

PERMANENT ARBITRATION TRIBUNAL

AWARD

RN 1002

Before:

Rashid HOSSEN	-	Ag President
Binnodh RAMBURN	-	Member
Rajendranath SUMPETH	-	Member

In the matter of:-

Beejanand Goburdhun

And

Airport of Mauritius Co. Ltd

The present dispute has been referred for Compulsory Arbitration 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 point in dispute is:-

“Whether Mr B. Goburdhun should have been offered the post of Car Park Official, following the recommendation of the AML Staff Remuneration Review (final report – 21 April 2006), so that he can move to a higher salary scale or otherwise.”

It is averred in the applicant's Statement of Case that:-

The Employee has been in the continuous employment of the AML since 1976.

In 1980 he was appointed to the post of Driver/Messenger.

In or about July 2005, the International Development Partners (IDP) was assigned with the task of submitting a report (the report) for the AML Staff Remuneration Review.

In or about June 2006 the Airport of Mauritius Employees' Union (AMLEU) and the AML approved the findings and recommendations of the report which was subsequently ratified by both parties.

The Employee was earning a basic salary of Rs 15,608 as at June 2006.

In or about June 2006, his monthly salary was fixed to Rs 17,025.

The case of the Employee was specifically highlighted by the report which recommended that he be promoted to a higher grade.

In or about January 2007, the AML merged the jobs of Driver/Messenger with that of Tractor/Forklift Driver.

As a consequence of the above mentioned merger, the post of the employee was re-styled to that of Heavy Duty Driver with a monthly salary of Rs 17,575, the latter being the higher end of the salary scale, with no prospect of increment.

The AML should have as per the report promoted the Employee to a higher grade, that is to that of the post of Car Park Official or otherwise.

The movement from the previous job of the Employee, that is from Driver/Messenger to that of Heavy Duty driver cannot be regarded as a promotion and the post of Heavy Duty driver cannot be regarded as one of higher grade with respect to that of Driver/Messenger for the following reasons:

- a. The job title of Heavy Duty driver is the result of a merger between the job of Driver/Messenger and that of Tractor/Forklift driver, the latter being at a lower salary scale than the former;
- b. A promotion is marked with two increments and the Employee was given only one salary increment.

The AML has acted in breach of the ratified report by not promoting the Employee.

The monthly salary in relation to the new post, as stipulated above, is the result of only one increment, when the AML should have given the Employee two increments.

The post of Car Park Official has been vacant since 2005.

The Employee has the required and necessary experience and competence to fulfill the job of a Car Park Official.

The AML should be ordered to promote the Employee to the post of Car Park Official.

In the alternative should the AML wish not to promote the Employee, the latter should be given a choice for early retirement upon reasonable terms and conditions, including an empowerment programme.

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

The employee joined service in November 1976, and AML on 01 April 1999.

He was promoted to the post of Driver/Messenger in January 1983.

Prior to June 2006, Mr Goburdhun was earning a basic salary of Rs 15,608 (which represented 6 points above his salary scale at that time, rightly confirmed as an anomaly by the IDP report).

On 01 June 2006, his basic salary as Driver/Messenger was revised to Rs 17,025, as per the conversion table in the IDP report, as approved by AML and AMLEU.

The new salary scale for Driver/Messenger, effective from June 2006 is:
 AML 20: Rs 8,500 x 200 – 9,700 x 250 – 10,450 x 275 – 11,275 x 400 –
 16,475.

The converted salary of Mr Goburdhun was then one point above the salary scale for Driver/Messenger.

In the IDP Report of April 2006 on Staff Remuneration, the anomalies regarding the salary of Mr. Goburdhun were indeed highlighted. In 2006, Mr Goburdhun was employed as Driver/Messenger and was 6 points above his old salary scale. Following the salary review exercise in 2006, Mr Goburdhun was one point higher in the new salary scale of Driver/Messenger. In order to address the above anomaly, the following recommendations were made in the IDP report:

“We strongly recommend that AML makes every effort to resolve these anomalies by examining the possibilities for these incumbents to either move to higher salary scales or opt for early retirement.”

