

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division**

2019/CLE/gen/01037

BETWEEN

NIQUEL PINDER

1st Plaintiff

SHARMAINE BARR

2nd Plaintiff

TIFFANY REID

3rd Plaintiff

KAREN COOPER

4th Plaintiff

CARLA SABALA

5th Plaintiff

KENDRA CAMPBELL-DARLING

6th Plaintiff

CECILIA FORBES-JORDAN

7th Plaintiff

NEDRA RODGERS

8th Plaintiff

-AND-

BAHAMASAIR HOLDINGS LIMITED

Defendant

Before: The Honourable Madam Justice Indra H. Charles

Appearances: Mr. Wayne Munroe QC with him Ms. Krystian Butler of Munroe & Associates for the Plaintiffs
Mrs. Lakeisha Hanna of Harry B. Sands for the Defendant

Hearing Dates: 1 March 2021, 15 July 2021

Employment contract – Breach of employment contract – Whether Plaintiffs were promoted or “upgraded” to “senior flight attendants – Whether the Plaintiffs are “managers” or “supervisors” as defined in *Duran Cunningham v Baha Mar Development Company Limited* SCCivApp No. 116 of 2010 - Whether flight attendants fall under Article 11:06.04 or Article 19 of the 2013 Industrial Agreement

The Plaintiffs are flight attendants employed with the Defendant and members of the Trade Union called the Airport Airline and Allied Workers’ Union (“the Union”). This Union is the bargaining agent for all line staff employees of the Defendant. The Plaintiffs’ terms and conditions of employment were governed by the various Industrial Agreements entered into between the Defendant and the Union. The last agreement entered into between the Defendant and the Union was dated 1 September 2013.

By letters dated 30 June 2017, the Plaintiffs were all upgraded to senior flight attendants of the Defendant airline. They allege that the upgrade is a promotion by virtue of Article 11.06.04 of the 2013 Industrial Agreement and therefore, they are entitled to 10% increase in salary. The Defendant alleged that the Plaintiffs’ classification as senior flight attendants is not a promotion. It is a mere designation which allows a flight attendant, who has more seniority on a Jet or an ATR 72 Flight, where there are 50 or more passengers, the right to receive a stipend under Article 19.20.00 of the 2013 Industrial Agreement and that Article 19 is applicable to them and not Article 11.06.04. The Defendant further alleged that the designation of senior flight attendant was never considered a promotion under the 2013 Industrial Agreement which binds the Plaintiffs. The Plaintiffs further allege that as a result of the additional duties which they performed as senior flight attendants, they are considered to be Managers and/or Supervisors.

HELD: Dismissing the Plaintiffs’ claims in their entirety with no order as to costs,

1. Article 11.06.04 is not applicable to flight attendants but to other employees of the bargaining unit of the Defendant. Flight attendants fall under Article 19 of the 2013 Industrial Agreement, with the heading “Flight Attendants Supplement”.
2. The Letters dated 30 June 2017 is titled “Senior Upgrade”. Nowhere in the respective letters is the word “promotion” used. The South African case of **Mashegoane & Another vs University of the North** J 630/97 is considered.
3. The Plaintiffs were not promoted to senior flight attendants. It is a mere designation which allows a flight attendant who has more seniority on a Jet or an ATR 72 Flight, where there are 50 or more passengers, the right to receive a stipend under Article 19.20.00 of the 2013 Industrial Agreement which binds the Plaintiffs and the Defendant.
4. The Plaintiffs are not “Managers” and/or “Supervisors”: **Duran Cunningham v Baha Mar Development Company Limited** SCCivApp No. 116 of 2010 applied.

JUDGMENT

Charles J:

Introduction

- [1] By Writ of Summons filed on 22 July 2019 and a Statement of Claim filed on 10 December 2019, the 1st to 8th Plaintiffs (collectively “the Plaintiffs”) who are senior cabin/flight attendants with the Defendant (“Bahamasair”) brought this action alleging that their contracts of employment were breached since they have not been paid a 10% increase in salary due to them as a result of their promotion to senior flight attendants. This was elaborated in their respective Statement of Claims, filed on 10 December 2019. They seek, in the main, a Declaration that Bahamasair is in breach of their contract of employment and an Order that they be paid the sums due to them as a result of their promotion. The Plaintiffs rely on Article 11.06.04 of the 2013 Agreement between themselves and Bahamasair.
- [2] In its Defence filed on 6 January 2020, Bahamasair denied that the Plaintiffs were promoted and averred that the Plaintiffs were merely given the designation of senior flight attendants and, as such, they are not entitled to an increase in salary. They say that a senior flight attendant generally performs the same duties and responsibilities as a flight attendant. However, when a senior flight attendant acts in the capacity as a lead flight attendant, which is considered a senior position, on a Jet or an ATR 72 flight, where there are 50 or more passengers, the senior flight attendant is paid a stipend of either 12 or 15 dollars per flight hour for the performance of the additional duties. Accordingly, Bahamasair does not consider such a designation as a lead flight attendant or a senior flight attendant a promotion. Bahamasair relies on Article 19 of the 2013 Agreement.
- [3] The parties are therefore at odds on two narrow issues namely: (1) whether the Plaintiffs were promoted by Bahamasair and are entitled to the 10% increase in pay scale; and (2) whether the Plaintiffs were in a supervisory or managerial position?

