

EMPLOYMENT RELATIONS TRIBUNAL

ERT/RN 35/2021

AWARD

Before: -

Shameer Janhangeer	-	Vice-President
Vijay Kumar Mohit	-	Member
Abdool Feroze Acharauz	-	Member

In the matter of: -

Air Mauritius Cabin Crew Association (AMCCA)

Disputant

and

Air Mauritius Limited

Respondent

The present matter has been referred to the Tribunal for arbitration by the Commission for Conciliation & Mediation (“CCM”) pursuant to *section 69 (9)(b)* of the *Employment Relations Act* (the “Act”). The Terms of Reference of the dispute reads as follows:

1. *The Lallah report to be applied in toto for the computation of meal allowance. AMCCA rejects the application of the ODA as a replacement of the meal allowance. Its methodology has not been communicated to AMCCA, and the figures communicated so far does not reflect the cost of food in the hotels crew have layovers.*
2. *The salary scale of cabin crew as shown in the new contract offered to crew must be adjusted, so that it is at par with salary scale on the collective agreement of 2014.*

3. *The crew structure on board to be maintained with 3 categories given that there is no change in commercial service delivery and standard and for safety on board established through hierarchy.*
4. *Crew complement to be restored to original number before Voluntary Administration as work load increase heavily with sanitary protocol in place.*
- 5.1 *Leave Without Pay (LWP) parameters should be clearly defined in order to protect members from abusive use of this creature by using coercive measures on employees.
For example: -
(a) *Inability to perform self-isolation.*
(b) *In case of prolonged injury.**
- 5.2 *LWP must be equally distributed.*
6. *AMCCA believes that sacrifices shown by employees in respect to a reduction of their pay package is tantamount to a refinancing of the company finances by the employees themselves, while the major shareholders of the company has shown no interest of re-investing. Therefore, AMCCA asks that the prejudice caused by imposed LWP policy, part-time work, ODA, FDH, grooming allowance, productivity bonus, not being paid since the beginning of Voluntary Administration to be refunded to employees.*
7. *New methodology of computation of meal allowance and discrepancy on same to be refunded.*
8. *Transport allowance for employees residing outside of MK network which has not been paid since the beginning of voluntary administration; to be refunded.*
9. *Employer shall provide tablets and WIFI package for crew to access all relevant documentation pertaining to the job.*
10. *Isolation days following a duty carried out on behalf of the company to be counted as a duty as it is a constraint related to the duty and hence should be paid.
Isolation is an additional task of cabin crew duty and need to be documented at the Ministry of Labour as forming part of the job of front liners in which cabin crew is officially included.*
11. *To be entitled to all provisions as per WRA; overtime, (even on standbys); Public Holidays and Sundays (Paid double); nightshift increase in salary.*

12. *ATR aircraft – Senior Cabin Crew Member (SCCM) on such aircraft to be remunerated same as for the same post as long haul flights.*
13. *October salary 2020 to be paid fully given that duty days were scattered throughout the roster of the month preventing crew from taking another part time jobs as proposed by the Administrators to palliate the loss in income. Furthermore, part time days were communicated 5 days after the start of the month.*
14. *Unilateral decision taken by MK under Voluntary Administration to bypass all our standing registered documents namely the Collective Agreement 2014, Industrial Agreement 2007, Procedural Agreement 2007 and the Award given by Judge Lallah (Balgobin Report) regarding Meal Allowance being replaced by ODA (Overseas Duty Allowance)*

Industrial agreement being replaced by Employee Benefits Policy:

- (i) Roster periods*
- (ii) Flight requests*
- (iii) Sick Leave*
- (iv) Days off request*
- (v) Number of emergency leave*

We are requesting the reinstatement of all existing agreements. If it is not possible to align with WRA, then all signed Agreements should take precedence.

15. *AMCCA is requesting full transparency on where matters stand regarding both pension funds (DB and DC).*
16. *Nursing mothers should benefit from all provisions of WRA.*
17. *Number of working days for part time has not been equally distributed bringing a much higher burden on those who are on a higher point in the salary scale. Crew perceiving Rs 25,000 work full time while those above Rs 50,000 get half of their salary for part time job.*

Both parties were assisted by Counsel. Mr E. Mooneapillay appeared for the Disputant, whereas Mr V. Reddi appeared together with Miss J. L. Somar and Mr A. Sunassee instructed by Mr R. Bucktowonsing, SA for the Respondent. Both parties have each put in their respective Statement of Case in the matter.

THE DISPUTANT'S AMENDED STATEMENT OF CASE

The Disputant has notably averred that its membership comprises the categories of Senior Flight Purser ("SFP"), Flight Purser ("FP") and Cabin Crew. Following voluntary administration on 22 April 2020, the Administrators had three meetings with the trade unions. Their current Collective Agreement was due in 2014 and, following discussions with management, was signed in 2018. Only the 10% increase on basic pay was implemented. A backpay of four years on the salary increase, due to the delay in implementing the agreement, is yet to be paid. On 8 May 2020, AMCCA took cognizance of the Overseas Duty Allowance ("ODA") and the current Meal Allowance was discontinued without any consultations with the Union. It entails a decrease of 50% on the amount paid on certain destinations, allowances not given as cash in hand at destination and paid two months post operating a flight in Mauritian currency. No rationale on the ODA, the exchange rate applicable or who would bear the bank charges was communicated by the company.

The prevailing Meal Allowance, consistent with the Lallah Report of 17 November 1995, forms part of the pay package of Cabin Crew. The Lallah Report should be applied *in toto* for computation of Meal Allowance. The Disputant rejects the application of ODA in replacement of Meal Allowance. Its methodology has not been communicated and it does not reflect the cost of food in hotels where crew have layovers. Meal Allowance during the Covid-19 pandemic would have brought no additional cost as layovers and its length were at a minimum. Sanitary protocol imposes crew to remain in isolation in hotel and eat from room service only.

The salary scale of Cabin Crew as per the new contract offered to crew must be adjusted so that it is on par with the salary scale of the Collective Agreement of 2014. The new contract of employment offered in July 2020 consists of 12 points LS1 only: Cabin Crew point 1 LS1 starting at Rs 17,600 and ending at Rs 42,775. The new contract proposes increment every two years instead of yearly. Overtimes applies as from 80.5 hours per month at a rate of 1.5 of the employees' normal hourly rate and as of 90 hours per month at a rate of 2 times. New overtime conditions apply as from 82.5 hours per month at a flat rate of 1.5 times the employee's normal hourly rate. It has also been averred that block flying hours was limited to 900 hours per year. As per an MOU in 2007, it was increased to 1000 hours per year and led to a change of overtime scale from 75 hours to 80.5 hours for some and 82.5 hours for others. The increase in work hours

was compensated by the Flight Related Allowance, which has a fixed cost of Rs 25 per flight hour. New individual contracts are based on 1000 hours per year without the Flight Related Allowance.

The criteria for merging three categories into two was not provided. SFP and FP have a separate defined salary scale. New contracts were only offered selectively to SFP and Cabin Crew. The three categories crew structure needs to be maintained as there is no change in commercial service delivery and MK standard as an airline; and for safety on board through established hierarchy. The restructuring tantamount to penalizing senior crew in the hierarchy, cancels all scope for a career path banning promotion and is against the Procedure Agreement. Cabin Crew have been working in that category for more than 20 years without any promotion. The last exercise for promotion to FP was in 2017. The crew complement is to be restored to the original number before administration as workload has increased substantially with the sanitary protocol in place. The airline is expected to deliver the same level of service as before. The crew complement was aligned with safety requirements and commercial exigencies as per Safety Risk Assessment.

Leave without pay has been included in the new contract allocated to 225 selective members. Its parameters should be clearly defined in order to protect members from abusive use of this clause. E.g., inability to perform self-isolation; vaccination; deprived of right to earn the Government Wage Assistance Scheme; and in case of prolonged injury. Leave without pay must be equally distributed. Some members have reached seven months leave without pay while others have done only four months.

AMCCA believes that sacrifices shown by employees in respect to a reduction of their pay package is tantamount to a refinancing of the company finances by the employees themselves, while the major shareholders of the company have shown no interest of re-investing. Therefore, AMCCA asks that the prejudice caused by imposed LWP policy, part-time work, ODA, FDH, grooming allowance, productivity bonus, not being paid since the beginning of voluntary administration to be refunded to employees. All FPs and 60 last in Cabin Crew were placed on part-time. A minimum pay of Rs 25,000 was maintained and those earning a lesser basic salary or same worked full time. Those employees at a higher salary scale made huge sacrifices. The system was most prejudicial to the most senior in the company; they have been placed on leave without pay and part-time. The selective offer of individual contracts to only part of MK Cabin Crew has given rise to discrimination as some are on more favourable condition than others given that two types of work contract exist for the same job.

As of 8 May 2020, the new methodology of computation of Meal Allowance and discrepancy on same to be refunded. Since voluntary administration, Transport Allowance for employees residing outside the MK network has been discontinued; this amount needs to be refunded and the rate reviewed. The employer is to provide tablets and wifi package for crew to access all relevant documentation pertaining to the job and this should be under the responsibility of the employer for replacement, loss or damage. The Department of Civil Aviation requires that all crew be provided with an electronic copy of the Cabin Operation Safety Procedures Manual. Before each crew was provided with a printed copy of this over 6000 pages manual. Savings on printing 350 individual copies can finance the new tools for Cabin Crew.

Isolation days following a duty carried out on behalf of the company to be counted as a duty as it is a constraint related to the duty and hence should be paid. Isolation is an additional task of Cabin Crew duty and needs to be documented at the Ministry of Labour as forming part of the job of front liners in which Cabin Crew is officially included. AMCCA members have been doing their isolation days on their leave without pay months or outside the days allocated to them for those on part-time basis without remuneration. The financial charge of isolation, performed after each flight, has been unfairly shouldered by Cabin Crew, who are already working at half pay or much less ever month. The isolation days should have been remunerated at a higher rate if all inconveniences are considered.

The AMCCA is also asking to be entitled to all provisions as per *Workers' Rights Act* ("WRA"); overtime, (even on standbys); Public Holidays and Sundays (Paid double); nightshift increase in salary. ATR aircraft – Senior Cabin Crew Member ("SCCM") on such aircraft to be remunerated same as for the same post as long-haul flights. The October salary 2020 to be paid fully given that duty days were scattered throughout the roster of the month preventing crew from taking another part-time jobs as proposed by the Administrators to palliate the loss in income. Furthermore, part-time days were communicated five days after the start of the month. The good faith shown by the employees to support the company have been used to their detriment and State financial support has also been denied to them. AMCAA is adamant that all its members be paid their full basic salary since October 2020 to date either through the Government Wage Assistant Scheme or through the Rs 9 billion financial support given to the company.

Unilateral decision taken by MK under voluntary administration to bypass all our standing registered documents namely the Collective Agreement 2014, Industrial Agreement 2007,

Procedural Agreement 2007 and the Award given by Judge Lallah (Balgobin Report) regarding Meal Allowance being replaced by ODA. The Industrial Agreement being replaced by Employee Benefits Policy:

- (i) Roster periods
- (ii) Flight requests
- (iii) Sick Leave
- (iv) Days off request
- (v) Number of emergency leave

They are requesting the reinstatement of all existing agreements. If it is not possible to align with WRA, then all signed agreements should take precedence.

AMCAA is requesting full transparency on where matters stand regarding both pension funds (DB and DC). A 10% increase for a year was paid as an allowance and this amount was not pensionable. This allowed the company to save its contribution to the pension fund by 10% for a year. It is also averred that number of working days for part-time has not been equally distributed bringing a much higher burden on those who are on a higher point in the salary scale. Crew perceiving Rs 25,000 work full time while those above Rs 50,000 get half of their salary for part-time job. Pregnant/nursing crew are to be at par with what the law provides to all other jobs. The right to get time-off for breast feeding after maternity leave. The possibility of grounding crew should be given and such choice to the pregnant/nursing crew should not bring about a salary cut. To provide an alternate for nursing mothers who will not be able to self-isolate after flights for obvious reasons during the pandemic.

It has further been averred that the WRA is more favourable than the Collective Agreement signed between MK and AMCCA. It is only fair that the Collective Agreement, Procedure Agreement and Industrial Agreement be re-established *in toto*. As Cabin Crew work specificities and conditions are not mentioned in Mauritian laws, the Association believes that it cannot part with the Collective Agreement which is the sole document detailing its specificities and remuneration. The Disputant has moreover averred that Administration is not the right time to evaluate and provide favourable conditions to Cabin Crew. The conditions laid by management are detrimental to AMCCA members. As no agreement was reached to sign a new Collective Agreement, it was bad faith of the Administrators to stop ongoing negotiations with the Union and instead offer individual contracts without clarifying the Union's queries on same. A bundle of Annexes is attached to the Disputant's Amended Statement of Case.

THE RESPONDENT'S SECOND AMENDED STATEMENT OF CASE

The Respondent has set out a background in relation to the present dispute. It has been averred that the Respondent went into administration on 22 April 2020, Administrators were appointed, and urgent measures were needed to manage cash flow issues and to restructure the business. Discussions with recognised trade unions at the company have led, in most cases, to new Collective Agreements. However, no Collective Agreement was reached with the Disputant despite a proposal from the Respondent. There is no Collective Agreement in force with the Disputant at this time. In August, 227 Cabin Crew (members of the Disputant) were made individual offers of employment containing a leave without pay clause. All, save for one, accepted. Those Cabin Crew who wanted to return the contract could do so for a period of time. None did so. The Cabin Crew who were not made individual offers of employment were identified for redundancy; this was held off pending negotiations and they were placed on part-time work.

By or about 27 September 2021, 97 FPs and 60 Cabin Crew initially identified for redundancy were made offers of employment subject to periods of leave without pay being agreed; most accepted. Again, the Disputant had the opportunity in intervening in these contracts. Therefore, a near majority of the Disputant's members have individually agreed to the leave without pay clause in their contracts. On 21 September 2021, the Watershed Meeting was convened and an Administrator's Report, detailing the Respondent's financial status, and a draft Deed of Company Arrangement ("DOCA") was circulated. On 28 and 29 September 2021, the creditors approved the DOCA. The Respondent is currently surviving on funds loaned from the Government and these funds are not limitless.