Indeed in January 2007, AML proceeded with the merger of the post of Driver/Messenger and that of Tractor Driver. This merger was done to bring about uniformity in the job titles of drivers in the Airfield section, and also due to the nature of work that these drivers were doing (which involved driving tractor and bus).

As the top salary in the scale of Heavy Duty driver is Rs 17,575, Mr Goburdhun was given the top salary.

The new salary scale for Heavy Duty driver is:

AML 18: Rs 8,500 x 200 – 9,700 x 250 – 10,450 x 275 – 11,275 x 400 –
 16,475 x 550 (revised) 17,575

The salary scale for Driver/Messenger is lower than that of Tractor driver.

Mr Goburdhun could not be awarded two increments, as this would be beyond the salary scale for Heavy Duty Driver. As such he was only awarded one increment to reach the top in the new salary scale for Heavy Duty Driver.

In line with the recommendations of IDP report, and to address the anomaly in his salary, Mr. Goburdhun has been promoted from the post of Driver/Messenger to that of Heavy Duty Driver and moved to a higher salary scale.

As per terms and conditions of employment, a promotion is marked by two increments. However Mr. Goburdhun could not be awarded two increments, as this would be beyond the new salary scale, hence resulting in yet another anomaly.

The post of Car Park Official has been suppressed and does not figure in the new salary scale as per the IDP report.

The request/claim of Mr. Goburdhun is a non-issue.

There is no direct appointment from the post of either Driver/Messenger or Heavy Duty driver to that of Car Park Official.

Mr. Goburdhun, aged 54, may opt for early retirement, as per paragraph 5 (a) (iii) of the existing terms and conditions of employment at AML.

The disputant deponed to the effect that he joined the Development Works Corporation on 14 Mars 1974 and was transferred to the Civil Aviation on 18 November 1976. He was employed as Driver in October 1980 and was promoted to Driver/Messenger in 1983. In October 1995 he was transferred to the AMSL (now AML) and it was agreed that – as per The Memorandum of understanding – all his acquired rights would be respected. At the AML he finds his salary less favourable when compared to the PRB Report. With the IDP Report, he was earning Rs 17,025 monthly. Just before that Report his salary was Rs 15,608. His salary

reached Rs 17,575 from Rs 17025 with the merging of Driver/Messenger and Heavy Duty Driver. This increase is equivalent to one increment only. He does not consider this as a promotion because a promotion is marked with two increments. The Consultants in the IDP Report speak of salary on promotion and of fair salary. Since 2000 he has been on top salary and will retire in 2019 with no prospect of promotion. The Employer has not respected the IDP Report ratified by the Union and the Employer. He thought that at the AMSL he would receive a better pay than what he received at the Civil Aviation.

The disputant further stated that he has been Driver/Messenger for 10 years. As per the IDP Report 2006 he should have been promoted. The IDP Report mentioned that he was earning 6 increments above scale and each increment was equivalent to Rs 400. The starting salary of Driver/Messenger as per the IDP Report 2006 (Scale AML 20) is Rs 8,500 and the top salary is Rs 16,475. The salary of a Tractor Driver (Scale AM 18) starts at Rs 9100 and tops at Rs 17,575. The top salary of a Driver/Messenger before the IDP Report was Rs 14,475. However, he was earning Rs 15,608 which was above scale. The IDP Report also mentioned that there was an anomaly in his case. The AML gave him a very personal treatment regarding his salary. He received Rs 17,025 instead of Rs 16,475. To clear anomalies and to respect the IDP Report, the AML merged the post of Driver/Messenger with that of the Tractor Driver. He thinks that he should have been granted 2 increments when his post was restyled as Heavy Duty Driver because he considered it as a promotional post. He also thinks that he should perceive a salary of Rs 18,125 instead of Rs 17,575 and on a continuous scale. He accepted the offer of the post of Heavy Duty Driver voluntarily. It was not an acceptance under protest. He is not aware that the post of Car Park Official has been suppressed. He agrees that there is no direct appointment to the post of Car Park Official from the post of either Driver/Messenger or Heavy Duty Driver. There is no break in his length of service since his first employment in the Development Works Corporation in 1974. He does not want to take an early retirement. There are 18 drivers at the AML. In the Government Sector there is a Head Driver for each 10 Drivers. He is the most senior

among Drivers. The 6 increments above the top point was given to him as a reward for good work and for long service. When he was transferred from the Civil Aviation to the AML, he was already on the top salary. When he joined the AMSL, he was offered a new salary scale and was granted increments. The works he is performing presently is not different from those he was performing as Driver/Messenger. It is only after the dispute has been declared that he came to know that the post of Car Park Official has been suppressed.