Factual background

- [4] The facts as I found them are as follows: The Plaintiffs, at the material time, were employees of Bahamasair, a Company incorporated under the laws of The Bahamas and carrying on the business of air travel throughout the Islands of The Bahamas, USA and the Caribbean. They are still employed by Bahamasair as senior flight attendants.
- [5] The Plaintiffs are also members of the Trade Union called the Airport Airline and Allied Workers' Union ("the Union"). This Union is the bargaining agent for all line staff employees of Bahamasair. Therefore, the Plaintiffs' terms and conditions of employment were governed by the various Industrial Agreements entered into between Bahamasair and the Union. The last agreement entered into between Bahamasair and the Union was dated 1 September 2013. It was for a period of 5 years and expired on 31 August 2018 ("the 2013 Agreement"). For purposes of this action, it is the applicable agreement.
- [6] Sometime in 2017, Bahamasair posted a Vacancy Notice for the position of senior flight attendants on the notice board and reading file in the crew room. The Vacancy Notice provides, under *Position Summary* that: "*The senior flight attendant will be in charge of the other cabin attendants during a trip and has the authority and responsibility to make judgment decisions, as well as provide guidance to the cabin attendants to ensure that all flight time is utilized for effective passenger service. The objective of all cabin attendants will be to promote excellence in safety and service standards by working together as a well-coordinated team directed by the senior*". The Vacancy Notice lists 15 essential duties and finally states "*Bids for the above vacancy should be submitted using the standard company bid form. Return completed forms to the Administrative Assistant, Flight Operations or Manager of Inflight no later than Wednesday, August 7, 2019 (sic)*". The Vacancy Notice was silent on salary or any allowance (stipend).

- [7] The Plaintiffs, who were working in the capacity of flight attendants at the time of the notice posting, applied for the position of senior flight attendants.
- [8] By letters dated 30 June 2017, Bahamasair confirmed the new designation of the Plaintiffs and their “senior upgrade” as senior flight attendants. The effective date on their “new appointment as senior flight attendant” was 1 July 2017. The letters describe the senior position as an appointment into a leadership role for the Plaintiffs.
- [9] The Plaintiffs completed the senior flight attendants training pursuant to Article 2.10.23 of the Cabin Attendant Manual, Revision No. 24 (“CAM”) which forms part of the employment agreement between the parties.
- [10] After 1 July 2017, the Plaintiffs led flights as senior flight attendants on aircrafts carrying 50 or more passengers in accordance with Article 5.1 of the Cabin Operations and Safety Best Practices Guide.
- [11] On 18 April 2018, a letter was sent to Captain Roberts, Mr. Basden, Mr. Tracy Cooper and the President of the Union requesting that the Plaintiffs be compensated in accordance with Article 11.06.04 of the 2013 Agreement. Pursuant to the Article, an employee is entitled to be compensated at a rate not less than the minimum salary of the higher rated classification of ten percent (10%) of his/her salary, whichever provides the greater increase in pay, when that employee is promoted.
- [12] By letter dated 8 May 2018, the Director of Human Resources of Bahamasair, Mr. Basden, sent a letter to the Union Representative, Jewel Fountain, indicating, among other things, that management was open to providing the 10% promotional adjustment, however “*we see the situation as more complicated as the decision to apply same has far reaching implications. A review of our payroll files has shown that for the past 22 years, we have not paid promotional adjustments for persons being reassigned as Senior Cabin Attendants, but rather they receive access to*

Senior Pay. To make this change now seems irresponsible especially with the industrial agreement expiring in less than 2 months....”

The issues

[13] There are two discrete issues which arise in this case namely:

1. Whether the Plaintiffs were promoted by Bahamasair and are entitled to the 10% increase in pay scale; and
2. Were the Plaintiffs in a supervisory or managerial position?

The evidence

[14] Although the issues are legal in nature, there were one or two areas of dispute with respect to the facts. As such, evidence was taken from both parties. Despite the fact that all of the Plaintiffs filed witness statements on 31 December 2020, it was agreed that the evidence of Niquel Pinder (“Ms. Pinder”) will be treated as the evidence for all of the Plaintiffs. Her witness statement stood as her evidence in chief and she was cross-examined by Counsel for Bahamasair, Mrs. Hanna.

