

PERMANENT ARBITRATION TRIBUNAL**AWARD****RN 966****Before:**

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

In the matter of:*Air Mauritius Staff Association (AMSA)**and**Air Mauritius Ltd.*

The following dispute has been sent by the Minister responsible for Labour and Industrial Relation for arbitration by virtue of Section **82 (1) (f) of the Industrial Relations Act 1973**, as amended.

The point in dispute is:-

“Whether Management should appoint Messrs Ajay Monohur, Mulsunkur Ramdhayan, Vishal Nyeck, Ismet Khan Kurreembaccus and Chandradev Mulliah as Operation Officers on the permanent and pensionable establishment, with effect from 21 December 2004, or otherwise.”

The Applicant avers the following in its Statement of Case:-

SUMMARY OF CURRICULUM VITAE

The five ex-PAT employees include AJAY MONOHUR, KRISHANAND NYAECK, CHANDRADEV MULLIAH & ISMET KHAN KURREEMBACCUS. It is understood that MR MULSUNKUR RAMDHAYAN is not participating in the industrial dispute any longer. They are members of the AMSA.

MR AJAY MONOHUR

MR AJAY MONOHUR had been recruited on 31 July 1996 by Rogers Aviation and had been seconded for duty to Air Mauritius. He is still working as Cargo Officer with the job title of Clerk at Air Mauritius Cargo Handling Department.

In the year 2002 there had been the case of Air Mauritius and Rogers where all Rogers employees concerned who had been working for Air Mauritius had to be recruited by the same company. All Rogers employees have been recruited by Air Mauritius Limited. MR AJAY MONOHUR has not been included so far.

On 1st September 2004, with the help of Air Mauritius Employees Union he has been employed as Clerk on a two years contract basis and he has been considered as a new fully fledged Cargo Officer on the job title of CLERK with a considerably lower salary from then.

He wishes to be considered as a PERMANENT EMPLOYED Cargo Officer as all his colleagues who have been doing the same.

QUALIFICATIONS

He is a holder of seven professional qualifications including IATA/FIATA Cargo Introductory course, Live animals Regulations IATA. Dangerous Good Regulations, First Aid Certificate and others regarding the management of computers. His refresher courses are up to date. He has been commended by his superior.

MR KRISHNANAND NAYECK

MR KRISHANAND NAYECK had been working for Plaisance Transport Services (PATS) from February 1998 to August 2004 as Cargo Officer. He had been seconded for duty to work at the Air Mauritius Cargo Handling Department of the Airport. From September 2004 to September 2007, he has been writing on a contractual basis within the Air Mauritius Cargo Department.

He is the holder of a Diploma in IATA/FIATA Introductory Course since April 2004, a certificate in Live Animals Regulations since 2004 and a certificate in Dangerous Goods Regulations since February 2003.

In September 2002, he has been awarded a certificate of attendance in Lectures and Practical in First Aid by the Mauritius Red Cross. He is currently following a Course in Business Administration with the Management College of South Africa. He has completed two years and is preparing his final year at present. He has an excellent work record has been commended by his superior. (See Annexure C).

ISMET KHAN KURREEMBOKUS

ISMET KHAN KUREEMBOKUS has been working for PATS from 1998 to 2004 as Cargo Officer. He has been seconded for duty to work at the Air Mauritius Cargo Handling Department. From September 2004 to September 2007, he has been working on a contractual basis within the Air Mauritius Cargo Department. He is a holder of a diploma in sales and marketing, a diploma of IATA from Geneva, a certificate in Dangerous Drugs Regulations and a certificate in live animals regulations. He has an excellent work record. (See Annexure D).

CHANDRADEV MULLIAH

MR CHANDRADEV MULLIAH has followed the same itinerary as the previous three employees. He holds diplomas in Live Animal Regulations, Dangerous Goods Regulations, in IATA/FIATA introductory course and in Word, Excel, Powerpoint. He has a good knowledge of internet. He has a very good work record.