The Respondent's stance is that all amounts prior to 22 April 2020, i.e., pre-dating the administration, are subject to the DOCA. All amounts accruing after 22 April 2020, i.e., post-administration, will be paid according to legal entitlements out of funds available. The Respondent maintains that the part-time work measures and leave without pay measures were lawful. Neither the Disputant nor the Cabin Crew have ever had an issue with the scheme for leave without pay. From discussions, it was understood that same would need to be implemented. A number of measures were taken to create a breathing space for the administration to continue without resorting to redundancies. Cabin Crew not identified for redundancy were made offers of individual contracts with a leave without pay clause; the

individual Cabin Crew signed their respective contracts ahead of the expiry of the time period provided. The Respondent was running out of resources and had no alternative than to ask employees to work temporarily for a time shorter than that specified in their agreements at a reduced remuneration or to go on leave without pay as an alternative in order to pursue the objectives of the administration. Leave without pay has been implemented on a fair and equitable basis.

As from 1 August 2021, all Cabin Crew have returned to full time work given the Government's policy to open borders as from 1 October 2021. The Respondent believes that the provision for leave without pay was freely consented by the individual Cabin Crew concerned and is legal in the circumstances. It is a temporary measure to help the Respondent survive the Covid-19 period. The Respondent has also averred that the Covid-19 pandemic and the restrictions as a result thereof was a *force majeure* in relation to the airline industry. The leave without pay clause is not being applied since January 2022 and crew members have resumed full time work with the reopening of borders. Leave without pay was last applied in December 2021 on crew members. The clause is only applicable for two years as from the effective date and for many Cabin Crew members, the clause has lapsed. The Respondent will not apply the clause between now and September 2023, when the clause will in any event lapse; it is prepared to give an undertaking to the Tribunal. There is therefore no live issue and mandatory leave without pay was applied in the context of the Covid-19 pandemic, closure of borders and grounding of flights.

The Respondent has notably averred that individual contracts of employment were issued to Cabin Crew members due to the Disputant's inability to call a general assembly as per an agreed timeline to get the new Collective Agreement ratified. The backpay of four years on salary increase is not due inasmuch as the previous Collective Agreement dated 2011 was applied until a new Collective Agreement was reached in 2018. A notice to Cabin Crew dated 13 August 2018 (Annex 3.1 of the Disputant's Amended Statement of Case) was issued whereby a further decision would be taken to agree on the quantum and modality of payment to applicable crew members. However, discussion of payment modalities could not be initiated due to the company's finances.

In relation to Meal Allowance, the matter was discussed in a meeting on 11 November 2020 and the company maintains its stand in relation to ODA Policy implemented in October 2020. The Respondent was facing cash flow problems and it was not possible to implement the old system. Even after having exited administration, given the fragile state of the Respondent's finances, it is not possible for the Respondent to accede to the Disputant's request. The Lallah

Report has never been applied. The ODA was agreed by both parties in the Collective Agreement of 2011 at clause 5.3 (Annex 5.3 of the Disputant's Amended Statement of Case) and its implementation was kept on hold. Since all conditions which arose during the collective bargaining in 2018 had not been revised, save from salary, transport and grooming allowance, the old formula existing prior to 2011 with regard to Meal Allowance continued. When going into administration in April 2020, there was no revenue generation and the ODA was extended to crew members.

The salary scale and overtime conditions have been accepted by crew members in their new contracts and they have expressly agreed that *'In the event of any discrepancy between this Agreement and the terms of any other agreement which is binding on the Company and relates to the terms and conditions of employment of the Employee (the Other Agreement), the Employee agrees to amend, or to exercise his or her rights in a manner as to procure the amendment of, the Other Agreement in order to bring it in line with the terms of this Agreement.'* Increments are paid yearly in April depending on the Respondent's financial situation; the 'two-year' element is applicable for those on the top of the scale. In 2007, the Respondent came up with a new formula of paying a Flight Related Allowance of Rs 25 hourly as and when the crew would fly instead of a fixed monthly allowance of Rs 2,250. The new scheme did not allow the Respondent to avoid a recruitment of Cabin Crew as prior to the collective bargaining, it hired 60 Cabin Crew instead of 48 in a single exercise.

With regard to the issue of crew structure, in view of the financial situation, the Respondent could not maintain the present crew structure and in the midst of the pandemic, the Respondent was striving to adjust to evolving situations. It was expected that the Respondent would retain only two positions of Cabin Crew in line with the Aircraft Operator Certification Requirements issued by the Department of Civil Aviation and is in line with European Regulations. This issue is no longer live inasmuch as the FP category has been restored in October 2021 after exiting voluntary administration. It was not possible for the Respondent to accede to the Disputant's claim to restore the crew complement to its original number. It is inevitable for the crew structure to be adjusted based on operational needs, as and when required. There has been no change in crew complement since existing voluntary administration and as per the Procedure Agreement of 2007 (Annex 3.3 of the Disputant's Amended Statement of Case), the responsibility with regard to definition of crew structure rests with management.

It has also been averred that leave without pay has been clearly defined in the contracts of employment and distributed in accordance with the needs and operations of the Respondent

in order to keep it going. This is no longer being applied since January 2022. In relation to issue of Transport Allowance, this has now been settled and the issue is no longer live. Regarding providing tablets and wifi, the Respondent made a proposal back in 2020 but was turned down by the Disputant. The Disputant has instead arranged for two tablets to be used per flight by crew members. The Respondent is not in a position to provide tablets and wifi package to crew and as such, it is not placing any unrealistic demands on the crew. It is furthermore not a requirement of the Department of Civil Aviation.

The Respondent shall await guidance from the Ministry as regards the issue of isolation days being computed as '*on duty*'. Sanitary protocols emanate from the Ministry of Health and Wellness and not the Respondent, who has no alternative than to comply with these protocols. The Respondent is still in financial distress and cannot accede to the Disputant's request regarding remuneration on isolation days. Regarding the Disputant's dispute to be entitled to all provisions of the *WRA* on overtime, public holidays, Sundays and nightshift, it has been averred that the said Act does not cater for the specificities of the work arrangements of Cabin Crew insofar as overtime, night duty and public holidays are concerned. Cabin Crew are remunerated as per international norms with respect to the Airline Industry. They are paid Flight Duty Hour Allowance despite their monthly salary and their hours of work are distinct from employees allocated ground duties.

The Respondent cannot accede to the Disputant's request for ATR Senior Cabin Crew members to be remunerated the same as for long haul flights in view of its financial state and in any event, long haul flights and ATR flights are not comparable. A Senior Crew on an ATR flight is distinguished by date of entry for the purpose of communication only. On long haul flights, higher remuneration only applies when a crew member acts at a higher level. Regarding the issue of payment of the October 2020 salary in full, it is averred that the current volatile nature of operations does not allow for long term planning. Regarding the reinstatement of previous agreements, the Respondent avers that the document being relied upon by the Disputant predates the administration of the company and the company cannot maintain such work practices which are no longer suited to the current environment and not sustainable during administration or with a view to the survival of the company.

The matter regarding pension must be referred to the Board of Trustees of the Pension Fund. Due to the unsustainability of the Pension Fund, it is currently reviewing the whole scheme and is working with concerned authorities to come up with a solution. The number of working days for part-time duty is adjusted based on principles set for the Government Wage Assistance

Scheme and related crew salary. In utmost fairness, the Respondent could not have placed those earning Rs 25,000 or less on part-time work and reduced remuneration. The number of working days was calculated to taken into consideration the salary scale of the employees. Those earning a higher salary were rostered 11 days a month, whereas those earning up to Rs 25,000 were rostered 18 days as was the situation in August 2020. From November 2020 to November 2021, the Respondent imposed one month work and one month off for everyone indiscriminately.

The Respondent also avers that it is in compliance with the *WRA* and also has, in place, a generous system taking into consideration the nature of the job of female Cabin Crew. Nursing mothers are always allowed authorised leave without pay upon request and are allocated short sectors like Rodrigues/Reunion allowing them to be with their babies. When a female crew member is pregnant, she is placed on ground duty and her basic salary is maintained. During the Covid-19 pandemic, few pregnant crew members could be posted to office duties due to a surplus of office and administrative employees. They were then paid a salary equal to the Wage Assistance Scheme or half their salary when higher than Rs 50,000. This exceptional measure was applied in exceptional circumstances. On exceptional grounds, the full salaries were finally paid to these pregnant crew members. The Respondent had, in 2011 during negotiations, allocated an exaggerated increase of an average of 20% to employees across the company. This affected labour costs considerably until the company went into administration in April 2020. The Respondent denies that the Collective Agreement will be lagging behind by 10 years inasmuch as salaries and work conditions have been adapted to absorb the country's inflation.

THE EVIDENCE OF WITNESSES

The Disputant's representative, Mrs Yogita Babboo-Ramma, Cabin Crew, was called to depose on behalf of the Disputant. Regarding points 5.1 and 5.2, she stated that during administration, they received new contracts containing leave without pay, which is not according to their Collective Agreement. It stated that they can have a years' leave without pay over a term of two years. There has been an abuse of this as all reasons were sought to put them on leave without pay, the more so they were forced to sign the contract so as not be sent before the Redundancy Board. It was said that this will be fairly distributed to all members. As time passed, they noticed that leave without pay was being imposed for reasons having nothing to do with flight operations. Their flight hours were reduced as the company was operating about 20% compared to normal.

Mrs Babboo also stated that self-isolation was imposed by the sanitary protocol as they were in the Covid period. This required them to isolate at home after a flight. A mail was sent by the company asking whether they could self-isolate or not. Those who replied negatively were put on leave without pay for three months at once. The contract, signed in August 2020, stated that leave without pay would take effect as from the Watershed Meeting. When the contract was signed, people were put on leave without pay as from November itself. Nobody wanted to take the responsibility to self-isolate as in the Cabin Crew contract, it is not stated that she must have a house to be able to self-isolate to be able to go to work. Self-isolation is no longer in force. But during administration, the crew had to isolate at their own cost. There was no compensation from the company nor from the Ministry of Health. It does not count as a duty day.

As regards point 17, the representative stated that when the Respondent offered the contracts, it was not applicable to all the workers and some were placed on part-time. 225 workers received the contract and 160 workers, who are members of the Disputant Union, were put on part-time. Those on part-time received a salary of Rs 25,000; whereas those on the contract received Rs 40,000 and were put on leave without pay. Over two months, she earned Rs 40,000 and was not eligible for the Government Wage Assistant Scheme. Concerning point 9, Mrs Babboo stated that before entering administration, there was a Transformation Steering Committee whereby they were proposed Rs 10,000 to buy tablets and wifi for a period of three years. They would be responsible for the tablet, which would be a work tool. They had to be available on the tablet to receive messages from the company. They found that this entails too many responsibilities and asked the Respondent to furnish the tablets instead. The wifi package is important as they not office based, being at home, at the airport or outstation having layovers. It is important to receive the mails and they need to have the wifi package.

The representative also stated, regarding point 13, that on 25 September, the Administrator informed them that employees would be put on part-time and leave without pay as from 1 October 2020. This was a very short delay in informing them as they could not make any provision. They were informed that could do part-time jobs when put on part-time. At the end of October, she only received half of her salary. Three quarters of their members earn less than Rs 50,000 and she does not understand why they did not receive the Government Wage Assistant Scheme. Those who earned less than Rs 25,000 were not affected. She does not know if the Government Wage Assistance Scheme was taken for them as they were not on their full salary. How is it that some workers were on half-pay and put on part-time, when others were working full-time with the company operating at 20% capacity. It would have been fair to apply part-time for everyone. The Administrator also rehired retired workers and they continued to earn a salary in addition to their pension. Some were earning two salaries, while others on leave

without pay were not earning anything. Regarding whether payment has been made, they have not received full payment but only half payment.

On point 15 regarding pension, Mrs Babboo stated that pensions are managed by the Air Mauritius Ltd Pensions Fund Scheme (AMLPS). They received a 10% increase on their basic salary in the Collective Agreement of 2018. However, this appeared as an allowance on their payslip. As it was considered as an allowance, it was not pensionable. The Direct Contributory (DC) entails a contribution; whereas the Direct Benefits (DB) do not pay – the company pays 100% towards their pension. Regarding nursing mothers (point 16), Mrs Babboo stated that according to law, mothers are entitled to one hour in the afternoon to nurse their new-born child. As Cabin Crew are on flights abroad, this is not possible. They wish to have a solution for mothers to continue to nurse their new-born child if need be. She also stated that before administration, they were 11 crew on a A350 flight; after the administration, they are now 10 on the same flight and the duties have remained the same. 10 crew members are now performing the work of 11 and their workload has increased despite their salaries remaining the same. They have not received any compensation.

Mrs Babboo referred to her original contract of employment at Annex 18.1 of her Amended Statement of Case which does not mention leave without pay and has been used as a reference; all changes made by Collective Agreements have been implemented thereon. The new contract of employment (at Annex 7 of her Amended Statement of Case) was received during administration and contains leave without pay and is not according to the terms of the Collective Agreement of 2018. Annex 16 of her Amended Statement of Case is a roster as from October 2020 to September 2022 and shows that leave without pay was not fairly distributed among crew members. They were told, when signing the contract in August, that leave without pay would be applied as from January 2021. A document relating to the Wage Assistance Scheme is also annexed (at Annex 15.4 of the Disputant's Amended Statement of Case).

Mrs Babboo also identified the MK policy for crew to be given Rs 10,000 to purchase tablets (at Annex 21.1 of the Disputant's Amended Statement of Case). Repairs would be their responsibility and sum comprised the internet package. As per a memorandum (at Annex 21.2 of the Disputant's Amended Statement of Case), the Respondent was going ahead with the policy. They noted that Rs 10,000 was not sufficient to cover three years for a tablet with internet charges. Annex 21.4 of the Amended Statement of Case refers to a sanction a crew member received for having lost her tablet. In relation to nursing mothers, she referred to a document at page 337 of the bundle of documents annexed to their Amended Statement of Case. Mothers

have to retake flights after maternity leave is over. The Collective Agreement of 2018 was registered. The Collective Agreement of 2007 is to be found at Annex 3.2 and precedes the one of 2018.

