

EMPLOYMENT RELATIONS TRIBUNAL

DECLARATION

ERT/RN 91/2024

Before: -

Shameer Janhangeer	-	Vice-President
Greetanand Beelatoo	-	Member
Venusha Autar Hemrazsing (Mrs)	-	Member

In the matter of: -

Mrs Asha BHAGIRUTTY

Disputant

and

DEVELOPMENT BANK OF MAURITIUS LTD

Respondent

The present matter is an application under *section 62 (2)* of the *Employment Relations Act* (the “Act”) for a declaration on the interpretation of section 4.1 (ii) of the Collective Agreement signed on 31 August 2023 between the Development Bank of Mauritius (“DBM”) Ltd and the DBM Ltd Staff Association (“DBMSA”). The question of interpretation has been formulated as follows:

Whether, in relation to an application for the payment of the one-off cash grant equivalent to duty remission on the purchase of a hybrid/electric car as mentioned in the said section 4.1 (ii), there is a requirement for the applicant to provide the quantum of duty element for an equivalent vehicle run by petrol.

Both parties were assisted by Counsel. Mr G. Bhanji Soni appeared for the Applicant, whereas Mr M. Ajodah appeared for the Respondent instructed by Mr R. Bucktowonsing, Senior Attorney. Both parties have put in their respective Statement of Case in the matter.

Counsel for the Applicant called Mr Ganesh Singh Hardowar, Chief Operating Officer at Leal & Co Ltd, out of turn. The witness notably stated that the X1 sDrive 18i is an internal combustion engine 1500cc and the X1 sDrive 20i is a 2 litres petrol engine coupled with an electric motor, it is a mild hybrid. He produced a table of duty applicable (Document A) and a table of the technical specifications of the two vehicles (Document B). The mild hybrid has a petrol engine of 1500 cc. The closest to the 20i is a 1.8 referring to Document B. There is no equivalent for that. The duty payable on the X1 18i is Rs 453,109 at the time the Applicant obtained her vehicle on 18 July 2024. The two vehicles have the same engine capacity, 1500 cc. They are the closest and the 20i has an additional booster of 48 volts. The witness was not cross-examined by Counsel for the Respondent.

The Applicant, Mrs Asha Bhagirutty was then called to depone and she solemnly affirmed as to the correctness of her Statement of Case. Upon questions from Counsel for the Respondent, the Applicant notably stated that she has not signed the Collective Agreement, which has been signed by the DBM Ltd and the DBMSA. As per paragraph o. of her Statement of Case, the car she has purchased has no equivalent run by petrol. Paragraph 4.1 (ii) of the Collective Agreement refers to paragraph 4.93 (B) of the Report “Review of Pay and Grading Structures and Conditions of Employment of the Development Bank of Mauritius Ltd (July 2021)”. The maximum she would be entitled to as duty remission is Rs 450,000. She agreed that there is not a fixed quantum payable under paragraph 4.1 (ii) of the Collective Agreement. In the Collective Agreement, no mention has been made that for implementation they need to submit an equivalent document. The Rs 453,000 stated by Leal as duty is not from an equivalent vehicle but from the closest one.

Mrs Maya Mooneesawmy, Ag. Assistant Head of DBM Ltd, deposed on behalf of the Respondent. She solemnly affirmed as to the contents of the Respondent’s Statement of Case. She notably stated that the cash grant has been given to staff as an inducement to purchase an electric or hybrid vehicle, being equivalent to the duty remission on a vehicle run by petrol and for the Applicant, it is a maximum of Rs 450,000. This has to be calculated depending on the model and duty on the car. This is why they asked for its implementation and asked for duty on an equivalent vehicle run by petrol and the calculation would be done by this figure. In the

absence of an equivalent vehicle running on petrol, the DBM is not in a position to implement paragraph 4.1 (ii).

When questioned by Counsel for the Applicant, the Respondent's representative notably stated that the implementation was a Board decision. There is no such condition in paragraph 4.1 (ii) requesting the individual employee to submit an equivalent for a car run by petrol, but as the amount to be paid was subject to a maximum of Rs 450,000, how can they pay the concerned persons. She cannot vouch if there was any consultation by the Board before the decision was imposed, she is not aware. The car purchased by the Applicant is not equivalent, it is the closest. If it was equivalent, the bank would pay.

In submissions, Learned Counsel for the Applicant notably stated that the matter is one of interpretation of paragraph 4.1 (ii), whether the employer can through the backdoor impose an impossible condition on staff that has already acquired a vehicle. The Board cannot impose a condition which is not available in the particular market for the vehicle, it can be available for other vehicles. There is this condition that staff should submit an equivalent run by petrol. The matter of interpretation is whether, in paragraph 4.1 (ii), there is need to obtain that particular condition to show that there is an equivalent vehicle run by petrol.