THE BACKGROUND TO THE INDUSTRIAL DISPUTE

The Air Mauritius Staff Association (hereafter called AMSA) is entitled to negotiate with the Management of Air Mauritius according to the rules and regulations of the Syndicate and according to the Procedural Agreement. While negotiations had been held on the Levelling Agreement in 2004, MR RAMACHANDRAN, Chief Administrative and Human Resources Executive had informed the AMSA about the intention of the

management to appoint the abovenamed Cargo Clerks and to integrate them within the new structure which had been prepared in common agreement between the Management and the Union.

In the early or mid course of the year 2004, AMSA had protested preliminarily to the appointment of the abovenamed five contractual employees. If, AMSA had not protested, then, these 5 contractual employees would have been appointed there and then. (See Annexure H) However on the 15th December 2004 at 14 hrs, during a meeting between the Management and AMSA in the HR Committee room of Air Mauritius, the parties to the negotiations have reached the following agreement regarding some clarifications which both wished to bring to the Levelling Agreement which had been signed by the representatives of both parties on the same day. That leveling Agreement concerned the recruitment and selection procedure amongst others.

The clarification related inclusively to the conditions specific to the Customer Service Department referred to at page 5 Part F of the Levelling Agreement. "Cargo Unit: An agreement needs to be drafted to regularize the transfer of the Ex-PATS Cargo Officers to the MK ESTABLISHMENT... The Cargo Officers do not have any objection that these 5 cargo clerks be integrated in the new structure"...The Management undertook to consider this matter.

Further, both parties stipulated that notes of meetings were considered as integral to and an inseparable part of the Agreement (Levelling) reached between MK and the Union on the 15th December 2004. The Levelling Agreement and the clarifications having been agreed upon as being part of the said agreement, it had been expected that the five contractual Ex-PATS employees would have been included within the new structure at Level three. Yet, to this date the Management has not abided by the agreement despite correspondence sent by the representatives of the Union to the Management of Air Mauritius. The agreement has not been implemented so far.

The Applicant prays for an award providing its four abovenamed members with a permanent contract as operation officers within the structure of the Respondent Air Mauritius Ltd starting from the 15th December 2004 and the corresponding backpay to which the four abovenamed members & employees would have been entitled if the Respondent. Air Mauritius Ltd had abided by its agreement since the 15th December 2004.

The Respondent avers in reply:-

In Limine Litis

Respondent avers that the Applicant {Air Mauritius Staff Association (AMSA)} which represents the staff grade at Air Mauritius Ltd has no locus standi in the present matter in as much as

- (1) Applicant does not hold negotiating rights for Messrs *Ajay Monohur, Mulsunkur Ramdhayan, Vishal Nyeck, Ismet Khan Kureembaccus and Chandradev Mulliah* who are contractual employees of the Company and,
- (2) This would constitute a breach of the procedural agreement signed with the Company.

Alternatively, on the Merits, Respondent avers the following:-

1. *Messrs Ajay Monohur, Mulsunkur Ramdhayan, Vishal Nyeck, Ismet Khan Kureembaccus and Chandradev Mulliah* were all prior to September 2004 employees of Plaisance Air Transport Services Ltd (PATs), a freight forwarder Company which was contracting work with Respondent.

Respondent takes note of the averment of the Applicant that *Mulsunkur Ramdhayan* “is not participating in the industrial dispute any longer.” Respondent denies that *Messrs Ajay Monohur, Vishal Nyeck, Ismet Khan Kureembaccus and Chandradev Mulliah* are members of AMSA and puts the Applicant to the proof thereof.

2. *Messrs Ajay Monohur, Vishal Nyeck, Ismet Khan Kureembaccus and Chandradev Mulliah* were seconded for duty at the Cargo Department of Respondent by PATs and their employment was during this period to all intents and purposes governed by their respective contracts of employment with Plaisance Air Transport Services Ltd.
3. In September 2004, *Messrs Ajay Monohur, Vishal Nyeck, Ismet Khan Kureembaccus and Chandradev Mulliahi* joined the service of Respondent as Clerks in the Cargo Department on a two years contract starting 01 September 2004 and ending 31 August

2006. The term and conditions governing their above employment were agreed upon between parties and this was reproduced in their contracts of employment to which they all gave their acceptance.

