 2010 introduced a new shift system whereby Sunday was reckoned as a normal working day and recommended the payment of a shift allowance and an allowance for working on Sunday. It is admitted that prior to the report, work on Sunday was remunerated at double rate. The HRD Report 2010 recommended payment of Sunday allowance to different categories of employees working on shift and the rationale for payment of Sunday allowance to Pilots and employees on the field had been worked out by the HRD Consultants based on an assessment of the duties and risks associated with the specific port activity after

consultation with the two trade unions on the matter. The Respondent takes note that the Disputants' trade union made representations to the Consultant. The mode of payment for Sunday allowance in the HRD Report 2010 was maintained in the HRD Report 2016.

The Respondent denies that ships of less than 100 tons are monitored by the Harbour Radio Unit without need for a Pilot; takes note that surveillance is made by way of the Vessel Traffic System; takes note that the Harbour Radio Unit is at all times visually in contact with ships; takes note that radio operators act as liaison when ships are in difficulty; avers that in cases of restricted visibility, it is the Captain who is fully responsible for the conduct of the vessel; takes note that radio operators monitor all ships anchored in the outer harbour; and avers that the Harbour Radio Unit acts as a control centre in case of any maritime incident occurring within the port waters and communicates the message to concerned parties for action.

The Respondent avers that the Harbour Radio Unit is a communication link in Marine operations and Shipping activities do not encompass its activities; the nature, complexity and risks associated with each unit operating within the whole Marine/Shipping business are different and distinct from each other; the staff of the Harbour Radio Unit operate in a control room as opposed to other employees of Marine operations (Pilots, Skippers, Senior Technicians, Tug Services and Seaman); the staff of the Harbour Control Unit work in a secure environment and are not exposed to bad weather conditions and other physical elements of Marine activities; the staff of the Harbour Control Unit are not involved in any physical intervention; and a collective agreement incorporating terms and conditions, including payment of Sunday allowance, has been signed by the Respondent and the MTPEU, which represents the interests of the majority of employees of the MPA.

THE DISPUTANTS' STATEMENT OF REPLY

The Disputants have notably averred that their union made specific representations that they be remunerated at double rate for every Sunday. The Consultants had discussions with the MTPEU, which does not represent the Disputants' interests. The HRD Report 2010 does not specify why the Harbour Radio Unit has been discriminated against referring to paragraphs 6.5 to 6.5.3 of the Report. The aforesaid paragraphs of the report spell out the duties of the Harbour Radio Unit. It is also averred that the Respondents did not call upon the MPA MAOSU, which represents Pilots, Skippers, Marine Engineers, Controller-Marine

Engineering, Officers – Harbour Radio and Technicians – Harbour Radio, to sign any collective agreement and the MTPEU is not the sole bargaining agent.

THE EVIDENCE OF WITNESSES

Mr Prithviraj Gungaram, Skipper, was called to depose by Counsel for the Disputant. Mr Gungaram is the Secretary of the MPA MAOSU which is recognised and represents the categories of Pilots, Skippers, Marine Engineers and Harbour Radio Officers. The Disputants are members of his union. He produced a letter dated 20 December 2017 (Document A) from the MPA confirming his union's representation. He also produced an extract of the HRD Report 2010 (Document B) on '*Shift system and allowance*'. He also referred to notes of minutes between his union and the MPA dated 18 April 2013 (produced as Document D) whereby there was an issue with regard to overtime and Sunday allowances, to which the Director Human Resources stated he would look into the grievances through the Port Master. There has been no development following this meeting.

Mr Gungaram stated that the Disputants from the Harbour Radio Unit have not been benefitting from the double allowance rate on the first two Sundays. An extract of the HRD Report 2010 titled '*Shift Allowance*' was produced (Document C). There has been no explanation why the Harbour Radio Unit is not benefitting from double rate as from the first Sunday as other employees of the Marine Section. He produced a letter dated 28 February 2018 (Document E) from his union addressed to the Director General of the MPA as well as a letter dated 13 September 2017 from the MPA (Document F) referring to item 4 '*Payment for work performed on Sundays*' of same. The Harbour Radio Unit forms part of Shipping and Marine operations being the communication link in Shipping operations.

