

PERMANENT ARBITRATION TRIBUNAL

AWARD

RN 946

RN 947

Before:

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

In the matter of:-

Mauritius Sugar Terminal Corporation Employees Union
And
Mauritius Sugar Terminal Corporation

Case of Mr Clement Bordelais	RN 946
Case of Mr Hemant Kumar Mungroo	RN 947

The above two cases were consolidated on 17th March 2008.

The present disputes have 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 Act 1973** as amended.

Mr D. Ramano, of Counsel, appears for the Applicants.

Mr S. Bhuckory, of Counsel, appears for the Respondent.

The points in dispute are:-

- (a) *“Whether Mr Clement Bordelais should have been selected and appointed to the post of Terminal Operator Grade I – (Mechanical), or otherwise.”*
- (b) *“Whether Mr Hemant Kumar Mungroo should have been selected and appointed to the post of Terminal Operator Grade II – (Electrical) or otherwise.”*

Statement of Case of Mr Clement Bordelais

1. Mr Bordelais, born on 30 July 1960, was recruited as Terminal Attendant since January 1988.
2. On 9 July 2001, he was appointed as welder.
3. Since 9 July 2001, he was then in a leading position, thus was asked to be a team leader, assisted by Terminal Operator Grade II (Mechanical).
4. Possessing a valid driving licence of industrial equipment, i.e. crane, he was asked to drive such equipment since April 2004, without any ad-hoc allowance.
5. His qualifications are as follows:

Qualifications: 1972 – Primary School Leaving Certificate

Geography	-	Very Good
Arithmetic	-	Credit
English	-	Pass
French	-	Pass

1978 – School Certificate

French	-	8 (Pass)
Human & School		
Biology	-	8 (Pass)

1991 – 22.01 to 08.02 (Part-Time)

Certificate awarded by Prof. B.S. Upadhyaya Training Centre

Followed a **Beginner's Course on Basic Electric Arc Welding**

11.02 to 01.03 (Part-Time)

Certificate awarded by Prof. B.S. Upadhyaya Training Centre
Followed a short Basic Course on Electric Arc Welding

13.05 to 21.06 (180 hours – Part-Time)

Certificate awarded by ITTC – Beau Bassin
Followed short course on **Turner Machinist**

1993 – 11.10 to 27.11 (120 hours – Part-Time)

Certificate awarded by IVTB
Followed course on Advanced Electrical Arc Welding

1994 – December

IVTB/MES: National Trade Certificate
Level 3 in Welding & Metal Fabrication – Credit

Experience**February 1981 to December 1983**

Electrician – Ireland Blyth Ltd

March to July 1984

Welder – Steel Reinforcement Co. Ltd.

October 1986 to January 1988

Shipping Clerk – International Fisheries Co. Ltd

13 January 1988 – to date

Terminal Attendant - MSTC

6. As welder he was drawing a salary scale higher than Terminal Operator Mechanical Grade II.
7. He was assigned the following duties:-
 - To perform all welding and cutting by electric arc and oxy acetylene torch.
 - To assist generally Senior Terminal Operator in the maintenance and repair of plant under direct supervision of the operation and maintenance officer (mechanical).

8. Pay Research Bureau Report 2003 recommended that welder personal post could apply for the post of Terminal Operator Grade I after 5 years experience.

In these circumstances, the Union prays the Tribunal for an award to the effect that Mr Bordelais be promoted and appointed by the Corporation to the post of Terminal Operator Mechanical Grade I.

Statement of Reply of the Corporation

1. In reply to point (1), Mr J. C. Bordelais assumed duty at the Corporation as Terminal Attendant on a casual basis on 13 January 1988. He was offered firm appointment as Terminal Attendant on 15 July 1989.
2. In reply to point (2), Mr Bordelais was promoted to the position of welder on 9 July 2001.
3. Regarding point (3), the Corporation denies that such a substantive post of team leader exists. As Welder, Mr Bordelais is required to perform inter alia all welding jobs at the Sugar Terminal, under the supervision and technical guidance of the Engineer (Mechanical) and under overall surveillance of the Technical Manager.
4. The Corporation denies point (4) of the Statement of Case, save and except that Mr Bordelais was rarely called upon to operate the crane for practical reasons and only during the course of his duties as welder.
5. The Corporation admits point (5).
6. The Corporation admits point (6) and adds that the current salary scales for Welder and Terminal Operator Grade II (Mechanical) are Rs 6,275 – Rs 10,300 p.m. and Rs 5,975 – Rs 10,300 p.m. respectively.
7. The Corporation admits point (7) as per Mr Bordelais' Scheme of Service.

