

PERMANENT ARBITRATION TRIBUNAL

AWARD

RN 916

Before:

Rashid HOSSEN	-	Ag President
Binnodh RAMBURN	-	Member
Masseelamanee GOINDEN	-	Member

In the matter of :-

Food and Beverages Industry Employees Union

And

International Distillers (Mauritius) Ltd

The present dispute has been referred for Compulsory Arbitration by the Minister of Labour, Industrial Relations and Employment in accordance with Section 82 (l) (f) of the Industrial Act 1973 as amended.

The points in dispute are:-

- (1) *Whether Management was right in changing the job title of Mr Permal Moonesawmy from Painter to General Maintenance employee.*
- (2) *Whether Management was right in changing the job title of Mr Dev Gureeba from Plumber to General Maintenance employee.*
- (3) *Whether Management should compel Messrs Permal Moonesawmy and Dev Gureeba to transport, handle and remove alcohol from Medine to Plaine Lauzun.*

The Food and Beverage Industry Employees Union in its Statement of Case dated 12 May 2006 avers that:-

1. Mr Permal Moonesawmy and Mr Dev Gureeba were recruited, employed and paid as Painter and Plumber respectively.
2. Mr Moonesawmy and Mr Gureeba have been trained and have worked as Painter and Plumber and possess experience and knowledge in these two trades. Their workmanship is of good level.
3. In year 2000, the company changed its management.
4. Previous to that change there were 10 employees in the Maintenance Unit. Thereafter the number has been reduced to 3 with a unilateral change in the contract of employment of Mr Moonesawmy and Mr Gureeba. Their posts have been converted to General Maintenance with new job guidelines _ Refer Annex (IDM page 02).

5. The new job guideline incorporates the following:
 - i. Unskilled duties (like general cleaning)
 - ii. Semi-skilled duties (assisting operators)
 - iii. Skilled duties – pertaining to different trades . Inter alia: Masonry-Carpentry-Mechanic-Pipe Fitting-Electricity, etc.
 - iv. Duties related to other jobs.
6. This has been imposed against the prescribed regulations in the Remuneration Order governing workshops.
7. In addition to above, the two employees are compelled to transport, handle and remove alcohol from Médine to Plaine Lauzun, which has nothing to do with their respective trade and contract of employment.
8. It is in fact asking the Tribunal to award as per the employees' contract of employment.

The following is annexed to the Statement of Case:-

TASK CARRIED OUT BY MAINTENANCE EMPLOYEES

1. *General repairs and replacement, masonry, woodwork, maintenance of all machines, building, premises, pipes, furniture and fittings, electrical and other equipment.*
2. *General cleaning, painting, removal, fixing and adjusting of machineries, pipes, furniture, electrical and other equipment.*
3. *Transport ,handling and removal of alcohol and other spirits including drums, casks and other related materials.*

4. *Assist bottling and demineralising operation.*
5. *Keeping up of all tools and equipment and materials and change parts in their proper allocated place.*
6. *Keeping up of workshop, engineering store and factory clean and tidy.*
7. *Assist in cyclone, fire fighting and bad climatic condition including fixing and removal of sign boards, flag poles and other fixtures.*
8. *Other related job as may be assigned by the Operations Manager.*

In its Statement of Case dated 26 April 2006, the Respondent avers that:-

1. Regarding point 1 and point 2 of the terms of reference, in view of the nature of its business, to employ a “painter” and a “plumber” in their true context do not arise. In fact and in truth, Messrs Permal Moonesawmy and Dev Gureeba are being employed and doing the jobs of general maintenance. For precision purpose, it is urgent and necessary that the actual job titles of the said two employees be changed into that of general maintenance.
2. Regarding point 3 of the terms of reference, the allegation of “compelling” the employees in question to transport, handle and remove alcohol from Médine to Plaine Lauzun is denied. As employees in the general maintenance, it is the duty for Messrs Moonesawmy and Gureeba to continue to do the job that has in fact been assigned to them including “to transport, handle and remove alcohol from Médine to Plaine Lauzun.”

