

**PERMANENT ARBITRATION TRIBUNAL**

**AWARD**

RN 956

RN 957

**Before:**

<b>Rashid HOSSEN</b>	-	<b>President</b>
<b>Binnodh RAMBURN</b>	-	<b>Member</b>
<b>Rajendranath SUMPUTH</b>	-	<b>Member</b>

**In the matter of:-**

**RN 956 – Veerjanand Baichoo**

**And**

**Central Electricity Board**

**RN 957 – Ramotar Madhub**

**And**

**Central Electricity Board**

The present dispute has 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 Relations Act 1973** as amended.

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

Mr. D. Ramful, of Counsel, appears for the Respondent.

Both cases have been consolidated.

The point in dispute is:-

*“Whether Mr Madhub and Mr Baichoo should have been appointed Technician B2 with effect from 22 October 2001 and Technician with effect from 1 July 2005 or otherwise as Driver.”*

### **Statement of Case of Mr. Veerjanand Baichoo (Applicant)**

#### **1. Historical background**

- (i) Mr.V. Baichoo was recruited as Handymen. However he was asked to perform the duties of Driver, though not paid as such.
- (ii) At a certain point in time he was given training as Assistant Technician.
- (iii) Subsequently he was appointed as Assistant Tradesman-Driver, a post that did not exist at the CEB. He was paid as from his appointment in the salary scale of Driver. He and Mr. Madhub were the only 2 employees to be appointed under the appellation of Assistant Technician/Driver.
- (iv) Though appointed as Assistant Technician /Driver he was asked to continue performing the duties of Driver.
- (v) The Collective Agreement of 1999 provided for: 1) The appointment of an Assistant Technician having his driving license as Technician B1 and 2) Drivers trained to assist Technicians, as Technician B2.
- (vi) Both Technicians B1 and B2 were paid in the same salary scale which was an intermediary salary scale between that of Assistant Technician and that of Technician A.
- (vii) A first dispute was declared and the claim of the applicant was that he be appointed as Driver in his existing salary scale. This has been refused.
- (viii) Subsequently a new Collective agreement was signed in 2002, which provided for the upgrading of ALL Technician B1 and B2 in the salary scale of Technician A, renamed Technician.

- (ix) Mr.V.Baichoo has not been appointed Technician B2 as per his status in the 1999 Collective Agreement consequently not as Technician in the Collective Agreement of 2002.
- (x) A new dispute was declared on the 4<sup>th</sup> November 2006 claiming for his appointment as Technician B2 with effect from the date he was appointed as Assistant Technician/Driver under the 1999 Collective Agreement and as Technician under the Collective Agreement of 2002.
2. As an alternative the applicant is requesting to be maintained in their grade of Driver, job which applicant is presently doing.

### **Statement of Case of the Respondent**

#### **1. Employment History of Mr. V. Baichoo**

The Respondent avers that Mr. V. Baichoo was appointed as Handyman on 12<sup>th</sup> January 1993. His employment history at the CEB is as follows:

<i>DATE</i>	<i>POST</i>	<i>POSTING</i>	<i>REMARKS</i>
12.01.93	Handyman	Main Store	
06.06.94	Handyman	Goodlands	Transfer
17.08.94	Handyman/Driver	CFPP	Responsibility Allowance
01.11.94	Handyman	Vacoas	Responsibility Allowance
01.11.95-13.06.96	Handyman/Driver	Vacoas	Responsibility Allowance
15.10.97	Handyman	Planning	Transfer
01.10.01	Asst.Tech/Driver	Goodlands	Promoted
09.11.01	Asst.Tech/Driver	GMG-F.Victoria	
06.10.05	Asst Tech/Driver	Goodlands	Transfer

Mr. V.Baichoo has no academic qualification.

#### **2. INC Meeting**

During negotiation held on 28<sup>th</sup> March 2001, Management stated that the Handyman and Drivers would shortly follow courses in Line works at the CFPP. On completion of the training, they would be interviewed to be

appointed either as Assistant Technician or Technician B, but having both the duties of Driver in their schemes of service.

Mr. V.Baichoo was initially employed as Handyman and required to drive CEB vehicles on an adhoc basis. During a JNC Meeting held on 25<sup>th</sup> September 2001, the Union of employees of CEB (UECEB) requested that a Multi-skilling programme be established for Handyman and driving facilities be extended to them in order to ensure mobility and employability.