4. At the expiry date of the above contract i.e. on 01 September 2006, the contracts of *Messrs Ajay Monohur, Vishal Nyeck, Ismet Khan Kureembaccus and Chandradev Mulliah* were subsequently renewed for specific determinate periods on a number of occasions, on the same terms and conditions, and the last renewal occurred on 1st October 2007 when the contracts were renewed for a further period of one year expiring on 30th September 2008.
5. Respondent avers that *Messrs Ajay Monohur, Vishal Nyeck, Ismet Khan Kureembaccus and Chandradev Mulliah* had given their assent to the conditions of employment as laid down in their contracts of employment and it was never agreed with them that they would be appointed as Operations Officers.
6. Respondent avers that Operations Officers which is scaled on the level 3 salary scale on the pay structure of the Company is a promotional post and as per Procedural Agreement Respondent has signed off with the Union representing the interests of the staff grade (AMSA), all promotional posts within the Company falling within the purview of the staff grade have to be advertised internally.
7. Respondent avers that any outright appointment of *Messrs Ajay Monohur, Vishal Nyeck, Ismet Khan Kureembaccus and Chandradev Mulliah* as Operations Officers on the level 3 salary scale of the Company would go against its internal policy and the provisions of the Procedural Agreement it has signed off with the union. This will lay open the doors for disputes coming from other members of its staff who have a legitimate expectation that the provisions of the Procedural Agreement with the Union and the internal policy of the company relating to recruitment and promotion would be adhered by the Respondent.

8. Respondent has taken note of the minutes of proceedings of 15 December 2004 referred to by Applicant in its Statement of Case and avers that at that meeting which was convened in the context of discussions held for the Levelling Agreement, it was never agreed that *Messrs Ajay Monohur, Vishal Nyeck, Ismet Khan Kureembaccus and Chandradev Mulliah* were to be appointed as Operations Officers on the Level 3 salary scale but only that Management would consider the matter. This is also agreed and admitted by the Applicant in its Statement of Case at the end of page 4.
9. Respondent avers that *Messrs Ajay Monohur, Vishal Nyeck, Ismet Khan Kureembaccus and Chandradev Mulliah* are not the only employees from PATS who are currently on determinate contracts. There are approximately 200 persons employed under similar conditions by the Respondent. Further, there are other employees in other grades who are also operating under similar contracts of determinate duration. Any confirmation of *Messrs Ajay Monohur, Vishal Nyeck, Ismet Khan Kureembaccus and Chandradev Mulliah* on its establishment will create further disputes and disruption since this will generate expectations for employees employed on contracts of determinate duration.
10. Respondent avers that any confirmation of the contractual employees on its permanent and pensionable establishment rest on requirements for such manpower and avers that the recruitment of employees whether for fixed or indeterminate duration is a management decision based, inter alia, on commercial exigencies and it cannot be forced to translate a contract of fixed duration into a contract of indeterminate duration.
11. Respondent confirms that it is respecting conditions of employment as agreed upon between parties and moves for the case to be set aside.

On the 4th March 2008 when the matter was called for disposal, both parties informed the Tribunal that a settlement has been reached and it is within the parameters of the Terms of Reference and reads as follows:-

“Air Mauritius offered to employ Messrs A. Monohur, V. Nyeck, I. Kureembokus and C. Mulliah on its permanent establishment as from 1st April 2008 on LS I scale (starting salary Rs 9,360 monthly) as Administrative Assistant. There will be no back pay and no buying and/or recognition of previous years of service be it at PATS or as contractual at Air Mauritius”.

Both parties moved in terms of the settlement.

The Tribunal awards accordingly.

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Rashid Hossen
Ag. President

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Binnodh Ramburn
Member

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Rajendranath Sumputh
Member

Date: 11th March 2008