[15] Under cross-examination, Ms. Pinder stated that, to the best of her recollection, she was hired as a junior flight attendant. She relied on paragraph 30 of her witness statement that pursuant to Article 11.06.02, she is entitled to 10% increase of salary. She was however unable to produce any documentation to support the assertion that she was hired as a junior flight attendant.

[16] In paragraph 32 of her witness statement, Ms. Pinder averred that she attended a meeting on 4 May 2018 to discuss various issues including the increase in pay for persons who were promoted to senior flight attendants and the letter dated 8 May 2018 from Mr. Basden to Ms. Fountain emanated as a result of that meeting. By her interpretation, she asserted that *“something else was going on and he opened that management is open to providing the ten percent promotional adjustment”*. She said that Mr. Basden *“opened with that to me, so to me, he is telling me we can give this to you but he then says the file shows that for the past 22 years it has*

not been given, but there was no promotion in the past 22 years.” Ms. Pinder thereafter maintained that, in the 2013 Agreement, it states “that whenever an employee is promoted, he/she shall be compensated at a rate of not less than the minimal salary of that or higher rated compensation or ten percent”.

- [17] Also, in paragraphs 21 to 29 of her witness statement, she listed the additional duties which she and the other Plaintiffs are required to perform as a result of their promotion.
- [18] Ms. Tamara Lightbourne, the Senior Manager of Human Resources for Bahamasair, testified on behalf of the airline. Ms. Lightbourne’s evidence in chief is contained in her witness statement which was filed on 26 January 2021.
- [19] She asserted that the Plaintiffs were all hired as flight attendants and not junior flight attendants. All flight attendants are hired on the same level and their characterization as a senior flight attendant is pursuant to Articles 19.26.00 and 19.27.00 of the 2013 Agreement: (Page 56 of the Agreement). She also asserted that Article 11.06.04 of the 2013 Agreement do not apply to flight (cabin) attendants because they do not have any classifications with various levels and various salary scales. Moreover, a designation from junior flight attendant to senior flight attendant is not a promotion under the 2013 Agreement.
- [20] According to her, if that were the case, the Union and Bahamasair would have outlined these separate positions in Schedule A and B of the Agreement, with appropriate levels and salary scales. She also asserted that the Union and Bahamasair have enacted provisions in the 2013 Agreement called “Flight Attendant’s Supplement” which deals specifically with the position of flight attendants. According to her, this has not been done for any other category of workers in the bargaining unit. This is due to the fact that the position of flight attendant is a special category of worker because of the nature of the job: page 47 of the Agreement.

- [21] Under cross-examination, Ms. Lightbourne was referred to paragraph 32 of her witness statement. She agreed that there are flight attendants who are not senior. She also agreed that before you could use the designation “Senior”, you have to complete the qualification process and Cabin Crew Leadership Training.
- [22] The senior flight attendants supervise other flight attendants. According to her, there are senior flight attendants and other flight attendants. She agreed with Mr. Munroe QC that there are flight attendants who are not senior but, for regulatory purposes, Bahamasair is required to have a senior flight attendant on every flight with over 50 passengers. Ms. Lightbourne said that it is not a Bahamasair requirement but it is a requirement for all airlines.
- [23] All in all, I found Ms. Lightbourne to be a knowledgeable witness and her evidence was more plausible than that of Ms. Pinder who produced no documentary evidence that she was employed as a junior flight attendant. I accepted Ms. Lightbourne’s evidence that there is really one designation at the date of employment: flight attendant as shown in Article 19 and after some years, that employee may be “upgraded” to a senior flight attendant. The CAM refers to “cabin attendants” and “senior cabin attendants” which suggests, in my opinion, that the upgraded flight attendants are called “senior” flight attendants and there are other flight attendants. In the Organizational Chart, the others are designated “junior” flight attendants.

Discussion and analysis

Issue 1: Whether the Plaintiffs were promoted to senior flight attendants

- [24] Learned Queen’s Counsel Mr. Munroe appearing with Ms. Butler for the Plaintiffs submitted that the Plaintiffs were promoted from junior flight attendants to senior flight attendants. They further submitted that the positions as outlined in the CAM exhibits a hierarchy relative to various ranking positions within Bahamasair where, it is evident by the hierarchy, that the post of senior flight attendant reflects a level of power and authority over a junior flight attendant which is to be interpreted as a promotional move and not a change in status.