### **3. Appointment as Assistant Technician/Driver**

In line with the objective, the following employees were given the opportunity to follow a full-time training course in Line works in September 2001.

<b>No.</b>	<b>Coy No.</b>	<b>Name</b>	<b>Previous Grade</b>	<b>Promoted Grade</b>
1	27485	S. Teka	Handyman	Assistant Technician
2	27492	N. Subbaroyan	“	“
3	25760	S. Augustin	“	“
4	27366	R. Madhub	“	Assistant Technician
5	27311	V. Baichoo	“	Assistant Technician/Driver
6	23764	V. Gutheea	“	“
7	23890	K. Luchmun Roy	Driver	Technician B2
8	15028	S.Dowlut	“	
9	23157	R. Beebakhy	“	
10	25791	P. Bhukuth	“	
11	20741	D. Chumun	“	
12	23502	A.Manna	“	
13	27504	S. Ramkurrun	“	

Such an initiative was taken in order to enable the employees to acquire more skills and training as well as to prepare them in multiskilling staff development so that they may assist in the works of the CEB during emergencies, cyclone re-instatement works and so on. In addition, such

training was in their interest as it may give them opportunity for appointment in other jobs, should vacancies arise.

The employees in the grade of Handyman were appointed Assistant Technician while employees in the grade of Driver were appointed Technician B2. Since V. Baichoo was a Handyman, he was appointed as Assistant Technician/Driver according to agreement made at that time.

#### **4. Collective Agreement 2002**

- (i) According to the Collective Agreement between CEB and the UECEB, signed in 2002, it is stipulated that:

***“Drivers shall be trained at the CFPP so that they can integrate the core technical functions, like Asst Technicians and after successful training shall be appointed in the grade of Technician B2 with wages in the scale of Rs 7 300 x 250 – 7800 x 300 – 9600 x 400 – 11 200 pm.***

***Likewise Asst. Technician possessing a valid driving licence shall be called upon to drive CEB vehicles as well as performing their core functions and shall be classified in the grade of Technician B2.”***

This Collective agreement of 2002 took effect as from 1<sup>st</sup> January 2001 and was in force until the signature of the next Collective Agreement.

On the basis of the decision taken at the level of JNC and following the successful completion of training in Lineworks at CFPP by Mr. V. Baichoo in September 2001, the latter was appointed as Asst. Technician/Driver on 1<sup>st</sup> October 2001. However, it was clearly stipulated in his letter of appointment that he would be required to perform both the duties of Driver and Assistant Technician.

Following his appointment as Assistant Technician, Mr.V.Baichoo was assigned driving duties at the CMG, Fort Victoria on a full time basis.

Mr. V. Baichoo was transferred to Goodlands on 06 October 2005 where he was required to perform the duties of Assistant Technician on a full time basis in the Engineering Section. As and when required, he was asked to replace Drivers whenever the latter was absent.

Mr. V. Baichoo has never performed both the duties of Assistant Technician and Driver concurrently and the relevant provision in 4(i) above is therefore not applicable to him.

5. A first dispute was reported by the Applicant to the Ministry of Labour & Industrial Relations which was referred to the IRC in January 2006 and the terms of reference was as follows:

*“Whether Mr. V. Baichoo should be appointed Driver with effect from the date he was promoted from the post of Handyman to that of Assistant Technician – Driver”*

No recommendation has been made up to now by the IRC.

6.

#### 6.1 **Selection and Appointment procedure**

The Selection and Appointment procedure as stipulated in the Collective Agreement of 2002 and 2006 is at **Annexes F and G** respectively.

