

EMPLOYMENT RELATIONS TRIBUNAL

AWARD

ERT/RN 32/2019

Before: -

Shameer Janhangeer	Vice-President
Francis Supparayen	Member
Karen K. Veerapen (Mrs)	Member
Ghianeswar Gokhool	Member

In the matter of: -

Mr Balakrishna KUPPAN

Disputant

and

CENTRAL ELECTRICITY BOARD

Respondent

In presence of: -

1. Mr Dheeraj SEEGOOLAM
2. Mr Zubeir M. MOORAJA
3. Mrs Pratima CONHYE

Co-Respondents

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

To consider my years of actingship as IT Technician and be confirmed to the post on the 22nd of October 2017 instead on the 22nd of April 2018 after the probational period.

Both the Disputant and the Respondent were assisted by Counsel. Mr D. Ramano appeared for the Disputant whereas Mr T. Runghen appeared for the Respondent. The three Co-Respondents were *inopps consilii* and are abiding by the decision of the Tribunal in the matter. The Disputant and the Respondent have each submitted their respective Statement of Case.

THE DISPUTANT'S STATEMENT OF CASE

The Disputant joined the Central Electricity Board ("CEB") on 5 January 2010 as a contractual Meter Reader. He was thereafter offered the post of Administrative Assistant and confirmed as same on 14 May 2013. In the aforesaid post, he has been working in the Information Technology/Management Information Systems ("IT/MIS") Department since November 2012 and has accumulated experience regarding the duties of Information Technology ("IT") Technician and Computer Database Operator. In June 2014, he was offered to act as IT Technician. The post was advertised in October 2014 and due to non-responsiveness of internal candidates, it was re-advertised as Trainee IT Technician in October 2015; he was appointed to same effective 22 October 2015. The latter post comprises a two-year training period followed by six months' probation. As a trainee, no increments are paid. He was thereafter appointed IT Technician on 22 October 2017 and confirmed as same on 22 April 2018. The requirements of this post are HSC / Diploma in the IT field and two-years' experience in Hardware and Network related functions.

Prior to the Disputant's appointment to the post of IT Technician, he experienced eighteen months as Acting IT Technician from 1 June 2014 to 22 October 2015 and also undertook twenty-four months training period from 22 October 2015 to 22 October 2017. As he has performed all the duties of the post of IT Technician for a period of eighteen months, it would be fair to shorten his two-year training period as the job description of the two posts are the same as at October 2014. Although he was paid an acting allowance for acting as IT Technician, same is not pensionable. The Disputant also avers that he was already trained prior to his assignment of the duties of IT Technician as he was exposed to the job of Computer Database Operator. He also participated in IT works after normal working hours. If this is to be accounted for, he would have already completed his two-

years' experience prior to have been appointed Trainee IT Technician in October 2015. However, he is only asking that his acting experience be considered. He did possess the necessary qualities for the post prior to being appointed to Trainee IT Technician.

The Disputant is further relying on *paragraph 5.29.1 (b)* of the *Collective Agreement* between the CEB and the CEB Staff Association July 2013 – June 2017 in support of his dispute. His humble request to the Respondent is to consider his acting experience as IT Technician against his years of training which would shorten his confirmation by six months as from 22 October 2017 instead of 22 April 2018. If not, he would be unfairly penalised salary wise and would lose seniority. He is therefore praying for an award as per the Terms of Reference.

THE RESPONDENT'S STATEMENT OF DEFENCE

The Respondent has notably averred that the duties of the Disputant as Administrative Assistant differed from the duties of IT Technician and Computer Database Operator and he cannot claim to have acquired experience for the two posts when employed as an Administrative Assistant. The post of IT Technician was re-advertised as no candidates met the requisite criteria of the post. The minimum requirements for the post of IT Technician are as per its vacancy notice (*vide* Annex 1 of the Disputant's Statement of Case).

The Respondent has also averred that a distinction needs to be drawn between the acting period and the traineeship period. During the latter period, the Disputant was working under the supervision of an officer in the Hardware and/or Printing Sections. The two-year traineeship and the six months' probation are mandatory in order to be confirmed as IT Technician and the Disputant was fully aware of this when he applied for the training in 2015 having duly signed a letter of acceptance dated 3 November 2015. The Respondent denies that the Disputant's two-year traineeship should be shortened by the eighteen months' period during which he acted as IT Technician. The Disputant was offered acting for the post of IT Technician on the basis of his BSc in Computing and Information Systems and him being on the lowest scale in the IT/MIS Department, thus being the only candidate apt to be considered for the acting period.