- [25] Counsel next submitted that it is erroneous for Bahamasair to advance the argument that the post of junior and senior flight attendants is not deemed a promotion, because in order to qualify for the position of senior flight attendant, one must sit and be a successful candidate in the Cabin Crew Leadership Training, which was advertised by Bahamasair, among other requirements, which the Plaintiffs had satisfied and fulfilled. Additionally, says Counsel, the 2013 Agreement outlines the duties and responsibilities of both junior and senior flight attendants and, in the role of a senior flight attendant, the level of responsibility shifts and the duties of the two positions vary in some respect.
- [26] Learned Queen's Counsel further submitted that the witness statements of the Plaintiffs and the oral evidence of Ms. Pinder put the duties of both positions into context and outlines how they would have executed their duties on flight services as a junior and currently as senior flight attendants.
- [27] The Plaintiffs further argued that the notion that the role of senior flight attendants is just a change in status is flawed since, according to the evidence given by Ms. Lightbourne, Bahamasair is unable to fly without a senior flight attendant once the aircraft carries more than 50 passengers. Further, Ms. Lightbourne stated that the position of senior flight attendant is a regulatory requirement for all airlines including Bahamasair. The Plaintiffs further argued that, in light of this evidence, the position of senior flight attendant can be viewed and purports to be a position that one cannot hold if they are not qualified and cannot demonstrate a level of competency in order to make sound judgment decisions for Bahamasair.
- [28] Undoubtedly, say the Plaintiffs, the responsibilities of junior and senior flight attendants are in fact not the same and are not a change in status, but a position which a person must meet promotional standards and is required by Bahamasair. The Plaintiffs relied on the South African case of **Mashegoane & Another vs University of the North** J630/97 where Mlambo J, in his judgment, found that although the applicant's salary would not increase, he would have received other

benefits and it had higher status and more responsibilities than a lecturer. The judge held that a move from a lecturer to a Dean was a promotion. He stated:

“It is common cause that there is an employment relationship between Mashegoane and the University. It is also apparent that the position of Dean is of a higher status. It carries with it the benefits of a car and a Dean’s allowance. By virtue of being Dean of a Faculty certain powers accrue to the incumbent.

Had Mashegoane been appointed his salary would have remained the same but he would have received a Dean’s allowance and would have a car at his disposal. These are the only mentioned benefits he would receive. I would however also assume that once appointed as Dean his status would be considerably elevated. He would further have responsibilities relating to the management and control of the Faculty. He would also become chairperson of the Faculty Board. It goes without saying that he would be clothed with certain powers and authority to be able to manage and control the Faculty.

To me, at least this indicates that the position of Dean is not a token position, it has real meaning and power attached to it. It is a position that is of a higher status with more responsibilities than a person who is, for instance, a lecturer in the same Faculty. I am therefore of the view that the appointment to the position of Dean amounts to a promotion”. [Emphasis added]

[29] The Plaintiffs also submitted that the Court, when interpreting the Articles in the 2013 Agreement relative to the promotion and 10% increase in pay for the Plaintiffs, the CAM and the level of responsibility given to senior flight attendants, should also take into account the basic procedure as it relates to promotional exercises within the workplace.

[30] Learned Counsel, Mrs. Hanna appearing for Bahamasair, properly submitted that the starting point is to examine the 2013 Agreement which governs the Plaintiffs’ respective contracts of employment. Under the rubric, Flight Attendants Supplement in Article 19, a flight attendant is defined as:

“19.01.00 An Employee who is qualified, and whose primary duties include the performance of all cabin services including the safety and comfort of the passengers, and is employed by the Employer as a flight attendant.”

- [31] Mrs. Hanna submitted that there is no classification or distinction between a junior flight attendant and a senior flight attendant in this section of the Article. She further submitted that, more importantly, there is no mention of the designation “junior flight attendant” anywhere in Article 19 or in the 2013 Agreement. As a matter of fact, the designation “senior flight attendant” is only mentioned twice in Article 19. Firstly, in Article 19.26.00 under the sub-heading “Senior Flight Attendant Responsibility” and in Article 19.27.00, under the sub-heading “Qualification and selection for Senior Flight Attendants”.
- [32] Mrs. Hanna also submitted that the qualification and/or selection criteria for the position of senior flight attendant is wholly different from the criteria for a transfer or promotion of another employee within the Bargaining Unit of Bahamasair. Also, under Article 11.06.02 of the 2013 Agreement, Bahamasair is mandated to apply the principles of greatest ability, required skill, experience and qualification when selecting an employee to fill a particular position, through promotion or transfer, within the Bargaining Unit. And if there are two (2) or more candidates who are equally qualified, the more senior candidate is given first preference. The successful candidate is then placed on a 90-day probation and if he/she does not perform satisfactorily, the candidate is returned to his/her former position: Article 11.06.00.
- [33] Mrs. Hanna next argued that the selection criteria for a senior flight attendant is in direct contrast to the aforementioned and that a senior flight attendant need not possess any special degree of skill, have a particular educational background or high level of performance, which is typically required when an employee is being promoted to a new position. Under Article 19.27.00, the most significant criteria, which influences the selection process for a senior flight attendant, is tenure.
- [34] Mrs. Hanna also argued that the nomenclature in Articles 11.6.00 - 11.06.05 and Article 19.27.00, is completely different which also signifies that it was the intention of the Union and Bahamasair to assign rather than promote a flight attendant to the position of senior flight attendant.

