

**AWARD**

**OF**

**THE ARBITRATION TRIBUNAL**

**OF**

**THE REPUBLIC OF THE FIJI ISLANDS**

**NO. 14 OF 2006**

**NO. 14 OF 2006**

**AWARD**

of

**THE ARBITRATION TRIBUNAL**

In the Dispute Between

**FIJI PUBLIC SERVICE ASSOCIATION**

and

**AIRPORTS FIJI LIMITED.**

FPSA : Mr R Singh  
AFL : Mr K Qoro and Mr K Vuataki

**DECISION**

This is a dispute between the Fiji Public Service Association (the "Association") and Airports Fiji Limited (the "Company") concerning the entitlement of Mr N G Singh (the "Grievor") to voluntary redundancy payments.

A trade dispute was reported by the Association on 30 August 2002. The report was accepted on 26 November 2002 by the Permanent Secretary who referred the Dispute to a Disputes Committee. As the Company failed to nominate a representative to the Committee, the Minister authorized the Permanent Secretary to refer the Dispute to an Arbitration Tribunal for settlement pursuant to section 5A(5)(a) of the Trade Disputes Act. Cap.97.

The Dispute was referred to the Permanent Arbitrator on 27 December 2002 with the following terms of reference:

***"..... for settlement over the failure by Airports Fiji Limited to grant the Voluntary Redundancy payments to Mr N G Singh who has accepted the offer of Voluntary Redundancy made by AFL as per Memorandum of Agreement signed by the Employer on 18 August 2000. The Union is requesting AFL to pay Mr Singh his Voluntary Retirement benefits without delay".***

A preliminary hearing took place on 31 January 2003. On that day the parties were directed to file preliminary submissions by 1 March and the Dispute was listed for hearing on 31 March 2003. At the request of the parties that date was vacated to enable further negotiations to take place. The Dispute was to be listed for mention on a date to be fixed.

The Association filed its preliminary submissions on 6 March and the Company did so on 21 March 2003.

The Dispute was subsequently listed for mention at the request of the parties on 27 May, 24 June and 30 September 2005. The Dispute was listed for hearing on 7 November 2005. The hearing commenced on that day and was adjourned part heard to 10 November 2005 when it was completed. Each party called one witness. The Grievor gave evidence for the Association and the Manager,

Human Resources and Administration (MHRA) (Mr A Nath) gave evidence for the Company. At the conclusion of the evidence the parties sought and were granted leave to file written final submissions.

The Association filed its final submissions on 1 December 2005. The Company filed answering submission on 13 February and the Association filed a reply submission on 9 March 2006.

The employment history of the Grievor and the terms and conditions of his employment with the Company since 1999 have been set out in some detail in Awards 65/2005 and 4/2006. There is no need to repeat that material a third time.

By letter dated 6 December 2000 the Company offered a voluntary redundancy package to the Grievor. Omitting formal parts, the letter stated :

***"I refer to the Staff Circular dated 13 September 2000 and wish to advise you that the position you occupy has been declared redundant. For this reason, I offer you the opportunity to voluntarily retire from your employment with AFL.***

***On the basis of this letter, you will be eligible for a severance package that is commonly referred to as the "Bose Package". Under it you will be entitled to be paid :***

- ***three months pay plus two weeks pay for each completed year of service provided that the redundancy payment does not exceed 104 weeks pay; and,***
- ***payment of retirement gratuity equivalent to three weeks pay for each completed year of continuous service.***

***The Ministry of Finance will make the above payment upon verification of your entitlement by the accounting firm of KPMG.***

***The conditions of this voluntary severance are as follows:***

- 1. You must exercise the option for voluntary severance by signing the attached copy of this letter within 14 days from the date of this letter and submit to Acting Human Resources Manager.***
- 2. The option shall be final and not subject to any negotiation.***
- 3. The effective date of your voluntary severance will be decided immediately after you have exercised your option to accept this offer and submitted to the Acting Human Resources Manager".***

In the event that the Grievor wanted to accept the offer he was required to return his acceptance by 20 December 2000. However, the offer was not received by him until 3 January 2001. This was not disputed by the Company.

