

EMPLOYMENT RELATIONS TRIBUNAL

AWARD

Before: -

Shameer Janhangeer	-	Vice-President
Bhawantee Ramdoss (Ms)	-	Member
Christelle P. D’Avrincourt (Mrs)-		Member
Ghianeswar Gokhool	-	Member

In the matters of: -

ERT/RN 84/2024

Ms Lisemay Magda Chantal BERTRAND

Disputant

and

MAURITIUS HOUSING COMPANY LTD (MHC)

Respondent

ERT/RN 85/2024

Mrs A. D. Yolette BAYA

Disputant

and

MAURITIUS HOUSING COMPANY LTD (MHC)

Respondent

ERT/RN 86/2024

Mrs Neermala MOHABEER

Disputant

and

MAURITIUS HOUSING COMPANY LTD (MHC)

Respondent

ERT/RN 87/2024

Mr Coossyram LUTCHMOODOO

Disputant

and

MAURITIUS HOUSING COMPANY LTD (MHC)

Respondent

The present matters have been referred to the Tribunal for arbitration pursuant to *section 69 (9)(b)* of the *Employment Relations Act* by the Commission for Conciliation and Mediation (“CCM”). All four matters have been consolidated as their respective disputes concern the same subject matter. The common Terms of Reference of the first two disputes (ERT/RN 84/2024 & 85/2024) reads as follows:

Whether the Mauritius Housing Company Ltd (MHC Ltd) should have paid my Travel Grant in full as stipulated in MHC Revised Set of Terms & Conditions of Employment 2017, referring to payment of Travelling Allowance/Travel Grant during Pre-retirement Leave (Paragraph 13.15).

The Terms of Reference of the third case (ERT/RN 86/2024) read as follows:

Whether the MHC Ltd should pay my travel grant in full to me during my pre-retirement leave.

The Terms of Reference of the fourth case (ERT/RN 87/2024) read as follows:

The Mauritius Housing Company Ltd having failed to pay my travel grant for the month of September 2022 in full.

The Disputants were assisted by their Trade Union Negotiator, Mr Deepak Benyidin. Whereas the Respondent was assisted by Counsel, Mr Noor Hussene. Both parties have put in their respective Statement of Case in the matter.

THE DISPUTANTS' STATEMENT OF CASE

All four Disputants have each submitted an identical Statement of Case in relation to their dispute. It has notably been averred that the dispute relates to the unreasonable and unacceptable part payment of the Travel Grant by the Respondent. As per the MHC's Revised Set of Terms & Conditions of Employment Report 2017 (the "Salary Report"), paragraph 13.15 stipulates that '*Employee on pre-retirement leave shall be paid their travelling allowance/travel grant in full.*'. The Disputants are not agreeable to the non-payment in full of the travel grant for their retiring month. The Respondent maintained its position of not paying the Travel Grant in full and averred that for the retiring month, the Travel Grant is on a pro-rata basis and that there is a fixed and variable component to the Travel Grant. The Respondent maintained that, as per the Salary Commissioner's Report, an employee benefitted from the privileges of employment up to his retirement. A deadlock was reached at the CCM. The Disputants are moving for the Respondent to pay the Travel Grant in full during their pre-retirement leave as per paragraph 13.15 of the Salary Report 2017.

THE RESPONDENT'S STATEMENT OF DEFENCE

The Respondent has notably averred that the Travel Grant was paid as at the last day of employment. An employee is governed by the Conditions of Employment as long as he is in employment, thus benefitting the privileges until his last day of employment. The full Travel Grant amount has been paid to the Disputants during pre-retirement leave and that only for the last month of the said leave, they were paid full Travel Grant on a pro-rated basis until retirement date. The Respondent denies the Disputants' prayer that it should pay the Travel Grant in full during pre-retirement leave.

THE EVIDENCE OF WITNESSES

Mr Coossyram Lutchmoodoo, former Branch Manager at MHC, was called to depose. He notably stated that according to the 2017 report, he should have been paid his Travel Grant. When he retired, the MHC paid him only a part of the Travel Grant. As per paragraph 13.15 of the Salary Report, the payment of Travel Grant should be made in full. He then wrote to the Corporate Manager stating he was not agreeable to part payment and was told, in reply, that it was according to practice prevailing at the Company. He then wrote to the Ministry of Labour, who called him, Mr Babeea, the ex-Managing Director and Mrs Kalapnuth, Corporate Manager. Mr Babeea wanted some time to consult the Legal Advisor of the Company and at the end of March, a payment was credited to his bank account. He wrote to the Corporate Manger saying he is not agreeable, why are they being paid piece meal? They then consulted with their Trade Union Negotiator and from Ministry of Labour, they went to the CCM and now to the ERT. The Salary Report was approved by the Board and is binding on both parties.