- [35] Another difference, says Mrs. Hanna, is that Articles 11.6.00 - 11.06.05 is located in the main body of the 2013 Agreement and is found under the rubric "Transfer and Promotion" whereas Article 19.27.00 is located specifically in the Flight Attendant Supplement and is found under the rubric "Qualification and Selection for Senior Flight Attendants".
- [36] Mrs. Hanna next submitted that the obvious conclusion to be drawn is that senior flight attendants are merely selected and/assigned to their position as and when a vacancy arises whereas other employees are transferred or promoted to various positions within the Bargaining Unit.
- [37] In addition, the general rule of law that all Articles of an Industrial Agreement are applicable to every member of the Bargaining Unit no longer applies when the parties have specifically outlined terms and conditions relative to a particular category of employees. In this case, Bahamasair and the Union have specifically agreed to terms and conditions relative to flight attendants only. These terms and conditions include, but are not limited to, Overtime pay, Public holiday, Duty roster/roster composition, Vacation pay, Maternity leave and the selection process and compensation for a senior flight attendant. This difference in terms makes it clear that flight attendants do not fit the same pattern as other members of the Bargaining Unit. The Union and Bahamasair have agreed that different rules will apply for flight attendants.
- [38] Mrs. Hanna maintained that the Plaintiffs cannot rely on Articles 11.6.00 -11.06.05 since those provisions are not applicable to flight attendants. Mrs. Hanna's submissions are compelling and make a lot of sense.
- [39] Further, a flight attendant is not considered a classification capable of being promoted under Article 11.06.04 because they are not classified into different levels or salary scales and there is no hierarchy as evidenced by F6 in Schedule A and B of the 2013 Agreement. Since a designation from a junior flight attendant

to a senior flight attendant is not reflected in the 2013 Agreement, there was no promotion as alleged by the Plaintiffs.

[40] She stated that Article 19 is the applicable provision in the 2013 Agreement which deals specifically with flight attendants. She stated that the definition section of the article does not classify/define flight attendants as junior or senior – there is simply a definition for “flight attendant”.

[41] In addition, the qualifications and/or selection criteria for a senior flight attendant differs from an employee who is transferred or promoted. Hence Bahamasair and the Union specifically agreed to terms and conditions relative to flight attendants only which includes but is not limited to the selection process and compensation for a senior flight attendant. The role of a senior flight attendant only arises where two or more flight attendants work the same flight and on ATR flights. Article 19.20.00 was referenced and includes the compensation due to senior flight attendants. Article 19.20.00 states:

“Whenever two or more flight attendants work the same flight, the flight attendant with the greatest seniority will be the senior on that flight and shall receive fifteen dollars (\$15.00) per flight hour. The most senior on the ATR flights shall receive twelve dollars (\$12.00) per flight hour.”

[42] It is clear also that all flight attendants have one salary scale which ranges from \$15,597.00 to \$32,397.00, with increments of \$600.00. This is in direct contrast to the positions of Accounts Clerk, Reservations Agent, Ticket Sales Agent, and Customer Service Agent etc., all of which are classified into various levels (hierarchy). These positions commence at Level I and can go up to a Level IV. Thereafter, the positions become Supervisory in nature.

[43] It is also clear to me that the Plaintiffs were not promoted but whenever they are serving on a Jet or an ATR 72 flight carrying 50 or more passengers, they are designated “senior flight attendants” in name only and are only entitled to the stipend to compensate them when they work in that capacity.

[44] In any event, flight attendants are covered under Article 19 of the 2013 Agreement. The entire article refers to them. Article 11 refers to “employees” There is not one single mention of “flight attendant” in Article 11.

[45] As Ms. Lightbourne alluded to, the role of a senior flight attendant is a unique designation which arises upon the existence of two (2) pre-conditions, namely, (1) when two (2) or more flight attendants work the same flight and (2) on a Jet or an ATR 72 flight.

[46] In addition, Article 19.20.00 of the 2013 Agreement is silent regarding whether or not a flight attendant has been promoted to the position of senior flight attendant. However, a careful examination of the remaining articles in Article 19, and in particular Article 19.26.00, provides a clear explanation of the role of a senior flight attendant. Article 19.26.00 states:

“In addition to regular flight attendants duties, a flight attendant assigned to work a senior position shall perform additional duties as outlined in the Employer's manual.”

[47] The unambiguous words of this section demonstrates that a flight attendant is merely **assigned**, and not promoted to the position of a senior flight attendant when the preconditions under Article 19.20.00 exist. Moreover, during this assignment, the flight attendant has expressly agreed to perform additional duties as outlined in the Employer’s Manual which in this instance is CAM.