Mrs Babboo was questioned by Counsel for the Respondent. She agreed that the Disputant would need to have regard to the Respondent's situation. Regarding the Respondent's financial situation, she stated that the Respondent does not provide any internal information, even prior to Covid-19. Regarding the pandemic, the Union was not aware of how the situation would evolve. The Government decided to stop commercial flights and this decision was out of the Respondent's hands. The Respondent's main revenue source stopped with the stopping of commercial flights. From March 2020 to October 2021, the company was not operating in the normal. At present, they are almost back to the 2019 pre-Covid-19 level. The Government Wage Assistance Scheme was provided to the company as well as Rs 9 billion in the 2020 budget. She is aware of some airlines that went into administration with Covid-19.

Mrs Babboo moreover agreed with the purpose of administration. Keeping her job without earning any money is like slavery. Her colleagues were doing isolation and were not paid for it. She agreed that the Administrator has to look at the broader picture of the company. The Respondent's wage bill is 18% of running costs of Rs 20 billion and for Cabin Crew, it is 2% of that cost. She was registered as a creditor as were most of the members of the Union. She was aware that the creditors voted in favour of the DOCA and, by operation of law, are bound by same. Any claim or debt arising prior to 22 April 2020 is subject to the DOCA. They had four meetings with Administrators following a case entered before the Tribunal. A proposal for a new Collective Agreement was sent; when they asked for more information, the Administrators never came back to them. She was referred to clause 8 of the 2018 Collective Agreement. She disagreed that on the basis of this clause there is no Collective Agreement in force between the Disputant and the Respondent. The 2018 agreement ends on 31 October 2018.

Mrs Babboo also stated that the Cabin Crew were offered new contracts of employment, which all, save for four, signed. She cannot say if she was bound by the contract of employment as it is an individual matter. The discussions between the Administrators and the Union were on part-time, not on leave without pay. There was a meeting whereby the Administrator informed as to the leave without pay clause. She is not aware of any criteria used by the Respondent in applying leave without pay. She is not aware that this is not being applied since August 2021. Since August 2021, some Cabin Crew are still on part-time and others on leave without pay. As

per the contract, leave without pay will go on for a certain period of time. She disagreed that leave without pay was an exceptional measure applied in exceptional circumstances.

Mrs Babboo furthermore stated that the measures taken by the Administrators to save jobs were unnecessary as they had received Rs 9 billion and the Government was supporting workers in the tourism sector. She agreed that nobody was fired. Those who did not sign the contract of employment are still employed as at today. The contract of employment did not mention the conditions for leave without pay. She did not accept that her claims would have an impact on other sectors. The Union's costing of their present claims is not in the bundle of documents. 400 members would cost Rs 1 billion per year. Isolation was done according to the sanitary protocol which does not say it has to be done free of charge. Regarding tablets, the claim is to allow Cabin Crew to have access to the manual during flights.

Mr Gilbert Finley Seetharamdoo, Cabin Crew, was also called to depone on behalf of the Disputant. He stated that the ODA is not part of the Collective Agreement of 2014, which was signed in 2018. The mode of calculation of the ODA is unknown to AMCCA. Previously, the Lallah Report provided for Meal Allowance and gave a rationale and mode of calculation for the Respondent to provide the crew for sufficient quantity and quality of food. With the Meal Allowance, one would earn 307 euros for a 36 hours' stay layover in Paris; for a minimum rest, it would amount to 178 euros. Whereas with the ODA, it is 160 euros for 36 hours, which is insufficient to provide for food. The ODA is not a Meal Allowance, which is covered by the Balgobin Award. The Lallah Report established a mechanism on how to pay the Meal Allowance. The ODA was imposed on them without any negotiations with the Union. There is a discrepancy in the way the ODA is calculated and he is asking for a refund of this discrepancy and a proper computation.

Mr Seetharamdoo also deposed with regard to overtime under point 11 of the Terms of Reference. In 2011, the Union and management agreed to an increase in the hours of overtime for more productivity and not to have an increase in manpower. The overtime monthly limit was increased to 82.5 hours from 75 hours. With the administration, the threshold has been increased to 90.5 hours. They were governed by a Flight and Time Limitations document, which gave them 900 hours per year making 75 hours per month. With administration, the threshold has been increased to 90 hours and paid at a rate of 1.5 instead of 2. This is not specified in the individual contract. They also receive a Flight Related Allowance of Rs 25 to increase the crew's productivity.

Mr Seetharamdoo was questioned by Counsel for the Respondent. He was referred to extracts of the Balgobin Award (RN 394) dated 17 November 1995 (at Annex 5.1 of the Disputant's Amended Statement of Case). The award considers Meal Allowance to be part of the salary package. He agreed that Meal Allowance is intended to pay for the meals when on layover overseas. The ODA has nothing to do with meals and he disagreed that it is meant to pay for the meals of crew when on layover. The Meal Allowance was calculated according to hotel rates; whereas with the ODA, they don't have enough money to buy food to nourish themselves. They received a memo from Flights Ops that as from 20 April 2020, the ODA is replacing the Meal Allowance. The ODA did not exist prior to administration. He agreed that Airmate crew were being paid an ODA to cover for their meals.

The witness also replied that there were no discussions on ODA in 2011 with the Union. The notes of a meeting on 15 November 2011 (produced as Document A) states that the Union will revert back to management on a new mode of payment, which was a zoning system; but it was never agreed. They have never agreed to change the Meal Allowance. The Balgobin Award does not fix the quantum of Meal Allowance but recommended that a method be devised and this had financial considerations. Meal Allowance is meant to cater for meals and not for the crew to make savings. The then Tribunal found that the allowance became a salary component.

Mr Seetharamdoo moreover replied that the Lallah Report of 1996 (at Annex 6 of the Disputant's Amended Statement of Case) followed the Balgobin Award. The Disputant contends that this report should be applied *in toto* for the computation of Meal Allowance. He agreed that there was a problem in the way that Meal Allowances were being applied as it could lead to preference for flights. A new system was implemented in 2011 where the crew can request two flights to the destination of his/her choosing. The report recommended *Per Diem* instead of Meal Allowance. If the report is to be applied, they have to sit and find an alternative to the Meal Allowance. The report was not applied. He does not agree that ODA is zone based as opposed to individual countries. Meal Allowance was being applied on a destination basis.

Mr Seetharamdoo was referred to the new contracts of employment (at Annex 13.1 of the Disputant's Amended Statement of Case) given to Cabin Crew when in administration and deals with the point of ODA. Referring to the ODA table at Appendix 2 of the contract, it specifies zones not countries. He would wish that the allowance be calculated by destination as opposed to the zone. As per the Collective Agreement of 2011 (at Annex of 5.3 of the Disputant's Amended Statement of Case), zoning was discussed and not agreed. Document A refers to Meal Allowances and the Respondent was, at that point in time, implementing the zoning concept but it was never

implemented until now. He is not aware of the ODA system applied to Cabin Crew recruited by Airmate.

Mr Seetharamdoo furthermore disagreed that ODA was meant to pay towards meals and that it is zone based. They were never apprised of its calculation. It would be good if the Respondent were prepared to review the ODA for destinations where there are genuine shortfalls. He did not agree that Meal Allowance cannot be applied in view of the Respondent's current financial situation. Meal Allowance is a basic necessity, it is about food and is humanitarian. He did not agree that the quantum of ODA is enough to provide for food of sufficient quality. There was an increase in block hours from 900 to 1000 and they were compensated for the increase. The Flight Related Allowance, which is Rs 25 per hours, forms part of the Collective Agreement of 2011.

Mr Didier Duval, Cabin Crew, was also called to adduce evidence on behalf of the Disputant. Transport allowance, at some point in time, was not being refunded. As at today, they do not have the exact amount of the refund as their payslip only mentions '*travelling*' and not '*refund*'. As per the Collective Agreement 2018, they were supposed to have a meeting for the transport system and are still waiting for same. As a unionist, it is important to review the transport system. Referring to page 275 of the bundle of documents annexed to the Disputant's Amended Statement of Case, they receive a litre of fuel for each 12 km.

On the twelfth point of the Terms of Reference, Mr Duval notably stated that there is a *Chef de Cabin* in all types of aircraft operated known as the SCCM or SFP. On ATR flights, someone also performs SCCM/SFP; however, he is not paid as a *Chef de Cabin* but as a simple crew at work when he is leading. Reference was made to the Cabin Operations Safety Procedures Manual ("COSPM") (at Annex 24 of the Disputant's Statement of Case), which is approved by the Civil Aviation and regulates their responsibilities; it is also approved and audited by the Respondent. The person has the same responsibilities as a SCCM on ATR flights, which is same as for a *Chef de Cabin*. Reference was also made to paragraph 5 of the Employees Allowances and Benefits Policy (at page 313 of Annex 26 of the Disputant's Amended Statement of Case), whereby the Cabin Crew working in a higher grade will be paid a responsibility allowance for the duty performed in the higher grade. The Cabin Crew member is performing the job of the SCCM on the ATR flight.

When questioned by Counsel for the Respondent, Mr Duval notably agreed that the duties that he performs on the ATR as Cabin Crew is to be found in his contract of employment.

He is not aware of the duties of an SFP. There is a difference of duties between the SFP and Cabin Crew. He agreed that it is only when the SFP is not present, the person who occupies the post of SFP will receive the responsibility allowance. Annex 24 of the Disputant's Amended Statement of Case does not indicate anything on the all the duties performed by the SFP as the document does not reflect the latter's duties for long haul flights. There is no SFP on ATR flights but two Cabin Crew members. As per paragraph 1.7.4 of Annex 24, it is written '*SFP/SCCM*' for '*ATR*'. He did not agree that the person responsible for communication with the pilot on ATR flights is not performing all the duties of an SFP. The Cabin Crew on the ATR flight is working in a higher grade doing more than a Cabin Crew.

Mr Steve Antoine, Cabin Crew, was also called by the Disputant as a witness. He notably stated that following a meeting with the Administrators, they discovered that the FP category aboard had been removed. They were not informed about how this was done. There are three categories on board a flight: the SPF, the FP and the Cabin Crew. A FP each operates in the Business and Economy class and coordinates the work of the Cabin Crew. Cabin Crew are fully engaged in service and have duties concerning security. The SFPs and the Cabin Crew, during administration, received new contracts; however, the FPs did not receive same. The FPs were offered a new contract of employment a week before the end of the administration (*vide* Annex 13.1 of the Disputant's Amended Statement of Case). They were offered a contract as Cabin Crew, not as FP, with their salary being reduced and their Flight Duty Hours ("FDH") being amended. A week after, on 16 September 2021, they received an Addendum (at Annex 13.2 of the Disputant's Amended Statement of Case) whereby there were changes to remuneration and seniority clauses.

Mr Antoine also stated that a third Addendum (at Annex 13.3 of the Disputant's Amended Statement of Case) was sent whereby the job of FP was restored. However, the salary scale for FP was not as it was in the Collective Agreement 2018 and the FDH was also reduced. It contained a clause stating '*I also commit not to claim any other conditions applicable prior to the voluntary administration*', which people were not agreeable to sign. There are now three types of contracts for the same job at the Respondent. As Cabin Crew can aspire to become FP, their career will stagnate. Referring to Annex 13.4 and 13.5 of the Disputant's Amended Statement of Case, Mr Antoine stated that it is important for there to be a good synergy between the Cabin Crew and is determinant for security on board a plane. There must be shared goal and a clear crew structure as well as clear task allocation for things to work correctly on board.

Regarding the fourth point of the Terms of Reference, he stated that they were operating with 11 crew on a A350, 10 crew on a A350 Neo and 9 crew on a A330-200 before voluntary administration. This was reduced to a maximum of 8 during administration because of sanitary restrictions and as service was reduced to a minimum, there were no issues. After administration, when commercial flights have resumed normally, the crew complement is now 10 on a A350 and same for the A330 Neo and A330-200. There is no sanitary protocol and the previous standard of service is being implemented on board. Reference was made to Annex 14.1 of the Disputant's Amended Statement of Case whereby the Disputant communicated its findings to their Manager and the CEO before administration. The CEO decided to set a Safety Risk Board to analyse the findings. Annex 14.2 of the Disputant's Amended Statement of Case is from the Administrator communicating the reasons why the complement was 8 on board.

Mr Antoine moreover stated that the issue is still live as there is still a problem as the number has been reduced. When the sanitary protocol was in place, the crew suffered prejudice as those on part-time were not offered contracts of employment and those, on contract, were put on leave without pay. Every crew member had to isolate after a flight, which was not paid by the company. They also had to follow the applicable protocol when abroad. The financial aspect was catered by the crew themselves. Reference was made to the rosters at Annex 22.1, 22.2 and 22.3 of the Disputant's Amended Statement of Case. The isolation protocol was in force up to mid-2021 and was still applicable when commercial flights had resumed for at least 12 months. They were not paid for the isolation. It is a duty imposed to allow the company to advance.

Mr Steve Antoine was questioned by Counsel for the Respondent. He notably stated, regarding the third point of the Terms of Reference, that the crew structure was reduced from three to two during administration with the FP being removed. He agreed that the FP category has now been restored and that 3 categories now operate on a flight. He agreed that the crew structure has been maintained to 3 categories. Regarding the fourth point of the Terms of Reference, it concerns the A350 and A330 Neo aircrafts for which the crew are now 10 and 9 respectively post-administration. He is not aware that the crew number was increased to 11 and 10 respectively because management was performing a test on the new aircrafts. He agreed that as per the Procedure Agreement signed in 2007, management can decide the number of persons who would work on the plane.

Mr Antoine moreover agreed that the isolation days were performed according to the sanitary protocol from the Government. He agreed that he had to comply as it was an obligation. The Covid situation was exceptional and one could not predict how it would evolve. When in

isolation in Perth, the hotel was paid by the company. They were receiving the ODA two months late and had no money for food when there. He agreed that at that time, when Covid was rife, it was during the period of administration and there was a major cashflow issue at the company.