As a result the Grievor wrote a letter dated 4 January 2001 to the Company.

Omitting formal and irrelevant parts, the letter stated:

***"Reference is made to the Offer of Voluntary Redundancy via your letter dated 6 December 2001, which was delivered to me on Wednesday 3 January 2001 when I returned to duty after my absence overseas on approved leave. I am seriously studying the offer and will make a considered response.***

***However, as the initial time limit for replying mentioned therein had already expired before delivery was made, it is hereby requested that an extension of that period by 21 days be considered. As the matter is of grave nature, one must exercise due caution and examine all the relevant details involved in order to arrive at the best decision. I wish to avail myself of this time and opportunity to study all the relevant issues involved and to seek the necessary explanations and clarifications, as applicable".***

The Company responded to the Grievor by letter dated 10 January 2001. This letter stated:

***"Reference is made to your letter dated 4 January 2001 on the above subject.***

***It is noted that the offer letter of voluntary redundancy dated 6 December 2000 was received by you on 3 January 2001, therefore you are given 14 days from 3 January 2001 for you to exercise the option of voluntary severance by signing on the attachment letter dated 6 December 2000 and submit the same to the undersigned."***

By letter dated 11 January 2001 the Grievor wrote to the Company on the same subject and acknowledged receipt of the Company's letter dated 10 January 2001. The Grievor pointed out the importance of this matter to his family and indicated that in order to make an informed decision he needed further information. He specified that he required further information on:

- "a) The length of service (from commencement) that would be utilised to calculate the payments.***
- b) The final applicable salary, together with adjustments (if any)***
- c) Any outstanding matters, e.g. application of awards etc.***
- d) Treatment of Gratuity for taxation purposes.***
- e) Crediting of FNPf contributions on all such payments".***

By letter dated 18 January 2001 the Company responded to the Grievor's request for further information. This letter stated:

***"Your letter dated 11 January 2001 on the above subject refers. The following information/details are provided in response to the queries raised: [information is provided (a) – (e)].***

It should be noted that the Company made no reference to the fact that its previously stated requirement that a response be provided by 17 January 2001 had now expired.

The Grievor sought further clarification from the Company in a letter dated 22 January 2001. So far as is relevant that letter stated:

***"Thank you for your letter of 18 January 2001 received on 19.1.2001.***

***After reviewing the response, I would like to comment on them as follows and request your views on them.***

***[items (1) to (5) are discussed]***

***Your early response and cooperation will be highly appreciated".***

The Company responded to the Grievor's queries in a further letter dated 26 January 2001. So far as is relevant that letter stated:

***"Further to our letter dated 18 January 2001 and your subsequent queries as per your letter dated 22 January 2001, following information/details are provided:***

***[items (1) to (4) are discussed]***

***We need your indication on your offer of voluntary redundancy as the 14 days time frame has already expired and if we could have your response to the offer of voluntary redundancy by this afternoon".***

The problem for the Grievor was that he did not receive the letter until 29 January 2001. This was not disputed by the Company. Upon receipt of the Company's letter, the Grievor wrote a further letter to the Company on the same day. The letter stated:

***"Thank you for your letter of 26 January 2001 received on 29.01.2001.***

***The contents of your items 1) 3) and 4) appear to be satisfactory. However, in respect of your item (2), the views in my letter of***

**22 January should be considered prior to adoption of any cessation date.**

**Furthermore, item (d) in your letter of 18.01.01 is still outstanding. I would appreciate if a reply on the subject of taxation (if any) on the due and accrued benefits/gratuity etc. were made available. Additionally, the reply should take due cognizance of clause 6.3.2 regarding deductions. In light of the above, the last sentence in your letter would not yet be applicable.**

**Your early response and cooperation will be highly appreciated".**

It would appear that the Company did not respond to that letter.

*Appreciated*

It should be noted that the Tribunal is satisfied that the Grievor's letter dated 29 January 2001 was the earliest opportunity for the Grievor to respond to the Company's letter dated 26 January 2001.

