

Permanent Arbitration Tribunal

AWARD

RN 785

In the matter of

E. Cesar

And

C.W.A.

BEFORE

R. Hossen	-	Acting President
B. Ramburn	-	Member
V. Lingachetti (Mrs)	-	Member

This Compulsory Arbitration has been referred by the Minister responsible for Labour, Industrial Relations and Employment in accordance with section 82(1) (f) of the Industrial Relations Act 1973, as amended.

The Terms of Reference are: -

“Whether Mr. Evariste César should be appointed Chief Works Officer with effect from 25.04.02 instead of 1.11.02, or otherwise.”

The Applicant, who conducted his own case, filed a Statement of Case and averred that:

Before being appointed Chief Works Officer with effect from 1 November 2002, he had been assigned the duties of Chief Works Officer with effect from 1 March 2002 on grounds of administrative convenience. In April 2002, a Chief Works Officer retired and his post became vacant, and it was subsequently advertised. The Disputant was eventually appointed with effect from 1 November 2002. His claim was that he should have been appointed as from 25 April 2002, the day on which the then Chief Works Officer retired. Prior to this promotion exercise, there was another promotion exercise at which two other persons were promoted. The Disputant is therefore complaining that in his case, he had to go through the promotion exercise again before being promoted when this has not been the case for other Officers.

The Respondent avers in its Statement of Case that the qualification requirements for the post of Chief Works Officer will be met from Officers who have held the rank of Senior Inspector and will be on the basis of merit, practical experience and technical ability as well as seniority. Vacancy for the post of Chief Works Officer was advertised on 24 June 2002. Three candidates applied for the post, amongst whom was Mr. L. E. César. They were interviewed on 03 October, 2002 by the Staff Selection Board. At its sitting on 23 October 2003, the Central Water Board ratified the appointment of Mr. L. E. César accordingly. He was offered appointment to the said post with effect from 1st November 2002.

The Authority avers that the procedure for appointment in this grade had been followed.

Mr César's short testimony is to the effect that the extra increment would have an impact on his pension and lump sum. He underwent two interims within six months when he should have been placed on a waiting list.

The representative of the CWA maintained under oath that the procedures of appointment had been followed in all its minute detail.

The Award of the Permanent Arbitration Tribunal in the case of **D. Goburdhun and Irrigation Authority, RN 483 of 1998** shows that the Tribunal reconciled with the view that a substantive appointment does not necessarily have to be backdated from the date of actingship in such grade/post even where the appointee has been fulfilling such actingship over a considerable length of time. "The Tribunal is satisfied that there is no established practice in the Civil Service that a substantive appointment (to a post or grade) is backdated with effect from the date of actingship in such grade/post especially when the appointee had been filling such actingship over a considerable length of time and is subsequently appointed to occupy the post in which he was previously acting" It is worth stressing that for the sake of good industrial relations, vacancies should be filled in as soon possible and period of actingship should not be made to last for more than is necessary.

The Tribunal holds that, subject to an abuse of powers on the part of management (**Mrs D.C.Y.P. and Sun Casinos RN 202 1988**). , matters regarding appointment and promotion of employees are essentially within the province of management. (**M. Pottier and Ireland Blyth Ltd RN 279 of 1994, A. Ayrga and Tea Board RN 575 of 1998**).

However sympathetic a view one wishes to take regarding Mr César's claim, the moreso as it appears to be his last wish before embarking on retirement, there must be some basis upon which the Tribunal can hold to, lest it may create a bad precedent. However small and petty his request may appear to be, we cannot intervene in the absence of evidence in support of his claim. The Tribunal is not here to grant by the mere asking. A claim must be justified.

The dispute is accordingly set aside.

Rashid Hossen
Acting President

B.Ramburn
Member

V. Lingachetti (Mrs)
Member

Date: 12th October 2005