Mr Gungaram also stated that there was no consultation with the MPA MAOSU on the issue of Sunday allowance prior to the HRD Report 2010, whereas consultations were held for the HRD Report 2016. He produced a letter dated 21 March 2018 (Document G) as well as a memorandum submitted to the Consultant in relation to the Harbour Radio Unit (Document H). He referred to item 6.5 of the HRD Report 2016 whereby the Harbour Radio Unit is described as the nerve centre of communications in case of incident or accident in the port area. When ships come to port, the Unit is the first line of communication and conveys the message to the Pilot. The Pilot then gives orders for tugs to come out and an operation is carried out to get the ship into the harbour. This operation cannot exclude the Harbour Radio Unit.

Mr Gungaram produced an extract of the HRD Report 2016 (Document J) and another extract of the same report titled '*Shift Allowance*' (Document K). Single rate payment is in fact at a rate of 1.5 because it is a Sunday. It was never mentioned that due to risk factors Sunday allowance is being paid separately. The reason given was that Sunday is to be considered a normal working day. He also produced Circular Note No. 15 of 2012 from the MPA (Document L) regarding salary review in 2013. Representations have constantly been made for the payment of the allowance from the first Sunday at double rate for the Harbour Radio Unit by his union since the HRD Report 2010. In 2013, management told them that the condition will be reviewed in the next HRD Report, but in 2013 there was only a salary review. They were then told that this will be reviewed in the HRD Report 2016 but to no avail. The dispute was reported to the CCM and he produced a copy of the Report of the Dispute Form (Document M).

Mr Gungaram was questioned by Counsel for the Respondent. He notably stated that the Disputants signed the option form for the HRD Report 2010 but were told by management that any grievance will be looked upon after signing the option form, but he could not produce the correspondence from management on this issue. There was no formal committee set up after the HRD Report 2010 to look into grievances. Between 2010 and 2013, the issue of Sunday allowance was raised with management; however, there is nothing in writing to this effect. The issue of Sunday allowance is not mentioned in the notes of minutes dated 18 April 2013 (Document D) but was among the anomalies present at the time. As regards paragraph 4 of the aforesaid notes of minutes, the issue of Sunday allowance as from the first Sunday is not in relation to Harbour Unit Officers.

Mr Gungaram also stated that there is nothing in written to show that the issue was raised between 2013 to 2016 but they were told by management that all pending issues will be looked upon in the next HRD Report in 2016. The Consultant maintained the recommendation of double payment as from the third Sunday for the Disputants despite representations made by his union. He agreed that the posts of Pilots, Tugs and Skippers and that of the Harbour Unit have different functions. Pilots, Tugs and Skippers need to be physically on board, whereas the officers of the Harbour Unit are posted in the Control Room at the MPA and are not physically exposed to adverse climatic conditions nor are they involved in any physical intervention. He agreed that the only time the issue of the payment of the Sunday allowance was taken was in the context of the HRD Report 2016 with representations being made to the Consultant.

Mr Gungaram, under re-examination, stated that the notes of minutes dated 18 April 2013 were taken by management. He also produced an email dated 29 November 2010 (Document N) between the union and the former Director of Human Resources at the MPA whereby the union was advised on the consequences of not signing the option form.

Mr Hansraj Adaya, Harbour Radio Technician, deposed on behalf of the Disputants. He agreed that he signed the option form for the HRD Report 2010 on the union's advice, who also told them that any grievance will be looked into after signing. Telephonists and Messengers at the MPA also benefit from double rate as from the first Sunday. Mr Adaya explained that when a ship arrives, they receive information from the ship and pass it on to the Pilot, who will go out and take the ship in. Once on board, the Pilot reports to the Harbour Radio Unit and also reports when the vessel is alongside and fastened. They also have to inform the Pilot when there is another ship leaving the port and another approaching. The categories of Skippers and Pilots should be paid risk allowance instead of the double allowance as from the first Sunday. There is no valid reason for Radio Operators to be discriminated and not be remunerated as from the first Sunday at double rate as other employees in Shipping operations.

