

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE EQUAL OPPORTUNITY TRIBUNAL**

(Referred pursuant to S. 39(2) of the Equal Opportunity Act 2000 as amended by Act No. 5 of 2001)

E.O.T. No. 0002 of 2012

**BETWEEN**

**DEREK SALANDY**

**Complainant**

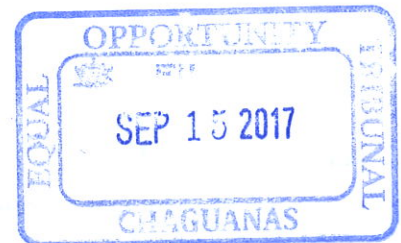
**AND**

**THE PETROLEUM COMPANY OF  
TRINIDAD AND TOBAGO (Petrotrin)**

**Respondent**

**CORAM:**

His Honour Mr. Rajmanlal Joseph	- Judge/Chairman
Her Honour Ms. Leela Ramdeen	- Lay Assessor
His Honour Mr. Harridath Maharaj	- Lay Assessor



**APPEARANCES:**

**Mr. Shankar Bidaissee** appeared on behalf of the **Complainant**

**Mr. Russell Martineau, S.C.,** appeared on behalf of the **Respondent**

**Date of Delivery of Judgment: September 14, 2017**

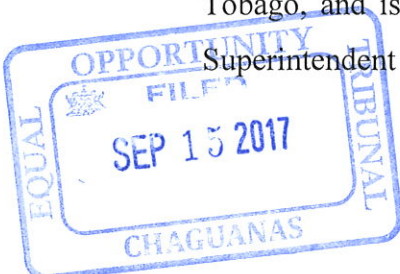
**JUDGMENT**

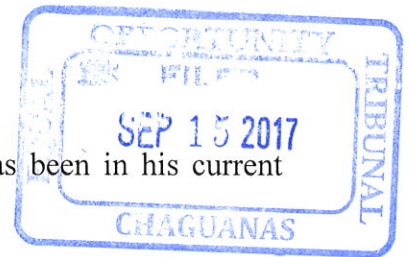
**BACKGROUND:**

1. This case concerns the allegation of the Complainant that he was continuously discriminated by and/or treated unequally by the Respondent in regard to his employment and more specifically his remuneration package contrary to Sections 8 and 9 of the Equal Opportunity Act, Chap. 22:03
2. Further, the Complainant seeks compensation for being treated less favourably than Mr. Brett. In addition to declarations that the Respondent contravened its own employment policy in the manner of hiring of Mr. Brett; and a further declaration that the Complainant was treated illegally and/or unfairly, and discriminated against by the Respondent on the basis of race and/or origin and/or ethnicity and/or nationality. As well as costs and interest.
3. The Respondent on the other hand, denied that it discriminated against the Complainant pursuant to Sections 8 or 9 of the Act. And that there was no discrimination against the Complainant in employment on the ground of status or victimisation under the Act. Moreover, it is the further contention of the Respondent that the Complainant is not entitled to any of the reliefs claimed in his Amended Complaint and Particulars.

**THE EVIDENCE:**

4. In support of their positions as outlined hereinabove, the parties submitted the following witness statements:
  - (a) Witness Statement of the Complainant dated and filed on October 2, 2012
  - (b) Witness Statement of Carrol Jarvis dated and filed on October 1, 2012; and Supplemental Witness Statement of Carrol Jarvis dated and filed on October 14, 2015.
5. Essentially, the evidence of the Complainant was that he is a citizen of Trinidad and Tobago, and is permanently employed with the Respondent as a Process Engineering Superintendent in the Refining and Marketing Division at Point-a-Pierre; and have been



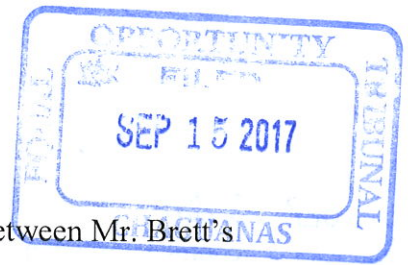


in the employ of the Respondent since August 11, 1980, and has been in his current position since May 1, 2002.

