

PERMANENT ARBITRATION TRIBUNAL

AWARD

RN 923

Before:

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

In the matter of:-

State Bank of Mauritius Staff Union

And

State Bank of Mauritius Limited

The present dispute was referred to the Permanent Arbitration Tribunal by the Minister of Labour, Industrial Relations and Employment under **Section 82 (1) (f) of the Industrial Relations Act 1973** for Compulsory Arbitration.

The points in dispute are:-

1. *“Whether the End of Financial Year Bonus equivalent to not less than one month’s salary should be paid for financial year ending 30th June 2005 and thereafter at the end of every financial year.”*

2. *“Whether the criteria for payment of that bonus should be linked to the profit of the bank.”*

Both parties were represented by Counsel.

1. Mr. A. Radhakisson of Counsel represented the applicant and was later replaced by Mr. D. Ramano of Counsel.
2. Mr. Anwar Moollan, of Counsel appears together with Sir Hamid Moollan Q.C. instructed by Attorney Moollan for the Respondent.

Applicant’s Statement of Case

1. A bonus has been paid for several years on closure of the financial year, i.e. 30th June. The quantum paid was an average of 1 month’s salary to each staff member. The appellation of that bonus has been subjected to changes. It is commonly referred to as the Productivity Bonus.

The criteria for payment of the bonus have also been subjected to several changes.

In the past the employees were receiving more than one month’s salary. Gradually the bonus has been reduced to one month’s salary. There is the tendency to pay less than one month’s salary year after year in spite of the increasing profit of the bank.

2. Criteria for determination of the quantum of bonus to be paid to the Bank employees.

From different circular letters issued by the Bank it is observed that the criteria are generally as follows: Bank performance/financial results/ability to pay. The situation has evolved from the Bank performance to the Group performance which includes the Bank's subsidiaries.

3. Criteria of distribution of the bonus to the employees.

That bonus is paid on basis of the following considerations: Key Performance Indicators (KPI) allocated to teams and individuals – individual performance at work – Absence on sick leave – Absence without pay – Duration of employment.

4. Evolution of Bank Profit since Payment of Bonus

Year	Gross Profit (Rs M)	Net Profit (Rs M)
2005	1,501	1,191
2004	1,366	1,127
2003	1,186	1,018
2002	1,029	952
2001	991	871
2000	858	778
1999	837	714

5. What Happened for Financial Year 2004/2005?

For payment of Productivity Bonus 2004/2005, Management informed many employees that they were not eligible for the bonus and in lieu, a considerable number of employees were offered compensation that is, less than one month's salary.

The situation for the last financial year as well as previous years is as follows:

- (i) Some employees obtained more than 1 month's salary as bonus.
- (ii) A substantial number of employees obtained 1 month's salary bonus
- (iii) A substantial number of employees obtained less than 1 month's bonus in the form of compensation
- (iv) Some employees have not received any payment at all.

6. Indicators

Employees

Year	No. of Employees (Mtius)
2005	842
2004	833
2003	818
2002	779
2001	738
2000	685
1999	687

7. Salaries

Year	Salaries and Human Resource Development (Rs M)
2005	279
2004	307
2003	270
2002	230

8. Claims of the Union

- 1) That the bonus be referred to as the Participation Bonus.
- 2) That for year 2004-2005 a minimum of 1 month's bonus be paid to all employees.
- 3) That the criteria for determining the payment of bonus at the end of every financial year to be paid to the Bank's employees be linked to the profit of the Bank. We have no objection that it be linked to the turnover or to the dividend distributed. The choice of the criteria will determine the formula of calculating the amount.
- 4) That the criteria for paying each individual employee to be limited to: absence on sick leave of more than 21 days and disciplinary actions taken against any employee during the course of the year. Payment should be made in accordance with an acceptable scheme base of the principle of pro-rata.