8. In reply to point (8), the Corporation states that any employee holding the post of Welder with five years' experience in that post could be eligible for the post of Terminal Operator Grade I (Mechanical) as per the 2003 Pay Research Bureau Report whenever a vacancy occurs.
9. Two vacant posts of Terminal Operator Grade I (Mechanical) were advertised internally on the 24th August, 2006 and the 12th September, 2006 inviting applications from suitably qualified Terminal Operators Grade II (Mechanical) and Welder reckoning five years' experience.
10. The Staff Committee interviewed all eligible candidates on the basis of their qualifications, experience, merit and seniority and found that Mr. Dave Burgus and Mr. Vishwadeo Purang were the most suitable candidates for the posts of Terminal Operator Grade I (Mechanical). Mr. Burgus and Mr. Purang were serving as Terminal Operators Grade II (Mechanical) as from the 24th July, 1989 and the 10th December, 2001 respectively. The Sugar Terminal Board approved the recommendations of the Staff Committee at its meeting on the 10th November, 2006.
11. The Staff Committee comprised of the following :-
 - A Representative of the Ministry of Agro Industry & Fisheries (as Chairman).
 - A Representative of the Prime Minister's Office
 - A Representative of Ministry of Labour, Industrial Relations and Employment
 - A Representative of cane planters who are members of Co-operative Credit Societies
12. The Corporation also avers that the Staff Committee based its decision on the four criteria as stated at para. 10 above and on the overall performance of the candidates during the interview as well as on their replies to the technical questions put to them by Mr. A.F. Nauthoo, Engineer (Mechanical) at the Terminal and the President of the Mauritius Sugar Terminal Corporation Employees Union who was present during the interview process as Observer.

13. Mr. Bordelais is employed as Welder and is mostly engaged in welding jobs whilst the duties of Terminal Operator Grade I (Mechanical) are inter alia to be in full charge of functions, including Technical Surveillance -
- (b) to be in full charge of all operations with regard to -
- (i) the weighing transactions at the Receiving Station Scale Rooms;
 - (ii) the operating of equipment on Weighbridge;
 - iii) the weighing transactions at Servo Balans Weigher and the proper rate of loading;
 - (iv) the operating of tunnel hoppers and the proper rate of loading;
 - (v) the operating of wheel loaders;
 - (vi) the technical surveillance of fire fighting equipment and its associated components during normal and outside normal working hours and ensure that the equipment is alive at all times;
 - (vii) to be responsible for minor mechanical maintenance, for example, daily routine inspections of wheel loaders, control of hours meters, sugar boxes, etc;
14. The Staff Committee has considered the overall merits of all candidates and has found at the time of selection that Mr. Dave Burgus and Mr. Vishwadeo Purang were the most suitable candidates for the posts of Terminal Operator Grade I (Mechanical).

Statement of Case of Mr Hemant Kumar Mungroo

1. Mr Mungroo, born on 26 May 1956, joined the Corporation since 20 February 1989 as Terminal Attendant.
2. He had never received any adverse report.
3. His qualifications are as follows:

Qualifications: 1968 - Primary School Leaving Certificate

Arithmetic	-	Very Good
English	-	Credit
French	-	Credit
Geography	-	Pass

1972 - Form III

Pass Division II

1999 – 03.04 to 26.06 (60 hours (Part-Time))

Certificate awarded by IVTB

Followed course in Preparation and Painting of Metal and Cement Surfaces

2004 – 28 June

Certificate awarded by RASITIC

Followed course on “**Le Risque d’Incendie et Pratique Extincteurs sur Feu Réel**” by Mr Grimler of SSI

Experience

20 February 1979 – to date

Terminal Attendant – MSTC

4. Though Senior most in the post in the Terminal Attendant-

The following Terminal Attendants were appointed as Terminal Operator Grade II, Mechanical, Civil and Electrical:

1. Anand Mohun
2. Vijay Anand Bundhoo
3. Jaganaden Ramasamy
4. Vishwadeo Purang
5. Gootansing Rughooputh

6. Rajesh-Ramma
7. Sunyaprakash Soyjaudah
8. Kailash Ramial
9. Vasoodaven Ramasamy

In these circumstances, the Union prays the Tribunal for an award to the effect that Mr Mungroo be promoted and appointed by the Corporation to the post of Terminal Operator Electrical Grade II.

