

PERMANENT ARBITRATION TRIBUNAL

AWARD

RN 735

BEFORE

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

In the matter of:

Technical School Management Trust Fund Staff Association

And

Technical School Management Trust Fund

This dispute has been referred by the Minister of Labour, Industrial Relations and Employment for Compulsory Arbitration by virtue of **Section 82 (1) (f) of the Industrial Relations Act 197, as amended.**

The Technical School Management Trust Fund Staff Association is hereafter referred to as the Applicant and the Technical School Management Trust Fund, as the Respondent.

Both parties were represented by Counsel.

The point in dispute is:-

“ Whether the salary scale of Trainers, who have been classified by the PRB on the same level as Education Officer, should be Rs 12570 x 400 – 12970 x 500 – 15470 x 600 – Rs 21470 similar to the salary scale of Training Officers working at the IVTB, or otherwise.”

In its Statement of Case, the Applicant avers that:-

- In its report dated 10/08/01, the Security Audit Team of the Faculty of Engineering of the University of Mauritius observed that "the lycée is a unique institution of its kind in the island and it caters for students in the age group 17-22", and accordingly concluded that "it should not in any respect be managed as a conventional secondary school or vocational institution."
- At page 12 of its Education Card 2001, published by the Ministry of Education and Scientific Research, Lycée Polytechnique Sir Guy Forget is classified as a TERTIARY INSTITUTION on the same level as UOM, MCA, MIE, MGI, UTM.
- With one or two exceptions, the trainers of Polytechnique Sir Guy Forget are all degree holders and all of them have followed post degree or post diploma courses.
- that the salary scale of the trainers posted at Lycée Polytechnique Sir Guy Forget should at least be at the same level as that awarded by the Tribunal on 07/03/02 in respect of the Training Officers posted at the IVTB.
- Management of Industrial and Vocational Training Board supported the claim of the staff before the Permanent Arbitration Tribunal.

The Respondent avers the following in its Statement of Case:-

- In support of its case, Applicant is relying mainly on an Award of the Tribunal on 7th March 2002 in respect of Training Officers posted at IVTB.
- TSMTF avers that the above arguments cannot stand in as much as Trainers at TSMTF cannot be compared to those at the IVTB for the following reasons:-

Working Hours

Sector	Time in	Time out
Education	08.10	14.10
Technical Schools MT Fund	08.30	14.40
IVTB	08.00	16.00

Trainee Population:

Sector	Age Group
Education	11-18 years
Technical Schools MT Fund	16 – 35 years
IVTB	16-50 years

School Holidays

Sector	Per Year
Education	Average of 70 days
Technical Schools MT Fund	Average 15 weeks
IVTB	Average of 35 days

Contact Hours

Sector	Per Week/per officer
Education	Average 15 hrs
Technical Schools MT fund	Same as above i.e 22 period
IVTB	Average of 27 hrs

- The Lycée Polytechnique de Sir Guy Forget organizes modular courses after normal working hours and the Trainers carrying out these courses are paid accordingly.
- The Mauritius Examinations Syndicate organizes examinations at the Lycée Polytechnique de Sir Guy Forget. The trainers are involved in the
 - (a) setting up of papers
 - (b) moderation of the examination papers
 - (c) marking of scripts

whereas Trainers at IVTB are responsible for the organization/setting up/moderation of examinations under the supervision of the MES.

- In the circumstances TSMTF avers that there is no merit in the applicant case, and pray the Tribunal to set aside the claim.

The Applicant called a witness who confirmed the contents of its Statement of Case. The Respondent chose simply to rely on its own Statement of Case.

We wish to deal first with the issue of Option Form is it relates directly to the jurisdiction of the Tribunal:

"A recent amendment to the Industrial Relations Act reads as follows:-

"Section 2 of the principal Act is amended –

- (a) *in the definition of "industrial dispute" by deleting paragraph (a) and replacing it by the following paragraph –*
 - (a) *a contract of employment or a procedure agreement except, not withstanding any other enactment, those provisions of the contract or agreement which –*
 - (i) *concern remuneration or allowance of any kind; and*
 - (ii) *apply to the employee as a result of the exercise by him of an option to be governed by the corresponding recommendations made in a report of the Pay Research Bureau.*

- (b) by inserting in its appropriate alphabetical place the following definition –

“Pay Research Bureau” means the bureau referred to in the yearly Recurrent Budget under the Vote of Expenditure pertaining to the Prime Minister’s Office.”

Section 2 of the principle Act previously defined “Industrial Dispute” to be “a dispute between an employee or a trade union of employees and an employer or a trade union of employers which relates wholly or mainly to

- (a) *a contract of employment or a procedure agreement;*
 (b) *the engagement or non-engagement, or termination or suspension of employment, of an employee; or*
 (c) *the allocation of work between employees or groups of employees.”*

“It is not disputed that the reference in the present matter was made before the coming into effect of the new Industrial Relations Act Amendment Act 2003. The Tribunal therefore had already been seized of a dispute compulsorily referred to by the Minister. The Law that was introduced to amend the meaning of “industrial dispute” does not have any retrospective effect and there is no qualifier as to the time it was to come into effect except the following: “Passed by the National Assembly on the thirteenth day of June two thousand and three”, and assented by the President of the Republic on 13.06.2003.”