Respondent's Statement of Case

The Productivity Bonus

1. Para 1 recites the Terms of Reference.

2. A productivity bonus payable at the discretion of management has been put in place by the Bank ever since 1989 after deliberations with the stakeholders, including the Union representatives.
3. The rationale behind the productivity bonus was and remains (inter alia) that
 - (i) In accordance with proven best international practice and in order to turn the Bank into a world class institution based on internationally recognized standards and offering the best banking services to its clients, it is necessary to involve each and every member of the staff and develop a performance-oriented culture focusing on value creation; and
 - (ii) There is also a necessity to reward
 - (a) productivity/performance;
 - (b) commitment to the success of the Bank and Group, and
 - (c) the entrepreneurship skills of each employee.
 - (iii) Each employee participates in the productivity bonus programme through his Key Performance Indicators (KPIs) which is a measure of both financial and non-financial performance, and at the same time,
 - (a) gives opportunity to the employees to learn and enhance his knowledge,
 - (b) improve effectiveness;
 - (c) aims to achieve value creation;
 - (d) very transparent and measurable, as the performance targets are given to each employee at the beginning of the financial year, and performance reviewed on a quarterly basis.
4. The Bank refers to following excerpts of its annual reports:
 - *Annual Report 2001*

Staff incentives

All SBM staff are eligible to participate in a productivity bonus programme at the end of the financial year depending on the Group financial performance, individual, team financial and non-financial performance. Management believes that this incentive motivates the staff to increase their commitment to the success of the Bank and the Group.

➤ ***Annual Report 2002***

SBM Employees

SBM Employees have always been an important asset to the Bank. SBM has a team of competent employees who welcome changes and new challenges to better serve its stakeholders through improved efficiencies. SBM encourages a performance-oriented culture among its entire staff focusing on value creation. A set of Key Performance Indicators is given to all employees aiming to achieve value creation for all stakeholders while at the same time giving opportunities to the employees to learn and further enhance their knowledge which will provide a good foundation for them to become leaders.

All SBM staff are eligible to participate in a productivity bonus programme payable at the end of the financial year depending on the Group financial performance, individual and team financial and non-financial performance. Management believes that this incentive motivates the staff to increase their commitment to the success of the Bank. SNM Park, a health centre coupled with a learning centre and a computer centre was created to provide an opportunity for the Group's staff to further strengthen their ties. The Bank's focus on Key Performance Indicators, training and staff development allows its employees to strengthen their skills, which will further improve the effectiveness and efficiency of the Bank in the years ahead.

➤ ***Annual Report 2003***

Human Resources Management

The Human Resources Team has introduced a number of new and improved initiatives to further improve productivity measurement and emphasis on training and people development. The successful induction Programme continues monthly for all new recruits and trainees on the Bank's twelve months Traineeship Programme. Training covers aspects

highlighted during quarterly appraisals. Employees are informed of any changes and refinements to our operating model to ensure transparency and compliance. Continuous technical training takes place to ensure a high level of accurate data capture and optimum use of software programmes. During the year under review SBM introduced a performance measurement based on Key Performance Indicators (KPIs). Employees had a full year to experience the advantages of quarterly appraisals with their immediate superior. Meaningful feedback and discussion take place and training needs and development issues are identified and addressed. The Bank will continue to improve the process during the next two years. The Human Resources Team is constantly involved in helping staff and management with the psychology of change. Besides training programmes, articles and books are circulated regularly to help employees understand and embrace change. The Human Resources Team support the lines of business with all their staffing requirements and look after staff welfare to ensure high staff morale and the smooth running of operations.

➤ *Annual Report 2004*

Human Resources

Employees receive regular feed-back on their contribution to the organization. Performance measures are based upon Key Performance Indicators (KPIs) agreed with every employee at the beginning of each year. The KPIs are made up of both quantitative as well as qualitative variables. The quantitative measures are based on meeting the departments' performance targets (actual sales or service performance). The qualitative factors include leadership, problem solving, knowledge and customer focus.

