

PERMANENT ARBITRATION TRIBUNAL

AWARD

RN 570

Before:

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

In the matter of:-

Telecommunication Workers Union
And
Mauritius Telecom

Terms of Reference

“Whether Telephone Operators should be granted:

(i) One day off for every public holiday coinciding with an off day; and

(ii) Two days off for every public holiday on which they have worked;

with effect from January 1990 or otherwise.”

The present dispute has been referred back by the Supreme Court to the Permanent Arbitration Tribunal as presently constituted following the judgment delivered on 25 May 2005, after the Respondent had challenged by way of judicial review the Award delivered on 28 October 2003 by the then constituted Tribunal presided over by Mr. H. Balgobin in respect of the above points in dispute.

In the present matter, Mr. A.K.Gujadhur, of Counsel, appears for the Applicant. Sir Hamid Moollan, Q.C. appears for the Respondent.

Background

1. Following an industrial dispute between Mrs Marie Claude L'Arrogant and Mr. A.Jeelany Peeroo and the Mauritius Telecom Services, the Minister of Labour and Industrial Relations referred the dispute to the Industrial Relations Commission (IRC) for conciliation.
2. The points of dispute were the same as those which are presently before the Tribunal.
3. After hearing the parties, the IRC on 28 October 1997 recommended that:-
 - (a) *The period of 30 minutes between 2 sessions of work of one hour be reduced to 20 minutes;*
 - (b) *The employees who work on public holidays be paid twice their normal wage salary;*
 - (c) *As the work on Sundays is on a rotation basis (once every 7 weeks), the Commission does not make any pronouncement thereon.*
4. On 18 November 1997 by way of letter, the two Applicants informed the Secretary of the Telecommunications Workers Union that they did not agree with the recommendations made by the IRC.
5. By way of letter dated 19 November, the Union informed the Minister of Labour and Industrial Relations of an industrial dispute between the Telecommunications Workers Union and the Mauritius Telecom.
6. By way of letter dated 5 January 1998, the Ministry of Labour and Industrial Relations referred the dispute to the Permanent Arbitration Tribunal. The Terms of reference were the same as those which are actually before the Tribunal.
7. On 28 October 2003, the Tribunal delivered an Award and found both claims fair and reasonable and awarded accordingly.
8. Consequent to the Award, the Respondent in January 2004 moved the Supreme Court for an order of **CERTIORARI** directing the Permanent Arbitration Tribunal to bring up before the Supreme Court all the records of proceedings in the matter of the

Telecommunications Workers Union v/s Mauritius Telecom (RN 570) in order to have the Tribunal's Award of 2003 quashed and/or set aside and/or reversed.

The grounds of the application amongst others were that:-

- (a) The Tribunal failed to take into account relevant considerations in making its Award.
 - (b) The Tribunal has failed to give reasons to substantiate its findings;
9. After hearing the parties, the Supreme Court on 25 May 2005 ordered the Award delivered by the Permanent Arbitration Tribunal on 28 October 2003 be quashed and the matter referred back to the Permanent Arbitration Tribunal.

The Applicant, in its first statement of case dated 27 January 1998, avers that:-

- The employees concerned were in the past civil servants and they were guaranteed their Civil Service conditions of employment when they were transferred from the Telecommunications Department to the Mauritius Telecom.
- As shift workers Telephone Operators, they should be compensated:
 - (a) When their off days fall on a public holiday, otherwise they would not enjoy any public holiday as an additional rest day; and
 - (b) When they have to work on public holidays, otherwise a public holiday would be just a normal day's work.

These factors have been considered by the PRB.

- In February 1996, Management agreed:
 - (i) to pay the Operators one day salary for work put in on every Public Holiday effective as from 1 July 1993; and
 - (ii) to pay overtime for work put in on every Public Holiday effective as from 1 January 1996.
- In October 1997, the IRC recommended that the Operators who work on Public Holidays be paid twice their normal wage/salary.

In its first Statement of Case, the Respondent avers that:-

- The MTS started operations on 1 July 1988. The formerly employees of the Government Department of Telecommunications were granted leave without pay from Government

for 6 months and worked for MTS. They joined the establishment of MTS on 1 January 1989.