In a further Statement of Case dated 30 June 2006, it is averred by the Respondent that:

1. As regards paragraph 1 of the Applicant's statement:
 - (i) it is denied that Mr Moonesawmy and Mr Gureeba were recruited and employed as painter and plumber respectively.
 - (ii) In view of the nature of the business carried out by the Respondent to employ a painter and a plumber respectively in their true context has no "raison d'etre"
 - (iii) Messrs Moonesawmy and Gureeba have always since their employment been doing the jobs as maintenance employee.
 - (iv) The said Messrs Moonesawmy and Gureeba have been identified by the Respondent as painter and plumber respectively by mere formality and to all intents and purposes, they are maintenance employees.
2. The Respondent is not aware of the averments of paragraph 2 of the Applicant's statement.
3. The averments of paragraph 3 of the Applicant's statement are admitted.
4. The Respondent denies the averments of paragraph 4 of the Applicant's statement.
5. As regards paragraph 5 of the Applicant's statement, it is denied that there has been any new job guideline.
6. The averments of paragraph 6 of the Applicant's statement are denied.

In the circumstances, the Respondent avers that it is urgent and necessary that the application be set aside.

Mr Moonesawmy, on examination, affirms that:-

1. He works at International Distillers Ltd since 20 years.
2. His job title has been changed from Painter to General Maintenance without his consent and knowledge. It was on 5 July 2005, many days after pay day, when he received his pay slip for period 16 May 2005 to 12 June 2005 that he became aware of the change in his job title. All other workers obtained their pay slips more than 10 days before the Applicants. He has a pay slip (for period 21 March 2005 to 17 April 2005) where it is seen that his job title is painter.
3. At the time of the previous management, he was essentially performing the duties of painter and duties related to painting. He was also doing other duties – which was not compulsory – and was paid an allowance.
4. Maintenance employees are now asked to do all kinds of work as per the list attached to the Statement of Case (of Applicant). These duties were imposed on the employees – no discussion were held between employer and employees. No allowance is paid for these additional duties which include the transportation, handling and removal of alcohol. He has no skill in some of these duties found in the new scheme.

Mr Mooneesawmy, under cross-examination, testifies that:-

1. He joined the Company as casual worker.
2. At the time of the previous management, he was not doing all the duties as per the scheme of duties at that time but was in a team of 10 employees among whom there were plumber, painter and boiler man.
3. Painting works were not being done every-day.

4. There has been a change in his duties as he is now also engaged in the transportation, and removal of alcohol in plastic drums from Médine. Moreover, he is now performing various other types of duties including the disposal of waste at Mare Chicose and the cleaning of toilets.
5. He has some apprehension concerning his works and does not know what will happen in the future.

On re-examination, the witness affirms that:-

1. He joined the Company as casual worker and later became painter. The job title as painter was appearing in his pay slip.
2. He has to abide by the new conditions of work. He cannot refuse any work he is asked to do.
3. Previously, for a painter it was not compulsory to perform any other duties outside painting works. He was otherwise given an allowance.

The second Applicant Mr Gureeba, on examination avers that:-

1. He joined the Company as boiler man and afterwards the British Management changed his job to plumber. He was, however, receiving an allowance.
2. The present Management has changed his job title to general maintenance without any negotiation.
3. He confirms all that Mr Moonesawmy has averred.

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

1. Under the British Management, he was performing other duties and was paid an allowance.
2. Under the present Management, his scheme of duties has been changed and he is effecting many other duties. If one refuses these duties, one has to bear the consequences

Mr Ashok Ramnarain, Financial Controller and representing the Management avers on examination that:-

1. He works in the Company since 17 years and knows the two Applicants well. He joined the Company under British Management.
2. The Applicants are now performing the same duties as before; only the job title has been changed.
3. Previously, the Applicants were not engaged in the conveyance of alcohol. Now they are in the maintenance unit and the pipe-fitter who has also worked as boilerman knows everything regarding alcohol and he was the person apt to do the job. There has been no complaint as far as security is concerned. No allowance is paid for this additional duty.

He admits under cross-examination that:-

1. The removal and distribution of alcohol falls under the Distributive Trades Remuneration Order.
2. In a Remuneration Order, there is a series of conditions for job title and specific duties for each grade.