Each employee's performance is reviewed on a regular basis and mutually agreed action plans are developed to address skills and competencies gaps. These plans usually include a component of formal training through in-house resources and external providers, as well as the more informal work place coaching and mentoring.

➤ *Annual Report 2005*

Human Resources

The Bank has always considered its people as its most valuable asset. In order to maintain its leadership in a competitive marker, much emphasis is laid on training and people development, thereby ensuring increased productivity.

A quarterly and annual performance appraisal is carried out to identify strengths and skills gaps of staff. Top performers are recognized for their contributions and appropriate training programmes are provided through various in-house programmes and external resources to address identified gaps. Training focuses on key areas such as leadership, product knowledge, customer service, work ethics and technical aspects.

The concept of contractual employment is being encouraged in order to reward staff more suitably in line with their yearly performance and more importantly to provide encouragement and motivation to continually enhance their skills and performance. Staff are rewarded based on achievement of their KPI's (Key Performance Indicators).

All recruits are given an Induction Programme that covers a general overview of the working of the working of the Bank and training on the use of the Tools and Systems at the Bank. All staff follow guidelines as defined in the Code of Ethics and Business Conduct of the Bank and adhere to the principles of good corporate governance.

SBM Park, a combined leisure and learning centre, provides opportunities for staff to participate in various sports, educational and cultural activities and further build the SBM team spirit.

5. It is not disputed that this bonus "*is based on the Bank's performance and results and that it is not automatic.*" (declaration made by the Applicant on 23rd August 1994 during the second joint council meeting between the Applicant and the Respondent).
6. The criteria for the bonus are very transparent, and are clearly spelt out at the beginning of each financial year. The Bank issues a Circular addressed to each member of its staff detailing the criteria, objectives, and basis of payment of the bonus.

The circular for productivity bonus 2004/2005 reads as follows:

"payment of productivity bonus will depend upon, amongst others, the following factors: Bank's performance, financial results and its ability to pay and the

quantum of productivity bonus, if approved, would be split between teams and individuals."

It was also specified that (i) the criteria for both teams and individuals was be based on Key Performance Indicators (KPIs) and (ii) the payment of a productivity bonus depended on the achievement of the Group's main objective, which were as follows:

- Quality Advances Growth
- Low Cost deposits growth
- Improvement in Risk Adjusted return on Capital (RAROC)
- Improvement in Cost to Income Ratio
- Improvement in Non-Interest Income to Average Assets.

The Bank furthermore provided full details on the different criteria and on the basis of payment as well as the different weightage of each criterion.

7. The bonus is discretionary but not discriminatory and it is a fact that it is an effective way to make each employee more committed towards reaching his or her key performance indicators, whether individually or as a team.
8. If the bonus were automatic, there would be no reward for performance, and it is the unproductive that will benefit from it.

It must be left to the discretion of the bank whether in terms of eligibility or in terms of the quantum. This productivity bonus was clearly agreed by the Bank's Union with the management as can be explicitly seen in the minutes of the Joint Council Meeting held on 23rd August 1994, where it was stated that the bonus is not automatic but at the sole discretion of the management based on productivity measures.

We note that discussions on Productivity Bonus were held during various sessions of Joint Council Meeting from 1994 to 2005 and the Respondent maintained its position on each occasion.

9. The bonus is lined to the performance and financial results of the Bank. However profit is not the only criterion to be considered. Quality is also of prime importance. In the field of banking, a myriad of other matters must come into account to ensure the best service to clients and other stakeholders. Hence emphasis is laid on the following:

- Quality Advances Growth
- Low cost deposits growth
- Improvement in Risk Adjusted return on capital (RAROC)
- Improvement in Cost to Income Ratio
- Improvement in Non-Interest Income to Average Assets.