- Prior to joining the MTS on 1 January 1989, Mrs Marie Claude L'Arrogant and Mr. A. Jeelany Peeroo, were employed in the Government Department of Telecommunications as Telephone Operators and their salary and conditions of service were governed by PRB/Chesworth Reports. These provide *inter alia* that shift workers whose day off coincides with a Public Holiday other than a Sunday should be granted a day off, those who work on a Public Holiday other than a Sunday should be granted 2 days off.
- In Government, the Telephone Operators were putting in 40 hours of work weekly including night/shift duties and covering Sundays and Public Holidays. All back pay relating to those shifts for the period ending 31 December 1988 has been paid in 1990. During that period those workers performed 40 hours per week.
- The dispute was referred to the IRC.
- As from 1 January 1989, when those workers joined the establishment of MT, the hours of work of shift workers were reduced from 40 to 36 hours weekly and after that conditions of service for MTS employees were discussed and agreed between Management and Unions. These do not provide for any grant of days off for Public Holidays. On the other hand those same employees who were working 40 hours per week with Government Department of Telecommunications were to work 36 hours per week with MT.
- In effect the reduced hours of work (4 hours x 52 weeks = 208 hours annually i.e. equivalent of 34 days annually) amply compensate for the change relating to days off which were obtained in Government Service.
- With the implementation of MTS conditions of service, only shift workers benefited from a reduction in working hours; office staff for example, had their working hours increased from 33.5 to 35 hours weekly.
- With respect to Public Holidays covering period up to 31 December 1988, it may be noted that ex-DTM Operators have been granted days off (paid 1 day's pay in lieu where it was not possible to grant days off owing to staff shortage). Payment in this connection was effected in 1990.

- On 28 October 1997, the IRC made its recommendations (Annex V11). The recommendations made by the IRC are justified and reasonable. MT is ready and willing to implement those recommendations.
- The MT prays the Tribunal to make an award implementing the recommendations of the IRC.

On 20 April 1998, the Applicant further submitted in writing as follows:-

- The findings of the IRC as set out under IRC/DIS/10/97 especially that part of the recommendations which appears under section (a) are *ultra vires* the Terms of the disputes as referred under IRA 82 I(c) for conciliation; the findings are unreasonable in that the gist of the dispute have not been addressed by the Commission.
- Telephone Operators were in the past Civil Servants at the DOT and their conditions of employment upon joining MT were deemed no less favourable than that which were obtained within the Civil Service. Hence up until December 1989 and as employees of MT, they were entitled to what are in the terms of reference.
- The reduction in the working hours of shift workers is merely in line with general employment trend and follows ILO guidelines. The main reason for that reduction was primarily to harmonise the working hours of all MT employees (i.e. 35-36 hours weekly). Secondly, the reduction was Management decision, reached without any meaningful negotiation with Unions and hence there was no agreement and certainly there was no global package contrary to what is averred by the Employer.
- Annex III of the Employer statement is misleading as no such agreement exists between the Union and the Employer. Similar items of dispute were considered by the PRB and the recommendation which appears at page 65 of the Report set the whole matter in its proper context. It states as follows:

Recommendation 2

“10.5.6 We recommend that shift workers and workers on roster, who cannot be granted off for work performed on a Public Holiday other than a Sunday, or when their day off coincides with a Public Holiday other than a Sunday be paid as follows:-

- (i) One day's pay for a day off coinciding with a Public Holiday other than a Sunday; and
 - (ii) Two days' pay for actually working on a Public Holiday.”
- A shift worker is on duty for actually working on a public holiday a year and also works an average of 42 Sundays every year.
 - Shift workers ought to be given time off in order that he/she may be compensated for not having enjoyed the leisure or religious aspect of public holidays like all other employees. Furthermore, it will also allow the shift workers time for adequate rest and recuperation.
 - Therefore, off days should be granted to shift workers as per the terms of reference.