Upon questions from Counsel for the Respondent, the Disputant notably stated that his last date as an employee of the MHC was 6 September 2022. He is asking for Travel Grant for the whole of September 2022. He went on pre-retirement leave four months before and was paid full Travel Grant for these four months. His case is based on the 24 days for the month of September 2022. He stopped work on 6 September 2022. He retired on 6 September. The Company paid him Travel Grant in full for the first four months, but he was not paid Travel Grant in full for the last month. He does not remember exactly when he was on pre-retirement leave but remembers his last day to be 6 September 2022. He received a pro-rata pension for the month of September for the part he stopped working as from 7 September to 30 September. He did not agree that he was not entitled for Travel Grant for the remaining days of September from the date he retired. Under re-examination, he maintained that for the last month when he retired, he should have been paid in full.

Mrs Ashvina Kalapnauth-Rajcoomar, Manager Corporate Services at MHC, was called to depose on behalf of the Respondent. She notably referred to paragraph 13.15 of the Salary Report entitled '*Payment of Travelling Allowance/Travel Grant during Pre-retirement Leave*' and stated that the Company has complied with the aforesaid paragraph. The Travel Grants have been paid in full in respect of the four cases. Mr Lutchmoodoo went on pre-retirement leave on 20 April 2022 and retired on 6 September 2022. Up to August 2022, his Travel Grant was paid in full; for September 2022, he was paid on a pro-rata basis up to his last day of employment, 5

September 2022. The Company paid full Travel Grant for the first five days of September 2022. He was not entitled for the remaining days of September 2022 as he was an employee up to his date of retirement and for the other days, Mr Lutchmoodoo drew a pension on a pro-rata basis. The same applied for the others. Mrs Bertrand retired on 5 September 2021 and her pre-retirement leave took effect as from 30 April 2021. Mrs Baya's date of retirement is 3 September 2021 and her pre-retirement leave took effect as from 19 April 2021. Mrs Mohabeer's date of retirement is 18 April 2022 and her pre-retirement took effect from 9 December 2021. Paragraph 13.15 has been fully complied with.

When questioned by the Disputants' Trade Union Negotiator, the Respondent's representative notably referred to the section on travelling allowances in the Salary Report. She stated that for employees, there is the fixed component and the variable component; if an employee is not attending work during a full month, he is entitled to the fixed component and if he has more than 12 days of attendance, he is then eligible to the fixed and variable component as stipulated in the report. For pre-retirement leave, there is only this one line; that is why they have paid in full. She produced an extract (pages 25 and 26) of the Salary Report (Document A). When it was put to her that the pro-rata was not paid and was only paid when a case was entered before the Ministry of Labour, she stated that as at date they have already paid all. She also stated that they paid only the fixed component at the time and the Board agreed that they pay in full, including the variable component as they had only paid the fixed component for the last month of employment.

THE SUBMISSIONS OF THE PARTIES

The Disputants' Trade Union Negotiator has put in written submissions in the matter. He notably referred to paragraph 13.15 of the Salary Report titled '*Payment of Travelling Allowance/Travel Grant during Pre-retirement Leave*'. He stated that the present situation is not a new one to the MHC as according to information gathered from former employees who retired under the same circumstances who were entitled to their Travelling Allowance in full and were not paid on a pro-rata basis. They therefore reiterate their position and maintain that this is a discriminatory and non-complaint procedure by the MHC.

On the other hand, Counsel for the Respondent has notably submitted that the Disputants have failed to establish their case. The Respondent is not disputing the Salary Report but the

proper interpretation that must be given is up to retirement. Retirement means the date on which the employee stops being an employee of the MHC. The Respondent's witness has explained that although the Disputants were on pre-retirement leave, they have been paid in full. Regarding the Disputants' additional arguments provided by the Trade Union Negotiator, this was not canvassed in the Statement of Case nor in evidence. Counsel left matters in the hands of the Tribunal.

In reply, the Trade Union Negotiator notably stated that according to his information, former employees who retired had been paid in full and management can check this information. These former employees were paid for the full month.