Mr M.F. Mohung, Human Capital Management Officer of AML, testified to the effect that when the Applicant joined the AMSL, he was not on the top salary because he was earning Rs 6,250 and the top salary was Rs 7,000. In June 2006, the Applicant was drawing Rs 15,608, a six points above the salary scale prior to conversion. Following the IDP Report 2006, he drew Rs 17,025 monthly. The post of Car Park Official (AML 15 & 15A) has been suppressed and does not appear in the new salary scale of the IDP Report. The post of Driver/Messenger (AML 20,21) has been merged with the post of Tractor Driver (AML 18) to become Heavy Duty Driver (AML 20/18). The post of Tractor Driver has been suppressed. The Applicant is now drawing Rs 17575 (the Top Salary as Heavy Duty Driver). He has moved upwards by one increment. He did not make any complaints regarding his appointment and his salary as Heavy Duty Driver. At present the creation of the post of Heavy Duty Driver is not feasible. If the Applicant was given 2 increments upon his promotion to Heavy Duty Driver, this would have disturbed the IDP salary structure and caused a bad precedent. His salary would have come to Rs 18,125, one increment above the top salary. The AML has tried its best to put the recommendations of the IDP into practice and correct the anomalies. The post of Car Park Official is open to anybody who meets the minimum requirement such as the School Certificate. That person needs not necessarily be a Driver/Messenger or a Heavy Duty Driver.

The witness further added that the AML is not against the creation of the post of Head Driver. A Consultant will be appointed to review the organizational structure

as together with the drivers there are other employees in other departments who have some apprehension regarding promotions. He agrees that a promotion is marked by 2 increments. He maintains that the Applicant has been promoted because he has been offered the post of Heavy Duty Driver together with a higher salary. He is now drawing Rs 17,575 compared to his previous salary which was Rs 17,025. The Applicant is performing the same works as prior to his promotion. The post of Car Park Official was suppressed in 2006 with the IDP Report. In 2007 the Union made a request to Management to consider the re-introduction of the post in question. The Management replied that a Consultant would be appointed to review the organizational structure. We cannot say that Mr Goburdhun has still 11 years more to work. The retirement age is sixty and there is the option for early retirement at the age of fifty. The incumbents at Salary Band AML 24 fall outside the recommended salary scale because their salaries are on a personal basis and they are not drawing increments. He maintains that the Applicant has been promoted. All pending cases will be referred to the Consultant.

Counsel for the Applicant briefly submitted:-

1. The recommendation of the IDP Report is not only to take someone to a higher scale, but it also entails promotion. As per the report, there are anomalies. The Report recommended that the AML should make every effort to resolve these anomalies and promote these people but have failed. There was one post that could have been considered, the Head Driver.
2. In relation to the promotion itself, it cannot be said that Mr Goburdhun has been promoted because a promotion entails two increments.
3. "Promotion" as per the Oxford Advance Learner's Dictionary means 'the process of raising or being raised to higher position or more important job'. The Applicant is currently doing what he did before.
4. The AML has acted in breach of the IDP Report. It should indeed reach a fair salary and not create frustrating people.