On 26 May 1998, the Respondent submitted in writing as follows:-

- It is abundantly clear that when workers of the former Department of Mauritius Telecommunications joined the MTS, new conditions of service were negotiated and agreed upon between the Employer and the Unions and no reservation was expressed. There is no provision for any days off in respect of public holidays in these conditions of service.
- Had the Union at that time intended to make a reservation to that effect it should have raised that issue there and then and not come to argue now that this is a matter which they are entitled and retrospectively with effect from January 1990.
- Negotiations are meant to be held in good faith. One cannot take advantage of beneficial proposals made in the context of a global agreement by accepting them without reservation and thereafter try to improve them piecemeal by raising issues on which they made no representation or reservation at the time.
- The circumstances show that the conditions of service have been settled within the organization itself. The PRB Reports were no longer of any relevance to MT and henceforth the conditions of service of MT must be obtained within the Organisation itself.
- The generous reduction in the hours of work of Telephone Operators from 40 to 36 per week amply compensates those who work on public holidays. The effective time on which Telephone Operators are on working position per week is 24 hours as they are granted ½ hours resting time after each hour on working position. Telephone Operators

(International Services) in countries like UK, France and Sweden are generally on working position for 30 hours weekly (5 hours daily x 6 days).

- The Tribunal should endorse the IRC's recommendations which the Employer is fully prepared to implement. The IRC has strived to achieve a balance between effective working time and the compensation for inconvenience of work on Public Holiday.

The Union in its updated Statement of Case of 18 January 2008 avers that:-

1. The Statement of case of the Union dated 27 January 1998 sets out the basis of the dispute and does not require any updating.
2. However, in support of their contention, the Union avers as follows:
 1. The Telephone Operators who joined Mauritius Telecom from the ex-DTM, on 1st January 1989 were previously governed by the PRB and were being granted the days off as per the terms of reference.
 2. Prior to the Telephone Operators joining Mauritius Telecom, negotiations were held, and it was agreed that the terms and conditions of the Telephone Operators, when they joined Mauritius Telecom would not be less favourable. In that context, the following documents are attached:
 - (a) Circular dated 25th May 1988, as document 2. Attention is drawn to paragraph 2 and paragraph 7;
 - (b) An agreement dated 20th January 1989, as document 3. Attention is drawn paragraph (i); and
 - (c) An agreement dated 20th January 1989, ad document 4. Attention is drawn to the second paragraph of paragraph 2 (c).
 3. In 1990, (after the Telephone Operators had been working for Mauritius Telecom for a year), without any prior negotiation, Mauritius Telecom unilaterally removed the days off that they were entitled to.
 4. It is to be noted that between 1989 and 1990, Mauritius Telecom were granting the days off to the Telephone Operators.
 5. The justification for the retention of the days off is that the Telephone Operators would lose the benefits of a public holiday if they were not granted the days off.

The reduction in working hours of 4 hours a week (approximately 50 minutes a day) is merely in line with ILO Conventions.

It is submitted that it is preferable to have a whole day off than to work 6 hours on a public holiday. The removal of the days off renders the conditions of employment less favourable.

6. In 1999, the Telephone Operators were deployed to other sections of Mauritius Telecom and to subsidiaries of Mauritius Telecom. However their contract of employment was and still is with Mauritius Telecom.
7. By virtue of an agreement dated 29th June 1999 attached as document 5, Mauritius Telecom and all the Unions recognized by Mauritius Telecom agreed to await the award of this dispute as such award would be implemented. Attention is drawn to paragraph 7 of Attachment 2.

In its updated statement of case of 5 May 2008, the Respondent avers that:-

1. Further to its statement of case, MT wishes to bring the following matters to the attention of the Tribunal.
 2. In answer to paragraphs 2(i) and (ii) of the updated Statement of Case of the Applicant dated 18 January 2008, MT avers that:-
 - 2.1 Historically, telecommunications services in Mauritius were undertaken by the Government of Mauritius under its Department of Telecommunications.
 - 2.2 On 1 July 1988, the assets and liabilities of the Department of Telecommunications were transferred to Mauritius Telecommunications Services Ltd (MTS). The Department of Telecommunications ceased to exist. All employees were transferred to MTS, and are herein referred to as the "*Ex-DOT*" employees.
 - 2.3 The Telephone Operators were also made an offer to serve in MTS as from 01 July 1988 on the same conditions that
 - 2.3.1 they would draw the salary they would have drawn had they been serving under the DOT and
 - 2.3.2 all their conditions of service would remain unchanged.
- They were deemed to be on leave without pay from the Government Service.