On the other hand, Learned Counsel for the Respondent has submitted mainly on the preliminary objection raised in the Respondent's Statement of Defence to the effect that the Disputant does not have the required *locus standi* to apply to the Tribunal to interpret the Collective Agreement under *section 62 (2)* of the Act. Counsel notably referred to the definition of collective agreement under *section 2* of the Act as being made between a union or a group of unions and an employer or a group of employers. As per *section 55 (1)* of the Act, an agreement is reached between the union and the employer and employees are not party to the agreement. As per *section 56* of the Act, a collective agreement shall bind the parties to the agreement and all the workers in the bargaining unit to which the agreement applies. Therefore, workers are not parties.

Counsel for the Respondent further submitted that *section 56 (3)* of Act makes a difference between the trade union, employer and the workers. As per *section 56 (4)* of the Act, the parties are the trade union and the employer, not the workers. The legislator has taken the pain to specify, as per *section 56 (7)*, that the agreement will also apply to the workers. Referring

to *section 58* of the *Act*, the parties being referred to is the employer or the trade union. Reference has also been made to *section 59* of the *Act*. Coming to *section 62 (2)* of the *Act*, in application of the aforementioned provisions, it is clear that reference made to '*party*' can only mean the employer and the trade union, group of trade unions or joint negotiating panel.

It was notably submitted by Counsel that there has to be consistency when we read an Act of Parliament and consistency in reading this *Act* can only mean that '*party*' referred to in *section 62* cannot include a worker and therefore cannot include the Applicant. Regarding the merits of the matter, Counsel for the Respondent stated that he leaves the matter in the hands of the Tribunal save for the Tribunal not to restrict itself to what is found in paragraph 4.1 (ii) of the Collective Agreement but whether it is possible to implement the paragraph without requesting for documentation required.

In reply to the Respondent's submissions, Counsel for the Applicant has notably submitted that as per *section 56* of the *Act*, the workers are bound by the collective agreement. *Section 58* refers to any party to the agreement. *Section 62* of the *Act* states that any party may apply. He stated that one cannot exclude someone from a particular avenue set out clearly in the law. But if it is the other way, the union will have to enter the case on the same issue. It is clear that the employee, as an individual, can ask for interpretation.

Having taken note that the Respondent has raised a preliminary objection, the Tribunal shall first ascertain whether the Applicant has properly made the present application in asking for a declaration pursuant to *section 62 (2)* of the *Act*. It is therefore apposite to consider the relevant provisions of *section 62* of the *Act*:

62. Procedure for interpretation of collective agreement

(1) *Every collective agreement shall provide for procedures to resolve any dispute which relates to the interpretation of any provision of the collective agreement.*

(2) *Where a matter relating to the interpretation of a collective agreement is unresolved by the procedures provided for in the collective agreement, any party may apply to the Tribunal for a declaration on the matter and the Tribunal shall, on hearing the parties, make such declaration as it thinks fit.*

In considering the ambit of *section 62* of the *Act*, it must be noted that it is mandatory for a collective agreement to provide for procedures to resolve any dispute relating the interpretation of any provision of the collective agreement. It is only where the matter of interpretation of the collective agreement has remained unresolved by the procedures provided for in the collective agreement that a party may apply to the Tribunal for a declaration on the matter.

In the present matter, there has been no evidence adduced as to whether the parties have availed themselves of the procedures that ought to be present in a collective agreement to resolve the dispute relating to the interpretation of paragraph 4.1 (ii) of the Collective Agreement. It has not been disputed that the Collective Agreement in question is the one signed on 31 August 2023 between the Respondent and the DBMSA. Nor has any evidence been adduced as to whether the matter of interpretation has not been resolved by the procedures provided for in the Collective Agreement. Bearing in mind that the burden rests of the Applicant to prove its case, it can also be noted that the Applicant's Statement of Case is silent on this issue.

Thus, it cannot be said that the present application has been properly made as an application can only be made to the Tribunal by a party where the matter relating to the interpretation of the collective agreement is unresolved by the procedures provided for in the collective agreement as per *section 62 (2)* of the *Act*. The Tribunal cannot therefore consider that it has been properly seized by the Applicant in the present matter. In the circumstances, it is not necessary for the Tribunal to consider the preliminary objection raised by the Respondent.

The matter is therefore set aside.

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(SD) Shameer Janhangeer
(Vice-President)

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(SD) Greetanand Beelato
(Member)

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(SD) Venusha Autar Hemrazsing (Mrs)
(Member)

Date: 18th November 2024