

**PERMANENT ARBITRATION TRIBUNAL****AWARD**

RN 937

**Before:**

<b>Rashid HOSSEN</b>	-	<b>Ag. President</b>
<b>Binnodh RAMBURN</b>	-	<b>Member</b>
<b>Rajendranath SUMPETH</b>	-	<b>Member</b>

**In the matter of:**

*Mr Gerard Severe*  
*and*  
*Cargo Handling Corporation Ltd*

The present dispute has been referred for Compulsory Arbitration by the Minister of Labour, Industrial Relations and Employment in accordance with Section 82 (1) (f) of the Industrial Act 1973 as amended.

The item of dispute is :-

***“Whether Mr Gerard Severe should have been appointed as Senior Supervisor Operations with effect from 1 August 2006, or otherwise.”***

The Applicant, Mr Gerard Severe, in his Statement of Case dated 13 January 2007 avers that:-

1. He has been in the employment of the respondent under terms and conditions not less favourable as those applicable at the United Docks, his former Employer.
2. He was on permanent employment as from 15 September 1975 and on permanent and pensionable basis as from 1 March 1979.

3. He was promoted as Senior Terminal Assistant (S.T.A.) as from 1 July 1999.
4. Mr Jean Roland Mahon should be considered as his junior as the latter was on permanent employment as from 6 October 1975 and on permanent and pensionable basis as from March 1979.
5. The Respondent has already agreed with his Union, the Docks and Wharves Staff Employees Association- DAWSEA, that sworn affidavits will direct the Respondents to the date of entrance of those employees taken over from the United Docks.
6. No performance appraisal scheme has been agreed upon between himself, his Union and the Respondent.
7. In the event that the Respondent considers any other documents except the sworn affidavits in reaching a decision as to promote Mr J.R. Mahon in lieu and place of the Applicant, then the decision will have based on a false declaration and the Respondent will have been party to a perjury and false.
8. He prays the Tribunal for an order that he be promoted to the post of Senior Supervisor Operations (S.S.O.) with effect from 1 August 2006 on the same footing as Mr Mahon.

The Respondent, in its Statement of Case dated 21 March 2007, avers that:-

1. Paragraph 1 and 3 are admitted.
2. With regards to paragraph 2, Mr G. Severe's official date of entry at the CHCL is 1 March 1979 (as per Respondent's records-Master List)and Management has never considered the date of entry as per the affidavits.
3. With regards to paragraph 4, Mr Mahon's official date of entry at the CHCL was 1 March 1979 (as per Respondent's records – Master List) and the Union, the DAWSEA, declared

an industrial dispute in October 2002 as regards the date of entry of Mr Mahon who was at that time the President of the DAWSEA.

- Discussion were carried out at the level of the Ministry of Labour and Industrial Relations and Management agreed to review the date of entry of Mr Mahon, if the latter would produce an official record as regards his date of entry.
- Mr Mahon produced an official gate pass issued by the Mauritius Marine Authority and Management decided to reckon the official date of entry of Mr Mahon as 20 February 1978.
- The Union, represented by Mr A. Hardy, and Management reached a settlement at the level of the Ministry of Labour and Industrial Relation as to the official data of entry of Mr Mahon.

4. With regards to paragraphs 5,6 and 7

(a) the affidavits have not been accepted by the Management of CHCL up to now.

(b) in the case of Mr Mahon the question of sworn affidavits was not taken into consideration.

(c) The only official document recognized and accepted by Management to alter the date of entry of Mr Mahon was the official gate pass issued by the M.M.A.

The dispute was settled together with the Ministry of Labour and Industrial Relation and with the approval of the Union, the DAWSEA.

5. Therefore as per their (Respondent) official records, Mr Mahon is senior to Mr Severe and Mr Severe has no justification to his claim.

On examination, Mr Severe confirms all that appears in his Statement of Case. He, furthermore, states that:-

1. Mr Mahon should not have been promoted because Mr Mahon is his junior. As per the sworn affidavits he (the Applicant) joined the CHCL in September 1975 whereas Mr Mahon joined in October 1975.
2. These affidavits are recognised by Management when reference is made to the minutes of proceedings of 11 April 1991 and of 30 January 1992 regarding negotiations between the Union and Management.
3. Being senior to Mr Mahon, he should have been appointed S.S.O in August 2006.

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

1. The S.S.O. is a promotional post from the 'S.T.A.'
2. Management recognizes him and Mr Mahon on *permanent and pensionable basis* w.e.f. 1 March 1979.
3. He is not aware whether the negotiations between the Union and the Management have been finalized regarding the date of entry of employees at the United Docks and at the C.H.C.L.
4. He agrees that *seniority* is based on the date the employees are placed *on permanent and pensionable emolument* and not the date they joined the CHCL.
5. He agrees that regarding the affidavits, the Union was negotiating for the length of service for pension purpose exclusively and that this exercise is not linked to seniority.
6. He is aware that in the case of Mr Mahon, the latter declared a dispute in 2002 and an *agreement* between Mr Mahon and the Ministry was reached that the *official date of*

*entry* of Mr Mahon was 20 February 1978 and not 1 March 1979. However, he does not agree that Mr Mahon is senior to him.