“It is our considered view that although the Legislator intended that disputes in relation to the PRB Report should be channelled to the PRB in view of the methodology used and the impact of relativity of remuneration and allowances across all sectors of the service for the making of appropriate recommendations, the Legislator could not have intended that this ought to have retrospective effect or they would have expressed such intention clearly and explicitly.

It would be wrong and unfair in our mind to view that the Tribunal is only seized of the dispute when it starts hearing evidence when in fact the Tribunal has already been seized of it when it was referred to it. There may have been a redefinition to the meaning of "industrial dispute" but that cannot deprive the applicant's claim from being entertained by the Tribunal despite having signed the Option Form, which in the light of what we have already said, became necessarily a void exercise in the present case." (See **Award RN 743 André Cheung Chuen Yeung And Municipal Council of Port Louis**)

The Applicant having lodged their dispute well before the passing of the amended Act, cannot therefore be deprived of a hearing.

The Tribunal considers it has jurisdiction to hear the present matter.

The Respondent relies in support of its case on Award ***RN 669 IVTB Staff Union and IVTB*** dated 7th of March 2002. This Award was delivered by a differently constituted Bench. No reason was put forward to justify the Award except the fact that the parties reached a settlement. One of its terms of reference read –

"Whether the salary scale of Training Officers who have been classified by the PRB on the same level as Education Officers should be 12570 x 400 – 12970 x 500 – 15470 x 600 – 21470 or otherwise".

We note that the IVTB had no objection for such realignment.

In the present case, the Respondent, the TSMTF objects on the ground that the condition of work of the Trainees posted at the Lycée Polytechnique Sir Guy Forget, Central Flacq are different. It is not on equal pay for equal work situation. But their evidence is rebutted.

It is agreed that Training Officers at IVTB have been set on equal footing with Trainers who themselves have been classified by the Pay Research Bureau on the same level as Education Officers.

In a further Statement of Case before the Tribunal, the Applicant in reply lays emphasis on the fact that the Respondent does not challenge any of the facts averred by the Applicant in its Statement of Case. The Applicant avers that the points raised in Respondent's Statement of Case are immaterial for the purpose of determining the operative level of responsibility which is the determining factor in deciding upon appropriate salary scale, shouldered respectively by the members of Lycée Polytechnique Sir Guy Forget and those posted at IVTB. A detailed analysis of all the facts averred in the reply and which have remained unchallenged shows that there may be differences in the various responsibility tasks, yet one cannot say that the level of responsibility of the two institutions differs. We, therefore, fail to see why there should be differentials in rewards between same categories of skills and levels of responsibility (Section 47 paragraph C VII of the I.R.A. 1973 as amended). Indeed, what is sauce for the goose is sauce for the gander. We highlight the following un rebutted evidence adduced by the Applicant:-

- The Working Hours at IVTB are either from 8.00 a.m. to 3.00 p.m. or from 9.00 a.m. to 4.00 p.m., depending on the nature of the course.
- The age group of 16 -50 years is explained by the fact that IVTB runs short refresher courses to persons sponsored by Private Enterprise.
- Industrial training during school vacations forms part of the curriculum for the 3-year BT Course run by Respondent.
- The members of the Applicant have the responsibility to establish contact with appropriate and willing industries for the practical training of the students.
- The members of the Applicant are allocated a minimum of three industries to follow the students during their practical training.
- The members of the Applicant have to assess the students during their practical training, and the marks scored by the students are taken into consideration for the final award of the BT (Brevet de Technicien Course).
- Composition is conducted during July and November vacation.
- The PRB has officially recognized the practical training component of the courses run by Respondent.
- The 22 periods refer to the actual teaching.

- A trainer posted at the Lycée run by the Respondent, is also required to spend precious time in the preparation of tools and maintenance of machines.
- Modular Courses are very rarely run by Respondent.
- Modular Courses, also known as Short Courses, are frequently run by the IVTB, and the training officers are correspondingly paid for these Short Courses.
- Setting and moderating of Examination Papers, and the marking of scripts are conducted both by the Trainers in Respondent's Lycée and by the Training Officers posted at IVTB.

For the reasons stated above, the Tribunal accedes to the Applicant's claim, i.e, that the salary scale of Trainers who have been classified by the PRB on the same level as Education Officer should be 12570 x 400 – 12970 x 500 – 15470 x 600 – 21470 similar to the salary scale of Training Officers working at the IVTB.

It goes without saying that whatever PRB report that came into effect after the lodging of this present dispute should be applicable as far as the relevant scale of salary is concerned, and subject to the same Qualification Bar obtained at IVTB.

In order to avoid any confusion regarding the effective date of payment of salary and in a spirit not to overburden the TSMTF with a disbursement of a heavy sum of money, the new salary is to be applicable as from 1st March 2006.

Rashid Hossen
Ag President

R. Sumputh
Member

B. Ramburn
Member

15 February, 2006