[48] The Plaintiffs, in their various Witness Statements, have outlined the additional duties which they are required to perform whenever they act in the role of senior flight attendant.

[49] However, as Ms. Lightbourne noted in paragraph 23 of her Witness Statement, the Plaintiffs do not perform the duties as a senior flight attendant every day. Additionally, there are some occasions (although it is avoided as much as possible) where two (2) senior flight attendants work the same flight and only the most senior flight attendant would receive the allowance on that day.

- [50] To my mind, if it were the intention of the Union and Bahamasair for the Plaintiffs to receive a promotion when they performed the duties of a senior flight attendant, then a terminology other than the word *assigned to work* would have been used.
- [51] Further, the emails from Wendy Humes, a senior flight attendant dated 10 October 2018, to Ms. Fountain as well as the letter dated 8 May 2018 from Selvin Basden, Director of Human Resources, advised Ms. Fountain that “management is open to providing the (10%) promotional adjustment, however, *“we see the situation as more complicated as the decision to apply same had far reaching implications...our pay roll files has shown that for the past 22 years, we have not paid promotional adjustments for persons being reassigned as senior flight attendants”*. He further advised that this is a matter that should be negotiated in the new Industrial Agreement.
- [52] All in all, I agree with Mrs. Hanna that if the senior flight attendants were promoted, there would have been no need for the then Union’s President to make a formal request for the Plaintiffs to be paid. Further, the Plaintiffs could have brought a representative of the Union who would have been able to speak intimately about the Union’s interpretation of and the purpose of Article 11.06.04 in the 2013 Agreement. The Plaintiffs have failed to adduce any corroborative evidence which may have assisted the Court.
- [53] For all of the reasons stated above, I therefore find that the Plaintiffs were not promoted to senior flight attendants and are therefore not entitled to a 10% increase in pay.

Issue 2: Were the Plaintiffs in a supervisory or managerial position?

- [54] The Plaintiffs alleged that subsequent to being promoted to senior flight attendants, they were given additional duties where there was a shift in the hierarchy which ultimately made junior flight attendants responsible to senior flight attendants and senior flight attendants administratively responsible to the Manager of Inflight Services and to the Flight’s Pilot in Command.

[55] The Plaintiffs, in their respective witness statements, listed the additional duties that they were tasked with since becoming senior flight attendants. For example, at paragraphs 17 to 29 of her witness statement, Ms. Pinder stated:

- “17. That as a Senior Cabin Attendant I am in charge of the other Cabin Attendants during a trip and has the authority and responsibility to make judgment decisions, as well as provide guidance to Cabin Attendants to ensure all flight time is utilized for effective passenger service.**
- 18. That after my promotion as Senior Cabin Attendant I became administratively responsible to the Manager Inflight Services and is ultimately responsible to the flight’s pilot in command. A Senior Cabin Attendant is classified as one who has attained leadership/supervisory designation through the successful completion of the qualification process and Cabin Crew Leadership training.**
- 19. That as a Senior Cabin Attendant I am responsible for the performance of the duties as outlined in the Cabin Attendant Manual and all applicable Operations Notices or Bulletins and compliance by the other crew members.**
- 20. That I am responsible for ensuring that all Cabin Attendants on their crew are available for the flight.**
- 21. That I am responsible for conducting emergency, safety and service briefings prior to every trip to ensure that Cabin Attendants are knowledgeable of required procedures and assignments.**
- 22. That I coordinate pre-flight activities on assigned flights to ensure adequate provisioning of meals, beverages, equipment and supplies.**
- 23. I ensure that all Cabin Attendants duties are completed, including the accurate accounting for bar sales, pre-flight emergency equipment checklist inspection and cabin appearance check.**
- 24. I coordinate with Captain, Customer Service and inform other Cabin Attendants regarding weather, delays, non-routine incidents, and/or passenger(s) with special needs.**
- 25. I am responsible for coordinating all communication with the flight deck.**

26. **That I am responsible for being thoroughly familiar with all Regulations, Company Manuals, Bulletins and any other information pertinent to his/her duties.**
27. **That I am responsible for conducting a crew briefing which includes the assignment of special information for situations that might occur onboard prior to each flight.**
28. **That I am responsible for ensuring all cabin Attendants on board have required items, have completed safety preflight checks and confirm (sic) to all Company policies and procedures.**
29. **That I am responsible for ensuring that all required Company forms and/or documentation are completed and processed for each assigned Cabin Attendant”.**

[56] These purported additional duties are replicated in each of the other Plaintiffs’ witness statements. In their evidence, the Plaintiffs have not demonstrated to the Court what duties they performed as flight attendants (junior) so that the Court could have a feel of how their duties increased when they were ‘upgraded’ to senior flight attendants.