It is now appropriate to refer to the evidence given at the hearing by the MHRA, Mr A Nath. The MHRA stated that the Company considered that the Grievor's letter dated 29 January 2001 amounted to an acceptance of the "Bose package" with some details still to be clarified.

It would appear that the details were not clarified at the time because the Grievor and the Company subsequently became pre-occupied with the Grievor's entitlement to in patient sickness benefits. The Grievor commenced in-patient sick leave on 1 March 2001 and continued on that benefit until 28 February 2002. That is the effect of the decision of this Tribunal in Award No.4 of 2006.

Upon recovery from his medical condition the grievor wrote a letter dated 31 July 2002 to the Company, the fifth paragraph of which is relevant to this Dispute:



***"I hereby write to accept the initial offer made by AFL for Voluntary Redundancy ("The Bose Package"). I would be pleased to receive an early advice of the final effective date of my service with AFL, and on the processing of the accrued benefits under the package entitlement".***

As there was no response from the Company, the Grievor wrote a second letter dated 12 August 2002 requesting a formal response to his first letter.

In view of the evidence given by MHRA during the hearing of the Dispute, the Tribunal has concluded that the Grievor's letter dated 31 July 2002 should be read as a confirmation of his acceptance of the offer as conveyed to the Company in his letter dated 29 July 2001.

By letter dated 29 November 2004 the Company offered a gross payment of \$90,315.00 by way of retirement gratuity. By letter dated 9 December 2004 the Grievor pointed out that this offer was not in accordance with the "Bose Package" which he had been offered and which he had accepted.

It would appear that the offer was based on clauses 6.3.1 and 6.3.2 of the Collective Agreement. That benefit is not the same as the voluntary redundancy package offered to the Grievor as the "Bose Package".

The Company eventually responded to the Grievor's correspondence by an undated letter which the Grievor received on 4 February 2005. This letter stated:

***"Your correspondence dated 9 December 2004 and 9 January 2005 regarding the payment of gratuity refers.***

***This is to advise that the matters raised are being checked against the records and a formal reply will follow shortly.***

Having carefully considered the evidence and in particular the evidence given by MHRA (Mr A Nath) the Tribunal has concluded that the Grievor's letter dated 29 July 2001 amounted to and was considered by the Company as acceptance of the "Bose Package" for voluntary redundancy. The details which were to be cleared up were not sorted out at the time because of the Grievor's medical condition and his treatment overseas. The Grievor confirmed his acceptance of the "Bose Packages" offer in his letter dated 31 July 2002.

The Tribunal has also concluded that the retirement gratuity offer made to the Grievor in November 2004 was not what the Grievor had previously accepted. It was a different offer from that which MHRA acknowledged in his evidence the Grievor had previously accepted.

The final submission filed by the Company deals at length with the issue of time and offer and acceptance. However, these issues are of no assistance to the Company when the evidence given by MHRA is considered. That evidence cannot be ignored or put to one side. It was clear and unequivocal. The Tribunal is satisfied that, based on the evidence given by MHRA, the Company received an acceptance of the "Bose Package" offer from the Grievor by way of his letter dated 29 July 2001.

The MHRA also indicated in his evidence that the Company had decided to pay to the Grievor only the gratuity component (albeit calculated under clause 6.3.2) and await the decision of this Tribunal in respect of the Grievor's entitlement to the whole "Bose Package".

For the reasons stated above, the Tribunal has concluded that the Grievor is entitled to receive in full the voluntary redundancy package referred to as the "Bose Package". For the purpose of making the necessary calculations the decision in Award No.4/2006 may be of assistance to the parties.

**AWARD**

The Company is to pay to the Grievor the Voluntary Redundancy package set out in the Memorandum of Agreement dated 18 August 2000 and conveyed to the Grievor in a letter dated 6 December 2000. This package is referred to as the "Bose Package" and was accepted by the Grievor by his letter dated 29 July 2001 and confirmed in his letter dated 31 July 2002. Calculations are to be made in accordance with the decision in Award No.4 of 2006.

**DATED** at Suva this 20<sup>th</sup> day of March 2006

*W. Pellanchini*

.....  
**ARBITRATION TRIBUNAL**