- 2.4 On 20 January 1989, all parties signed an Agreement which stipulated, inter alia, that:
- MTS would offer employment to all the staff of the Ex-DOT
 - MTS would ensure that no employee's terms and conditions of service would be less favourable than that prevailing in the Government Service on 30 June 1988.
3. Paragraph 2(iii) of the updated Statement of Case of the Applicant is denied.
- 3.1 Inline with the Agreement referred to at paragraph 2.4 above, Telephone Operators were offered employment in MTS on the Terms and Conditions of Service that had been agreed upon after discussions with Unions.
- 3.2 The Telephone Operators voluntarily accepted the offer, on the basis of the Terms and Conditions of Service of MTS.
- 3.3 Those Terms and Conditions of Service did not provide for either
- one day off for every public holiday coinciding with an off-day; or
 - two days off for every public holiday on which they have worked.
- 3.4 At no time prior to signing the acceptance did the Telephone Operators make any reservation in relation thereto.
4. Paragraph 2(iv) of the updated Statement of Case of the Applicant is denied. MT avers that:
- 4.1 As set out in paragraph 3.3 above, no such provision existed in the Terms and Conditions of Service of MTS.
- 4.2 However, in line with Conditions of Service prevailing in the Government Service, with respect to public holidays covering the period up to 31 December 1988, Ex-DOT Telephone Operators were granted days off or paid 1 day's pay *in lieu* where it was not possible to grant days off owing to staff shortage.
5. Paragraph 2(v) of the updated Statement of Case of the Applicant is denied.
- 5.1 The contention of the Applicant to the effect that the Terms and Conditions of Employment of Telephone Operators in MTS were less favourable than obtainable in the Public Service, because it did not include the provision referred at paragraph 3.3 above, is denied.

- 5.2 A comparison of their total remuneration package clearly indicates that the one in MTS was more favourable by some 67% (more favourable Salary & Transport Allowance, Medical Scheme, Attendance Bonus lesser hours of work etc.).
- 5.3 The reduction in hours of work for the Telephone Operators (4hrs x 52 weeks = 208 hours annually i.e. the equivalent of 34 days annually) amply compensated them for the change relating to days off which were obtainable in the Government Service.
6. In answer to paragraph 2(vi) of the updated Statement of Case of the Applicant, MT avers that:
- 6.1 In October 1999, the services provided by the Telephone Operators have been taken over by Call Services Ltd, a new subsidiary of Mauritius Telecom.
- 6.2 As a result thereof, all the Telephone Operators were redeployed to new posts corresponding to their grades in other departments and are performing office/day duties on a 35-hours week basis.
- 6.3 According to the available records, out of the initial group of 47 Telephone Operators under reference, 20 are still in employment, out of which, 17 have been promoted to higher grades.
7. In answer to paragraph 2 (vii) of the updated Statement of case of the Applicant, MT avers that:
- 7.1 Since 1999, none of the Ex-DOT Telephone Operators are performing any duty cognate to those of a Telephone Operator.
- 7.2 All those Ex-DOT Telephone Operators are employed as Senior Clerk, Sales Officer/Senior Sales Officer or Administrative Assistant. One of them is a Receptionist.
- 7.3 As at present, MT has not been able to trace any record as from 1990 which would show whom of those Ex-DOT Telephone Operators were performing duties as a Telephone Operator on a Sunday.
- 7.4 As regards the terms of reference of the Tribunal, they limitatively concern an industrial dispute reported by three persons, and pursued by two of them

(Mr Peeroo and Mrs L'Arrogant). They have both retired and are no longer employed by MT.