The Respondent has further averred that *paragraph 5.29.1 (b)* of the *Collective Agreement* does not find any application in the present matter as it applies to candidates who have been acting in a higher post for a continuous period of five years. Regarding the Disputant's salary, on 1 April 2015, he was earning Rs 22,400 per month as Administrative Assistant; on 22 October 2015, this was increased to Rs 24,800 per month upon appointment as Trainee IT Technician; on 22 October 2017, his salary was increased to Rs 27,500 per month upon appointment as IT Technician; and on 1 April 2018, his salary was increased by one increment of Rs 900 to Rs 28,400 per month as IT Technician.

THE EVIDENCE OF WITNESSES

The Disputant, Mr Balakrishna Kuppan, was called to depose. He solemnly affirmed as to the correctness of his Statement of Case. He produced a letter from the CEB dated 28 February 2012 (Document A) which confirmed that he was offered the post of Administrative Officer on the aforesaid date. He also produced an Overtime Authorization Form dated 5 December 2013 (Document B) from the Respondent which shows that he worked as IT Technician whereby he installed PCs for users affected by lighting. A Staff Overtime Return for the month of May 2014 (Document C) was also produced to show the technical work he performed as IT Technician on 30 May 2014 before he was appointed Trainee IT Technician in October 2015. A memorandum from the Respondent dated 24 September 2014 (Document D) was also produced whereby he would be paid an acting allowance of Rs 5,700 per month for cumulating and assuming all the responsibilities of the post of IT Technician with effect from 1 June 2014. Mr Kuppan also produced a copy of his BSc in Computer and Information Systems degree (Document E). He stated that he also supervised contractors undertaking networking on 22 April 2016 as a Trainee IT Technician and produced an Overtime Authorization Form dated 21 April 2016 (Document F) to this effect. He is therefore praying for an award in accordance with the Terms of Reference of the dispute.

Mr Kuppan was questioned by Counsel for the Respondent. He produced a Performance Appraisal Report from the CEB dated 29 January 2013 (Document G) which showed that he was released on 14 November 2012 to become Administrative Assistant. He also produced a Staff Variation Form dated 11 February 2011 (Document H) which showed that he was brought onto the permanent establishment of the CEB on 26 January 2011. Referring to Document B, he confirmed that none of the persons mentioned therein, including himself, were fully-fledged IT Technicians. According to Document C, the post he was occupying at that time was that of Administrative Assistant. He agreed to the second

paragraph of Document D, whereby he cannot make any claim for consideration for appointment to the post of IT Technician.

Mr Kuppan also confirmed that following the Internal Vacancy Notice dated 27 March 2015 for the post of Trainee IT Technician, he received a letter of offer dated 3 November 2015 from the CEB. The aforesaid letter stated that he shall *inter alia* undergo two-years' training, six months' probation, regular assessments during the training period and would need a report from the Head of Section in order to be confirmed as IT Technician. He signed the letter of offer voluntarily accepting the terms and conditions set out. He received another letter of offer dated 9 November 2017 following the training period wherein he was informed that his appointment as IT Technician shall take effect as from 22 October 2017 but he will have to undergo an initial six months' probationary period to be confirmed in the post if favourably reported upon. He voluntarily signed accepting the offer to same. He agreed that what he accepted is a valid contract between him and the CEB. The CEB has not departed from the offer it made. He does not agree that his confirmation should not be backdated by 6 months as being a Trainee he was not working as such, with no supervision and was working alone.

Mr Kuppan produced an Interim Performance Appraisal Report dated 29 June 2016 (Document J) signed by the Head of Section eight months into his training. Another Interim Performance Appraisal Report dated 10 March 2017 was produced (Document K) which is signed by the Head of Section sixteen months into his training, which shows that there were regular assessments during the training period. A third Interim Performance Appraisal Report dated 31 October 2017 was produced (Document L) signed by the Head of Section. A fourth Interim Performance Appraisal Report dated 7 February 2018 was produced (Document M) after having undergone three months' probation. He confirmed that he was appraised as a trainee. The forms produced show that there was supervision on him during training. The duties of Acting IT Technician and Trainee IT Technician are the same. He agreed that even if he was confirmed on 22 October 2017 as IT Technician his salary would still be Rs 28,400 in April 2018. In stating that he would be unfairly penalised salary wise, he was referring to his training period. As his salary is not affected, he agreed that it will not affect his pension as well.