#### 6.2 **Job evaluation and Salary review**

A job evaluation and salary review exercise was carried out in year 2004 with the following terms of reference and scope of work:

- *Critically examine current job grades, compensation structure and terms and conditions of employment, including the Internal Regulations, with a view to rationalizing, harmonizing and simplifying these so as to attract and retain the competent and efficient resource persons required to perform the duties and functions of the CEB.*

- *Eliminate overlapping jobs and functions, reduce the number of job grades, if necessary, to a level consistent with best business management practices within electric utilities, and establish the optimum human resource requirements of the organization; and*
- *Establish appropriate levels of compensation and benefits consistent with Mauritius market exigencies relative to comparable companies in similar operational environments.*

### 6.3 **Collective Agreement 2005**

The Collective Agreement signed between the UECEB and Management in 2006 for the period 01 July 2005 to 30 June 2009 stipulates that:

*Assistant Technicians in the Transmission and Distribution Department will continue to be trained for eventual appointment as Technicians, following proper selection exercise. The Assistant Technician shall be given training at the CFPP.*

*Ex- Technicians B1 after integration in Salary Scale 3 shall proceed normally up to the PB. They shall not be called upon to take charge of a gang unless they have successfully passed the relevant competency test.*

*Ex-Technicians B2 after integration in Salary Scale 3 shall proceed normally up to PB. They shall continue to perform their duties of Driver and assist the gang during normal hours and during standby. At their request, they shall be sent to the CFPP for formal training and shall cross the PB on passing the appropriate Trade Test.*

In line with the above recommendation and following the Collective Agreement that has been signed between the Board and the UECEB on 15<sup>th</sup> February 2006, for the implementation of a New Salary Structure and Revised

Conditions of Employment, which took effect from 1<sup>st</sup> July 2005, Mr. V. Baichoo was offered the following post and title:

**Job Title: Asst. Technician**

**New Salary Scale: 9200 x 300 – 10 100 x 350 – 12 200 x 400 – 13 000 x 500 – 14 000 PB 14 500 x 500 – 15 500**

**Revised monthly salary as at 01.07.05 was Rs 13000**

He was also required to sign an option form to signify his acceptance of the above.

He did sign an option form, thereby accepting the above terms and conditions.

The dispute of Mr. V. Baichoo that he should have been appointed Technician B2 with effect from 22<sup>nd</sup> October 2001 and Technician with effect from 1<sup>st</sup> July 2005 or otherwise as Driver is not justified for the following reasons:

- (i) He was offered training at CFPP so as to enable him to acquire more skills and training as well as to prepare him in multiskilling as part of the staff development so that he may assist in the works of the CEB during emergencies, cyclone re-instatement works and so on. In addition, such training was in his interest as it was an opportunity for him to get appointment in other jobs, in case vacancies arise.
- (ii) Upon the successful completion of his course in Lineworks at the CFPP, Mr. V. Baichoo, former Handyman, was offered the post of Assistant Technician/Driver. However, he was required to perform duties of Driver on a fulltime basis and thereafter he was transferred to Goodlands on 06 October 2005 where he was required to perform the duties of Assistant Technician for all intents and purposes.
- (iii) Only Drivers who followed similar training were appointed Technician B2 as pointed out in the letter addressed to the President of the UECEB dated 07 May 2001. At that material



date on the implementation of the Collective Agreement, Mr. V. Baichoo, ex Handyman, was for all intents and purposes, offered appointment as an Assistant Technician/Driver and was accordingly proposed an option form in that capacity which he has voluntarily accepted. In order to get appointment to the post of Technician B2 at that time and to the post of Technician as claimed by him, he was required to pass through the Selection and Appointment procedure, as stipulated in the Collective Agreement, which has the discretion to make selection and appointment.

(iv) Mr. V. Baichoo has no academic qualification. The qualification requirement for the post of Technician in the Engineering Section of the Transmission and Distribution Department is as follows:

- SC/GCE'O' level with passes in three (3) subjects.
- Technical Certificate in relevant field.
- A valid driving licence for car/van and goods vehicle is essential.
- Minimum of three (3) years work experience.

(v) Only those employees who were on the CEB establishment, in the capacity of Technician B1 or Technician B2 as at 1<sup>st</sup> July 2005, have been proposed the new appellation of Technician in line with the provision of the Collective Agreement.

On the basis of the above, the Respondent submitted that the dispute be set aside.

Mr Jack Bizlall, a witness for the Applicants, confirms their statements of case. He furthermore avers that:-

1. For the post of Technician one must have a School Certificate at least and for the post of Driver at least a CPE. The Applicants do not have any of these two

certificates. So much so that as Assistant Technician they will never move upward and a lateral transfer has been asked, but that has been refused. Though there are more than 10 vacancies advertised recently, other persons recruited some years back may be appointed.