In response to questions by Counsel for the Respondent, Mr Adaya notably stated that he could not confirm where in the HRD Report 2010 it is mentioned that '*... it was agreed with the MTPEU that shift employees who were engaged in shipping operations would be paid at double rate...*' as averred in his Statement of Case. The recommendation in the HRD Report 2010 was accepted by all the Disputants, who also signed the option form. He produced a copy of the option forms of each of the Disputants (Document O, O₁ to O₇). Sunday allowance as from the third Sunday was not accepted by the Disputants. It took them so long to report the matter as management said that they will look into the matter in 2016 referring to the notes of minutes dated 18 April 2013 – which he agreed did not mention the issue of Sunday allowance in relation to the Harbour Unit. A copy of their representations (Document H) was also sent to the MPA. The Disputants have not signed the option form to be governed by the HRD Report 2016. He agreed that the activities of the officers in the Harbour Unit are different from the activities of the Pilots, Skippers and those in Tug Services. Officers in his unit are not involved in any physical intervention. They are being discriminated as they are part of Shipping operations and should not be excluded.

Upon questions put by the Tribunal, Mr Adaya stated that their dispute arose because they are not being paid twice as from the first Sunday and this after the HRD Report in 2010. As from December 2010 or January 2011. The dispute falls within their terms and conditions of service.

Mrs Prameshwaree Gungaram, Human Resource Manager, was called to depose on behalf of the Respondent. She stated that the HRD at the MPA is done every five years and looks at salary review, term and conditions, shift systems and payment of allowances amongst others. The Term of Reference of the Consultants for the 2010 HRD Report included carrying out a proper job evaluation for each position and grade, reviewing terms and conditions of service, proposing consolidated terms and conditions of service for employees, reviewing existing hours of work and shift systems. A copy of the aforesaid Terms of Reference was produced (Document P). The Consultants obtained information from employees and management and consulted with the union; an extract of the HRD Report 2010 was produced to this effect (Document Q). In relation to workers of the Harbour Radio Unit, the HRD Report 2010 provided for payment of Sunday Allowance as from the third Sunday, whereas Skippers, Pilots and Tug Services benefit from payment of Sunday Allowance at double rate as from the first Sunday; an extract of the aforesaid HRD Report 2010 was produced to this effect (Document R). The general rule, as per the report, for employees who work on Sundays is that they are paid single rate first and double rate as from the third Sunday; the relevant extract of the HRD Report was produced (Document S). She is not aware of any representations made by the Disputants in relation to the HRD Report 2016.

Mrs Gungaram also stated that all the Disputants signed the option form for the HRD Report 2010 and have so benefitted from the new salaries and conditions attached, including the payment of Sunday Allowance. There was no protest from the Disputants at the time of signing the option form in relation to the issue of Sunday Allowance. The HRD Report 2010 was published in November 2010 and its effective date was 1 January 2011. The HRD Report 2016 was produced by BDO and a copy of its Terms of Reference was produced (Document T). The recommendations of Sunday Allowance in the HRD Report 2016 remained the same as in the 2010 report. The MPA accepted the recommendations of the HRD Report 2016, same was implemented and there was no reason to depart from the recommendations. A copy of the Collective Agreement dated 24 May 2018 signed between the Respondent and the MTPEU was produced (Document U). The HRD Report 2016 has maintained the mode of payment of Sunday Allowance.

Mrs Gungaram was questioned by Counsel for the Disputants. She notably stated that two unions are recognised at the MPA, i.e. the MPA MAOSU and MTPEU. The unions were invited to make their representations directly to the Consultant. There is no specific explanation in the HRD Report as to why the Harbour Radio Officers have not benefitted from the same Sunday Allowance as Skippers and other employees of the maritime section.

Their duties are different and they do not directly form part of the Shipping movements. The Harbour Radio Unit acts as a communication link between ships entering the harbour and the Pilots; however, they are not on the tugs as are Pilots, Skippers and Tug Services. There are risks associated and they are not exposed to bad weather. They also operate during cyclonic weather.