Mrs Marise Sylviane Doris Julien, Air Hostess, also deposed on behalf of the Respondent. She explained that every year they have to undergo an emergency procedures examination to obtain a flying licence. Everything was in hard copy before going digital. When digitalised, they had no tools as they navigate. It is easier to have a tablet which they can bring to verify the security manuals and the procedure for commercial and security. They received nothing when it was digitalised and had to manage with their own phones and personal tablets to have access to the manuals. There are about 7 to 10 manuals ranging from 500 to 3000 pages. She personally had an issue when she attended a course, she could not download the materials as her personal tablet had crashed. She received a mail asking for her explanations to which she did not reply and was summoned to the office. She received a verbal warning which is in her file. One cannot expect everyone to have a laptop or PC or a sophisticated tablet to download these consequential manuals. One cannot work without receiving the necessary tools.

The Disputant also called Mr Hoomadeven Curpen, Cabin Crew, as a witness. He notably stated that after 20 years as Cabin Crew, he was promoted to FP. During administration, the FPs did not receive any contract of employment and were informed that their position was being identified for termination. On 10 September 2021, he received a contract of employment (at Annex 13.1 of the Disputant's Amended Statement of Case) as Cabin Crew instead of FP. He was not satisfied but was obliged to accept. He then received an Addendum on 19 October 2021 (at Annex 13.3 of the Disputant's Amended Statement of Case) stating that his job title of FP will be restored. The FP's salary was also reworked. However, he did not receive any contract stating that he is a FP and his actual contract is that of Cabin Crew. He referred to his individual roster at Annex 22.2 of the Disputant's Amended Statement of Case. When they were not on contract, they were not working and were put on leave without pay for about 3 to 6 months. He performs the same work as a FP with the same responsibilities. As at now, he does not have a contract as FP.

The Respondent first elicited evidence from its representative and Human Resources Manager, Mrs Nivedita Purmessur. She confirmed as to the correctness of the Respondent's Second Amended Statement of Case, save for paragraph 6 whereby six persons did not sign the contract offered during administration. Regarding the first item of the Terms of Reference, she stated that the Lallah Report was never applied as the company could not apply a *Per Diem* as

per its recommendation and this is not a Meal Allowance. The Meal Allowance system was being applied prior to the report and continued after the recommendation of the report. Currently, the ODA is in place. In 2011, they came up with a zoning system which was agreed by both parties, but the formula was not derived. The zoning system was applied to crew hired from Airmate and a formula was derived. The Administrators decided to align everyone on the system as those hired from Airmate, which is the ODA. The ODA applied the zoning system, and the Meal Allowance was as per destination. For the ODA, the Procurement Department worked with hotels as to the costs of meals and decided what to pay for each route. There have not been any individual complaints since the introduction of the ODA, but there have been revisions in stations where it was fair to revise. The Respondent's position is that it is prepared to listen to concerns and address them after investigation.

As for the second point of the dispute, Mrs Purmessur stated that each category, i.e. Air Hostess/Stewards, FP and SFP, have their salary scale. During administration, the Cabin Crew scale remained, and FPs were made redundant with the scale being scrapped. The scale for SFPs was revised downwards. After the DOCA, management decided to restore the FP category for stability purpose on the aircraft. The salary scale for FP was reworked and has been lowered. In relation to the third item of the Terms of Reference, the category of FP has been restored. As for the fourth item, she explained that the crew complement is the number of crew you have on board an aircraft. There has been no change to the crew complement as such as there was a testing phrase for the new A 350 aircraft whereby they started with 11 crew and this came to 10. As per the Procedure Agreement, this is management's responsibility.

As regards the sixth item, Mrs Purmessur stated that there is no such thing as a productivity bonus, but an extra allowance is paid to those who do not absent themselves during the whole month. Grooming Allowance was to front liners to be well groomed and was stopped during administration; it is being paid now. The FDH Allowance was also stopped during administration as were all allowances across the organisation. In October 2020, they started with part-time work for all categories of employees as there were only 20% or less of operations daily. It was difficult for the Cabin Crew as they were on roster and it was decided by the Administrators to apply the one month on, one month off system. Part-time for Cabin Crew for only in October 2020. Regarding leave without pay, it has come back to normal in October 2021. Leave without pay no longer applies and she confirmed that the Respondent will not apply the leave without pay policy. Management is not imposing this on anyone since October 2021 unless there is a request by an employee.

Concerning Transport Allowance (item 8), the Respondent's representative stated that Cabin Crew are refunded when they stay outside the transport network. As from October 2021, what was due has been refunded. Regarding the ninth item, in 2018, management proposed Rs 10,000 to each crew to purchase a tablet; but this was not accepted. A policy was drawn by management, but this did not progress. Then management come up with two tablets on each aircraft for anybody to access information regarding the manuals. Paragraph 40 of the Respondent's Second Amended Statement of Case should read management instead of Applicant. In relation to the eleventh item, Mrs Purmessur stated that the conditions of service of Cabin Crew have always been aligned with international standards. The *WRA* has not been applied for Cabin Crew. As regards the twelfth item, there are only two crew on ATR flights and have the same duties. For long haul, you have the SFP and then Air Hostess/Steward. It is called SCCM in the manual for the purpose of communicating to the ground personnel, to the technical crew or the Captain. On an ATR, they are not performing any duty outside their scheme of duties.

Regarding the fourteenth item, the roster period, flight requests, sick leaves, day-off requests, emergency leaves are covered in the Employee Benefits Policy despite no Collective Agreement being signed with AMCCA. Roster periods, flight requests, days-off request, emergency leaves have remained the same. Only sick leaves have been aligned to 15 days as in the *WRA*. She cannot depone as to fifteenth item regarding pension as the trustees should be called as witness. Regarding nursing mothers, the *WRA* is not applied for this category because of the nature of the work. Those who request for leave without pay after maternity leave are given same. For those willing to continue with their babies, they try to accommodate as far as possible by giving them back flights to allow them to return home.

Mrs Purmessur was thoroughly questioned by Counsel for the Respondent. She notably stated that, regarding Meal Allowance, the Balgobin Award was not followed. She corrected herself in that the Balgobin Award did not mention *Per Diem*; it is the Lallah Report which recommended *Per Diem*. The *Per Diem* could not be applied as it is not a Meal Allowance. Referring to a letter dated 19 October 2021 from her, she meant that the modality for payment will be restored prior as it was prior to administration irrespective of the fact that she wrote Meal Allowance or ODA. She also stated that the job title of FP has been restored, the salary of FP will start from point 1 to point 19 and Flight Duty Allowance will be at Rs 19. ODA is a zoning system. She agreed that for the first 12 hours of a layover, there is total of 178 euros. She has not had any complaint from the staff. She agreed that the ODA is at least 50% down compared to the previous Meal Allowance but not for all routes; it is not overall 50%.

Mrs Purmessur also replied to Counsel for the Respondent on the issue of crew structure. FPs were earmarked for redundancy during administration and they were given contracts as Cabin Crew. The FP position was created to give Cabin Crew a promotional avenue. The information provided to the Administrators was credible. When it was decided to restore the category of FP, a scale had to be worked out on what was agreed to be the SPF scale by the Administrators. There was a first and a second Addendum signed with regard to the contract of FPs. The contract remained the same and they received a side letter restoring FP. Four senior FPs did not sign the new Cabin Crew contract. If there is a promotional exercise, those who are eligible can apply. Regarding point 5, she notably stated that there was a system during administration when the Cabin Crew were on leave without pay one month on, one month off. Cabin Crew were not on part-time as AMCCA said that this will not suit them and the Administrators came up with leave without pay one month on, one month off. They were not earning any revenue and no flights were operating.

Regarding point 12, Mrs Purmessur stated that the Senior Cabin Crew is remunerated as per his contract when flying on ATRs. On long haul flights, when a FP is absent, the Senior Cabin Crew takes over; if the SFP is absent, the most senior FP will take over and is paid a responsibility allowance. There is only one category of crew on ATR, Cabin Crew. It is not in the structure to have a SFP on ATR. Referring to the COSPM (pages 305 – 306 of Annex 24 of the Disputant's Amended Statement of Case), the duty of ensuring load sheet is done by a SFP on long haul and SCCM on ATR. There is no need for SFP on ATR. The position of SFP has never existed on the ATR only SCCM. The most senior Cabin Crew on the ATR is assigned for communication purposes. The SCCM on the ATR has additional responsibilities to the normal Cabin Crew member as she has to write a report after the flight. She agreed that when a Cabin Crew is exercising a higher grade, he is paid a responsibility allowance but this is not the case for the Cabin Crew on the ATR as it is not a higher grade. In terms of anything happening on board and reporting to management, the FP on a long haul carries the same duty as the SCCM on an ATR.

Mrs Purmessur was also questioned on the fourteenth point of the Terms of Reference. She stated that the last Collective Agreement was signed in 2018 and every four years, the conditions of service are reviewed through negotiations and if it is more than four years, the ancient one remains as they are. There have been no negotiations for a new Collective Agreement with the Disputant. The allowances provided in the Collective Agreement are no longer in place as they have been through administration. The Flight Duty Allowance stands good for Cabin Crew, it was lowered for the SFP and when FP has been restored, it has to be related to whatever the SFP has been given as a new figure. It is now Rs 75 per hour for Cabin Crew.

Regarding Transport Allowance, the members living outside the transport network are paid for their expenses. She confirmed that it has been refunded.

On the issue of tablets and wifi, Mrs Purmessur stated that Rs 10,000 was going to be given to each crew member but they were not willing to accept same because of the maintenance of the tablets. They were not ready to cater for the cost of maintenance. In the meetings she attended, the discussion was around the maintenance of the tablets. What management has catered is for crew members to have whatever relevant information and two tablets on each flight have been provided. The wifi issue does not therefore arise as two tablets have been provided on each flight. The crew are supposed to know the manual by heart and are given refresher training. If there is an emergency situation, the crew will not have the time to check the tablets. The Flight Related Allowance of Rs 25 was discontinued during administration and has not been restored. On Meal Allowance, when taking breakfast, lunch and dinner amounting to 178 euros for 12 hours when the ODA caters for 160 euros, she did not agree that the crew would be out of pocket.

Regarding the issue of pension, Mrs Purmessur stated that this is for the trustees of the pension fund and she will not be able to answer. On nursing mothers, Mrs Purmessur stated that when a crew is pregnant, she has maternity leave for 13 weeks and afterwards, in almost all cases, the crew asks and takes all her leaves and then ask for leave without pay. On resuming, the person is given all the facilities so that she can do back-to-back flights when she resumes flight duty. She agreed that the company is not abiding to allowances such as Sunday Allowance and Public Holiday Allowances as per the *WRA* as they are paid other allowances.

Mrs Purmessur was re-examined by her Counsel. Referring to the letter dated 19 October 2021 (at Annex 13.3 of the Disputant's Amended Statement of Case), she explained that modality of payment means that the crew are given their allowances in hotel overseas; at a certain point in time, the money was put in their bank account and this did not suit them and overseas payment at the hotels was restored. She also stated that allowances which were previously under the Collective Agreement 2018 are now under the Employee Allowances and Benefits Policy (at Annex 26.1 of the Disputant's Amended Statement of Case) which was written during administration. There were discussions between the Administrator and the Disputant for a new Collective Agreement.

Mrs Sarajhen Mounsmie, Manager Crew Scheduling and Administration, was also called to depose on behalf of the Respondent. She stated that the crew complement is the number of Cabin Crew required to operate a flight and is primary and commercial. The current crew complement for the A350 is 10, whereas before administration it was 11 crew members at its entry in service, done purposely to allow crew to be accommodated to the new aircraft. The crew complement is not inadequate as it should have been 10 from the start. The crew complement for the A330 Neo is 9 and was 10 at its entry into service. The crew complement of 9 is not inadequate from a commercial perspective.

Regarding leave without pay, Mrs Mounsmie stated that the leave without pay clause was stopped from being applied in November 2021. There was an equitable distribution of leave without pay except where crew members themselves would request to be on leave without pay for continuous periods. From November 2020 to January 2021, all crew members were planned for one month of leave without pay during this period of three months; from February 2021 to November 2021, it was on-off working except where there was a particular circumstance that would get them to get crew members to be on continuous leave without pay as it occurred for a few crew members not fully vaccinated in August 2021. In July 2021, they were informed that all operating crew members, as a government policy, must be fully vaccinated; those not vaccinated were assigned leave without pay until there would be fully vaccinated.

Regarding the tenth point of the Terms of Reference, Mrs Mounsmie stated that the isolation period was 14 days in March 2020 for all operating crew members. In October 2021, it was brought down to 7 days. As from April 2021, it was hotel isolation for crew members operating Bombay and Johannesburg commercial flights and 7 days for the rest of operations. Everything seized at 30 September 2021. This was a Government policy. The crew members were being paid their salary during the isolation period. They were not put on leave without pay for the isolation period before November 2020. As there were a few flights, 10% – 20% of usual operations, it was not difficult to assign 7 days of self-isolation to crew members after having operated a flight. There were 300 cabin crew members and reduced operations. For assignment of a flight, it is two days off after a flight and then back on the roster.

Mrs Mounsmie also stated that Cabin Crew carried out part-time duties in October 2020; for those who received the contract in 2020, they were scheduled on part-time up to 2021. She was involved in preparing the October 2020 roster. It is true that the roster was issued late on 29 September because they were informed of the part-time formula on 25 September by Pay Office. They worked on the roster which was published on 29 September. The agreed date, at that time,

was 10 days before the start of the month, i.e. the roster should have been published by 22 September 2020. Regarding distribution of part-time working days, they were provided with figures from Pay Office prorated based on the salary of the crew member that would be paid. For up to Rs 25,000, you would be paid your full salary and be working full time. From Rs 25,000 to Rs 50,000, you would have prorated days based on a salary of Rs 25,000. For above Rs 50,000, you would be working 50%, i.e. 11 working days. The normal full time is 22 working days.

She added that the distribution was not equal as each crew member had his or her own number of working days; the working days were scattered as they could have a few standbys at the start of the month and flights in the midst of the month and a few duties at the end of the month. It was not clustered and was based on operational requirements. After having met the Union and based on their feedback, she devised another formula where the days would be clustered as far as possible. On the financial burden, those who earned more than Rs 50,000 got half of their salary and those who under Rs 25,000 got their full salary. It is not equal from a rostering perspective and they worked on the number of days that the crew were paid as instructed. Part-time is not being applied since November 2021 and the crew are all on full time, except for two FPs who did not sign their contracts.