THE MERITS OF THE DISPUTE

The Terms of Reference of the first two cases (ERT/RN 84/2024 & 85/2024) is asking the Tribunal to enquire into whether the MHC should have paid the Disputants' Travel Grant in full as stipulated in the Salary Report of 2017 referring to paragraph 13.15 of the report. The Terms of Reference of the third case (ERT/RN 86/2024) is asking the Tribunal to enquire into whether the MHC should pay the Disputant's Travel Grant in full during her pre-retirement leave. In the fourth case (ERT/RN 87/2024), it is averred that the MHC has failed to pay the Disputant's Travel Grant for the month of September 2022 in full. It is common ground, despite the differences in the wording of the Terms of Reference, that the dispute concerns the payment of Travel Grant in full of the Disputants during their pre-retirement leave.

The Disputants are notably relying on paragraph 13.15 of the Salary Report in support of their dispute. This particular paragraph reads as follows:

Payment of Travelling Allowance/Travel Grant during Pre-retirement Leave

13.15 Employees on pre-retirement leave shall be paid their travelling allowance/travel grant in full.

Mr C. Lutchmoodoo, who was called to adduced evidence for the Disputants, notably stated that as per paragraph 13.15 of the Salary Report, the payment of Travel Grant should be made in full. When cross-examined, he stated that he was not paid Travel Grant for the whole of

the month of September 2022 having stopped work on 6 September 2022. He was paid in full for the previous months of his pre-retirement leave. His case is based on the remaining days of September 2022 for which he was not paid the Travel Grant. He did however recognise that he did receive his pension for the month of September 2022 on a pro-rata basis.

On the other hand, the Respondent's witness has categorically stated that paragraph 13.15 has been complied with in all four cases. She notably stated that Mr Lutchmoodoo was paid his Travel Grant in full up to August 2022 and paid same on a pro-rata basis up to his last day of employment, the 5th of September 2022. He was not entitled to payment for the remaining days of September 2022 as he was an employee up to his date of retirement and, for the other days, he drew his pension. The same applied for the other Disputants. When cross-examined, she moreover maintained that the Disputants were paid in full.

From a perusal of paragraph 13.15 of the Salary Report, it is clearly stated that employees on pre-retirement leave shall be paid their Travel Grant in full. Thus, it must be determined when does the period of pre-retirement leave end. For the case of Mr Lutchmoodoo, it is clear that his pre-retirement leave ended on 5 September 2022 and thereafter he drew his pension, which was on a pro-rata basis for the month of September 2022. The aforesaid Disputant is seeking payment of Travel Grant for the remaining days for the month of September 2022. However, for these remaining days, he was no longer on pre-retirement leave and was instead paid a pension.

It is therefore clear that the provisions of paragraph 13.15 have been satisfied as the Disputant was paid his Travel Grant in full during the period of his pre-retirement leave up to the date of his retirement. It would be irrational for the Disputants to seek payment for Travel Grant for the period that they were no longer on pre-retirement leave having already retired bearing in mind the provisions of paragraph 13.15 of the Salary Report. It is to be noted that the Respondent's witness gave evidence of the date of retirement and pre-retirement date of each Disputant in the matter.

The Disputants' Trade Union Negotiator has, in his submissions, stated that other former employees were paid their Travel Grant in full. However, it should be noted that no evidence has been adduced to this effect and the Tribunal cannot therefore rely on the accuracy of this proposition. His submissions also mention that the procedure adopted by the Respondent is discriminatory. It must however be noted that discrimination has not been averred in the Terms

of Reference of the dispute and it is trite law that the Tribunal cannot enquire into a matter which is not within the Terms of Reference. It must also be noted that the Disputant who deposed never mentioned any discriminatory practice in his evidence.

Having therefore considered the evidence on record as well as the submissions of both parties, the Tribunal cannot therefore find that the Disputants were not paid their Travel Grant in full during their pre-retirement leave. Regarding the Terms of Reference pertaining to the first three cases, the Tribunal can only find that the Disputants concerned were paid their Travel Grant in full during their pre-retirement leave. As regards Disputant Mr Lutchmoodoo, the Tribunal can only find that he was paid his Travel Grant in full up to the date he retired in September 2022 and that he is not entitled to payment for the remaining days of September 2022 as he was no longer on pre-retirement leave and drew his pension on a pro-rata basis for the said month.

The four consolidated disputes are therefore set aside.

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(SD) Shameer Janhangeer
(Vice-President)

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(SD) Bhawantee Ramdoss (Ms)
(Member)

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(SD) Christelle P. D'Avrincourt (Mrs)
(Member)

.....
(SD) Ghianeswar Gokhool
(Member)

Date: 9th December 2024