Mrs Gungaram also stated that prior to the HRD Report 2010, Sunday was remunerated as a public holiday at double rate. Telephonists, who work on a roster system, are paid double rate for their Sundays worked as are Messengers. The risk factor is one of the elements why the workers of the Marine section are being paid double rate as from the first Sunday. They are also paid a Shift Allowance. She does not agree that there is no reason to discriminate the Harbour Radio Unit from the other categories of workers of the Marine section. The Consultant recommended the mode of payment and the MOSU adhered to the the HRD Report 2016 *in toto*. It is not mentioned in the report that the Consultants have taken on board the representations of the Disputants and made their recommendations.

Mrs Gungaram, under re-examination, stated that Telephonists and Office Attendants work on roster and not on the shift system. There is no discrimination between the Disputants and the Pilots, Tug Services, etc. as the Consultants are normally called upon to make a proper job evaluation of each and every position and come up with their recommendation.

Mr Louis Gervais Charles Benoit Barbeau, Port Master, was also called to depose on behalf of the Respondent. He stated that the Harbour Radio Unit is one of the four units within the Marine Department. Pilots, Skippers and Tug Services form part of the Marine Unit of the Marine Department and are more on the operational side. The Harbour Radio Unit are the start of the link and the end of the link and their work is to see that the works are executed within the time frame that has been set. They liaise with all departments and inform the Pilot when the ship is ready to come in. The Officers of the Harbour Radio Unit are not involved in physical intervention at all. The Consultant has based its recommendations on the nature of the work of the group.

Mr Barbeau, upon questions from Counsel for the Disputants, notably stated that if there was no one to operate the Harbour Radio Unit, the Pilots have all the facilities of the Harbour Radio in the *Capitainerie* Building. The Pilots replace the Radio Operators when the latter are not available. The Harbour Radio Unit does have an essential part of the whole of the Marine operations.

THE RESPONDENT'S PRELIMINARY OBJECTIONS

The Respondent has in its Amended Statement of Case in Reply raised two preliminary objections as follows:

1. *The point in dispute does not tantamount to a labour dispute as defined in section 2 of the Employment Relations Act since it arose as far back as in 2010.*
2. *Respondent moves that the present dispute be set aside in as much as the granting of an award in terms of the Terms of Reference of the labour dispute before the Tribunal will be inconsistent with section 14 (a) of the Ports Act and thus, be contrary to section 72 (5) of the Employment Relations Act.*

State Counsel for the Respondent first submitted on the second aspect of the preliminary objection raised. She referred to *section 6 (1) (a)* of the *Ports Act* wherein the Board of the MPA is vested in the administration of its affairs. At *section 14* of the *Ports Act*, the pay of the employees is one of the issues that rests with the Board. As per the prayers of the Disputants, at paragraphs 17 and 18 of their Statement of Case, they are asking the Tribunal to decide on an issue which relates to the pay of the worker. If the Tribunal were to so grant the prayer, it would be acting in breach of *section 72 (5)* of the *Act*. Moreover, the Disputants have conceded that the dispute relates to terms and conditions of employment. Counsel also relied on the ruling of the Tribunal in the case of *M. Daby and Open University of Mauritius (ERT/RN/ 37/2017)* in support of her submissions.

In relation to the first aspect of the preliminary objection, State Counsel for the Respondent submitted that the present dispute does not amount to a labour dispute within the meaning of *section 2* of the *Act* having arose as far back as 2010. The difference in treatment of the payment of Sunday Allowance was introduced in the HRD Report 2010 and the Disputants signed the option form to same. There is nothing between 2010 and 2013 to show that anything was raised in relation to the issue. There is a lack of evidence to conclude that this issue was continuously raised as from 2010. As the Tribunal only has jurisdiction to hear disputes as defined under the *Act*, the present dispute is excluded from the definition and is time-barred.

Counsel for the Disputants submitted, in relation to the second aspect of the preliminary objections, that the simple mention of the word '*pay*' in the *Ports Act* cannot be ascribed to mean that the word of the employer is final and that the Tribunal, not even the Supreme Court, would have any power or responsibility to intervene. If so, if the employer decides to decrease the pay of the workers, the Tribunal or even the Supreme Court does not have a say. Counsel submitted that this simply cannot stand.