Under cross-examination by Counsel for the Disputant, Mrs Mounsmie notably stated that she did not agree that the Respondent itself imposed longer leave without pay period on some crew members and a shorter period for other crew members as the Administrators had instructed them to assign 3 months of continuous leave without pay to crew members who could not self-isolate. During 2021, they adjusted for a more equitable distribution of leave without pay; unfortunately, in July 2021, they received the new regulation that crew members had to be fully vaccinated and they then had to assign leave without pay to those who were not vaccinated resulting in them having more leave without pay than other crew members. Regarding not being paid when on isolation, the witness stated that crew members are paid their basic salary regardless of the number of working days in a month and even when in isolation they are paid their full salary.

Mrs Mounsmie also replied that a crew on part-time working for 15 days and goes into isolation and when coming back on the 15th of the month, would not be counted as over the 15 days part-time. She could not say if the 11 crew members on the A350 and the 9 crew members in the A330 Neo would reflect international standards. International norms vary from airline to airline based on what they commercially offer their customers. She is not aware of a letter dated

15 March 2019 (Annex 14.1 of the Disputant's Amended Statement of Case) regarding business crew complement. As of date, there are 36 SFPs, 80 FPs and 360 Cabin Crew members.

Mr Shivaji Gunnesh, Senior Manager Financial Accounting, was also called as a witness for the Respondent. Regarding the eighth Terms of Reference, he stated that the Transport Allowance has been paid and he produced two payslips for the month of October 2020 (Document B) and another payslip dated 27 October 2020 for Cabin Crew (Document C). The refunds appear under the item '*travelling crew*' in the payslips. As at present, there is no Transport Allowance that has not been paid to the Cabin Crew. He also stated, on the issue of ODA, that the ODA is paid in local currency when the crew check-in at the hotel. They calculate the rate that will be paid for the month, then transfer it to the hotel as an advance. This modality of payment has been in place except during administration. During administration, there were minimum or no layovers and they could not use the hotel to disburse the funds; so the crew's bank account was credited. The Respondent does not owe any of its staff any ODA. ODA is adjusted as per the MoU in 2020 where it is mentioned that management will assess and revise the rate as required. Lately, Bombay has been reviewed and increased. The Meal Allowance for Bombay was Indian Rupees 5,534 effective 1 April 2019 and the ODA in India is now Indian Rupees 7,160. The adjustment was made following a request from the crew for an increase for India. The ODA for South Africa was revised again in June 2023.

Upon questions from Counsel for the Disputant, Mr Gunnesh notably stated that on the refund of transport, he got the information from the Pay Office. He is not in a position to say if the crew have filled a form and requested for the refund. Regarding ODA, the rate for Europe is 100 euros for 24 hours and 60 euros for every subsequent 12 hours. 36 hours will come to 160 euros. Referring to hotel meal rates at Table 2 of Annex 4.2 of the Disputant's Amended Statement of Case, the witness could not agree to the rates having no notion on the rates applied. He also stated that it is not his job to contact hotels.

THE SUBMISSIONS OF COUNSEL

Counsel have each provided written submissions in relation to the present dispute. Counsel for the Disputant first submitted orally in relation to the first, seventh and fourteenth points of the Terms of Reference. These oral submission has been also been reproduced in his written submissions. With regard to these specific points of the Terms of Reference, Learned Counsel for the Disputant referred to the Permanent Arbitration Tribunal's award dated 17

November 1995 (known as the Balgobin Award) which concerned deductions made by the Respondent to Meal Allowances since September 1993. Therein, the Tribunal stated that the Respondent shall introduce ‘*a method of calculation of meal allowance on the basis of the ancient formula favoured by the applicant*’. However, the Respondent set up a Salaries Commission chaired by Mr Justice R. Lallah and in its report (known as the Lallah Report), the Commission recommended, *inter alia*, a *Per Diem* in lieu of Meal Allowances. As per the Respondent’s representative, this was not possible to apply.

It was also submitted that the Collective Agreement signed as a Memorandum of Understanding (“MoU”) in 2007, provides for Meal Allowance; as does the MoU of 2011. Provisions regarding Meal Allowances have always been the result of mutual agreement between the parties based on factual and methodical computation; the notes of meeting dated 15 November 2011 being evidence of this. The Collective Agreement signed in 2018 was effective from 1 November 2014 for a period of 4 years and meant to end on 31 October 2018. Although Meal Allowance was not referred to in this agreement, clause 7 of same notably provides that any existing employment condition which is not referred to remains in force. On 8 May 2020, when under administration, a memo informed the Disputant that the Meal Allowance has been reviewed and replaced by the ODA. At the timing of this memo, the Collective Agreement 2018 had lapsed, the annual review of Meal Allowance was due, and the Disputant was put before a *fait accompli*. The unilateral cancellation of Meal Allowances came from the Respondent in administration.

Referring to the evidence of Mrs Purmessur, it was submitted that if it is accepted that the *Per Diem* is not a Meal Allowance, it can only follow that the ODA is also not a Meal Allowance. The evidence of Mr Seetharamdoo for the Disputant should be accepted as credible and logical. The Respondent is at all times liable to the terms of the Collective Agreements signed between the parties and cannot apply a unilateral decision without the agreement of the Disputant. *Article 1134-1* of the *Civil Code* has been cited in support. Once a Collective Agreement is concluded, it forms part of the employee’s contract of employment. Reference was made to the decisions in *Atchia v Air Mauritius Ltd* [2021 SCJ 206] and *Air Mauritius Ltd v Bezuidenhout* [2011 SCJ 205]. The decision to cancel the Meal Allowance unilaterally was unlawful and unreasonable as it formed part of the contract of the Disputant. The Collective Agreement is law between the parties and can only be varied through a substantial change in circumstances (*vide section 58* of the Act). There was no application from the Respondent under administration to vary the Collective Agreement.

On the issue of whether the Collective Agreement 2018 is still binding on the parties, the intention of the parties is important (*vide SBM v Jagessur [2008 SCJ 8]*). Reference was made to the evidence of Mrs Purmessur on whether the provisions of the Collective Agreement are still in force. The evidence of Mr Seetharamdoo is that the ODA is not a Meal Allowance and its computation is not known to the Disputant, whereas Mrs Purmessur was evasive on the issue of computation. The rates of ODA are lower compared to Meal Allowances causing prejudice to the Disputant in the absence of proper computation. The letter dated 19 October 2021 promises that the modality of payment of Meal Allowance will be restored. Management benefits from a *Per Diem* when they travel as per Mrs Purmessur. When taking into account the intention of the parties, it is apposite to take into account the gaps between the respective agreements and the continuing allowances between the duration lapses. Alternatively, all provisions of the *WRA* should be applicable should the Tribunal determine that the Collective Agreement 2008 is not applicable.

Learned Counsel for the Disputant has grouped his submission under points 2, 5, 6, 11, 13, 16 and 17 of the Terms of Reference together in his written submissions. The submissions regarding the legality and applicability of the Collective Agreement 2008 were reiterated. New contracts were signed under duress since the prospects of redundancy were waived. The Lallah Report recommended a Flight Duty Attendance Bonus equivalent to 10% of salary and also referred to Flight Duty Hours. The payments due should be reimbursed. The testimony of Mr Seetharamdoo on 22 February 2023 (pages 8 – 9) was referred to. It was put to Mrs Purmessur that the Flight Related Allowance was discontinued, she also agreed that the provisions of the *WRA* are not being abided to and that negotiations will have to start from scratch. It has been restated, alternatively, that all provisions of the *WRA* should be applicable should the Tribunal determine that the Collective Agreement 2008 is not applicable. Reference was also made to Mrs Purmessur's evidence on leave without pay.

Regarding the third point of the Terms of Reference on the crew structure on board an aircraft, it was notably submitted that the position of FP was scrapped during administration and was reinstated by giving new contracts. It is submitted that the new contract was signed under duress as those who refused to sign would be sent to the Redundancy Board. As per her evidence, Mrs Purmessur was not aware of the second Addendum when it was signed by her. It is also submitted that the scale has changed the prospects of going up referring to the evidence of Mrs Purmessur in cross-examination.

On the fourth point of the Terms of Reference, Learned Counsel for the Disputant has notably referred to the testimony of Mr Antoine in the sitting of 9 May 2023 (pages 32 – 38). With a crew reduction, there is an increase in workload leading to physical constraint and impacts on the safety of crew members and passengers. Reference is also made to Annex 14.1 of the Disputant's Amended Statement of Case. On the issue of Transport Allowance (point 8 of the Terms of Reference), it was notably submitted that Mr Duval stated that they do not have the exact amount of the refund as on their payslips, it is not stated 'refund' but only 'travelling'. The proper weight must be attached to the evidence of Mr Gunness as he was labouring under the false belief that there was a MoU signed in 2020 between the parties; the payslips could not be counter verified; and the documents produced are double hearsay. Clause 5 of the Collective Agreement 2008 provides for the setting up of a Transport Committee and much of the confusion as to whether or not Transport Allowance has been refunded could have been resolved through this committee.

On the tenth point of the Terms of Reference regarding counting isolation days as a duty and should be paid, it was submitted on behalf of the Disputant that isolation days in Mauritius and abroad have never been refunded as per Mr Antoine's evidence. Reference was also made to questions put by Counsel for the Respondent to Mr Antoine on the Procedure Agreement on the number of crew working on an aircraft and to Mrs Babboo regarding the end of the Collective Agreement on 31 October 2018. On the twelfth point of the Terms of Reference on the issue of the SCCM on ATR aircrafts to be remunerated as for the same post as for long haul flights, reference was notably made to the COSPM and to the evidence of Mr Duval thereon. Mr Duval stated that as per the manual, the responsibilities of an SCCM on the ATR are the same as a SFP but the former is not paid as a cabin chief. Section 5 of the Employee Allowances and Benefits Policy Cabin Crew provides for a responsibility allowance for Cabin Crew working in a higher grade. Mr Duval also stated that the SCCM takes charge of the plane as it is being done by a SFP in another flight. It is trite law that there should be equal pay for equal work. On the fifteenth point of the Terms of Reference, it was notably submitted that transparency is important for the working agreement between the parties and that the Respondent has a legal duty to be transparent on this issue.

On the other hand, Counsel for the Respondent, in his written submissions, has preliminarily observed that the Disputant's representative nor any of its witnesses have affirmed or sworn as to the correctness of the Disputant's Statement of Case. That the Terms of Reference are not correctly formulated, the Tribunal having often emphasised the importance of properly formulating Terms of Reference being complete in themselves – *vide Greedharee and Mauritius Ports Authority & Anor. (ERT/RN 258/11)*. It has also been observed that the Disputant has during

the proceedings travelled outside its Terms of Reference; this cannot be done as the Tribunal's jurisdiction is set and defined by the Terms of Reference. Any purported evidence that does not fall under the Terms of Reference must accordingly be disregarded. Fourthly, the present labour disputes arose within the specific and unprecedented context of the Covid-19 pandemic with the Respondent having been placed in administration.

The Respondent has grouped the first and seventh points of the Terms of Reference together in its written submissions. From a plain reading of the first Terms of Reference, the Disputant is asking for the Lallah Report to be applied *in toto* for the computation of Meal Allowance. However, the Disputant's evidence was to the effect that the Meal Allowance that existed prior to administration be restored, which is in contradiction with the Terms of Reference. Under the seventh Terms of Reference, the Disputant is asking for a refund on the discrepancy between a new methodology of computation of Meal Allowance and the old computation thereof. This is unclear and uncertain and in variance with their own evidence, which was to the effect that Meal Allowance has been replaced by the ODA which is not a Meal Allowance. Even if the Tribunal were to consider the Disputant's contentions regarding the ODA, which is submitted to be outside the Tribunal's jurisdiction, the Disputant's contentions are without merit.

As regards the second Terms of Reference, it has been submitted that the Collective Agreement has lapsed and is of no effect. All Cabin Crew, except for four, have consented to be governed by a new contract of employment and are therefore bound by same and the provision of the salary scale therein. The context of these new contracts of employment is one of *force majeure*. The decision in *General Construction Limited v Chue Wing & Co Ltd and Anor.* [2011 PRV 73] was cited in this respect as was a judgment of the Paris Court of Appeal (*Arrêt du 26 Mars 2021 (no. 107)*) regarding a finding of *force majeure*. It was also submitted that the issue of the salary scale cannot be raised as a labour dispute and should be taken up properly in negotiations on a new Collective Agreement.

As regards the third Terms of Reference on the issue of crew structure on board to be maintained with three categories, it has been submitted that same has already been restored to three categories and there is no live issue. Reference has also been made to the evidence of Mr Antoine on 9 of May 2023. It has also been submitted that there is no live issue under the fourth Terms of Reference as it is primarily concerned with when the sanitary protocol was in place relating to the Covid-19 pandemic. There was no evidence of any increase of workload; the Disputant was not aware of the initial crew complement being set for the testing of the new aircrafts, namely the A350 and A330 Neo; and crew complement is decided by the Respondent

as per the Procedure Agreement. On the issue of leave without pay (the fifth Terms of Reference), it was submitted that this does not disclose any live issue as same has ceased to be applied since November 2021 except where the members have themselves made a request thereof; the leave without pay clause has ceased to have any effect having lapsed by latest as from September 2023; this was applied in the context of the Covid-19 pandemic and administration; and the Disputant's representative not being aware of any criteria (as stated in cross-examination) cannot contend that the criteria applied was not reasonable or objective.