8. In light of the above, the Respondent prays that the application be set aside.

Mr. Indiran Carpanen, Secretary of the Telecommunications Workers Union, under examination, affirms the contents of the updated statement of case of the Union. He also states that it is not correct to say that only Telephone Operators benefited the reduction in the hours of work. Clerk and Administrative staff also benefitted.

The witness, under cross-examination, concedes that:-

- The employees who joined the Mauritius Telecommunications Services (MTS) after June 1988 and those who were there prior to June 1988 were all benefitting the same conditions of service.
- Eventually there were several changes in the conditions of service. Normally there is a Collective Agreement every four years between the Employer and the Unions and at each time changes are effected.
- He believes it was Mrs M.C. L'Arrogant and Mr.J. Peeroo who lodge the *industrial dispute* against Mauritius Telecom which was referred to the IRC.
- During negotiations they looked for better conditions of work but they did not forego the other acquired rights.
- When the matter went to the Supreme Court, he included in the affidavit he drew up the words "Mauritius Telecom in presence of L'Arrogant and Peeroo."

Mr. D. H. Hurree, Executive Compensation and Benefits, at Mauritius Telecom, testifies to the effect that:

- The Government Department of Telecommunications (ex DOT) was a supply Department of Telephone for national services and a regulator of the whole telecommunication system.
- There was also a company called Cable and Wireless which supplied overseas telecommunication.
- Eventually Government took over Cable and Wireless by forming a company called the OTS in 1985.

- As from July 1988 another Company was formed which was called the Mauritius Telecom Services (MTS) and took over the operational part of the Department of Telecom. Then the regulatory part of the Department was taken over by the Telecommunication Authority.
- In July 1992 the OTS and the MTS operationally merged under the banner of Mauritius Telecom.
- The Civil Servants who were working at the ex-DOT were transferred to the MTS in January 1989. At the MTS after negotiations with the Unions, they were offered employment on terms and conditions *propre à* MTS. From July 1988 to December 1988 they had worked for six months transitory period – considered to be on leave without pay under terms and conditions that prevailed in Government.
- He maintains all the statements which have been made in the updated Statement of Case together with the main Statement of Case which was put in a few years back.
- To his knowledge, no Telephone Operator who was transferred from the ex-DOT to the MTS is still working as Telephone Operator at the MTS, now MT.
- Mr. Peeroo and Mrs L'Arrogant have retired from the service some years back.
- Both finance-wise and operation-wise conditions of work are more favourable at the Mauritius Telecom.
- There has been the review of the Collective Agreement every four years and the review covers every field of activity of all workers within the MT and the result of those reviews has always been applied.
- The recommendations of the IRC have not been implemented. The Management was prepared to implement those recommendations but the Unions were not agreeable and the matter has been dragging on all those years.
- There came a time when there were no Telephone Operators and the actual issue was no longer an issue.
- The matter before the Tribunal is purely academic and there is no live issue.
- When the employees from the ex-DOT were transferred to the MTS there was an agreement that these ex-civil servants would not be getting less favourable terms in their conditions of service.

- Once they have become full-time established offices of Mauritius Telecom, there is no need to go back to the PRB for a decision.

The witness, under cross-examination, concedes that:-

- When the employees of the ex-DOT were given the option to join the MTS, they were deemed to be on leave without pay from the public service and they were paid by the MTS.
- When these employees joined the MTS it was agreed that they were joining the MTS on terms and conditions which were no less favourable than that which they were familiar with when then employed.
- Whilst they were civil servants, the Telecom Operators were benefitting from one day off for public holidays coinciding with an off day and two days off for every public holiday on which they have worked. When they joined the MTS these were removed.
- Telephone operators at the MTS had their weekly hours reduced from 40 to 36. The office employees are working for 35 hours weekly at the MTS whereas in the civil service they were working 33.5 hours a week.
- It would be the view of the Union that the reduction of the working hours did not benefit the employees.
- There are 20 persons who were Telephone Operators and who are still in employment.