In relation to the first aspect of the preliminary objection, Learned Counsel for the Disputant submitted that just because the issue (of Sunday Allowance) has been set in stone in 2010 concerning these categories of workers, are they not allowed to raise a labour dispute under the *Act*. A labour dispute means that when a worker comes ahead and is seeking redress. What will become of the claims of the workers as there is no valid reason for them to be discriminated. There is no reason why they should be excluded, should not be remunerated, as other category of workers.

The Terms of Reference in the present matter is asking the Tribunal to determine whether the work performed by the Disputants at the Port Control/Harbour Radio should be remunerated at same rate (i.e. double rate) as the different units of the Marine/Shipping operations falling under the MPA or otherwise.

In relation to the first aspect of the preliminary objection, Counsel for the Respondent is contending that the dispute referred to the Tribunal is not a labour dispute as defined under the *Act* in as much as it has arisen in 2010 following the publication of the HRD Report 2010.

This particular objection is grounded under *paragraph (c)* of the definition of a labour dispute under *section 2* of the *Act*. This provides as follows:

"labour dispute" –

...

(c) *does not include a dispute that is reported more than 3 years after the act or omission that gave rise to the dispute;*

It is clear that a labour dispute does not include a dispute that is reported more than three years after the act or omission that gave rise to the dispute. It is therefore incumbent

on the Tribunal to ascertain what is the act or omission which gave rise the present dispute as per its present Terms of Reference.

It is also apposite to note what the Supreme Court, in the matter of *D. Ramyeed-Banymandhub v The Employment Relations Tribunal* [2018 SCJ 252], stated in relation to *paragraph (c)* of the definition of a labour dispute under *section 2* of the Act:

Whilst considering the nature of the objections raised by the co-respondent, the Tribunal was therefore first called upon to spell out the act or omission which triggered the applicant's labour dispute and to then determine at what point in time such act or omission took place. This is in line with the provisions of article 2271 of the Code Civil which provides as follows:

“Le délai de prescription court à compter du jour ou le droit d'action a pris naissance.”

In the present matter, it has not been disputed that the HRD Report 2010 introduced the provision relating to Sunday Allowance, whereby the Disputants would only benefit from double rate as from the third Sunday. As per the evidence adduced, the HRD Report 2010 was published in November 2010 and was effective as from January 2011. The Disputants have not denied that they opted for the HRD Report 2010 by signing the option form thereto. It should also be noted that the provision relating to Sunday Allowance affecting the Disputants has remained unchanged in the HRD Report 2016.

The Tribunal can only find that the act that gave rise to the present dispute would be the provision relating to Sunday Allowance in the 2010 HRD Report. Although the Disputants' signed their option forms at the beginning of the month of December 2010 as per the eight option forms produced (Documents O, O₁ to O₇), the aforesaid Report came into effect as from 1 January 2011 and this is when the dispute occurred. This is moreover admitted by the Disputant Mr H. Adaya, who unequivocally stated that the dispute is in relation to Sunday Allowance and that this happened after the HRD Report of 2010.

The Tribunal also notes that State Counsel for the Respondent has submitted that there is no evidence to indicate that the dispute is continuous. On the other hand, Counsel for the Disputant has not submitted that the present dispute is a continuous one.

As per the referral made to the Tribunal pursuant to *section 69 (7)* of the *Act* by the CCM, it is apparent that the dispute was reported as a labour dispute on 24 May 2018 to the President of the CCM under *section 64* of the *Act*. Being given that the act which gave rise to the present dispute arose in January 2011 and that it was reported by the Disputants in May 2018, it is clear that the dispute was reported more than three years after the act which gave rise to it. The Tribunal thus cannot find the dispute to be a labour dispute pursuant to *paragraph (c)* of the definition of a labour dispute under *section 2* of the *Act*. The first aspect of the preliminary objection must therefore succeed.

The Respondent, under the second aspect of the preliminary objection, contends that the granting of an award pursuant to the Terms of Reference of the dispute before the Tribunal will be inconsistent with *section 14 (a)* of the *Ports Act* and thus be contrary to *section 72 (5)* of the *Act*.