In relation to the sixth Terms of Reference, it has notably been submitted by the Respondent that the Disputant has not adduced any evidence regarding its contention that major shareholders have shown no interest in investing. The Disputant's claims regarding leave without pay, part-time work and ODA are addressed under the other Terms of Reference. On the eighth Terms of Reference relating to refund of Transport Allowance, it is the case for the Respondent that this has been refunded and this has not been seriously denied by the Disputant. There is therefore no live issue under this Terms of Reference. As for the ninth Terms of Reference, it has been submitted that there is no legal basis for this claim which is a mere request which the Respondent can consider at its own discretion. There is also no live issue as the Respondent does provide two tablets on each aircraft. Regarding the tenth Terms of Reference on the issue of isolation days, this ought to be set aside as there is no longer any requirement for the Cabin Crew to isolate; this was imposed through the Government's sanitary protocol and there is no legal basis for the Respondent to pay any additional allowance over the salary of the Cabin Crew; the Disputant does not account for the exceptional Covid-19 pandemic context; and Cabin Crew who worked on flights would not have been placed on roster given that the number of flights had decreased substantially and it was open on them to refuse to work flights if they considered that the requirement to isolate as too onerous.

On the eleventh Terms of Reference, this was summarily touched upon by the Disputant in evidence as presumably the Disputant accepts that the provisions of the *WRA* do not lend themselves to the specificities of the work undertaken by Cabin Crew. It was incumbent on the Disputant to demonstrate how the terms and conditions are less favourable than what is provided for and that they would be entitled to under the *WRA*, which it has failed to do. Regarding the twelfth Terms of Reference, it is submitted that this is a mere request which is open for the Respondent to consider at its discretion; the duties of the SCCM on the ATR are part of the duties of Cabin Crew as conceded in Mr Duval's cross-examination; and the responsibility allowance and improved Flight Duty Allowance is applicable to long haul flights where the Cabin Crew member is called upon to perform the duties of SFP. As there is no SPF on ATR flights, no Cabin Crew is called upon to perform the duties of SFP. For the issue of unpaid salary under the thirteenth

Terms of Reference, this lies within the exclusive jurisdiction of the Industrial Court and at any rate the Respondent was in a state of *force majeure*. On the fourteenth Terms of Reference, the Disputant has focused on the Collective Agreement 2014 which has lapsed. No evidence was adduced to address the Procedure Agreement 2007 and the Industrial Agreement 2007. The Employee Benefits Policy is part of the contract of employment and the items listed therein in the aforesaid Terms of Reference have a contractual basis.

It has also been submitted that the fifteenth Terms of Reference on the issue of full transparency on both pension funds is not a labour dispute. The pension scheme is managed by a trust governed by the *Trusts Act* and any request for information must be directed to the trustees. Regarding the issue of nursing mothers under the sixteenth Terms of Reference, the case for the Disputant, in evidence, is not that the provision of the *WRA* ought to be applied but that solution must be found to align with the specificities of the work. Reference has been made to the evidence of Mrs Babboo on 13 September 2022 and 23 February 2023. The Respondent's evidence that adequate measures are in place to accommodate nursing mothers, such as back to back flights, was not rebutted or challenged. Under the seventeenth Terms of Reference, it has notably been submitted that no specific claim has been formulated for the Tribunal to decide upon; the part-time scheme has been discontinued since November 2021 and there is no live issue. Other issues attempted to be raised in the context of this Terms of Reference, such as leave without pay and the Government Wage Assistance Scheme, should be disregarded as falling outside the scope of this particular Terms of Reference.

THE MERITS OF THE DISPUTE

The Disputant, in its written submissions, has grouped the first, seventh and fourteenth points of the Terms of Reference together. Under the first Terms of Reference, the Disputant is asking that the Lallah Report be applied *in toto* for the computation of Meal Allowance. This particular point of the Terms of Reference has also averred that the Disputant rejects the application of ODA as a replacement for Meal Allowance and that its methodology has not been communicated to them and the figures communicated so far do not reflect the cost of food in hotel where the crew has layovers. Under the seventh point of the Terms of Reference, the Disputant is asking for a new computation of Meal Allowance and discrepancy on same to be refunded. As regards, the fourteenth point of the Terms of Reference, it has been averred that there has been a unilateral decision taken by the Respondent to bypass all their standing registered documents, namely the Collective Agreement 2014, the Industrial Agreement 2007, the Procedural Agreement 2007 and the Award given by Judge Lallah (Balgobin Report) regarding

Meal Allowance being replaced by ODA. It has also been averred that the Industrial Agreement has been replaced by the Employee Benefits Policy.

The Disputant has in submissions offered a historic chronology of the evolution of the Meal Allowance being paid to the Cabin Crew at the Respondent. Reference was made to the Balgobin Award of the then Permanent Arbitration Tribunal in 1995, to the Lallah Report as well as the Collective Agreements signed in 2007, 2011 and 2018. As per a memo dated 8 May 2020, the Respondent informed that Meal Allowance has been replaced by ODA. It was notably submitted that although the Collective Agreement signed in 2018 does not refer to Meal Allowance, it is notably provided that any existing condition which has not been referred to remains in force. The Disputant's contention is that the Respondent is liable to the terms of the Collective Agreement signed and cannot apply a unilateral decision without the Disputant's agreement and that the decision to cancel the Meal Allowance was unlawful and unreasonable as it formed part of the contract of the Disputant's members.

The issue of whether Meal Allowance forms part of the contract of the Cabin Crew depends on whether the Collective Agreement signed in 2018 is still in force and binding between the Disputant and the Respondent. A perusal of the aforesaid Collective Agreement (at Annex 3.1 of the Disputant's Amended Statement of Case) shows that it was signed on 21 August 2018 before the CCM. As per clause 8 of the agreement titled '*Duration of Agreement*', it is to be effective from 1 November 2014 for a period of 4 years ending 31 October 2018. As per the same clause, the Disputant and the Respondent were to meet in February 2019 to start discussions on a new Collective Agreement. It has also been stated that the parties may agree to extend or vary the agreement and same must be done with the express approval of the Disputant in writing.

It is thus expressly stated that the Collective Agreement ends on 31 October 2018 in the aforesaid document. It has moreover been recognised in the Disputant's written submissions that the agreement was meant to end on 31 October 2018 (at paragraph 27 (iv)) but that the parties were meant to start new discussions in view of a new Collective Agreement. It should also be noted that the Disputant's representative, Mrs Babboo did recognise, when cross-examined, that the 2018 agreement ended on 31 October 2018. There is also no evidence on record to show that parties have agreed to extend or vary the agreement and that the Disputant has given its express approval in writing to this effect. Despite the tenor of evidence of the Respondent's representative, Mrs Purmessur to the effect that conditions of service are reviewed through negotiations and if it is more than four years, the ancient one remains as it is, the Tribunal cannot escape the fact that from a clear reading of the Collective Agreement signed in 2018, same has

expired since 31 October 2018. In the same vein, it must be noted that *section 55 (3)* of the Act notably provides that a Collective Agreement shall remain in force for a period of not less than 24 months from the date of its coming into force.

The Disputant has also relied on *Article 1134 – 1* of the *Civil Code* in contending that the Respondent is liable to all terms of the Collective Agreement. Although it cannot be disputed that a duly concluded contract is legally binding on both parties, the common intention of the parties must be ascertained in interpreting the contract as provided by *Article 1156* of the *Civil Code*:

DE L'INTERPRÉTATION DES CONVENTIONS

1156. On doit dans les conventions rechercher quelle a été la commune intention des parties contractantes, plutôt que de s'arrêter au sens littéral des termes.

The Disputant's submissions are also along these lines (*vide* paragraph 68 of the Disputant's written submissions) citing the case of *SBM v Jagessur (supra)* in support. Although this decision has considered the issue of enforceability of Collective Agreements, it has not touched on the determinate duration of a Collective Agreement.

As previously noted, the Collective Agreement signed in 2018 has expressly provided for a duration clause clearly stipulating that the agreement would end on 31 October 2018. This particular clause also provided for a framework whereby the parties would enter into negotiations for a new Collective Agreement. It has also been noted that there is no evidence on record to show that the 2018 agreement has been extended as provided for in clause 8. The Tribunal can only therefore find that it was the common intention of the parties that the agreement be of a determinate duration with the expressed intention to start discussions for a new Collective Agreement. It can also be noted that contracts are extinguishable as has been provided under *Article 1234* of the *Civil Code*.

The Disputant has also cited the cases of *Atchia v Air Mauritius Ltd (supra)* and *Air Mauritius Limited v Bezuidenhout (supra)* in submitting that the Collective Agreement once concluded becomes part of the contract of employment of the employee. Although as per *section 56 (7)* of the Act the terms of a Collective Agreement shall become implied terms and conditions of the contract of employment of the workers covered by the agreement, it is clear that the Collective Agreement signed in 2018 is no longer in force having ended on 31 October 2018. Moreover, it can also be noted that the two decisions cited by the Disputant do not touch on the

issue of the duration of a Collective Agreement. It has further been submitted that, as per *section 58* of the *Act*, only a substantial change in circumstances will allow the variation of a Collective Agreement. It must, however, be noted that as the Collective Agreement has already come to an end, it would be futile for the Respondent to apply for a variation of same.

The Disputant has notably submitted, under the three aforementioned points of the Terms of Reference, that alternatively, all provisions of the *WRA* should be applicable should the Tribunal determine that the Collective Agreement signed in 2018 is not applicable. In relation to this submission, the Tribunal must first observe that this is not within the ambit of the first, seventh and fourteenth points of the Terms of Reference and it would therefore be *ultra vires* for the Tribunal to pronounce itself on this. Secondly, as the *WRA* is duly enacted as law, one cannot escape its application where any of its provisions duly applies. It must also be noted that as per *section 71* of the *Act*, the Tribunal cannot enquire into a labour dispute which is within the exclusive jurisdiction of the Industrial Court. The *Industrial Court Act*, under its *First Schedule*, lists the *WRA* as one of the enactments upon which the Industrial Court has exclusive civil and criminal jurisdiction save for *section 69A* of same.

As per the evidence adduced, the Cabin Crew members were offered new individual contracts of employment when the Respondent was in administration. These new contracts were accepted by all of the Cabin Crew cadre except for six employees. An example of this contract of employment dated 24 July 2020 is at Annex 7 of the Disputant's Amended Statement of Case. The standard terms and conditions are set in Appendix 2 to the contract containing the main conditions attached to the offer made by the Respondent which notably includes the ODA applicable at outstations according to zones. Thus, it is clear that ODA is part of the individual contracts of employment offered to the Cabin Crew when the Respondent was in administration. Those who have therefore accepted the new contract of employment are therefore bound by the terms and conditions contained therein which includes the ODA.

It would be apposite to note that although the Respondent was in administration when the offers for individual contracts of employment were made, it would not be in order to dissociate the Administrators' acts and doings from the company. While the Administrators have a specific mandate once they are appointed as per the provisions of the *Insolvency Act*, it cannot be denied that they are acting as the company's agent (*vide section 223* of the *Insolvency Act*) and are not functioning independently of the company. Moreover, the following can be noted from the Supreme Court judgment of *Zoobair & Osman Properties Ltd v Mauritius Union Assurance Co. Ltd* [2022 SCJ 157] in this respect:

It is evident from the above provisions that–

- (a) the administrator in effect acts as the agent of the company and in the course of an administration, no person other than the administrator, can perform or exercise any function or power as an officer of the company except with the administrator’s written approval;*
- (b) the company continues into existence notwithstanding the appointment of an administrator; and*
- (c) legal proceedings do not come to an end merely by the fact that an administrator has been appointed.*

It is trite law that a company exists as a specific legal entity. In the present case when the initial plaint was lodged it was lodged against a specific legal entity; that legal entity remained the same one throughout the case whether it was placed in administration or not. Further, the legal proceedings which were initiated and which had been validly lodged against the company remained valid all throughout. However, one thing that changed during the time the company was in administration was that it was no longer represented by Mr. Surfraz but by the administrator. Mr. Toorbuth is under the misapprehension that a company in administration no longer is the same legal entity as it was prior to it going in administration.

The Disputant, in its submissions, has referred to a memo dated 8 May 2020 whereby Meal Allowance has been replaced by the ODA scheme. Although, the Disputant claims that this is a unilateral decision by the Respondent, it must be borne in mind that at the time the Collective Agreement had come to an end since 31 October 2018 and that the ODA is incorporated in the individual contract of employment entered into by the Cabin Crew with the Respondent. The context of this memo must also be considered with the Respondent having been put in administration and facing a dire financial situation due to the Covid-19 pandemic. It cannot be disregarded that the task of the Administrators was to salvage the company. The following may be noted from the decision in *Zoobair & Osman Properties Ltd v Mauritius Union Assurance Co. Ltd (supra)* in this respect:

*As can be gathered from the above, the administrator has wide powers over the company. In fact, he assumes effective control and management of the company’s business, property and affairs essentially for the purpose of salvaging the company’s business in the interests of creditors, employees and shareholders [vide: **Intrepedia Ltd v Mauritours Ltd [2020 SCJ 199]**].*

The Disputant has also raised the issue of a letter dated 19 October 2021 from the Respondent contending that same promises that the modality of payment for Meal Allowance overseas will be restored. What was meant by this letter was explained by Mrs Purmessur in her evidence to the effect that the modality of payment will be restored to as it was before administration. When re-examined, the Respondent's representative clarified that the money was being credited into the Cabin Crew's bank account which did not suit them and the overseas payment at the hotel was restored. It would not therefore be correct to assert that this letter is a promise that the Meal Allowance will be restored.

As per the first point of the Terms of Reference the Disputant is asking that the Lallah Report be applied *in toto* for the computation of Meal Allowance. It has not been disputed that following the Balgobin Award of the Permanent Arbitration Tribunal in 1995, the Respondent set up a salaries commission chaired by former Chief Justice, Mr R. Lallah. The report of this commission made several findings among which related to the item of Meal Allowance. The report notably recommended '*the replacement of the present system of payment of Meal Allowance by a Per Diem Allowance.*' (vide paragraph 4.41 of the Lallah Report). This recommendation of the report has been acknowledged by the Disputant's witness, Mr Seetharamdoo when questioned by the Respondent's Counsel. In view of this recommendation, it would be misleading for the Disputant to claim that the Lallah Report should be applied *in toto* for the computation of Meal Allowance when the report clearly recommended that Meal Allowance should be replaced by a *Per Diem Allowance*. Moreover, the evidence of the Respondent to the effect that this recommendation of the Lallah Report was never applied has not been disputed. In fact, Mr Seetharamdoo did acknowledge that the Lallah report was not applied when cross-examined. The Tribunal cannot therefore find any merit in this particular Terms of Reference.