2. At the time the Applicants were recruited, there were no qualifications as set down by the Employer regarding the post of Driver and the post of Technician.
3. From 1994 to 2004 the Applicants have been performing on a permanent basis the duties of Driver and this is partly contested by the employer who talks about ad hoc basis. There has not been any ad hoc basis.
4. The Applicants were sent for courses at the CFPP together with the Drivers. Following the courses at the CFPP, all the Drivers have been appointed Technician B2 whereas Handymen have been appointed Assistant Technician in conformity with the Agreement they had with the Central Electricity Board. The only two persons kept outside the Agreement were Mr Madhub and Mr Baichoo who were promoted Assistant Technician/Driver.
5. The appellation 'Assistant Technician/Driver never existed, does not exist and most probably will never exist at the Central Electricity Board'.
6. The Applicants have been trained to move upward and by putting qualification at School Certificate Level for Technician they will never be appointed. So they have been trained for nothing regarding their own interest. All the other employees have been promoted with CPE and without CPE. There are many employees, Drivers without CPE, who are now Technicians.
7. The qualification for Assistant Technician is School Certificate/General Certificate of Education 'O' level with passes in at least 3 subjects but this have been waived out because they are already in the post of Assistant Technician.

8. Since their transfer and for many months, the Applicants have been performing the duties of Driver until when the case was put before the Tribunal. They were asked to perform both duties (of Driver and of Assistant Technician).
9. The dispute regarding the Applicants was previous to July 2005. Had it been settled before that, the Applicants would have been appointed technician B and now they would have been Technician.

To a question put to the witness by Mr Ramano to the effect that the Employer is saying that the employee has signed an option form and so he cannot come before the Tribunal, Mr Bizlall explains that in the Collective Agreement of February 2006 at page 3 paragraph 3.5, there is a proviso which provides for the consideration of any problem though an option has been signed.

The witness also avers that there is in the conditions of service regarding the internal regulation No. 1 which allows lateral transfer i.e. whenever a vacancy exist an employee in another grade may ask for their transfer. For the lateral transfer there is no promotional increment.

The witness, under cross examination, concedes that:-

- Drivers may be posted at any department of the Central Electricity Board but if they are posted in the T&D department, they have to drive heavy vehicles there, vehicles of more than 2.5 tons. They are the rare persons at the Central Electricity Board who can drive
- When the Applicants were appointed Assistant Technician/Driver, they were posted in the Production Department. They were working at the station in the Production Unit at Fort Victoria or Fort George for many years and thereafter they were transferred to the T&D Department.

- The Applicants were performing the duties of Driver since 1994 and have been claiming upgrading since then.
- There is a general agreement which is giving satisfaction to everybody except these two employees. The agreement was reached in early 2001 and the Applicants were offered their appointment in October 2001. A personal letter of acceptance was addressed to them regarding this offer outside any reference to the Collective Agreement. At that time they were performing the duties of Driver at Fort Victoria.
- Individual agreements are not covered by the collective Agreement. It is the Collective Agreement which commands individual agreement.
- The post of Assistant technician/Driver does not exist and has never existed.

Mr Sailendra Sahye, Principal Human resource Officer, confirms the contents in the statement of case of the Central Electricity Board.

Furthermore, he avers that:-

1. The Applicants according to their Scheme of Duties as Handymen were asked to replace Drivers on an ad hoc basis. From 12 September 1994 to 6 November 1995 they replaced Drivers.
2. Following training session at the CFPP in 2001, Drivers were appointed as Technician B. Handymen (5 in all) who followed the training session and were either appointed as Assistant Technician or as Assistant Technician/Driver. There among the Handymen were appointed as Assistant Technician and not as Assistant Technician/Driver because they did not possess a driving licence. The Applicants did possess a driving licence.