Mr Kuppan, moreover, confirmed that there were five other successful candidates who also received their letters of offer for the post of Trainee IT Technician. In relation to seniority with his colleagues, he stated being the only one who had acted as IT Technician. He agreed that actingship and training are two different matters. Referring to *paragraph*

5.29.1 (b) of the *Collective Agreement* mentioned in the Disputant's Statement of Case, he agreed that this refers to five years' actingship and that it did not apply to him.

Under re-examination from his Counsel, Mr Kuppan notably stated that he was confirmed on 22 April 2018, whereas Mr Seegoolam was confirmed on 2 August 2018; Mr Mooraja was confirmed on 13 August 2018; and Mrs Conhye is still on traineeship. According to the *Collective Agreement*, when one is confirmed an increment is due. Therefore, if confirmed six months earlier, he will receive an increment in 2017 and have an additional increment to his salary. He produced *paragraph 6.4 (b)* of the *Collective Agreement* (Document N).

Mr Roshan Heerasingh, Human Resource Executive, was called to depose on behalf of the Respondent. He solemnly affirmed as to the truth of the Respondent's Statement of Defence. It is not disputed that the Disputant acted as IT Technician for eighteen months between June 2014 to 22 October 2015. He stated that actingship and traineeship are not the same. The former may be for a short or long period and does not give the person any priority for promotion or appointment in the post. It is an administrative measure taken to replace an officer when lacking an employee in a particular grade. Traineeship is much more detailed with appraisals; the trainee has to perform well and obtain good appraisals to be promoted. An increment is due a year after appointment and payment of the annual salary increment is on 1 April as per *paragraph 6.1* of the *Collective Agreement of 2017 to 2021* (produced as Document O).

Mr Heerasingh, when questioned by Counsel for the Disputant, notably stated that although the Disputant has a higher qualification, this is not necessarily a plus in terms of skill and knowledge. The post of IT Technician falls under the IT/MIS Department as per its scheme of service. He did not agree that the reporting line, job purpose, desired knowledge, qualifications and duties and responsibilities for the post of Trainee IT Technician are exactly the same as for IT Technician as there is a difference in experience required and the duties of the Trainee IT Technician are performed under supervision. He could not say if the Disputant was exposed to IT duties as an Administrative Assistant. According to the memorandum (Document D), the Disputant would have to cumulate and assume all the responsibilities of an IT Technician and would, in fact, act as one. He cannot say if someone with eighteen months as IT Technician would have sufficient experience and skills to perform as IT Technician.

Mr Heerasingh further stated that he could not confirm, referring to Document B, if the Disputant as an Administrative Assistant undertook network tasks in December 2013. He could not say if, according to Document C, Mr Kuppan was performing network duties in May 2014. He agreed that as per Document F, the Disputant supervised DCL works as Trainee IT Technician, but a Senior Officer's name, i.e. Mr V. Narayen, Assistant ICT Analyst, is also mentioned. He could not say if the Disputant should have undergone two-years' traineeship despite having a BSc in Computer and Information Systems and acquired experience. The CEB can consider employees with experience for promotion where they have performed five years actingship without any unsatisfactory appraisal. He also stated that he cannot answer for the Respondent's Board as to whether the Disputant's confirmation should be backdated by six months.

THE SUBMISSIONS OF COUNSEL

Learned Counsel for the Disputant notably submitted that it is being contended that there is contract between the two parties and by virtue of same the Disputant has no case before the Tribunal. In this regard, a distinction must be made between disputes of right and disputes of interest. The latter is not contractual. He thus invited the Tribunal to consider all the surrounding circumstances and elements raised along an equitable line in order to determine this matter. The contract of employment is a *contrat d'adhésion* and referred to the Supreme Court case of *Jeetoo v MTC & Anor.* [2007 SCJ 216]. The Disputant, on the facts of the case, had already been performing the duties of IT Technician for one and a half years. He has performed IT duties as Administrative Officer and given supervisory duties as a Trainee IT Technician. The Disputant is only asking for his confirmation to be backdated by six months based on his experience. This will allow him to receive one increment and will impact his salary, his pension and his seniority.