The Disputant has also adduced evidence to show that the cost of food is not reflected in the figures of hotel in which the crew have layovers. As per Mr Seetharamdoo, the cost of meals for a layover in Paris would amount to 178 euros whereas they receive 160 euros as ODA. This figure of 178 euros was not disputed by the Respondent's representative. In this respect, the evidence of the Respondent's representative to the effect that there has been a revision of the ODA in stations where it was fair to revise and that the Respondent is prepared to listen to concerns and address them after investigation must be given its due. Thus, if ever the Disputant's members find that the ODA is inadequate for any particular layover, representations can be made to management for a revision of the ODA rates for it to reflect the cost of meals. It can be noted that as per the evidence of Mr Gunnesh, the ODA for India was reviewed following a request from the crew for an increase and that the ODA for South Africa was revised in June 2023.

Under the seventh point of the Terms of Reference, the Disputant is asking a new methodology of computation of Meal Allowance and discrepancy on same to be refunded. As has been previously noted, the Meal Allowance is no longer in existence and has been replaced by the ODA which is included in the individual contract of employment the Cabin Crew members have entered into. It would therefore be futile for the Disputant to ask for a new methodology of computation for the Meal Allowance when same is no longer being applied. The Tribunal has noted that, as per the evidence of Mr Seetharamdoo, that the ODA is inadequate to pay for meals. This would therefore concern the rates of the ODA. As previously noted, the Respondent is willing to listen to concerns regarding the ODA and address them after investigation. However, the Tribunal cannot make a finding for a new computation of Meal Allowance when same is no longer in existence as per the current state of affairs. It can also be noted that this point of the Terms of Reference is inconsistent with the first point of the Terms of Reference which is asking for the Lallah Report to be applied for the computation of Meal Allowance. There is therefore no merit in relation to this particular Terms of Reference and same is set aside.

Regarding the fourteenth point of the Terms of Reference, the Disputant is notably seeking the reinstatement of existing agreements. The Tribunal has already examined the issue of whether the Collective Agreement 2014 still subsists between the parties and has found that same ended on 31 October 2018 as per the terms of the agreement itself. As for the Procedure Agreement 2007, no evidence has been adduced to show that this is no longer in force and it can be noted that reference was made to same in relation to the dispute regarding crew complement on board the aircraft (i.e. the fourth point of the Terms of Reference). The Tribunal also notes that no reference has been made to the Industrial Agreement during the course of the hearing nor has this been mentioned in the Disputant's submissions. The Respondent's representative did however state in her evidence that allowances that were previously under the Collective Agreement 2018 are now under the Employee Allowances and Benefits Policy.

As for the award given by Judge Lallah (Balgobin Report) regarding Meal Allowance being replaced by ODA, this is somewhat confusing inasmuch as the Balgobin award was delivered by the then Permanent Arbitration Tribunal in 1995 and is not the same as the Lallah Report dated December 1996, which is the report of the Salaries Commission presided by Mr Justice Lallah. In any event, neither the award nor the report deals with the issue of Meal Allowance being replaced by ODA. It can also be noted that the Balgobin award of then Permanent Arbitration Tribunal dated 17 November 1995 cannot be said to have any effect at present inasmuch as *section 85 (1) of the Industrial Relations Act* notably provides that an award shall be binding on

the parties to whom the award applies for a period of not exceeding two years. There is therefore no merit in the fourteenth point of the Terms of Reference and same is set aside.

The Disputant, in its submissions, has taken points 2, 5, 6, 11, 13, 16 and 17 of the Terms of Reference together. The submissions regarding the legality and applicability of the Collective Agreement signed in 2018 have been reiterated. The Tribunal needs not revisit this issue upon which it has already pronounced itself when raised in relation to the first, seventh and fourteenth points of the Terms of Reference. It has also been submitted that the new contract of employment was signed under duress since the prospects of redundancy were waived. It must however be noted that, as per the Terms of Reference of the present matter, no dispute has been raised as to whether the contracts of employment were signed under duress by the Disputant's members and it would not therefore be in order for the Tribunal to enquire into this issue. It is trite law that under *section 70 (1)* of the *Act*, 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 (*vide Air Mauritius Ltd v Employment Relations Tribunal [2016 SCJ 103]*).

It has moreover been submitted that the Lallah Report recommended a Flight Duty Attendance Bonus and the Flight Duty Hours was also referred to in the same report. As per the Terms of Reference of the dispute, the Lallah Report has only been referred to in relation to the computation of Meal Allowance (*vide* point 1 of the Terms of Reference) and has not been mentioned in relation to other allowances. It has also been borne out in evidence that the Lallah Report was never applied. Although the sixth Terms of Reference mentions Flight Duty Hours, this is in the context of the prejudice caused by its non-payment since voluntary administration to be refunded to employees. It must also be noted that as per Mr Antoine's evidence, the FPs were offered new contracts of employment as Cabin Crew with their Flight Duty Allowance being amended. Moreover, the Respondent's representative, Mrs Purmessur notably stated that Flight Duty Allowance stands good for Cabin Crew, it was lowered for the SFP and when FP was restored, it had to be related to whatever the SFP received as a new figure and that it is now Rs 75 per hour for Cabin Crew. The issue of Flight Duty Allowance not being paid does not therefore arise as has been averred in the relevant Terms of Reference. It can also be noted that no reference has been made to any Flight Duty Attendance Bonus during the course of the hearing nor is this to be found in any of the various points of the Terms of Reference.

The Disputant's submissions under these specific points of the Terms of Reference have notably referred to the evidence of Mr Seetharamdoo at the sitting of 22 February 2023 (*vide*

pages 8 – 9). The witness, in his evidence, touched on the issues of overtime, of block flying hours and Flight Related Allowance. Regarding overtime, it was notably stated that the threshold has been increased to 90.5 hours and is paid at a rate of 1.5 instead of 2. However, as per the record, this evidence was ushered in relation to the eleventh point of the Terms of Reference. As previously noted, matters pertaining to the *WRA* fall within the exclusive jurisdiction of the Industrial Court and it would not therefore be in order for the Tribunal to pronounce itself on whether the Disputant should be entitled to all provisions as per the *WRA* for overtime, public holidays, Sundays and nightshift increase in salary. It must also be noted that the issues of block flying hours and Flight Related Allowance are not to be found in the various points of the Terms of Reference and it would therefore not be within the Tribunal's mandate to enquire and pronounce itself on these issues.

It has been restated in the Disputant's submissions that the *WRA* should be applicable should the Tribunal decide that the Collective Agreement signed in 2018 is not applicable. As previously noted, the *WRA* is law and its provisions therefore cannot be derogated from wherever applicable. However, the Tribunal must reiterate that the matters under the *WRA* fall within the exclusive jurisdiction of the Industrial Court and it is not for the Tribunal to pronounce itself on same. Moreover, as previously noted, this issue is not to be found within the Terms of Reference of the dispute.

As regards the issue of leave without pay under points 5.1 and 5.2 of the Terms of Reference, it has not been disputed that this was introduced in the contracts of employment that were offered to the Cabin Crew members. From a perusal of the contract of employment (*vide* Annex 7 to the Disputant's Amended Statement of Case), it can be noted that the leave without pay clause at paragraph 2 of Appendix 1 notably provides that leave without pay shall be applied during the next 24 months for a maximum aggregate period of 12 months. Thus, going by the plain wordings of this clause, the leave without pay provision is no longer applicable at present having lapsed around July/August 2022. It must also be noted that the Disputant's representative did recognise that the contract of employment provided for leave without pay for a term of two years.

Moreover, the Respondent's witness, Mrs Mounsmie categorically stated that leave without pay has stopped from being applied in November 2021, which is before the expiry of the 24-month period stipulated in the contract of employment. The evidence of Mrs Purmessur referred to by the Disputant in its submissions on this issue relates to how leave without pay was being applied on a one month on and one month off basis. This is however no longer applicable

as it has not been disputed that leave without pay has been stopped since November 2021. The Respondent's representative moreover confirmed that the Respondent will not be applying the leave without pay policy in evidence. The issue of leave without pay, its parameters and distribution cannot therefore be deemed to be a live issue.

Under the second point of the Terms of Reference, the Disputants are asking that the salary scale of the Cabin Crew as shown in the new contract be adjusted to be at par with the salary scale of the Collective Agreement signed in 2018. The Tribunal notes that the Disputant did not specifically refer to this point in dispute in its submissions. Moreover, as previously noted, the aforesaid Collective Agreement is no longer in force having come to an end on 31 October 2018. The Cabin Crew cadre were offered new contracts of employment containing specific terms and conditions and in having accepted this contract, they are bound by same. The Tribunal cannot therefore award that the salary scale of Cabin Crew be adjusted to be at par with the salary scale contained in the Collective Agreement 2014 signed in 2018.

Under the fifth point of the Terms of Reference, the Disputant is asking that leave without pay parameters should be clearly defined to protect members from abusive use of this creature by using coercive measures on employees (point 5.1); and that leave without pay be equally distributed (point 5.2). As has been noted above, the new contracts of employment provided for leave without pay for a period of 24 months and, as per the evidence on record, the leave without pay clause is longer being applied since November 2021. Moreover, the Respondent has stated that it will not apply the leave without pay policy. As the issue is no longer live, it would thus be academic and declaratory for the Tribunal to pronounce itself on the same. In this context, the following may be noted from what the Tribunal stated in *Mooneepen and Mauritius Institute of Training and Development (ERT/RN 35/12)*:

*The Tribunal is being merely asked to give a declaratory award on whether the Respondent should have proceeded with the interview or not. We quote here what was held in **Planche v. The PSC & Anor [SCJ 128 of 1993]**: -*

*"It seems to us that this application is incompetent if only for the reason that the question in issue is now purely an academic one. We can do no better than echo the dictum of Lord Justice Clerk Thomson in *McNaughton v McNaughton's Trs, (1953) SC 387, 392*: -*

"Our courts have consistently acted on the view that it is their function in the ordinary run of contentious litigation to decide only live, practical questions, and that they have no concern with hypothetical, premature or academic

questions, nor do they exist to advise litigants as to the policy which they should adopt in the ordering of their affairs. The courts are neither a debating club nor an advisory bureau.”

The issue of the application and distribution of leave without pay no longer being live, the Tribunal shall not therefore pronounce itself on points 5.1 and 5.2 of the Terms of Reference and same are set aside.

As regards the sixth point of the Terms of Reference, it has been averred that the Disputant believes that the sacrifices shown by employees in respect to a reduction of their pay package is tantamount to a refinancing of the company finances by the employees themselves, while major shareholders have shown no interest in reinvesting; the Disputant is asking that the prejudice caused by imposed leave without pay policy, part-time work, ODA, Flight Duty Hours, grooming allowance and productivity bonus not being paid since the beginning of voluntary administration be refunded to employees.

The premise of the Disputant’s claim under this specific Terms of Reference is that the employees sacrifice tantamount to a refinancing of the company by the employee themselves while major shareholders have shown no interest in reinvesting. The Tribunal notes that as per the evidence on record, the Disputant has not substantiated these particular averments made in relation to this Terms of Reference. Moreover, issues such as leave without pay, part-time work and ODA are the subject matter of other points of the Terms of Reference of the present dispute and the Tribunal is dealing with same in relation to those specific points of the Terms of Reference. The Tribunal also notes that no evidence has been adduced by the Disputant as to grooming allowance and productivity bonus which has also been mentioned in relation to this point of the Terms of Reference. Regarding Flight Duty Hours, this was touched upon by Mr Antoine in relation to the crew structure on board an aircraft under the third point of the Terms of Reference. The Tribunal cannot therefore find that the Disputant has proved its case in relation to the averments of the sixth point of the Terms of Reference and sets same aside.

With regard to the eleventh point of the Terms of Reference, the Disputant wishes to be entitled to all provisions of the *WRA*, particularly overtime, Public Holidays, Sunday and nightshift. As has been noted, matters under the *WRA* are not within the jurisdiction of the Tribunal and pertain to the exclusive jurisdiction of the Industrial Court. The Tribunal cannot therefore pronounce itself in relation to this particular Terms of Reference and sets same aside.

Under the thirteenth point of the Terms of Reference, the Disputant is asking that the October 2020 salary be fully paid as duty days were scattered throughout the roster of the month preventing crew from taking part-time jobs; it has also been averred that part-time days were communicated five days after the start of the month. The Disputant's representative notably stated, in her evidence, that on 25 September, the Administrator informed them that employees would be put on part-time and leave without pay as from 1 October 2020, which was a very short delay in informing them as they could not make any provision. She also stated that they were informed that could do part-time jobs when put on part-time and that at the end of October, she only received half of her salary. On the other hand, the Respondent's witness, Mrs Mounsmie stated that the Cabin Crew performed part-time duties in October 2020, the October roster was issued late in 29 September as they were informed of the part-time formula on 25 September by the Pay Office and the roster was published on 29 September.

It should be noted that the evidence on record has borne out that the roster was published at the end of September and not five days after the start of the month as averred in the Terms of Reference. Moreover, the Disputant has not shown that duty days were scattered throughout the month of October 2020 which prevented the crew from taking other part-time jobs. Although reference was made to the individual roster at Annex 16 of the Disputant's Amended Statement of Case by the Disputant's representative, this was in the context of leave without pay not being fairly distributed among crew members. The Tribunal cannot therefore find in favour of the Disputant with regard to the thirteenth point of the Terms of Reference.

Regarding the sixteenth point of the Terms of Reference, the Disputant is asking that nursing mothers benefit from all provisions of the *WRA*. It should be noted that this point in dispute concerns the provisions of the *WRA* and as previously noted, the *WRA* falls under the exclusive jurisdiction of the Industrial Court. The Tribunal cannot therefore pronounce itself in relation to this particular point of the Terms of Reference and same is set aside.