[57] Ms. Lightbourne noted that the main differences in the duties of a senior cabin attendant as compared to those of a cabin attendant (junior) is that the senior cabin attendant (i) conducts a crew briefing prior to each flight which includes the assignments for normal and abnormal situations that might occur on board; (ii) is responsible for ensuring all cabin attendants on board have required items, have completed safety preflight checks and conform to all Company’s policies and procedures; (iii) is responsible for ensuring that all required company forms and documentation are completed and processed for each assigned cabin attendant; (iv) reports directly to the Captain and; (v) leads the coordination of normal and emergency cabin procedures.

[58] According to Ms. Lightbourne, the senior flight attendant is compensated for these additional duties by receiving a stipend of either twelve or fifteen dollars per flight hour. She also confirmed that these are not daily duties. The role of a senior flight

attendant only comes into play when it is a Jet or an ATR 72 flight which has more than 50 seats. The stipend is stipulated in Article 19.20.00 of the 2013 Agreement.

[59] On a balance of probabilities, I find the evidence of Ms. Lightbourne to be more plausible than that of Ms. Pinder. I therefore accept her version of the duties of a senior flight attendant.

[60] The Plaintiffs contended that they were responsible for, among other things, ensuring the compliance of other crew members, briefing and assignment of normal and abnormal situations which may occur onboard prior to each flight, ensuring that all required forms of the Company were completed and processed for each Cabin Attendant. Additionally, say the Plaintiffs, the Vacancy Notice summarizes the position as one where, *“Senior Cabin Attendants will be in charge of the other Cabin Attendants during a trip and has the authority and responsibility to make judgment decisions, as well as provide guidance to the Cabin Attendants to ensure all flight time is utilized for effective passenger service.”*

[61] According to the Plaintiffs, these acts were only performed by them after having been made senior flight attendants and they demonstrate a level of authority in the interest of Bahamasair; an exercise of authority over junior flight attendants and the level of independent judgment needed and required (*as per Vacancy Notice*) for situations when on board aircrafts belonging to Bahamasair, thereby satisfying the elements of a supervisory/managerial role.

[62] Mrs. Hanna submitted that, in addition to the Plaintiff’s expressly agreeing to perform additional duties, Article 19.26.00 provides a clear explanation of the role of a senior flight attendant. Article 19.26.00 states:

“In addition to regular flight attendants duties, a flight attendant assigned to work a senior position shall perform additional duties as outlined in the Employer’s manual.”

[63] Mrs. Hanna submitted that since the terms “Supervisor” and “Manager” are not defined in the Employment Act, Ch. 321A, the definitions have been adopted from

the Fair Labour Standards Act, even though it was repealed by the Employment Act. Paragraph 3 (The First Schedule) of the Fair Labour Standards (Exceptions) Order, provided that sections 5 to 7 of the Fair Labour Standards Act Ch. 295, which provided for standard hours of work, days off and overtime pay respectively, were not applicable to:

"Any employee disentitled under his contract of employment to the payment of overtime pay and performing managerial or supervisory functions, that is to say, having authority on behalf and independently of, his employer to hire, or lay off or promote or transfer or exercise disciplinary power over persons employed by his employer or to adjust the grievance of such person".

- [64] Section (1) of paragraph 3 of the Fair Labour Standards (Exceptions) Order defines a “supervisor” or “manager” as an employee who has *authority on behalf and independently of his employer to hire and lay off or promote or transfer or exercise disciplinary power over persons employed by his Employer or to adjust the grievance of such person.*
- [65] Both parties rely on the Court of Appeal decision of **Duran Cunningham v Baha Mar Development Company Limited** SCCivApp No. 116 of 2010 which distinctively define the role of a manager/supervisor within an employment scheme. In that case, Mr. Cunningham was employed as the Logistics Coordinator and his job description included, but was not limited to, coordinating all logistics on behalf of the Company, liaising with Shipping Agents, Freight forwarders and Bahamas Customs, etc., to ensure that all orders were delivered in a timely manner. Mr. Cunningham made a claim for payment for “lieu days” to the Human Resources Manager and his claim was rejected because *“his position was a supervisory one and he was not technically entitled to overtime.*
- [66] Mr. Cunningham brought a claim for compensation for his lieu days at the Industrial Tribunal which was dismissed. In 2010, the Court of Appeal heard his appeal and the terms “Supervisor” or “Manager” was clarified.

[67] Allen P, in delivering the Judgment of the Court, held that the definition of "Supervisory or Managerial" survived the repeal of the Fair Labour Standards Act. Therefore, to come within the definition of "Manager or Supervisor" the Employee must have the authority to hire, lay off, promote, transfer or exercise disciplinary power over persons employed at an establishment on behalf of and independently of his employer.