10. The Bank annexes to its Statement of Case the documents it has referred to as well as other relevant documents.

Testimonial Evidence

Mr. Anirood Jugessur, a member of the Executive Committee of the Union deposed as follows:-

- The end of the financial year bonus was paid at the end of the financial year which is in June of each year, so as to motivate and reward the staff

for their effort they have put in during the financial year. There has been some criteria set by the bank and it has now been called the “Productivity Bonus”.

- The said bonus was paid for half month in 1989, when the Bank’s profits exceed the hundred million rupees. It was followed by an average of one month, until it became “Productivity Bonus.”
- It was paid every year to all employees of the bank and it was done systematically.
- For several years, some criteria have been established and are now called “Productivity Bonus” but not all employees are receiving the said bonus.
- Some employees are getting more than one month, others one month, half month and some none at all.
- There is a sort of discrimination, frustration and uncertainty on the pay-packet they will earn by the end of June.
- The criteria are set up at the beginning of each financial year but added to the text there is also the wording “Amongst others.” It is left to the management to decide what is meant by “amongst others” in the criteria.
- According to the table, it shows that the bank’s profit is soaring upward while the number of employees is more or less the same. The said financial year bonus is paid by the Hong Kong Bank, Barclays Bank, the Mauritius Commercial Bank.
- The workload has increased and procedures have changed. New products have come into the bank and the number of employees is more or less the same. Employees have to put in more effort and good performance to reach the target but are not being remunerated correctly for their work.

- The gross end net profits have practically doubled from 1999 to 2005; the number of employees for the same period has increased only from 687 to 842, whilst their salary evolution from 2002 to 2005 which was 230 millions in 2002 reached only 279 millions in 2005 and the evolution does not correspond to the profitability of the bank.
- As many among the staff are not getting a minimum of one month's bonus each year and as they are putting much effort, this leads to them being frustrated.
- One of the criteria for the payment of the bonus is that when a staff goes on more than 3 times on sick leave, he is not entitled to the Productivity Bonus. Anyone taking sick leave is not necessarily unproductive and these criteria should be removed.
- Disciplinary measures may be taken against an employee but the one month bonus should be paid.

Cross Examination of the witness

- The witness was cross-examined on figures presented as profit for years 1999-2000, 2004-2005 where the bank's profit goes down from 8% to 6% and during the last year to 5% and the pay-packet has increased to 17%. He agreed to the figures as presented.
- The witness agreed that half month bonus was paid in 1989 and one month thereafter; payment was at the bank's discretion and there was no obligation for the bank to pay same as it was a gift made.
- He was cross-examined on the criteria set up by the bank to pay the Productivity Bonus.
- The case of Mr. Indra Kumar Bostun was pointed out to him. Mr. Bostun was charged for illegal withdrawal of money from customers whose

accounts were dormant, and was doing so for at least 10 years. The question was whether such a person shall benefit from "Productivity Bonus."

- He was not aware of the exact figures of those not having received the Productivity Bonus.
- He agreed that the bank system has changed into 'Electronic Verification System' and it is more efficient.
- He was lengthily cross-examined on the bank's performance and agreed that the objective was only 1.49% instead of 2.1% as targeted for Non-interest to Average Assets.

He was cross-examined on the stand of the Union at the Joint Council Meeting of the 23rd August 1994:

"Union representatives agreed that productivity bonus is based on the bank's performance end results and that it is not automatic."

He firmly believes that the payment should not be automatic although the criteria set up by management to pay the bonus are not clear and give rise to various interpretations.

- The witness agreed that it was the bank which paid the half month bonus in 1989 without any request from the Union and the bank was under no obligation to pay and it has the right to decide on criteria.
- During re-examination the witness stressed that at least one month bonus should be paid to all employees and criteria should be set-out for over and above the one month.

Mr. Leckram Dawonauth, Divisional leader at the State Bank, testified to the effect that:-

- The averments contained in the statement of case of the Respondent are correct.
- All employees have their pay-packet and fringe benefits as per their contract of employment and the “Productivity Bonus” is over and above based on “Key Performance Indicators” and it is a reward for good performance.