Under the seventeenth point of the Terms of Reference, it has notably been averred that the number of working days for part-time has not been equally distributed bringing a much higher burden on those who are on a higher point in the salary scale. It is clear that this point in dispute concerns the equal distribution of part-time working days. Mrs Babboo notably stated that 160 members of the Disputant were put on part-time; those on part-time received a salary of Rs 25,000 and those on the contract received Rs 40,000 and were on leave without pay. The Respondent's witness, Mrs Mounsmie stated that those who earned more than Rs 50,000 got

half of their salary and those under Rs 25,000 received their full salary. She further recognised that the distribution was not equal as each crew member had their own working days and she later devised another formula for the days to be clustered as much as possible. She also stated that part-time is no longer being applied since November 2021 and that the crew are now on full time, except for two FPs who did not sign the contract.

The Tribunal has noted that the evidence of Mrs Mounsmie regarding the non-application of part-time since November 2021 has not been disputed. It is clear that the Cabin Crew are now working on a full-time basis, except for the two FPs who have not signed the contract of employment. The issue of part-time work and its distribution is therefore no longer live and it would be academic for the Tribunal to pronounce itself on this issue (*vide Planche v. The PSC & Anor [supra]*) as quoted in *Mooneepen and Mauritius Institute of Training and Development (supra)*). The seventeenth point of the Terms of Reference is therefore set aside.

Under the third point of the Terms of Reference, the Disputant is asking that the crew structure on board be maintained to three categories given that there is no change in commercial service delivery and standard and for safety on board established through hierarchy. The Disputant's witness, Mr Antoine has established that during administration the FP category was removed and FPs later received a new contract of employment as Cabin Crew. The FPs received an Addendum to the contract (*vide* Annex 13.2 of the Disputant's Statement of Case and then another Addendum (*vide* Annex 13.3 of the Disputant's Statement of Case) which restored the post of FP on a different salary scale to what was in the Collective Agreement of 2018. It is apposite to note that when cross-examined, Mr Antoine agreed that the FP category has now been restored, that three categories now operate on board a flight and that the crew structure has now been maintained to three categories.

The Tribunal further notes that the Disputant, in its written submissions, has recognised that the position of FP was reinstated by giving new contracts (*vide* paragraph 98 of the Disputant's written submissions). Although it has also been submitted that the contracts were signed under duress, this issue does not form part of the various points of the Terms of Reference and it would not be proper for the Tribunal to enquire into same. The Disputant has also highlighted that Mrs Purmessur was not aware of the second Addendum. Despite the tenor of the evidence of the Respondent's representative, it is clear that the crew structure abroad comprises the three categories of SFP, FP and Cabin Crew as recognised by the Disputant's witness himself. The issue of the crew structure to be maintained to three categories has thus been rectified by the Respondent and no longer subsists. Moreover, the matter of the salary scale

having allegedly changed the prospects of promotion is not within the ambit of this point of the Terms of Reference. The Tribunal therefore sets aside the third point of the Terms of Reference.

With regard to the fourth point of the Terms of Reference, the Disputant is asking that the crew complement be restored to the original number before voluntary administration as work load has increased heavily with the sanitary protocol in place. The Disputant led evidence from Mr Antoine on this issue to the effect that the crew complement was reduced during administration to a maximum of eight; after administration, when flights resumed normally, it is now 10 on the A350 and has also been reduced for the A330 Neo and A330-200. He also stated that there is no sanitary protocol in place at present. When cross-examined, Mr Antoine notably agreed that according to the Procedure Agreement signed between the Disputant and the Respondent in 2007, management has the right to decide the number of persons working on a plane. On the other hand, the Respondent's representative stated that there has been no change in the crew complement as there was a testing phase for the new A350 aircraft with 11 crew and this came to 10. She also added that this is management's responsibility as per the Procedure Agreement. Mrs Mounsmie also stated that the present crew complement is not inadequate on the A350 and A330 Neo aircrafts.

Having considered the evidence on record regarding the fourth point of the Terms of Reference, the Tribunal notes that the basis for which the Disputant is asking that the crew complement to be restored is that work load has increased with the sanitary protocol in place. However, as per Mr Antoine, the sanitary protocol is no longer in place and flights have resumed normally. Thus, the reason why the Disputant is asking for crew complement to be restored no longer exists. Moreover, it has been recognised that management has the power to decide on the number of persons working on board a flight as per the Procedure Agreement. The Disputant has also referred to a letter they addressed to management (*vide* Annex 14.1 of the Disputant's Statement of Case) in its submissions on this issue. However, the Tribunal cannot see the significance of this letter in relation to the dispute other than to show that the issue was raised with management by the Disputant. The Tribunal cannot therefore find any merit in this point of the Terms of Reference and same is set aside.

Under the eighth point of the Terms of Reference, the Disputant is asking that Transport Allowance for employees residing outside of the MK network which has not been paid since the beginning of voluntary administration be refunded. In relation to this dispute, the Disputant's witness, Mr Duval notably stated that Transport Allowance was not being refunded and as at today, they do not have the exact amount of the refund as their payslips only mention '*travelling*'

and not refund. On the other hand, the Respondent's witness, Mr Gunnesb stated that the Transport Allowance was refunded and he produced three payslips for the month of October 2020 indicating that the refund appears under the item '*travelling crew*' on the payslips. He also stated that as at present there is no Transport Allowance that has not been paid to the Cabin Crew. Mrs Purmessur did also state, in her evidence, that what was due as Transport Allowance has been refunded.

As per the evidence on record, the Respondent's contention that the Transport Allowance has been refunded has not been disputed by Mr Duval, whose evidence was to the effect that they do not have the exact amount of the refund. Although the Disputant has in its submissions casts doubts on the tenor of Mr Gunnesb's evidence on this issue, the burden lies on the Disputant to prove its case that the Transport Allowance has not been refunded and having duly considered the evidence of Mr Duval, the Tribunal cannot be satisfied that the Disputant has discharged its burden. Moreover, the alleged MoU in 2020 referred to by Mr Gunnesb when cross-examined was in relation to the rates of ODA and was not on the issue of Transport Allowance. Whereas, the Respondent has maintained throughout that the Transport Allowance has been refunded. The Tribunal cannot therefore find in favour of the Disputant with regard to the eighth point of the Terms of Reference and same is set aside.

Under the ninth point of the Terms of Reference, the Disputant is asking that the employer provides tablets and wifi package for crew to access all relevant documentation pertaining to the job. On this issue, Mrs Babboo notably stated that the Respondent proposed Rs 10,000 to the crew to purchase tablets and wifi, which they did not find to be correct as there were too many responsibilities attached. They then asked for the Respondent to provide the tablets which would facilitate their jobs. She also stated that wifi is also important, given that they are not office based, for them to receive their mails. When cross-examined, Mrs Babboo notably clarified that the claim is to allow the Cabin Crew to have access to the manual during flights. On the other hand, the Respondent's representative confirmed that in 2018, Rs 10,000 was proposed to each crew to buy a tablet, which was not accepted. It was further stated that management now provides two tablets on each aircraft to allow the crew to access information regarding the manuals and same was maintained under cross-examination.

In relation to this point of the Terms of Reference, the Tribunal notes that the claim is mostly for the crew to have access to their manuals when in flight. This has been catered for by the Respondent in providing two tablets on each flight to the crew to access the manuals. The Disputant, in its written submissions, has notably referred to remarks made in Lallah Report

regarding the work and responsibilities of Cabin Crew. It should however be noted that these remarks have not been referred to in evidence and it is not proper for the Disputant to submit on same without having substantiated same in evidence. Moreover, the Disputant is also claiming wifi to allow the crew to receive their mails. However, as per the wordings of this particular Terms of Reference, the wifi package is being demanded to allow access to all relevant documentation pertaining to the job. The Respondent has also denied that this is a requirement of Department of Civil Aviation in its Second Amended Statement of Case (the correctness of which was affirmed to by its representative) nor has the Disputant stated so in its evidence. The Tribunal cannot therefore find any merit in this demand, the more so that the Respondent does provide two tablets on each flight to access the manuals. The ninth point of the Terms of Reference is thus set aside.

Regarding the tenth point of the Terms of Reference, it has been averred that isolation days following duty for the company to be counted as a duty as it is a constraint related to the duty and hence should be paid. It has further been averred that isolation is an additional task of cabin crew duty and need to be documented at the Ministry of Labour as forming part of the job of front liners in which Cabin Crew are officially included. In relation to this point, the Disputant has notably referred to the evidence of Mr Antoine who stated that isolation was a requirement of the sanitary protocol requiring the crew to self-isolate after a flight; self-isolation was also applicable for outward flights abroad; and the Cabin Crew themselves catered for the financial aspect of this isolation. He also stated that the isolation protocol was in force up to mid-2021 and they were not paid for this. When cross-examined, Mr Antoine agreed that isolation was performed according to the sanitary protocol of the Government. He did also admit that when abroad in Perth, the hotel was paid by the company. Mrs Babboo for the Disputant did also state that self-isolation was imposed by the sanitary protocol in her evidence.

Whereas, Mrs Mounsmie, in her evidence, explained that the isolation period was 14 days in March 2020 for all operating crew members, brought down to 7 days in October 2021 and isolation ceased on 30 September 2021. She notably stated that crew members were being paid their salary during the isolation period. As there were a few flights, it was not difficult to assign 7 days of self-isolation to crew members after having operated a flight. Under cross-examination, the Respondent's witness maintained that crew members were paid their basic salary regardless of the number of working days in a month and even when in isolation they were paid their full salary.

Having considered the evidence adduced by both sides in relation to this particular point of the Terms of Reference, it is clear that isolation was an obligation of the sanitary protocol imposed by the Government. As per Mr Antoine himself, the sanitary protocol is no longer in force. The Respondent's witness, Mrs Mounsmie has clearly stated that the crew were being paid their salary when under isolation and has maintained same when questioned by Counsel for the Disputant. The Tribunal cannot therefore accept the Disputant's version that the crew were not paid for isolation. Moreover, both parties have agreed that self-isolation is no longer applicable. Thus, the requirement to self-isolate is no longer a live issue. Regarding the second aspect of this point of the Terms of Reference, the documentation of isolation concerns the Ministry of Labour not the Respondent and does not fall within the ambit of a labour dispute.

The Tribunal has also noted that the Disputant, in its written submissions on the tenth point of the Terms of Reference, has remarked that the Respondent cannot claim a provision favourable to them whenever it suits them and reject another provision when it is less favourable in referring to the Procedure Agreement and the Collective Agreement signed in 2018. As per its submissions, the Disputant has erroneously confounded the Procedure Agreement with the Collective Agreement ("CA 2007"). Under the *Act*, a Procedure Agreement is legally different from a Collective Agreement. Although the Collective Agreement signed in 2018 has ended, it does not necessarily mean that the Procedure Agreement of 2007 is no longer in force. The Tribunal therefore sets aside the tenth point of the Terms of Reference.

Under the twelfth point of the Terms of Reference, the Disputant is asking that the SCCM on the ATR aircraft be remunerated same as for the same post on long haul flights. Mr Duval was called to substantiate this point in dispute on behalf of the Disputant and notably stated that all flights have a *Chef de Cabin* known as the SCCM or SFP and someone performs this function of SCCM/SFP on ATR flights but is not paid as a *Chef de Cabin*. Reference was notably made to the COSPM at Annex 24 of the Disputant's Amended Statement of Case and to the Employee Allowance and Benefits Policy whereby a Cabin Crew working in a higher grade is paid a responsibility allowance. However, when cross-examined, Mr Duval did admit that the duties he is called upon to perform as Cabin Crew on an ATR flight are in his contract of employment. He also agreed that it is when the SFP is absent and the Cabin Crew has to perform his duties that the latter receives the responsibility allowance. Mrs Purmessur, for the Respondent, notably stated that there is only one category on the ATR, Cabin Crew and the Cabin Crew on the ATR is not in a higher grade.

The evidence on record in relation to this particular point of the Terms of Reference shows that the Disputant is seeking a responsibility allowance for the Cabin Crew on the ATR in the role of the SCCM in accordance with the Employee Allowances and Benefits Policy. However, as per the wordings of this point of the Terms of Reference, the Disputant is asking to be '*renumerated same as for the same post as long haul flights*'. Thus, what is being asked for in the Terms of Reference differs from the Disputant's evidence on this issue. This point of the Terms of Reference does not also specify what is the same post as for long haul flights. It is trite law that Terms of Reference are meant to be complete in themselves and remain the basis upon which the dispute is examined (*vide Greedharee and Mauritius Ports Authority & Anor. (supra)*). Moreover, Mr Duval did agree that the duties he is performing on the ATR flight are in his contract of employment and it cannot therefore be said that he is performing any task outside his contractual duties. The Tribunal cannot therefore find any merit in this particular point of the Terms of Reference of the dispute and same is set aside.

As regards the fifteenth point of the Terms of Reference, the Disputant is requesting full transparency on where matters stand regarding both pension funds (DB and DC). The Disputant's representative has recognised in relation to this issue that pensions are managed by the Air Mauritius Ltd Pensions Fund Scheme and also stated that the 10% increase they received on their salary appeared as an allowance, which is not pensionable. The Respondent's representative has stated that she cannot depone on this as the trustees should be called as witness and maintained her stand under cross-examination.

The Disputant's request for full transparency regarding the pensions funds is more akin to a demand for information rather than a labour dispute. In any event, the pension fund is managed by the Air Mauritius Ltd Pensions Fund Scheme as stated by Mrs Babboo herself and likewise, the Respondent's stand is that this is a matter for the trustees of the pension fund as per the evidence of Mrs Purmessur and the averments of their Second Amended Statement of Case. This issue does not therefore directly concern the Respondent. Moreover, the matter of the 10% increase being pensionable does not appear in the aforesaid Terms of Reference. Bearing in mind that a labour dispute is between the trade union and the employer, the Tribunal cannot deem the fifteenth point of the Terms of Reference to be a labour dispute and therefore sets same aside.

In the circumstances, having considered the evidence on record in relation to the various points in dispute raised as per the Terms of Reference as well as the submissions of Counsel, the Tribunal has not found in favour of the Disputant under any of the points in dispute. The matter is therefore set aside.

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SD Shameer Janhangeer
(Vice-President)

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SD Vijay Kumar Mohit
(Member)

.....
SD Abdool Feroze Acharauz
(Member)

Date: 31st January 2024