

PERMANENT ARBITRATION TRIBUNAL

Award

RN 894

Before:

Rashid Hossen	-	Ag President
Masseelamane Goinden	-	Member
Bhinnod Ramburn	-	Member

In the matter of:-

Mr Roodradev Sharma Dabeedeen

And

Air Mauritius Ltd

This is a dispute 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 1973** as amended.

The point in dispute is:-

“ Whether the post of Mr R S Dabeedeen, Senior Technical Librarian, should be evaluated and be classified on a Management B salary scale, instead of AM5 scale, or otherwise”.

In his Statement of Case, the applicant avers:-

- His employer has agreed in the Conciliation & Mediation Committee that he does not have a job list and descriptions and thereupon management decided to write his current job list for evaluation in Hays Evaluation Committee.
- His employer also accepted that he performs certain job functions which are normally for managerial level staff.
- His employer advised the Conciliation & Mediation Committee that a decision was taken to remove these managerial functions from his job list which he states is on purpose to downgrade his position.
- In fact he will be doing all these managerial functions under disguise as administrative duties in the Hays Job Evaluation format.
- Management also agreed that he would participate in the Hays Job Evaluation Committee but this was not the case.
- His job descriptions were compiled on purpose by two managers who are new in his section and he was asked to give his inputs which were manipulated deliberately to downgrade him.
- In his previous letters to the Conciliation & Mediation, he stated that he was asked by Management to write his job descriptions along with those of his subordinates.
- All the facts used in the evaluation are extracted from his given information and it is clear that Management does not know the various processes involved in his job.

- The two managers used his written job descriptions and manipulated them in the Hays format for evaluation in order to downgrade his position.
- The various tasks, subtasks and processes involved in the performance of his duty including his responsibilities were not taken into consideration in the Hays Evaluation.
- All his inputs regarding **problem solving, requirements to communicate** in Hays format have not been considered.
- Presently there are no clearly defined company policies as mentioned in the Hays format.
- The actual company procedures and policies manual needs to be amended with his inputs.
- His supervision task of his subordinates has not been considered in the Hays Evaluation.
- In the Hays Evaluation, no mention has been made that as the **Senior Technical Librarian**, he is responsible of the Technical Library.
- A similar Hay Job Evaluation exercise was carried out throughout the company in the year 2000 and he was evaluated above AM6 salary level point. Unfortunately it was not implemented.
- His outputs as mentioned in the Hays format have been deliberately minimized to suit what Management wants to pay him as salary and he states that this evaluation is subjective, not realistic.
- Recent internal vacancies and their Hays Evaluation need to be compared with his job lists.
- He states that Hays Job Evaluation depends on Management willingness to show the degree of importance of certain jobs in his organization.

- His subordinate, A Technical Clerk was promoted to Senior Technical Clerk without a job list and Management did not apply Hays Evaluation in this particular case.
- He has been victimized since a long time and has been under more pressure after having reported this dispute.
- His annual increment on salary was applied two months after and this practice he states was deliberate on Management's part to victimize him.
- He is not agreeable to the counter responses given by his employer to the Conciliation & Mediation Committee regarding the dispute and if required he will justify accordingly.

In its Statement of Case, the respondent avers:-

1. Applicant joined the service of the Company on the 11th May as Helper/Cleaner in the Cleaning Department.
2. Applicant was thereafter appointed Library Assistant, post in which he was confirmed in November 1988.
3. On 1st October 1991, after he was awarded a "Diploma in Business and Management Communications", Applicant was offered the position of Assistant Librarian in the Technical Library of the Maintenance & Engineering Department of the Company.
4. Applicant was promoted as Librarian on 16 November 1992 and thereafter, following an agreement which was reached between Respondent and Applicant's Union, he was on 1 April 1997 upgraded to the post of Senior Librarian in the Maintenance Control Section of the Technical Department.

5. Applicant had always had a Job Description as Technical Librarian and when he was promoted to Senior Librarian in 1997, he was indeed not provided with a list of duties as the department was on the eve of a major restructuring program.
6. Applicant was not nonetheless performing duties relating to the Technical Library which was agreed upon with his supervisors.
7. Respondent denies that Applicant has been performing managerial duties and avers that controlling attendance, approving leave, approving material requisition and checking invoices have never been duties assigned to Management level staff only.
8. Respondent avers that on 23 December 2004 it has entered into an agreement with the Union catering the interest of the staff grade for the implementation of a new salary structure in the Company and according to this structure, staff grade employees at Level 3 are called upon to monitor leave and attendance of their subordinates.
9. Respondent avers that with the restructuring of its Maintenance & Engineering Department, certain functions had to be decentralized to avoid duplication of work and in this context, the leave management and control functions had to be removed from the assigned duties of Applicant.
10. Respondent denies that the removal of these duties was done in a spirit of bringing a downgrading to Applicant.
11. Respondent avers that after a trade dispute on the matter was reported to the Ministry of Labour and Industrial Relations by Applicant, on the 5 January 2005, a conciliation meeting was convened at the Ministry on 28 February last wherein it was agreed before the officers of the Ministry that:
 - *Respondent will write the current Job Description of Applicant as Senior Librarian in the Maintenance & Engineering Department.*