[68] At [12], Allen P. stated that "there is no definition in the Act which gives any insight as to what is a "supervisory or managerial" position. Then at [16], she stated:

"Under the definition, there are three essential elements of supervisory or managerial status: (i) authority to exercise one or more of the functions stated in the definition; (ii) the exercise of such authority in the employer's interest, and (iii) the exercise of independent judgment in performing one or more of the functions stated."

[69] The Court clearly stated that, in the absence of any of the aforementioned powers set out in the definition, an Employee will not be considered a Supervisor or Manager.

[70] In the present case, it is plain that the Plaintiffs cannot be considered as Managers or Supervisors because they did not have the authority to hire, lay off, promote, transfer or exercise disciplinary power over or to adjust the grievance of other flight attendants, on behalf of and independently of Bahamasair.

[71] Furthermore, the Plaintiffs have not adduced any evidence that they were able to perform the aforementioned functions, therefore, their respective claims that they have been promoted to Managers and/or Supervisors based on the duties which they performed, must fail.

Overtime pay

[72] The Plaintiffs have claimed overtime pay in their Statements of Claim and are entitled to the same pursuant to Article 19.12 of the 2013 Agreement. Managers and/or Supervisors are not entitled to overtime pay: section 8 of the Employment

Act. I have found that they are not Managers and/or Supervisors. Therefore, if they have worked overtime, as they alleged, they should be compensated in the amount stated in their respective Witness Statements.

Conclusion

[73] In a nutshell, the Plaintiffs 'hang their hat' on Article 11.06.04 and the South African case of **Mashegoane**. In **Mashegoane**, the position of a Dean of Students was incorporated and was a recognizable position within the preferment scheme of the University. In the present case, a senior flight attendant is not a recognized title within the 2013 Agreement as, for example, an Accounts Clerk or Reservation Agent of Bahamasair. In fact, there is no classification or distinction between a junior flight attendant and a senior flight attendant in Article 19 of the 2013 Agreement. More importantly, there is no mention of the designation "junior flight attendant" anywhere in Article 19 or in the 2013 Agreement. As a matter of fact, the designation "senior flight attendant" is only mentioned twice in Article 19. Firstly, in Article 19.26.00 under the sub-heading "senior flight attendant Responsibility" and in Article 19.27.00, under the sub-heading "Qualification and selection for senior flight attendants". However, in the CAM, cabin attendants and senior cabin attendants are used. The nomenclature "junior cabin attendant" is used for the first time in the Flight Operations Inflight Services Organizational Chart and is reflected in that chart as a position below that of senior cabin attendant. That said, without demur, the 2013 Agreement binds the parties. Article 2:03:00 of that Agreement states:

"The Employer and the Union agree that this Agreement is the final and binding authority regarding working conditions and all other terms and conditions of employment contained herein."

[74] In **Mashegoane**, he was not entitled to a salary increase but to a Dean's allowance, a car at his disposal, elevation in his status by becoming chairman of the Faculty Board and managerial responsibilities and control of the faculty. In the present case, the senior flight attendants are given an allowance but the commensurate value and benefits of their title are included in the 2013 Agreement.

What they are entitled to is only the allowance as set out in Article 19.20.00. Further, **Mashegoane** was not alternating his position with any other faculty members and would have been expected to carry out his duties daily. In this case, the senior flight attendants' title and duties were occasional and were only engaged when the need arises (when there are two flight attendants on one flight and on ATR 72 flights). Even within the two circumstances in which it is needed, only one flight attendant, based on seniority, will take the lead and be entitled to the allowance.

[75] Further, like both parties, I too accept the definition of “supervisor” and “manager” as defined by the Court of Appeal in **Duran Cunningham**. Mr. Cunningham’s duties included “*managing the flow of material into the country and to the job site, coordination of stock items in the 3 warehouse or storage facilities, coordinating the movement of documents between Customs and the shipping agents... [but] no evidence that he had any power to hire, promote, lay off or discipline staff on behalf or independently of his employer.*” In the present case, the Plaintiffs are tasked with some supervisory duties but not to the extent of being able to hire, promote, lay off etc. on behalf of Bahamasair. The decision of the Court of Appeal was that Mr. Cunningham was not a supervisor or a manager. Likewise, I find that the Plaintiffs are not supervisors or managers.

Costs

[76] Bahamasair is the successful party in this action. The general rule is that the unsuccessful party should pay the costs of the successful party. That said, in the exercise of my discretionary powers, the Court may however order a successful party to pay all or part of the costs of an unsuccessful party, or may make no order as to costs.

[77] The Plaintiffs are still senior flight attendants with Bahamasair and in order for the parties to maintain a congenial and cooperative relationship, I will make no order as to costs. In other words, each party will bear their own costs.

[78] Like Counsel for Bahamasair, if the Plaintiffs are desirous of changing the present position, the proper procedure is to lobby with their Union to negotiate a new Industrial Agreement with Bahamasair.

Dated this 16th day of August 2021

**Indra H. Charles
Justice**