Counsel for the Respondent on the other hand submitted:-

1. Promotion entails a higher post. There has been a promotion. The AML has given all due endeavors to the Applicant's case on a personal basis. That is why the post has been merged. Where there is a merger of posting, there is a movement from one grade to another. It should also not be forgotten that the Applicant himself has said from the block that he was already six increments above.
2. There is no evidence that there ought to have been the post of Head Driver created. In the Applicant's Statement of Case, there is no such request. It came only when he was deponing.
3. If the top salary is crossed, as in the case of the Applicant, because he has been given one increment above the top salary (as Driver/Messenger), we would say that the AML has done everything practically possible to put the IDP Report into practice.
4. The Applicant has signed the acceptance form. He has waited for about 10 years before he makes his first complaint in the form of a dispute.
5. Now the case before the Tribunal is whether the Applicant is entitled to the post of Car Park Official. Unfortunately, this is a non-issue, a non-avenue.
6. Is the Applicant entitled to something more? On the Applicant's side they are saying that the scale should have started at Rs 18,125 – pushing further the scale. This cannot be done because it would have caused an upheaval among workers. It would have created a domino effect.
7. There is no grievance. Mr. Goburdhun has been adequately rewarded.
8. If ever he has any grievance, he may make his representation through his Union in the impending or the forthcoming Consultant hearing.

After careful consideration of the testimonial and documentary evidence adduced and the submissions of Counsel, the Tribunal finds that:-

1. Prior to June 2006, the Applicant was earning a basic salary of Rs 15,608, which was six points above his salary scale, rightly confirmed as an anomaly by the IDP Report.
2. On 1 June 2006, his basic salary as Driver/Messenger was revised to Rs 17,025, which was one point above the top salary scale at Rs 16,475.
3. The anomaly regarding the salary of the Applicant was highlighted in the IDP Report. In order to redress the anomaly, the following recommendations were made in the said Report:-
“We strongly recommend that AML makes every effort to resolve these anomalies by examining the possibilities for these incumbents to either move to higher salary scales or opt for early retirement.”
4. Thereafter, in January 2007, the AML in order to redress the anomaly proceeded with the merger of the post of Driver/Messenger and that of the Tractor Driver which became Heavy Duty Driver. The top salary of the Heavy Duty Driver is Rs 17,575 and Mr Goburdhun was given the top salary, one increment above the salary of Rs 17,025 which he was earning before as Driver/Messenger. It is understood that a promotion is marked by two increments.
5. The Applicant did not make any protest regarding his appointment and his salary as Heavy Duty Driver. He signed the acceptance letter dated 18 January 2007 on that very day itself. There is no evidence that he acted under compulsion.
6. He reckons more than 400 months of service, which qualifies him for a full pension if he retires. However, he has conceded under cross-examination that he does not want to take an early retirement.
7. He has testified from the dock that in the Public Service there is one Head Driver for every ten Drivers. He has, however, not adduced any

evidence on that score. Now, assuming that the post of Head Driver is created at the AML, there is nothing written in black and white that the post should be offered exclusively to the Applicant. It is not every time that there is direct appointment. Very often promotional posts are advertised. There is internal or open competition.

8. The post of Car Park Official has been suppressed and does not appear in the new salary scale of the IDP Report 2006.
9. The post of Car Park Official, when it existed prior to the IDP Report, was open to anybody who met the minimum requirements as testified by the Employer's witness. Moreover, that witness also testified that one of the requirements was the possession of a School Certificate. The Educational qualifications of the Applicant have not been revealed before the Tribunal.
10. The post of Car Park Official was a higher post than that of a Car Park Warden or a Car Park Operator/Cashier on shift (Scale AML 17) or than that of a Foreman (Scale AML 16). The Respondent's witness has affirmed that it was a high post taking into account the duties attached to it. The Tribunal also finds that it is not feasible that an employee moves from the grade of a Driver/Messenger or a Heavy Duty Driver (which it is believed are manual grades) to reach the grade of a Car Park Official, thus surpassing the grade of a Foreman (which is normally a staff grade) by mere "automatic promotion."

In the light of all the above, the Tribunal finds no compelling reason to award in favour of the Applicant. The post of Car Park Official does not appear in the establishment of the AML actually. It has been suppressed as per the IDP Report of 2006. It should be borne in mind that the dispute has been declared in December 2007.

Likewise, there is no avenue under "or otherwise" for the Applicant. We cannot disturb the salary scale of the Heavy Duty Driver by giving the Applicant further increment (s), thus creating another anomaly.

Secondly, the post of Head Driver is not an issue. It does not even appear in the Statement of Case of the Applicant.

The dispute is accordingly set aside.

Rashid **HOSSEN**
Acting President

Binnodh **RAMBURN**
Member

Rajendranath **SUMPUATH**
Member

Date: 12th August, 2008