SUBMISSIONS

Sir Hamid Moollan, Q.C., for the Respondant, submits as follows:-

- If we take the updated Statement of Case of the Union on the first page itself, there is the terms of reference being with effect from January 1990 – we are talking of 18 years back. By virtue of Article 2279 of the Civil Code where everything is being paid at intervals of less than a year, the claim becomes time barred by three years. Before it used to be five years. The time bar of three years is of public interest and public order and we cannot contract out of it. If the Tribunal is going to cast its mind 18 years back, it would be going against a public order provision of our Civil Code. A civil claim is barred by ten years and even if we apply that particular standard, that would be time barred.

- There is no beneficiary of this claim to-day. This case is purely academic and there is no live issue. The Telephone Operators who would be considered under that have either retired or presently occupying other and better posts. The Tribunal should not take time to give academic judgments.
- On the merits of application itself, there are two issues. Employees from the Civil Service are at Mauritius Telecom for more than 20 years now. It is not because at one time these employees were in the Civil Service that they should consider matters which are better in the Civil Service but not those which are worst should apply to them. It is a case of keeping your cake and eating it at the same time. We cannot come and say that in a package of ten items, nine are more beneficial, but the tenth is not beneficial and we will not take it. One cannot unbundle the package and take it item by item. The employees have their conditions of service in the Mauritius Telecom far better than those in the Civil Service, except probably after the last P.R.B. We have at Annex 3 of the updated statement of Case of the Respondent a table, where at the bottom line it shows that in Government, for the same work the annual package is Rs61,000 and at the MTS the same annual package is Rs102,000, a benefit of nearly Rs40,000 over Rs61,000.
- The employees are governed by conditions of service of Mauritius Telecom. There are not only employees that originated from the DOT at the Mauritius Telecom, but there are other people, other recruits. We cannot have a condition of service in an organization with different people having different organization, different terms. We have to re-modernise the whole thing and come to a system which is workable and which is fair to everybody. This is where the documents will show that all those persons were given the option and all of them signed it. Therefore when we look at the principle itself, of equality within the service, we can find that this hangover from the Department of Telecom (ex-DOT) has to be buried once for all.
- In these circumstances, when we come to the evidence before the Tribunal, the balance weighs extremely heavily on the side of Mauritius Telecom as against the Union.
- Therefore, whatever test we use to analyse this case, the only result we can reach is that there is no ground for granting the application or for changing the conditions of work so as to be freely and fully reviewed and it kept on being reviewed every four years.

Mr. A, K. Gujadhur, for the Applicant, submits to the effect that:-

- There was an agreement dated 29 June 1999 between Mauritius Telecom and the Union concerned that an award is being awaited regarding this dispute and obviously if ever it were in favour of the Union this award would be implemented (Ref. paragraph 7 of Attachment 2 attached to Doc.5 of the updated Statement of Case of the Union). This agreement is dated at the time when there was the deployment of the staff of Mauritius Telecom. So at the time of agreement the Employer knew it well that there would be a deployment of staff and those who were then Telephone Operators would no longer be Telephone Operators and they would get an increment by Mauritius Telecom and this award would be implemented.
- This case has been going on for some time and the root of this case goes back to some 18 years. When this dispute was declared by the Union, there were some 20 employees of the Mauritius Telecom who were then Telephone Operators, although they are not working in that capacity. If the Tribunal were to give an award in favour of the Union, this award would benefit those 20 staff. So, it is in the nature of a dispute of interest and once the Tribunal gives its award and if this award is in favour of the Union, an interest is being granted to these employees to make them take whatever action they may be advised to do so before the appropriate forum.
- With regards to the merits of this case, the Union has annexed various agreements to its updated Statement of Case and in these agreements, it was mentioned that the terms and conditions of work of the staff would not be less favourable. When the staff joined Mauritius Telecom in 1990 their terms and conditions of service were less favourable than when they were governed by the PRB (the PRB salary). Now if someone is working on a public holiday he is denied the right to participate in religious ceremonies and in order to compensate him, he was granted two days off. This right has been removed now.