7. He agrees that there has been no *agreement* with Management as regard to the date of entry appearing in the affidavits but is not aware if negotiations are still going on on this issue.
8. He was promoted S.S.O. with effect from 15 November 2007 but he cannot say if he was next after Mr Mahon.

On re-examination the witness avers that:-

1. The gate pass is a document issued to employees every morning when they enter the port. It is not a document valid for a long period. He has not kept his gate pass.
2. An affidavit is a sworn document, whereas a gate pass is not.
3. For many issues during negotiations between Management and the Union reference was made to the affidavits. However, there were no negotiations on affidavits.

Mr Raj Ganoo, Human Resource Manager, testifies to the effect that:-

1. When the CHCL was created in 1983, a number of employees of the United Docks joined the Corporation and CHCL received a list from the United Docks indicating the date of entry of the employees.
2. Thereafter there were negotiations going on between the Union and Management with regard to the date of entry as some members of the DAWSEA did not agree with the date of entry submitted by the United Docks. The negotiations are still going on.

3. The employees went to swear an affidavit as to their date of entry in the United Docks. The Union agreed that affidavit with regard to the length of service would serve for the purpose of pension only and not as seniority for promotional post.
4. When Mr Mahon was promoted, Management did not take into consideration the affidavits, be it in the case of Mr Mahon or in that of Mr Severe or in any other cases. It is understood that both Messrs Mahon and Severe were on the permanent and pensionable basis as from 1 March 1979 except that for Mr Mahon there was a dispute raised by the DAWSEA that Mr Mahon's date of entry should be 20 February 1978 as reproduced in an official document from the M.M.A. This date of entry was agreed in the Ministry of Labour and Industrial Relations and was taken into account regarding Mr Mahon's promotion.
5. Mr Severe was promoted to S.S.O. in 2007 and it would be wrong on the part of Mr Severe when he is saying that his promotion should be backdated to 1 August 2006 because Management reckoned his date of entry on permanent and pensionable emolument as at 1 March 1979.

Under cross examination, the witness concedes that:-

1. The United Docks gave to the CHCL in 1983 a master list which indicates the date of entry of employees prior to 1982.
2. Whenever there were negotiations or meeting between Management and the Union this issue of affidavit has been mentioned.
3. Up to now the CHCL has not recognized the affidavit to be either a sworn document or not. Management is still negotiating with the Union on the contents of the affidavit. If ever the CHCL agrees, the affidavit should be used to consider the total years of continuous service at the time of retirement of the employee.

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

1. The CHCL was created in 1983 and a number of employees of the United Docks joined the Corporation. The United Docks then submitted a list to the CHCL regarding the date of entry of employees at the United Docks. Some members of the DAWSEA did not agree with the date of entry submitted by the United Docks. Thereafter, negotiations upon this issue were opened between the Union and the CHCL. The negotiations are still going on.
2. Affidavits were sworn by employees as to their date of entry. The Union agreed – and this has not been denied – that affidavits with regard to the length of service would serve for pension purposes only, and not for any other purpose such as the issue of seniority for promotion.
3. Mr Mahon succeeded in his move when he produced an official document – a gate pass- issued by the Mauritius Marine Authority regarding his date of entry. Therefore Mr Mahon is regarded to be ‘officially’ Senior to Mr Severe. It should also be borne in mind here that when the Applicant deponed, he averred that, contrary to Mr Mahon, he did not kept his gate pass.
4. The Management has not taken into consideration the affidavits for promotion exercises be it in the case of Mr Mahon, in that of Mr Severe or in any other cases.
5. The Applicant does not deny that there has been no agreement with Management as regard the date of entry appearing in the affidavits but avers that he is not aware if negotiations are still going on on this issue.
6. The CHCL has not recognized up to now the affidavits be it sworn or otherwise. It is still negotiating with the Union.

From all that has been averred and evidenced, it is clear that when the criteria of seniority is taken into account for promotion to the post of SSO, Mr Mahon undoubtedly has on this score priority over Mr Severe. It has not been contested that the official date of entry at the CHCL of Mr Mahon is 20 February 1978 whereas that of Mr Severe is 1 March 1979. The Applicant, not having been able to prove that he is senior to Mr Mahon, cannot justify his claim.

In the circumstances, the Tribunal concludes that the case of Mr Severe has not been made out.

The application fails and is accordingly set aside.

.....  
**Rashid Hossen**  
**Ag. President**

.....  
**Binnodh Ramburn**  
**Member**

.....  
**Rajendranath Sumputh**  
**Member**

**Date: 14<sup>th</sup> March 2008**