Learned Counsel for the Respondent, on the other hand, submitted that the Disputant, in his Statement of Case, acknowledges that the post of Trainee IT Technician requires two-years' training followed by six months' probation. Counsel referred to *article 1134* of the *Code Civil Mauricien* submitting that there is no mutual consent from either party to depart from the contract signed voluntarily by the Disputant. An actingship does not give the Disputant a claim or priority to the post. On the issue of consent and acceptance of a contract, Counsel referred to the case of *Pougnnet v The Medine Sugar Estate Co. Ltd* [1996 SCJ 222] which was followed in *Edoo & Anor. v Gungabissoon* [2011 SCJ 240]. In relation to whether the Tribunal can look into disputes of interests and act in equity Counsel relied on the decision in *Meetoo v Employment Relations Tribunal & Anor.* [2018 SCJ

133] to submit in the negative. There can be no recourse to equity in this matter. Counsel also submitted that it would be wrong for the Disputant to say that he would be penalised with regard to his seniority as he is already senior to the Co-Respondents. Counsel also submitted that *paragraph 5.29.1 (b) of the Collective Agreement* does not find its application in this matter.

THE MERITS OF THE DISPUTE

The Terms of Reference of the present dispute is asking the Tribunal to consider the Disputant's years of actingship as IT Technician and to confirm him to the aforesaid post on 22 October 2017 instead of 22 April 2018 after the probational period.

It has not been disputed that Mr Kuppan joined the CEB as a meter reader on contract. He was thereafter, in May 2013, confirmed in the post of Administrative Assistant working in the IT/MIS Department. From 01 June 2014 to 22 October 2015, he acted as IT Technician as can be evidenced from the contents of a memorandum dated 24 September 2014:

Actingship

I am pleased to inform you that you will be paid an acting allowance of Rs 5,700 a month, for cumulating all the duties and assuming all the responsibilities of the post of IT Technician, with effect from 01.06.2014, until further notice.

Kindly note that the above actingship, which was made on grounds of administrative convenience, will not give you any claim or priority of consideration for appointment to that post.

It has also not been disputed that the post of IT Technician was advertised in October 2014 with no candidates meeting its requisite criteria. It may be noted that the aforesaid post *inter alia* demanded '*at least 2 years' experience in hardware and network related functions.*'. Thus, the post of Trainee IT Technician was advertised at the CEB in October 2015 without the requirement of two-years' experience. The latter post provided for a minimum two-year training period, following which, upon successful completion, the candidate would be appointed as IT Technician on a probationary period of six months.

It is also pertinent to note that as per the vacancy notices of the two aforementioned posts, the duties of Trainee IT Technician only differ from that of IT Technician in the requirement to perform the set identical duties under the supervision/guidance of an officer in the Hardware and/or Printing Section. This was moreover confirmed by the Respondent's representative in his evidence.

Mr Kuppan applied for the post of Trainee IT Technician and was appointed to same as from 22 October 2015 as evidenced by a letter from the CEB dated 3 November 2015, wherein the terms and conditions of his training were set out. As per a letter dated 9 November 2017 from the CEB, the Disputant was offered the post of IT Technician with his appointment taking effect as from 22 October 2017. Mr Kuppan accepted the post of IT Technician on the terms and conditions set out in the aforesaid letter on 21 November 2017. He was thereafter confirmed as same on 22 April 2018.

Mr Kuppan is therefore asking, as per his Statement of Case, that his experience acquired when acting as IT Technician from June 2014 to October 2015 be considered against his years of training by six months. Thus, to render his confirmation as IT Technician effective as from 22 October 2017 instead of 22 April 2018.

The Disputant, in his evidence, has laid great emphasis on his experience acquired as Acting IT Technician for about 18 months prior to being appointed as Trainee IT Technician. The Tribunal has however noted that the Overtime Authorization Forms dated 5 December 2013 (Document B) and 21 April 2016 (Document F) produced by Mr Kuppan in this regard pertain to his posts of Administrative Assistant and Trainee IT Technician respectively. Moreover, the Staff Overtime Return for the month of May 2014 (Document C) produced pertains to the post of Administrative Assistant. These documents are clearly not related to the Disputant's actingship period as IT Technician.

