

PERMANENT ARBITRATION TRIBUNAL

AWARD

RN 791

BEFORE

R. Hossen	-	Acting President
B. Ramburn	-	Member
R. Sumputh	-	Member

In the matter of :-

Mr A S Joolia

and

Mauritius Standards Bureau

This compulsory arbitration has been referred by the Minister of Labour, Industrial Relations and Employment to the Permanent Arbitration Tribunal by virtue of section 82(1)(f) of the IRA 1973, as amended for settlement of the dispute.

Mr A S Joolia is hereinafter referred to as the Applicant and Mauritius Standards Bureau as the Respondent.

The point in dispute is:-

“Whether the Mauritius Standards Bureau is justified in not proceeding with the appointment of Mr Joolia as Assistant Technical Manager, at least with effect from 25.01.01 having regard to the fact that Mr Joolia has been continuously acting as Assistant Technical Manager of the Mauritius Standards Bureau since June 2000, and that previously he has served as Acting Standards Officer (restyled Assistant Technical Manager) from May 1989 to May 1993 and, again, from July 1993 to June 1994, and being given the fact that the Standards Council has, at its meeting of 25.01.01 approved the recommendation of the Staff Committee for the appointment of Mr Joolia as Assistant Technical Manager”.

The Applicant avers in its Statement of Case:-

- He is in the employment of the Respondent and currently holds substantive appointment as Technical Officer in the Quality Assurance Division, with assignment of duties as Assistant Technical Manager in an acting capacity.
- Respondent is a statutory body set up under the Mauritius Standards Act 1993 to manage the Mauritius Standards Bureau (MSB) established under the said Act.
- On the 1st December 1977, Applicant was appointed Mechanical Laboratory Technician in the Ministry of Commerce by the Public Service Commission.
On 16th July 1993, Applicant accepted posting on the establishment of the MSB as Technical Officer and was on the same duties of Standards Officer.

- On 6th November 1995, Applicant accepted to be transferred from the Mechanical Division to the Quality Assurance Division at the MSB.
- On 13th June 2000, Applicant was assigned the duties of Assistant Technical Manager in the Quality Assurance Division at the MSB.
- With the increase in workload at the MSB, 2 additional posts of Assistant Technical Manager were created.
- On 26th November 2000, the 2 additional posts of Assistant Technical Manager were advertised.
- Applicant submitted a written request to the Respondent to be considered for the post being given that –
 - (i) since 14th October 1997, the Applicant had become an Associate Member of the Institute of Quality Assurance (AMIQA);
 - (ii) the requirement to be a licentiate of the Institute of Quality Assurance (IQA) is a Bachelor's Degree acceptable to the Institute's Council;
 - (iii) AMIQA is a superior grade to IQA; and
 - (iv) the post of Assistant Technical Manager is one requiring professional skills which the Applicant had although, he held a Diploma.
- In January 2001, the Staff Committee, an advisory body set up by the Respondent examined the request of the Applicant and recommended that the Applicant be considered for the post of Assistant Technical Manager.

- At its meeting of 25th January 2001, Respondent took cognizance of the recommendation of the Staff Committee and endorsed the same. The Respondent further agreed that other officers with alternative qualifications be given the same opportunity.
- Applicant avers that he had a legitimate expectation to be appointed Assistant Technical Manager on the basis of the endorsement by the Respondent of the recommendation of the Staff Committee. The Respondent, however failed to inform the Applicant of its decision in this regard. Nor did it implement the same.
- Applicant made repeated verbal representations to the director MSB without any success.
- On 7th April 2003, Applicant renewed his request in writing to the Respondent for the implementation of the recommendation endorsed by it on 25th January 2001. In the same letter, Applicant informed the Respondent that he had qualified as Lead Auditor since 18th December 2001.
- On 10th April 2003, the Respondent informed Applicant that his request would be considered by the Staff Committee at its next meeting.
- By letter dated 28th April 2003, Applicant represented to the Respondent that the matter could not validly be sent before the Staff Committee in as much as the Staff Committee had already given its conclusions on the matter which the Respondent had additionally endorsed.

- On 6th May 2003, the Respondent replied to the Applicant and confirmed in writing that:-
 - (a) Applicant had made an initial request on 29th November 2000 to be considered for the post of Assistant Technical Manager; and
 - (b) the Respondent did endorse the recommendation made by the Staff Committee on 17th January 2001 to consider the Applicant for the said post.

- In the same letter of 6th May 2001, Respondent contradicted itself by stating that “the Council has never made any commitment to appoint you on a substantive capacity as Assistant Technical Manager in the Quality Assurance Division.....” Respondent further stated that it “has no alternative than to refer the case to Staff Committee for a recommendation”.

- Applicant avers that the Respondent is procrastinating the matter unduly without any justification whatsoever.

- Applicant therefore prays for an order directing the Respondent to implement its decision reached on 5th January 2001 to appoint the Applicant, on the recommendation of the Staff Committee, in the Post of Assistant Technical Manager in the Quality Assurance Division with effect from the said date.