The Terms of Reference of the present dispute is asking the Tribunal to determine whether the work performed by the Disputants at the Port Control/Harbour Radio on Sundays should be remunerated at the same rate (i.e. double rate) as the different units under the Marine/Shipping operations at the MPA or otherwise. The dispute is therefore one of remuneration in relation to work performed on Sundays by the Disputants. As per the *Concise Oxford English Dictionary, Eleventh edition (revised)*, the word '*remunerate*' (of which '*remuneration*' is a derivative) means '*pay for services rendered or work done*'.

The Respondent is established as a body corporate under *section 3* of the *Ports Act (Act 3 of 1998)* and is the sole national port authority to regulate and control the port sector and provide marine services. The conditions of service of employees at the MPA are dealt with under *section 14* of the aforesaid *Act*. This provides as follows:

14. Conditions of service of staff

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

(a) the appointment, dismissal, discipline, pay, leave of, and the security to be given by, employees;

(b) appeals by employees against dismissal or other disciplinary measures; and

(c) the establishment and maintenance of provident, pension fund and welfare schemes and the contributions payable to and the benefits recoverable from those schemes.

It has not been disputed that the Board of the MPA is entrusted with the administration and control of its affairs. Moreover, *section 13 (c)* of the *Ports Act* provides as follows:

13. Appointment of staff

The Board—

...

(c) may employ, on such terms and conditions as it thinks fit, such other employees as may be necessary for the proper discharge of its functions.

A reading of *section 14 (a)* of the *Ports Act* makes it clear that the Board of the MPA has been entrusted with the discretion to make provision to govern the conditions of service of its employees and, in particular, to deal with *inter alia* their pay. It may also be noted that *section 13 (c)* of the *Ports Act* allows the Board of the MPA to employ persons on such terms and conditions that it thinks fit. The Disputant, Mr H. Adaya, did not deny that the present dispute relates to his terms and conditions of service.

The Respondent contends that if the Tribunal were to so award as per the Terms of Reference of the dispute, it would be acting contrary to *section 72 (5)* of the *Act*. This particular section provides as follows:

72. Award and its effects

...

(5) An award under sections 56(5) and 70(1) shall not contain any provision inconsistent with any enactment, other than a Remuneration Regulations, relating to the terms or conditions of, or affecting, employment, and any such provision shall, to the extent of the inconsistency, be void.

Pursuant to *section 72 (5)* of the *Act*, an award of the Tribunal shall not contain any provision inconsistent with any enactment relating to the terms or conditions of, or affecting, employment. It also specifies that any such provision in the award shall be void to the extent of the inconsistency (*vide M. Daby and Open University of Mauritius (ERT/RN 37/2017)*).

Despite the arguments of Counsel for the Disputants to the effect that the word of the employer is final and that the Tribunal or even the Supreme Court cannot intervene, the Tribunal is bound by the provisions of the *Act* and in particular, *section 72 (5)* thereof. It should also be noted that the Supreme Court has unlimited jurisdiction to hear and determine any civil or criminal proceedings under any law other than a disciplinary law and such jurisdiction and powers as may be conferred upon it by the Constitution or any other law. Moreover, *section 72 (5)* of the *Act* does not apply to the Supreme Court but to awards given by the Tribunal under *sections 56 (5) and 70 (1)* of the *Act*.

In the present matter, which has been referred under *section 69 (7)* of the *Act*, the award of the Tribunal would fall under *section 70 (1)* of the *Act*, thus bringing it within the bounds of *section 72 (5)* of the *Act*.

In view of the powers of the Board of the MPA under the *Ports Act* to govern the conditions of service of its employees and, in particular, their pay, the Tribunal would be acting contrary to *section 72 (5)* of the *Act* in awarding that the Disputants should be remunerated at the same rate for their work performed on Sundays as are the different units of the Marine/Shipping operations at the MPA. The second aspect of the preliminary objection must therefore succeed.

As the Tribunal has found that both aspects of the preliminary objection raised by the Respondent must succeed, the present dispute in each case is therefore set aside.

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

**SD Vijay Kumar Mohit
(Member)**

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

**SD Teenah Jutton (Ms)
(Member)**

Date: 30th April 2019