On the other hand, the Disputant has notably admitted when cross-examined that he signed the letter of offer for the post of Trainee IT Technician voluntarily and what he has signed is a valid contract between him and the Respondent. He admitted that he was under appraisal as a trainee and that the Performance Appraisal Reports he produced show that he was under supervision when undergoing training.

The Tribunal has also noted that the CEB's representative clearly made a distinction between actingship and traineeship inasmuch as the former, which may be for a long or

short period, does not give the incumbent priority for promotion and is an administrative measure. Same is also reflected in the contents of the memorandum dated 24 September 2014 (as reproduced above). Moreover, the Disputant agreed to the second paragraph of the contents of the memorandum. The Tribunal has also noted that the traineeship period was part of the contract the Disputant voluntarily accepted when being offered the post of Trainee IT Technician. This distinction is vital to the present dispute given that the Disputant is asking for his confirmation to be shortened by six months taking into account the time he spent acting as IT Technician.

Counsel for the Disputant has notably submitted that the employment contract is a *contrat d'adhésion* wherein the employee is at a disadvantage. This particular type of contract has been described by the Supreme Court in *Sewraz Frères Ltd v British American Tobacco* [2013 SCJ 43] as follows:

... a "contrat d'adhésion" which is described in Marty & Raynaud, Droit Civil, Tome II, 1er volume at para. 116 as follows :-

« on a proposé d'appeler contrats d'adhésion, ces contrats devenus nombreux et importants aujourd'hui, dont la conclusion n'est pas précédée d'une discussion entre les parties. Les clauses de la convention ont été établies par une des parties qui les offre de façon permanente au public ; ces clauses sont, le plus souvent, imprimées à l'avance, elles ne peuvent être qu'acceptées purement et simplement et n'appellent qu'une adhésion pure et simple. De tels contrats se caractérisent par le procédé de la pré-rédaction unilatérale ; ils aboutissent à une unification, à une standardisation de certaines relations contractuelles. »

Though the employment contract may possess the characteristics of a *contrat d'adhésion* (vide J.M. Verdier, A. Coeuret et M.A. Souriac in *Droit du travail, Volume 2, Rapports individuels, mémentos Dalloz, 16^e édition, 2011, p.41*), the principle of contractual freedom cannot be excluded in its conclusion. Indeed, the following may be noted from Dr. D. Fok Kan in *Introduction au droit du travail mauricien 1/Les relations individuelles de travail, 2eme édition, p.59*:

Conformément au principe de la liberté contractuelle, la conclusion du contrat de travail est généralement libre. C'est ainsi aux parties eux-mêmes de choisir librement leur contractant. Dans le domaine du travail toutefois, ce sera généralement à l'employeur de choisir son collaborateur.

It should however be noted that the employment contract does not exist in a vacuum. It is subject to the various employment laws that have been enacted by the legislator, which have the objectives of *inter alia* safeguarding the rights of the employee and to protect the employee from any abuse by the employer. In this regard, it is pertinent to note that *article 1780* of the *Code Civil Mauricien* provides that '*Les contrats de louage des gens de travail qui s'engagent au service de quelqu'un seront régis par le Employment Rights Act*'. It should be noted that the *Employment Rights Act* has now been replaced by the *Workers' Rights Act 2019 (Act No. 20 of 2019)* since 24 October 2019.

Having considered the authority of *Jeetoo v MTC & Anor.* [*supra*] submitted by the Disputant, the Tribunal has not however found how the principle of *contrat d'adhésion* would be applicable to the present dispute. In *Jeetoo*, it was found that a *contrat d'adhésion* came into effect when a punter bets on a horse by purchasing a betting ticket. Moreover, the decision is not an authority for the proposition that an employment contract is a *contrat d'adhésion*. In the present matter, the Disputant is merely asking for the backdating of his confirmation as per the Terms of Reference and has not invoked any abusive clause with regard to his contract of employment with the CEB.