3. There has been no mutual consent between the Management and the employees in the change of the latter's job title. It was only Management's decision.
4. The job title painter and pipe fitter appearing in the pay slips of the employees is just a matter of "formality".
5. The employees are already performing all the duties found in the scheme of duties (task carried out by maintenance employees). Not abiding to these conditions of work may result in disciplinary action.
6. Many of the general maintenance duties he does not know under which Remunerations Orders they fall.

Counsel for the Applicant observed:-

1.
 - (a) Employees who remove and transport alcohol are governed by the Distributive Trades Remuneration Order.
 - (b) Painters and pipe fitters fall under the Electrical & Mechanical Engineering Workshop Remuneration Order.
 - (c) Those doing the duties of "General Cleaning, painting, removal, fixing and adjusting " found at paragraph 2 of the new scheme of duties (task carried out by Maintenance Employees) fall under the Factory Workers Remuneration Order.
 - (d) There is no Remuneration Order that deals with general maintenance.
2. The two employees are dedicated to the company. They do not want to disturb any structure. They are happy with their original posting and are

prepared to do additional work subject to a mutual agreement and an allowance being given.

Counsel of the Company, states that:-

1. There is no painting works every day.
2. There is no change in the nature of works and duties and in the pay packet of the Applicants.
3. Following observations made by the Tribunal, the employer would rather have an award because it would probably help them to harmonise the whole thing.

After considering the testimonial and documentary evidence adduced, the Tribunal notes and finds that:-

1. The Employer has flouted the contract of employment with the workers. Changes brought unilaterally occurred in their scheme of duties. Their job titles have been changed without their consent.
2. The Employer avers that employing a painter and a plumber in their true context does not arise.
3. It has not been denied that:-
 - (a) At the time of the British Management the Employees were receiving an allowance when performing other duties.
 - (b) The new scheme of duties were imposed on the Employees. No discussions were held between the Employees and the Employer.

- (c) Mr Mootoosamy joined as casual worker and later became painter. Previously it was not compulsory for a painter to perform other duties outside painting works. Additional duties were compensated by way of an allowance.
 - (d) Mr Gureeba joined the Company as boilerman, then became plumber. He also was receiving an allowance for additional duties.
4. (a) The duties found in the new scheme of duties fall under many different Remuneration Orders.
- (b) A worker cannot at the same time be a lavatory cleaner, a refuse collector, a lorry loader, a plumber or a painter. Moreover, the worker is asked to do general repairs and very many other jobs and jobs assigned to him by the Operation Manager. The Employer may be saying that there is no painting or plumbing works everyday. However, this is not the fault of the employee. Anyone having been “promoted” to a higher grade cannot find himself being “reverted” unilaterally in his job title. The Employer states that there has not been any change in their pay packets and that should not be an excuse. The Employees are prepared to do other duties on payment of an allowance as has been under the British Management.
5. The Management avers that the change in the job title of the Employees is just a matter of “formality”. This is far from convincing. They are identified as painter or pipe fitter in an official document-the pay slip- and are asked to clean toilets or dispose of refuse at Mare Chicose among other jobs. Moreover, they are asked to transport, handle and remove alcohol from Médine to Plaine Lauzun. All these jobs are being performed by

the Employees without payment of an allowance. This is unfair on the part of the employer.

The Tribunal should like to point out here that it is of paramount importance that for the good running of an enterprise a harmonious human relation climate is necessary. There should be no frustration and apprehension on the part of the employee. The Tribunal invites the Employer to consider to make provisions for an allowance for any extra duties and then regularizing the posts of the Employees. The painter is to go back to the post of painter and the plumber, to his post of plumber and any extra duties be compensated by a **reasonable** allowance.

Now after considering carefully all the above points, the Tribunal concludes that the Respondent was

1. **wrong** in changing the job title of Mr Permal Mooneesawmy from Painter to General Maintenance employee;
2. **wrong** in changing the job title of Mr Dev Gureeba from Plumber to General Maintenance employee;
3. and should **not** compel Messrs Permal Mooneesawmy and Dev Gureeba to transport, handle and remove alcohol from Medine to Plaine Lauzun.

The Tribunal awards accordingly.

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Rashid Hossen
Acting President

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Binnodh Ramburn
Member

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Masseelamane Goinden
Member

Date: 13th March, 2008