TRIBUNAL'S CONSIDERATIONS

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

- This dispute regarding the Telephone Operators originated after these employees from the ex-Government Department of Telecommunications (exDOT) 'officially' joined the Mauritius Telecommunications Services Ltd (MTS) in January 1989. These employees state that when they were at the ex-DOT, they were benefitting from one day off for public holiday coinciding with an off day and two days off for every public holiday on which they have worked. At the MTS that day off have been removed. The Telephone Operators were also 'in service' with the MTS between 1 July 1988 to 31 December 1988 – they were deemed to be on leave without pay from the Government Service during those six months. However, during this period they were granted the days off. They worked for 40 hours a week and were paid by the MTS.
- The Union's demand for the days off to be granted are with effect from January 1990 – more than eighteen years back from now.
- The application covers the period from January 1990 to October 1999. This case was originally between the years 1998 and 2003 before the then constituted Tribunal. In the meantime in October 1999 the services provided by the Telephone Operators were taken over by Calls Services Ltd, a new subsidiary of Mauritius Telecom and all the Telephone Operators were redeployed to new posts corresponding to their grades in other departments of the Mauritius Telecom.
- This case has been dragging for long. We find that on the Applicant's side, the latter expressed their grievances belatedly. As per the documentary evidence, it is only in February 1996 that this issue of days off was raised between Management and the Union. Subsequently, this issue was referred in the form of a dispute to the IRC for conciliation. After the rejection of the recommendations of the IRC by the employees, the dispute was finally referred to the Tribunal in January 1998.
- The fundamental point to consider is whether the terms and conditions of service of the Telephone Operators when they joined the MTS were less favourable than when they were at the ex-DOT. In this connection the vital elements of salary and of the working hours need to be considered.

The salary

It has been averred by the Respondent and this has not been challenged by the Applicant that in 1990 for the same work the Telephone Operators were earning Rs 102,794 while they would have earned only Rs61,644 had they still been at the ex-DOT. This is a material increase in their pay packet – around 67%.

The working hours

There has been a marked reduction in the hours of work of the Telephone Operators -208 hours annually equivalent to 34 days work. At the MTS they are working for 36 hours a week as opposed to the ex-DOT where the working hours were 40 hours a week. Taking into account that between the years 1990 and 1999 there has been an average of 13 Public Holidays annually, this amply compensated for the change relating to days off obtainable at the ex-DOT.

On the two above scores, the Telephone Operators should have no reason to complain. Also, the Applicant has not been able to prove sufficiently that the terms and conditions of work are less favourable at the MTS than they were at the ex-DOT, despite the fact that the days off were removed.

- The employees should bear in mind that they are no longer in the Civil Service. They are governed by the terms and conditions of work prevailing at the Mauritius Telecom. They have signed a new contract to this effect without reservation on 20 January 1989 which did not provide what they are claiming for (as per the Terms of Reference).
- The employees made reference to the PRB Report of 1993 (Recommendation 10.5.6). The Tribunal views that the PRB Report is not of any relevance to the Mauritius Telecom employees. These employees have a new contract as from January 1989 where the terms and conditions of works are reviewed and applied every four years. They should therefore stick to their contract of employment.
- The disputes are no more live issues. The applicant failed to establish in what way other members of the staff would benefit, if any, from an academic award. Both Mr. Peeroo

and Mrs l'Arrogant have retired from the Service. (See also the **Minister of Labour & Industrial Relations V/S the PA.T, in presence of M. Serret & Os. SCJ/69 of 2004**):-

*“It seems to us that this application is incompetent if only for the reason that the question in issue is now purely an academic one. We can do no better than echo the dictum of Lord Justice Clerk Thomson in **Mc Naughton V Mc Naughton’s Trs. (1953) SC 387,392**:- Our courts have consistently acted on the view that it is their function in the ordinary run of contentious litigation to decide only live, practical questions, and that they have no concern with hypothetical, premature or academic questions, nor do they exist to advise litigants as to the policy which they should adopt in the ordering of their affairs. The courts are neither a debating club nor an advisory bureau.”*

Taking into account all the above, the Tribunal finds that the case of the Applicant has not been made out. In the circumstances, the disputes are set aside.

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Rashid HOSSEN

President

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Binnodh RAMBURN

Member

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Rajendranath SUMPUTH

Member

Date:21 October, 2008