The Tribunal has further noted that if the Disputant's confirmation were to be brought forward by six months to 22 October 2017, this would be tantamount to appointing him to the post of IT Technician on the aforesaid date. Thus, the Disputant's prayer would result in a backdated appointment. In matters of appointment of employees, the powers of the Respondent's Board cannot be overlooked as may be noted from *section 6* of the *Central Electricity Board Act (Act No. 32 of 1963)*:

6. Appointment of officers

(1) *The Board shall appoint and employ a General Manager and such technical and administrative staff as it thinks fit.*

(2) *The salaries and terms of appointment under this section shall be determined by the Board.*

The *Central Electricity Board Act* confers powers upon the Respondent's Board to appoint such technical and administrative staff as it thinks fit. Inasmuch as an appointment or the backdating of same relates to terms and conditions of employment or would affect employment, the Tribunal, having regard to *section 72 (5)* of the *Act*, should guard itself against usurping the mandatory powers of the Respondent's Board to appoint its officers. Indeed, the aforementioned 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.

The Tribunal in the present matter, which has been referred under section 69 (7) of the Act (prior to the 2019 amendment by Act No. 21 of 2019), is bound by virtue of section 70 (1) of the Act to enquire into the dispute and make an award thereon (*vide Air Mauritius Ltd v Employment Relations Tribunal* [2016 SCJ 103]).

Furthermore, it is appropriate to note what was stated 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).

On the evidence adduced in the present matter, the Tribunal has not found any suggestion of any abuse by the employer with regard to the contract entered into with the Disputant. The latter has admitted that he voluntarily signed the letter of offer to the post of Trainee IT Technician; that there is a valid contract between him and the CEB; and that the CEB has not departed from the offer it made. It is apposite to note that the letter of offer for the post of Trainee IT Technician *inter alia* provided for a period of two-years' training which was voluntarily acceded to by the Disputant.

The hearing of the present matter has also delved on the issue of increments the Disputant would have earned if his confirmation were to be backdated to 22 October 2017. The Tribunal has noted that the present dispute is asking it to enquire into whether the Disputant's years as acting IT Technician should be considered so as to backdate his confirmation as IT Technician and not if it should enquire into whether the Disputant should receive an additional increment to his salary if the confirmation were to be brought forward. An award in relation to this particular issue would be *ultra petita* as can be noted from *dicta* of the Supreme Court in *Air Mauritius Ltd v Employment Relations Tribunal* [*supra*]:

Under section 70 (1) the Tribunal is required to enquire into the substance of the dispute that is referred to it and to make an award thereon and it is not empowered to enquire into any new matter that is not within the terms of reference of the dispute.

The Tribunal has noted that the Disputant is relying on *paragraph 5.29.1 (b)* of the *Collective Agreement* at the CEB in furtherance of his dispute. This provision however applies to employees who have performed the duties of a higher post in an acting capacity for a continuous period of five years and who do not possess the qualifications of the higher post. Having noted that the Disputant performed only eighteen months in an acting capacity and holds a BSc in Computer and Information Systems since March 2010, the Tribunal cannot see how the Disputant can avail himself of this provision in the *Collective Agreement*. The Tribunal has also noted that the Disputant has not invoked any provision of the *Collective Agreement*, which may allow for an appointment and/or confirmation to be backdated – if ever such a provision exists.

During the hearing of the matter, the three Co-Respondents were put into cause upon the Disputant raising the issue of seniority over his colleagues. The Tribunal has however noted that, as per the Disputant's own evidence, he was confirmed as IT Technician before the first two Co-Respondents, whereas the third Co-Respondent is still undergoing training. The issue of Disputant's seniority over the Co-Respondents does not therefore arise.

The Tribunal, having notably found that the Disputant voluntarily accepted the letter of offer for the post of Trainee IT Technician on the terms set out therein; that there has been no abuse by the Respondent with regard to the contract entered into with the Disputant nor has any abusive aspect of the employment contract been invoked; and that it would be usurping the powers of the Respondent's Board and acting contrary to *section 72 (5)* of the *Act* in backdating the Disputant's confirmation, cannot therefore award that the Disputant's years of actingship as IT Technician be considered and that he be confirmed to the aforesaid post on 22 October 2017 instead of 22 April 2018 as is being asked in the Terms of Reference of the dispute.

The dispute is therefore set aside.

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

**SD Francis Supparayen
(Member)**

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

**SD Ghianeswar Gokhool
(Member)**

Date: 6th December 2019