Mr. Dawonauth on being questioned on the principles adopted by the bank for the payment of Productivity bonus stated that the quantum paid to one individual has never been fixed, it could be from zero, .25, .5, one month, 1.5, two months or can go beyond the two months. Payment is made based on the performance of the team and that of the individual. It is 50% team and 50% individual.

He does not agree on the automatic payment of one month to everyone. *“It is difficult to reward somebody at the same level when he has underperformed and to the same extent as to one who has performed.”*

On a question whether profit is the only criteria based upon for the payment of bonus, the witness replied in the negative and added that 4 or 5 parameters have to be considered because the bank does not see the element of profit at one specific period of time.

He further explained the parameters based upon and gave details on RAROC “*Risk Adjusted Return on Capital*”.

During his cross- examination, he stated that he does not think that the “Productivity Bonus” was called “End of Financial Year bonus.”

He agreed that in the initial years there was a bonus and that bonus was linked to the Bank’s performance and later in the mid 90’s criteria was added and became a sort of “Productivity bonus”.

The criteria and parameters set out to pay the Productivity Bonus are always discussed with the staff, but there was never any agreement between the Union and management.

He agreed that there is no uniformity in the payment of the bonus. Payment of Productivity bonus is not automatic; it is based on performance and the Bank’s capacity to pay.

Counsel Submissions

Sir Hamid Moollan Q.C. submitted that all discussions had a bearing on “Productivity Bonus” and the effect of sick leave and certain other criteria are in relation to that bonus.

The whole statements of case of both parties are on criteria, performance and quantum of payment known as “Productivity Bonus”; however the terms of reference the Ministry has sent to the Tribunal did use the word “End of financial year” bonus instead of “Productivity Bonus”. The end of financial year bonus decides the amount from the pool and the ‘Productivity Bonus’ decides as to

how it is going to be distributed based on laid down criteria and performance. The applicant is asking that everybody should at least get something.

The Ministry has thrown a confusion in the proceedings by leaving it open to say that "End of financial year bonus" is different from "Productivity Bonus."

Counsel is of the opinion that "Productivity Bonus" and "End of Financial Year Bonus" should be considered as the same.

He further pointed out that the question had been raised at the different Joint meeting held on:-

6th August 1994;

7th April 1995;

19th February 1997

Every time the question of one month bonus was raised, the Chairman of the Committee clarified it.

According to Sir H. Moollan, Q.C., Counsel for the appellant should make it clear to the Tribunal whether to keep the "Productivity Bonus" or bring changes to it.

Is the Union asking for the "Productivity bonus" to continue as it is to-day and over and above the Productivity Bonus for an End of Financial Year bonus to be introduced for the first time?

Sir Hamid further submitted that there is a pool which is created depending on the profitability and performance of the bank. That pool is then divided among the workers.

From that pool it goes to the Units; from the units it goes to the group and then directly to the individuals. It is agreed that people who have performed less will get less and those who have performed more will get more. Others will get nothing at all.

To keep the present pool and to create a new one for the purpose of giving one month to everybody, irrespective of his contribution to that pool will require 30 millions rupees more to be distributed over and above the "Productivity bonus."

The system is not there to create uniformity but to reward for effort and intelligence to achieve capacity to reach targets.

This application is purely another means of asking for extra pay.

In his intervention, Mr. Ramano pointed out that "End of Year Bonus" is linked to profit and "Productivity bonus" is linked to performance.

Productivity bonus is one linked to performance and in the case of the bank, it is linked to individual performance and team performance, that is when you perform you get, when you perform less you get less and when you do not perform you get nothing at all. For the Union, the two bonuses are distinct. They are distinct in form, in substance and in nature itself. The only common

denominator between End of Financial year Bonus and Productivity Bonus is the word "Bonus" itself and the terms of reference are clear. It says Financial year bonus and the second part of it, is one linked to profit. The "Productivity Bonus has been substituted to the "End of Financial Year Bonus". Two distinct items, one linked to profitability, the other one to performance; therefore two types of bonuses of different nature that are packed together into an unnatural combination.