- *The Job Description will be forwarded to Applicant for his approval.*
 - *Respondent will thereafter arrange to have the post evaluated and if it fetched any upgrading, Applicant would be upgraded.*
12. Respondent proceeded along the lines of the above agreement and after the Job Description was approved and signed by Applicant, it was sent for evaluation before an in-house Job Evaluation Committee, which comprised of selected Managers and Directors who had been trained in Job Evaluation Exercise.
 13. Respondent avers that the post was evaluated as per the Hay Evaluation Method taking into account Know-How, Problem Solving and Accountability components of the Job and the conclusions held by the Job Evaluation Committee were that the duties performed by Applicant fell within the scope of a Staff Grade.
 14. Respondent further avers that any Job Evaluation and more so, the Hay Evaluation that it utilizes to evaluate jobs, does not lay much emphasis on tasks, subtasks and procedures but on the criteria set out above. The signature of Applicant on the Hay Evaluation Sheet utilized for the evaluation exercise is testimony of his acceptance to it. (**Annex I**).
 15. Respondent states that in the light of the conclusions of the above evaluation committee, it wrote to Applicant on 23 May 2005 to inform him that his current salary of AM5 was being maintained. (**Annex 2**).
 16. Respondent denies that the job performed by Mr Dabeedeen had been subjected to an evaluation in the past and he had been rated on the AM6 salary scale and states that the Job Evaluation referred to was in fact never completed.

17. Respondent denies that the Hays Job Evaluation practised in the Company depends on Management's willingness to show a degree of importance to certain jobs in the organization and avers that its role is to set up proper structures within the department to enable it to perform efficiently and deliver results in a timely and cost effective rate.
18. Respondent avers that the Management in the Maintenance & Engineering Department had proposed a structure which had been approved by the Board of Directors and evaluated as per Company's policy.
19. Respondent denies that Applicant has been subjected to any victimization on its part and avers that the delay in the payment of increments to Applicant was due to the fact that his Line Manager and his Senior Manager were exceptionally abroad busy with C checks which are major checks done on its aircrafts.
20. Respondent in the light of the above states that there are no grounds for any upgrading of Applicant and moves that this application be set aside.

The Applicant who was not assisted by Counsel confirmed to the correctness of his Statement of Case.

During the course of proceedings, Counsel for the Respondent informed the Tribunal that following a disciplinary committee, the applicant has been sacked and is no more an employee of the Company.

Counsel submitted that in the circumstances, the Tribunal does not have jurisdiction to entertain the present matter.

It is not denied that the Applicant is no more an employee of the Company.

We refer here to what was held in **L. Ramsaha and Sugar Industry Labour Welfare Fund (RN 847 of 5/7/07):-**

““Industrial dispute” means 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) An 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”*
(the underlining is ours).

It is quite clear from such a definition, that, as rightly submitted by Learned Counsel for the applicant, that the industrial dispute for the purpose of the Act can only refer to a dispute between a current employer and his present employees, not former ones who had been in retirement for a long time as is the case with the co-respondents.”
(Supreme Court Judgment no. 169 of 2004).”

A close look at the Terms of Reference confirms that the dispute is not in relation to “*an engagement or non-engagement, or termination or suspension of employment, of an employee.*” It is in relation to re-classifying a salary scale.

“We consider that the applicant not being presently employed and therefore the employer not being the current employer, the dispute initially declared no more satisfies the definition as per the Industrial Relations Act. We need to add that the very purpose of the Industrial Relations Act is the maintaining of good industrial relations between employers and employees. It goes without saying that anyone of them becoming inexistent in the sense that the contractual obligations can no more exist between them, the purpose of good industrial relations no longer stand. The Code of Practice annexed to the Industrial Relations Act clearly shows the very intention of the legislator which is that of good industrial relations between employers and employees”.

Consequently it is our considered view that the Tribunal cannot entertain the present matter as the Applicant is no more in the employment of the Respondent.

The dispute is therefore set aside.

Rashid HOSSEN
Acting President

Binnodh RAMBURN
Member

Masseelamanee GOINDEN
Member

Date: 13th December 2007