Under Cross examination, the witness concedes that:

- Handyman may replace Drivers but it cannot be said to be on a permanent basis.
- Someone who is set as permanent Driver has great expectation to be promoted as Technician B should vacancy arises.
- The CEB followed the trend of modernizing the post of Driver and until recently the CEB was not having Drivers. This trend is still maintained for some Departments.
- The post of Driver was advertised following a proposal from the Tribunal for a settlement of this case and also because there was a need in some Departments.
- The two Applicants applied for the post of Driver, but they were not given interview because they did not have the Certificate of Primary Education.
- For the post of Assistant Technician, the academic qualification requirement actually is SC or GCE 'O' Level with passes in at least 3 subjects.
- Among all employees of the CEB only the two Applicants have that appellation of Assistant Technical/Driver. They do not have promotional avenue, no lateral transfer and are locked in the system.
- The scale of Driver in terms of salary is the same as that of the Assistant Technician. If the Applicants are transferred from Assistant Technician/Driver to that of Driver, there will be no financial implication on the CEB but there will be a contravention to the Collective Agreement.

After careful consideration of the oral and documentary evidence adduced, the Tribunal notes and finds that:-

1. During negotiations with the Union of Employees of the CEB held on 28 March 2001, Management stated that Handymen and Drivers would follow courses in live Line works at the CFPP. On completion of the training, they would be interviewed to be appointed either as Assistant Technician or as Technicians B, but having both the duties of Driver in their schemes of service. Here we fail to understand that after their successful completion of training, the Applicants were not appointed as Assistant Technician, but as Assistant Technician Driver.

This last post as averred by Mr. J. Bizlall, when he deponed before the Tribunal, has never existed and does not exist.

2. The Applicants were in February 2006 offered the post and title of Assistant Technician with effect from 1 July 2005.
3. In the Collective Agreement of 2002 which took effect as from 1 January 2001 and was in force until the signature of the next Collective Agreement, it is stipulated that:-

“Drivers shall be trained at the CFPP so that they can integrate the core technical functions like Asst. Technicians and after successful training shall be appointed in the grade of Technician B2. Likewise Asst. Technician possessing a valid driving licence shall be called upon to drive CEB vehicles as well as performing their core functions and shall be classified in the grade of Technician B2”.

The Applicants if they were appointed as Assistant Technician after their completion of training would have been eligible to compete for appointment as Technician B in as much as they possess their driving licence.

4. However, the employer has averred and this has not been denied that to be appointed to the post of Technician B at that time, one was required to pass through the Selection and Appointment procedure as stipulated in the Collective Agreement which has the discretion to make selection and appointment. (underling is ours).
5. Futhermore, the Respondent has advanced that the Applicants have no academic qualification. The qualifications required for the post of Technician in the Engineering section of the T & D Department among others are as follows:-
  - SC/GCE ‘O’ Level with passes in 3 subjects
  - Technical Certificate in relevant field
6. Mr. Bizlall has averred, and these have not in the least been challenged, that:
  - When the Applicants were recruited, there were no qualifications as set down by the Employer regarding the post of Driver and the post of Technician
  - Many Drivers have been promoted as Technician with or without C.P.E
  - They are the rare persons who can drive heavy vehicles at the CEB

7. The Respondent has averred that a first dispute was reported to the Ministry of Labour and Industrial Relations which was referred to the IRC in January 2006 and the terms of reference was as follows:

***“Whether Mr. V. Baichoo should be appointed Driver with effect from the date he was promoted from the post of Handyman to that of Assistant Technician/Driver.”***

No recommendation has been made up to now by the IRC.

8. The Applicants are already in the post of Asst. Technicians although they do not possess the SC or GCE ‘O’ level with passes in at least 3 subjects.
9. It is a fact that the Applicants have been performing the duties of Driver for long periods whether on a permanent or on an *ad hoc* basis.
10. Even for the job of Handyman at the CEB one has to possess the C.P.E (Doc C MSD – 1995).

In the light of all the above, the Tribunal could have determined in favour of the Applicants had it not been for paragraphs 4 and 5 above. However, the Tribunal finds that as far as the post of Driver is concerned the Applicants cannot be stifled completely although they do not possess the C.P.E. They have their driving licence and have been driving vehicles for years and these have not been challenged. The Applicants are now in the grade of Asst. Technician and do not have academic qualification for that. Even for the post of Handyman (their initial post) the CPE is required.

The Tribunal can do no better than to recommend priority of consideration for the Applicants should vacancies occur for the post of Drivers. The dispute is otherwise set aside.

**(sd) Rashid HOSSEN**  
**President**

**(sd) Binnodh RAMBURN**  
**Member**

**(sd) Rajendranath SUMPUTH**  
**Member**

**Date: 30.01.2009**