STATEMENT OF REPLY OF THE CORPORATION

1. In reply to point (1)

Mr. Hemant Kumar Mungroo assumed duty with the Corporation as temporary Terminal Attendant on a day-to-day basis on the 2nd February 1989. He was confirmed as Terminal Attendant on the 5th July 1989.

2. On the 24th August 2006, the post of Terminal Operator Grade II (Electrical) was advertised internally.
3. The Staff Committee interviewed five candidates on the 9th November 2006 on the basis of their qualifications, experience, merit and seniority and found that -
Mr. Vassoodaven Ramasamy, Terminal Attendant was the most suitable candidate for the post of Terminal Operator Grade II (Electrical). The Sugar Terminal Board approved the recommendation of the Staff Committee at its meeting on the 10th November 2006.
4. The Staff Committee comprised of the following:-

A Representative of the Ministry of Agro Industry & Fisheries (as Chairman)

A Representative of the Prime Minister's Office

A Representative of Ministry of Labour, Industrial Relations and Employment

A Representative of cane planters who are members of Co-operative Credit Societies

5. With regard to point 2, the Corporation avers that Mr. H.K. Mungroo had on certain occasions been reported for not performing his duties efficiently. His attention had been drawn and he had been advised that any recurrence could entail disciplinary action.
6. The Corporation admits point 3.
7. In reply to point 4, the Corporation avers that although seniority is a criterion, it is not the determining factor for promotion.
8. The Corporation also avers that the Staff Committee based its decision on the four criteria as stated at para. 3 and on the overall performance of the candidates during the interview as well as on their replies to the technical questions put to them by Mr. L. Motah, Operations and Maintenance Technician (Electrical) at the Terminal, who has vast experience in the maintenance and running of the Terminal. The President of the Mauritius Sugar Terminal Corporation Employees Union was also present during the whole interview process as Observer.
9. The duties of a Terminal Operator Grade II (Electrical) are inter alia:-
 - (i) To be responsible to a Senior Officer for minor operations, for example, operating antispillage flaps at the Receiving Station; proper closing of sugar boxes after unloading; scraping of sugar boxes.
 - (ii) to be first assistant to Terminal Operators Grade I (Electrical) in charge of the Servo Balans weigher and tunnel hoppers;
 - (iii) to be second assistant to Senior Terminal Operators (Electrical) in the general major maintenance and repairs and first assistant to Terminal Operators in general minor maintenance and repairs (for example, Electric Motors, Switch-gears);

- (iv) to be first assistant to Terminal Operators Grade I (Electrical) in the technical surveillance of the Terminal.

In these circumstances, the Corporation, taking into consideration all the above facts, selected Mr. Vassoodaven Ramasamy for the post.

Mr Bordelais, examined by Mr Ramano, confirms the contents of his Statement of Case.

He further affirms that:-

1. He should have been appointed Terminal Operator Grade I (Mechanical) following the interview held in 2006.
2. Messrs Burgus, Purang and Mohung who participated in the interview were nominated but does not think that they have been appointed.
3. He was senior to Messrs Purang and Mohung.
4. A Terminal Operator Mechanical Grade I assist the Senior Terminal Operator in mechanical works, carry out maintenance and operate tractors, cranes, loaders among other works.
5. He is a welder but often he has to drive cranes, tractors and loaders. He has the licence and this is very essential for operating these vehicles. Among his colleagues Burgus, Purang and Mohung, he thinks that only one of them has that licence.
6. He is a sort of team leader and in various duties; Messrs Burgus, Purang and Mohung assist him and this since many years. These three colleagues do not know how to manipulate a crane. He has a document (Document A) showing all these duties.
7. Based on his qualifications, experience, seniority and his leading position, he feels that he should have been promoted.

Mr Bordelais, cross-examined by Mr Bhuckory concedes that:-

1. He has no complaint to make with respect to the interview.
2. The term “Assisted by” appearing in Document “A” is a term coming from the Applicant and not from the Corporation.
3. The salary of a welder is slightly higher than that of a Terminal Operator Grade II.
4. It is impossible for him to work alone. He needs the help of his colleagues (Messrs Burgurs, Purung etc) who are from other departments in the enterprise.
5. When an employee comes from another department to give him a helping hand in his work, he feels that this employee is his assistant or his junior.
6. He does not agree that the interviewing panel has been wise in selecting others and not him. In this connection, he also does not agree that no injustice has been done to him.

