

# EMPLOYMENT RELATIONS TRIBUNAL

## DECLARATION

**ERT/RN 130/2024**

*Before: -*

<b>Shameer Janhangeer</b>	-	<b>Vice-President</b>
<b>Alain Hardy</b>	-	<b>Member</b>
<b>Christelle P. D'Avrincourt (Mrs)-</b>		<b>Member</b>
<b>Ghianeswar Gokhool</b>	-	<b>Member</b>

*In the matter of: -*

**DBM LTD STAFF ASSOCIATION**

*Applicant*

**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 Applicant has formulated the question of interpretation as follows:

*Whether, in relation to 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), is there a requirement for staff or former staff to provide the quantum of duty element for an equivalent vehicle run by petrol or else the Bank shall find a mechanism to pay the one-off cash grant to staff or former staff who has applied for the one-off cash grant since the signature of the Collective Agreement as there is no equivalent vehicle run by petrol for hybrid/electric cars.*

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.

Mr Damendra Sennsing Bhagirutty, Assistant Head at the DBM and Secretary of the DBMSA, deposed on behalf of the Applicant. He affirmed as to the correctness of the Applicant's Statement of Case. He notably stated that he does not accept that the Respondent did not modify the Collective Agreement. The main issue is whether the Collective Agreement provides for the giving of a cash grant equivalent of the duty remission for an electric or hybrid car. As per information gathered, the DBM has paid based on quotations submitted by sale agents; the Bill of Entry is a precise document which calculates the duty element. For hybrid and electric cars, there is no equivalent vehicle in petrol and it is difficult for staff to obtain the one-off cash grant. He referred to section 4.1 (ii) of the Collective Agreement. The Respondent, at its Board meeting of September 2023, came up with a new policy to require staff to submit the duty element of an equivalent vehicle run by petrol. This is not part of the Collective Agreement. He is therefore asking the Tribunal to interpret the provision to see whether in relation to the payment of a one-off cash grant, there is a requirement for the staff to submit a duty element for the equivalent vehicle run by petrol.

Upon questions put by Counsel for the Respondent, Mr Bhagirutty notably stated that minimum duty remission depends on the Bill of Entry as this is the document which can calculate the duty element that needs to be paid. He agreed that there is no absolute figure under section 4.93 (B), the maximum being Rs 450,000. He agreed that there is no absolute figure under section 4.1 (ii) of the Collective Agreement and to ascertain the duty remission, one has to go to the table at section 4.93 and apply column (B). He agreed that unless they know what would have been the duty remission on a hybrid/electric car, they would not be able to compute the cash grant. When put to him that the DBM asking employees, who apply for a cash grant, for the duty element applicable to an equivalent car is not a new policy, he stated that this is the current practice at the DBM.

Mrs Maya Moonesawmy, Assistant Head of Department at the DBM, was called on behalf of the Respondent. She affirmed as to the correctness of the Respondent's Statement of Defence. She notably stated that to implement the cash grant, they have to get the figures for

the duty and they requested an equivalent petrol vehicle of the hybrid one. The quotation has been used to pay the cash grant.

When questioned by Counsel for the Applicant, Mrs Moonesawmy notably stated that it is a Board decision of 18 September 2023 that if there is no strict equivalent between a vehicle run by petrol and an electric/hybrid vehicle, there will be no payment. If there is no equivalent vehicle run by petrol, they cannot arrive at a figure to pay the staff. For a hybrid car, there is no customs duty on the Bill of Entry as it is exempt. Section 4.1 (ii) does not mention a car run by petrol. They had to provide a mechanism to implement this condition, but the condition is the same. She accepts that the Board cannot change the Collective Agreement unilaterally but the mechanism has been put for implementation.

Learned Counsel for the Applicant has notably submitted that the interpretation to be given to the Collective Agreement is whether there is such a condition as has been implemented by the Board's decision of September 2023; if there is none, the Board cannot insist for staff to give a certificate of an equivalent vehicle run by petrol. On the other hand, Learned Counsel for the Respondent has submitted that no condition has been added or imposed on the employee to benefit from the cash grant. To process the application, the DBM needs to know what is the equivalent of that duty remission to be able to disburse the amount. In reply, Counsel for the Applicant notably stated that he is not insisting on the second aspect of the question of interpretation starting with 'or else'.

As per the matter of interpretation, the Tribunal has to ascertain whether there is a requirement for staff or former staff to provide the quantum of duty element for an equivalent vehicle run by petrol in section 4.1 (ii) of the Collective Agreement for the payment of the one-off cash grant equivalent to duty remission. It is therefore apposite to consider section 4.1 (ii) of the Collective Agreement, which reads as follows:

(ii) **Cash Grant**

*To induce staff to shift to renewable energy for the purchase of hybrid/electric cars, a one-off cash grant equivalent to duty remission mentioned at paragraph 4.93(B) in the Report "Review of Pay and Grading Structures and Conditions of Employment of the Development Bank of Mauritius Ltd (July 2021)", will be paid for the purchase of a new hybrid/electric car and will be a taxable item.*

It must also be noted that the Board of the DBM took a decision in September 2023, whereby it was resolved as follows:

*Management to obtain a document from the supplier regarding the duty element for an equivalent vehicle run by petrol to have an indication on the quantum of duty.*

It can be noted that section 4.1 (ii) of the Collective Agreement refers to paragraph 4.93 (B) of the Review of Pay and Grading Structures and Conditions of Employment of the Development Bank of Mauritius Ltd (July 2021), which provides a table giving the rate of duty exemption in accordance with the Officer's salary range. E.g. Officers drawing a monthly salary of Rs 64,400 up to Rs 91,375 would be entitled to 100 % duty exemption for the purchase of a vehicle of up to 1500 cc engine capacity subject to a maximum of Rs 450,000 duty remission. As per the Respondent's Statement of Defence, the payment of the one-off cash grant is processed based on the figures contained in the table at paragraph 4.93 (B), which is the duty remission in respect of vehicles run by petrol.

From a plain reading of section 4.1 (ii) of the Collective Agreement, it is clear that there is no express requirement for staff or former staff to provide the quantum of duty element for an equivalent vehicle run by petrol. The requirement for staff to submit a document on the duty element for an equivalent vehicle run by petrol has been introduced by the Board's decision dated 18 September 2023, in order to allow the DBM to obtain a figure to process the duty remission as per what has been provided for in paragraph 4.93 (B).

It should be noted that the Applicant has not insisted with second aspect of the question of interpretation regarding the DBM finding a mechanism to pay the one-off cash grant as this matter is not within the ambit of the present application for interpretation of a collective agreement.

The Tribunal can only therefore declare that there is no requirement in section 4.1 (ii) of the Collective Agreement for staff or former staff to provide the quantum of duty element for an equivalent vehicle run by petrol.

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

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**(SD) Alain Hardy**  
**(Member)**

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

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**(SD) Ghianeswar Gokhool**  
**(Member)**

**Date: 24<sup>th</sup> February 2025**