The Respondent avers in its Statement of Case:-

- Applicant is not qualified for the post of Assistant Technical Manager. He possesses a Diploma in Mechanical Engineering when the post of Assistant Technical Manager requires a degree.

- The Council of the Mauritius Standards Bureau endorsed the recommendation of the Staff Committee to consider (not appoint as the

Applicant claims) the Applicant for the post of Assistant Technical Manager in the Quality Assurance Division in line that the same policy be applied to other officers not possessing the prescribed qualifications but having an equivalent one together with long experience.

- Consequently, with regard to officers who do not possess the prescribed qualification, the National Accreditation Equivalence Council (NAEC) is contacted to see whether they have equivalence. After receiving a reply from the NAEC to the effect that they equivalence, only then is the Council of the MSB in a position to take a decision. If the Applicant is appointed to the post of Assistant Technical Manager while holding current qualifications, without NAEC deciding that he has the equivalence, this will disrupt considerably the efficiency of the MSB and materially affect its running.
- The Applicant, who possesses several other qualifications together with his Diploma in Mechanical Engineering, was requested to submit his qualification to be sent for equivalence to NAEC. The Applicant has up to now failed to show to the MSB that the NAEC has given him the equivalence.
- The Respondent avers that Council has agreed that together with long experience, officers holding equivalent (as certified by the NAEC) qualifications might be considered for the post of Assistant Technical Manager.
- As long as the Applicant does not show to the MSB that he has the equivalence, his appointment for the post of Assistant Technical Manager cannot be considered.

- The Respondent therefore prays that the present application be set aside with costs.

The Applicant confirmed under solemn affirmation of matters stated in his Statement of Claim. At the time he was deponing, he stated that he was still acting as Technical Manager since 3rd June 2000, which function he had occupied on several occasions without having to confess any adverse report, nor has anyone complained of any disruption in the activities of his employment. He added that he was never told before requesting to be appointed in a substantive capacity that he should refer his qualifications to the National Equivalence Council before the decision of the staff committee. According to the applicant the Council endorsed the recommendation of the staff committee to consider him for the post of Assistant Technical Manager and also agreed that other officers with alternative qualifications be given the same opportunity and that was a decision which was taken in January 2001. On the basis of that decision, the applicant concluded that his representation was examined by the Board

Mr Asraf Caunhye, the director of Mauritius Standards Bureau did not agree that applicant was never made aware that his qualification was being submitted to the Mauritius Qualification Authority. His version is that, applicant was requested to submit same to the Authority. He was made aware by way of a letter dated the 30th September, 2003. In fact Mr Caunhye wrote a letter to applicant informing him that Standard Council had decided that in the light of his request to consider him for the post of Assistant Technical Manager, the advice of the Mauritius

Qualification Authority would have to be sought. The purpose of that exercise for the purpose of equivalence before considering the applicant for the post of Assistant Technical Manager. Eventually Council decided after considering the staff committee's recommendation that applicant did not possess the required qualification for the post of Assistant Technical Manager. The witness stressed that the consideration was for the recommendation but not for the appointment as such.

After considering the testimonial and documentary evidence adduced, the Tribunal comes to the following conclusion:-

the Council has the task by law, i.e, according to the Act governing it, to perform certain specific duties in relation to standards and in the discharge of its duties it is bound to follow certain imperatives, namely, the ability and the qualifications of people to discharge those duties. In the present matter, we find that Applicant's dispute stems from a misconception. There seems to be two folds to Applicant's dispute as referred to us. The first part deals with the fact that Applicant has been acting as Assistant Technical Manager for a certain period of time and the second part relates to the recommendation of the Staff Committee for appointment. It is trite law that an actingship does not per se gives right for an appointment in a substantive capacity although it may be a factor to be taken into consideration. As regards the second part of the dispute, it appears to us that Applicant bases his case on the ground that there has been a recommendation for his appointment and perhaps honestly, that the Staff Committee has made a

recommendation for his appointment and this from what he had been told. We share the view of Counsel appearing for the Respondent that annexure (9) that is the letter dated 6th May addressed to Applicant and signed by the Chairman of the Mauritius Standards Bureau is in consideration to the appointment and not actually to appoint. The sentence reads:-

“However Council endorsed the recommendation of Staff Committee to consider you for the post of Assistant Technical Manager and also agree that officers with alternative qualification be given the same opportunity.”

That letter further stressed the following:-

“I wish to inform you that Council has not made any commitment to appoint you.”

Those terms are clear and Applicant himself agrees in his own Statement of Case and we believe therein lies the misconception. The Applicant thought that there was a recommendation for appointment when in fact the recommendation is to consider.

Perhaps it would be apposite here to refer to the recent Award of E. César and CWA (RN 785 of 2005), although the latter deals essentially with backdating of an actingship service:-

“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**).”

This being the case, the Tribunal cannot encroach on the Respondent’s right in not proceeding with the appointment of Applicant, inspite of his actingship if the Respondent considers Applicant does not qualify for it.

The dispute is therefore set aside.

R. Hossen

Acting President

B. Ramburn

Member

R. Sumputh

Member

Date: 23rd November 2005