Mr. H. K. Mungroo swears to the correctness of the contents of his Statement of Case. Furthermore, he affirms that in terms of seniority and qualifications he is above Mr Vassoodaven Ramsamy. The latter, he avers, has adverse report and has been suspended for several months. Despite all these, it is Mr Ramsamy who has been selected for the post of Terminal Operator Grade II.

Under cross-examination, the witness concedes that:

1. He agrees that seniority is one of the criteria that the Selection Committee takes into account.
2. He has no complaint to make regarding the way the Selection Committee proceeded to the

interview and the selection. His only complaint is that Mr Ramsamy should not have been selected.

3. He has never been reported verbally or in writing for not performing his duties efficiently.

Mr Pierre Noel Mootoosamy, President of the Union examined by Mr Ramano testifies that:

1. He sat in the interviewing panel as an observer.
2. He thinks that there can be justification in the case of Mr Bordelais when the latter is saying that he should have been promoted before the others because he has been operating vehicles such as loaders, cranes and tractors. He has licence to operate those vehicles whereas two of his other colleagues who have been selected do not have the required licences. Furthermore, those who have been selected assisted Mr Bordelais in many duties.
3. Generally the qualifications of Mr Bordelais are better than those of Messrs Mohung and Purang who have been selected.
4. For the year 2000, as per Document 'B' which the Union obtained from Management, the weight point for Mr Bordelais was 95.5%, 103 for Mr Mohung, and 74 for Mr Purang. This indicates that at least Mr Bordelais was better than Mr Purang.
5. In the case of Mr Mungroo, he obtained 80.5 points whereas Mr Ramsamy Vasoodaven obtained 66.5%.
6. The weight point for candidates who took part in the interview of 2006 was not obtained because of confidential reasons.
7. Probably there is a short-coming in the selection procedures.

Mr Mootoosamy, under cross-examination, concedes that:

1. Document 'C' was obtained after the Union wrote to the Management.
2. He does not know the weight point given to Mr Bordelais by Mr Nauthoo who interviewed on technical aspects.
3. Document 'A' was prepared by Mr Bordelais and verified by him (Mr Mootoosamy).

Mr Vijay Kumar Boyjonauth, General Manager, examined by Mr Bhuckory, makes solemn affirmation as to the correctness of the respective Statements of Case of the Corporation in the cases of Messrs. Bordelais on the one hand, and Mungroo, on the other hand.

Moreover, he affirms that:

1. He does not agree to the word 'assisted' used by Mr Bordelais when the latter said he was assisted by Mr Burgus and some other officers as per Document 'A'. The people who worked along with Mr Bordelais were already Operators. So, their Scheme of Duties is completely different with those of the welders. Whenever a work is given, they are there to help him on the same footing. The question of Mr Bordelais being a welder does not put him at a higher footing.
2. He was present in the course of the interview as an observer. The applicants have not laid any blame against the interviewing panel. He confirms that all the procedures were followed.

The witness, under cross-examination, affirms that:

1. A welder is bound to operate a crane and Mr Bordelais was given training to operate a crane by the Corporation when he joined work.

2. Mr Bordelais is senior to Messrs Mohung, Purang and Burgus, but not better than them. He has more experience in crane manipulation. However a Terminal Operator has other cognizance duties, to operate other things which Mr Bordelais does not.
3. In terms of qualifications, Mr Bordelais is far better than Mr Mohung.
4. Mr Purang and Mr Mohung have been nominated but have not been officially appointed to the post of Operator Grade I.
5. He cannot say if Mr Mohung and Mr Purang have a driving licence. He agrees that Mr Bordelais has the required licences.

Mr Satish Purnessur, Technical Manager, testifies under examination as follows:

1. The work of loaders is completely different to that of Mr Bordelais as welder. The welder does mainly maintenance and repair works including welding works, whereas the Operator Grade II does maintenance, repairs and operation of equipment.
2. At the Corporation there is the system of multiskilling and opportunities which are given to Operators and Welders who have licences to operate different equipment. This is how Mr Bordelais came to the function of Operator. In fact it is not his duties because it is an added value. When a crane Operator is going for a welding job, he has to take the crane and pull his welding set together instead of having someone else to do it. But definitely when he is doing this work, there are other people putting their resources at par with Mr Bordelais for any specific job. A welder will do the welding part, whereas the other employees working in the team will be doing other jobs which are at par with that of welding such as preparation of materials for welding, grinding and filling. That does not make him hierarchically superior as he is trying to suggest to the Tribunal.