In his opinion it is not sound to maintain such an unnatural combination of two components of different nature and they must be kept apart.

The proposal is that the two parts should be kept separately.

Sir Hamid Moollan Q.C. sought to be enlightened on whether the Union is asking for one bonus or for two.

Mr. Ramano clarified in answering that Productivity Bonus is already at the Bank and the Union is asking for an End of Financial Year Bonus linked to profit only.

Mr. Ramano further submitted that there has never been any mutual agreement between the parties on the set of criteria for the payment of the "Productivity Bonus". In the different minutes of proceedings of the Joint Council meetings reference is made to:-"*informed the employees*", "*explained to the employees.*"

The bonus which is now being paid at the bank is on the wrong basis because it is linked to different conditions –profits, individual performance amongst other things and which employees are asked to perform and if they perform in the absence of any profit, they are not compensated for such performance.

The second proposal of the Union is to have a Profitability Bonus linked to profit only.

Findings

The Tribunal examines this dispute as per the terms of reference emanated from the Ministry and finds that the statements of case as well as the testimonials of both the applicant and respondent stress mainly on a Bonus paid by the Respondent as from 1989 at the end of each financial year. By the mid 1990's certain criteria were introduced for the said bonus, which was called "Productivity Bonus." At the end of each financial year a pool decided by management is divided among the employees, as per the performance of each team and individual accordingly. The result following the establishment of the criteria, is that the bonus is not uniformly divided among the employees. This takes place as from the financial year 2004-2005. The bonus is supposedly divided uniformly from 1989 to 2003.

This particular year has been decided as the Terms of Reference speaks of "Financial Year ending 30th June 2005 and thereafter at the end of every Financial Year."

The Productivity Bonus could either be received for more than 2 months if not at all as averred by the Respondent. This situation leads to a protestation signed by about 200 employees addressed to the Union to show their frustration.

The only common factor in the Applicant's demand for "End of Financial Year Bonus" and the "Productivity Bonus" is profit.

More emphasis has been laid by both parties on criteria rather than the terms of reference itself.

It is only during the course of proceedings and following a request from the Tribunal to clear a confusion that Applicant's Counsel took a stand to say that the "Productivity Bonus" as paid by the Bank should be kept apart and the payment of "End of Financial Year Bonus" be introduced based on profit only.

The Tribunal does not find the stand taken by the Applicant to be convincing as the bank has already paid bonuses as from 2005 onwards from the pool decided at the end of every financial year based on profit and other factors. An additional sum of Rs30 millions yearly would be needed over and above the Productivity Bonus already paid. This figure has not been challenged.

The disputes as referred to us in the Terms of Reference only invite us to consider allowing payment of a bonus and its criteria.

If there is anything that the Union has successfully established before the Tribunal is a state of confusion. Its disputes before the Minister of Labour, Industrial Relations and Employment and referred to us by the latter speaks in

no unambiguous terms of a claim for an End of Year Financial Bonus. The Union's claim in its Statement of Case is that of a Participation Bonus. The evidence it adduced before the Tribunal took us off rails every now and then and so much so that the Tribunal has had to ask for its bearing. The Union is now asking, so it seems, for an additional bonus to be referred to as an End of Financial Year Bonus linked to profit. Clearly, it is not in the Terms of Reference that any Productivity Bonus should precede an End of Year Financial Bonus.

The Terms of Reference which emanate from the Ministry are the basis on which all industrial disputes are examined and going outside any Term of Reference would be considered *ultra petita*.

We consider that the Applicant in attempting to ride different horses at the same time departed from the Terms of Reference and inevitably left us in a State of confusion.

The Tribunal considers that the case of the Applicant has not been made out.

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: 30th December 2008