Under cross-examination, Mr Purnessur concedes that:

1. Grinding and filling are skilled jobs.

2. Mr Bordelais is performing only 10% of Operator's work if compared with what the Operators are fulfilling. The Operators have to operate such equipments like Servo Balans, Weighbride, Shiploader whereby Mr Bordelais has never done so. It is very important as Operator Grade I for the smooth operation of the Terminal; these are the main equipments at the Terminal where the Operator grade I will be mostly involved, especially during crop season and loading operation. Mr Bordelais never did that. On the other hand, he has never been involved in any Technical surveillance duties compared to the Operators who are looking at the operations of the Terminal.
3. Mr Bordelais is part of the maintenance team but not of the operation team whereby Operators are needed to operate specialized equipment.
4. Whatever is written in Document 'A' - submitted by Mr Bordelais – is mostly operation of cranes involved in one particular job (maintenance of sugar boxes). At the Terminal there are many equipments whereby Mr Bordelais has never operated. He is involved in the operation of one equipment only.
5. Mr Purang and Mr Mohung have no driving licence but they are given training to operate machines. They have not yet been confirmed in their respective posts.

After going through all the documentary and testimonial evidence adduced, we note and find that:-

1. Mr Bordelais was promoted to the position of Welder on 9 July 2001.
2. Mr Burgus and Mr Purang, who have been selected as Terminal Operators Grade I (Mechanical) after the interviews of 2006 were serving as Terminal Operators Grade II (Mechanical) as from 24 July 1989 and 10 December 2001 respectively.
3. The second Applicant namely Mr Mungroo was confirmed as Terminal Attendant on 5 July 1989. He was not successful in the interview held on 9 November 2006 for the post of

Terminal Operator Grade II (Electrical). It was Mr Vassoodaven Ramsamy who was selected to that post.

4. Both Applicants have no complaint to make regarding the way the interview has been conducted.
5. Mr Bordelais as a Welder considers himself as a team leader in his work, assisted by Terminal Operators Grade II.

The following have not been rebutted before the Tribunal:

- (a) As a Welder, Mr Bordelais is required to perform inter alia all welding jobs under the supervision and guidance of the Engineer (Mechanical) and under the overall surveillance of the Technical Manager.
- (b) Mr Bordelais was rarely called upon to operate the crane for practical reasons and only during the course of his duties as welder.
- (c) A Terminal Operator has other cognizance duties, to operate other vehicles which Mr Bordelais does not.
- (d) The work of the Operator is completely different from that of the Welder. The Welder does mainly maintenance and repair works including welding works, whereas the Operator Grade II does maintenance, repairs and is engaged in the operation of equipments.
- (e) Mr Bordelais is performing only 10% of the Operator's work if compared to what the Operator is fulfilling. Operators have to operate such equipments as Servo Balans, Weighbridge, Shiploader whereby Mr Bordelais has never done so. These are the main equipments at the Terminal where the Operator Grade I will be mostly involved especially during crop season and loading operation. Mr Bordelais never did that. Moreover, he has never been involved in any Technical Surveillance duties compared to the Operators who are looking at the operations of the Terminal.

- (f) Whatever is written in Document 'A' – submitted by Mr Bordelais – is mostly operation of cranes involved in one particular job (maintenance of sugar boxes). At the Terminal there are many equipments whereby Mr Bordelais have never operated. He is involved in the operation of one equipment only.

The Union has submitted Document B obtained from the Management in respect of the weightage points of the candidates for the interview of 2000. However, the Tribunal views that this has no relevance with the interview of 2006 and its outcome.

Averment has been made by Mr Bordelais that Messrs Purang and Mohung, who have been selected as Terminal Operator Grade I have no driving licences. The Respondent has replied that these employees have not yet been confirmed in their posts and training is being given to them. The Applicants have claimed that regarding seniority and qualifications, they are above their colleagues who have been selected. However, the Tribunal would like to remind the Applicants that seniority and qualifications only are not the determining factors for promotion. Merit and experience also have to be taken into consideration. The overall performance of the candidates during the interview as well as replies to the technical questions put to the candidates by the interview panel should also be taken into account.

The testimony of Mr Mungroo has not revealed anything as to why he should have been selected as Terminal Operator Grade II (Electrical) save that he is senior to Mr Ramsamy.

In the light of the above the Tribunal can only conclude that the Applicants have failed to adduce cogent and coherent evidence, be it documentary or viva voce to establish their claims.

The disputes with regard to both cases are set aside.

Rashid HOSSEN
Ag. President

Binnodh RAMBURN
Member

Rajendranath SUMPUTH
Member

Date : 18th July, 2008