6. It is the Complainant's contention that on April 23, 2007 the then Chief Process Engineer sent out an email to persons in the Operation and Process Engineering Department advising that one Luis Cuauro Brett was employed by and/or joined the Respondent as the Process Engineering Superintendent – Heavy Oils, effective April 23, 2007.
7. The Complainant further avers that at all material times Mr. Brett was a Venezuelan national who had no citizenship or residence status in Trinidad and Tobago; and while they were both qualified to hold the position of Process Engineering Superintendent he (the Complainant) had more experience than Mr. Brett. Additionally, the position of Process Engineering Superintendent-Heavy Oils is a position in the approved organization structure of the Respondent.
8. The Complainant maintained that he spent 32 years in the Process Engineering Department, that is, from August 1980 to 2012. And before the Respondent was formed in 1993 the aforesaid position of Process Engineering Superintendent has always been filled and occupied by citizens and nationals of Trinidad and Tobago, not foreign nationals. He further indicated that he held the position of Process Engineering Superintendent since May 1, 2002 five (5) years before Mr. Brett joined the Respondent. And at all times Mr. Brett was employed and was working as a Process Engineering Superintendent, a position same as and/or materially similar to his, if not identical, and they performed similar functions.
9. It is the contention of the Complainant that Mr. Brett had received, checked or signed off on numerous Processing Engineering Reports and Signed same as Process Engineering Superintendent. In addition, while he (the Complainant) served as Acting Chief Process Engineer on several occasions, Mr. Brett reported to him on several occasions while performing the functions of Process Engineering Superintendent.

10. Furthermore, the Complainant posits that as far as he is aware there is no position on the organizational structure referred to as "*Process Engineering Consultant*" which Mr. Brett is alleged to have been employed as. At all times he signed as Process Engineering Superintendent and carried out functions akin to this position, just as he (the Complainant) did. To be sure, the Complainant maintained that Mr. Brett was not hired as a consultant but as an employee. And pointed out that on an occasion he co-signed Mr. Brett's application for annual leave which only employees are entitled to do. Further, the Respondent produced "*call cards*" for Mr. Brett bearing the Respondent's logo in which Mr. Brett was described as a "*Process Engineering Superintendent-Heavy Oils*". And was given a company cell phone and pager all of which are only given to employees.
11. The Complainant further asserted that as at April 2007, Mr. Brett's base monthly salary was \$51,487.00. Mr. Brett also received the use of a new leased vehicle at a rate of \$4,926.60 per month which was paid for by the Respondent. And received a gratuity of 15% of his salary calculated to be \$7,723.00 per month. Mr. Brett also had free accommodation for himself and his family of a 3-4 bedroom house, which in the Complainant's opinion was of a rental value of \$10,000.00 per month, which said residence had unlimited access to all amenities on the Respondent's Compound, including swimming pool, tennis and squash courts, club house, restaurant and bar and security which were never afforded to the Complainant. Mr. Brett further received \$500.00 of gasoline per month; and enjoyed all these benefits for approximately 42 months. On the other hand, the Complainant put forward the position that as at April, 2007 he received a base monthly salary of \$24,334.00, a travel plan of \$650.00 per month, travelling allowance of \$4,500.00 per month, a pension plan payment of \$3,406.76, and savings plan payment of \$730.02. The Complainant further declared that he did not receive any monies from the Respondent for any medical plan, but instead contributed to a group plan.

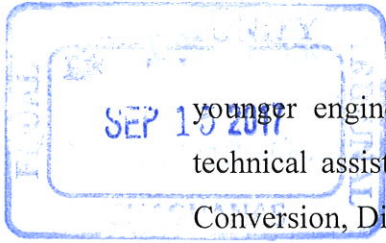




12. The Complainant further asserted that he brought this disparity between Mr. Brett's remuneration package and his own to the Respondent's General Manager (Refinery) during the latter half of 2007 without any positive result. The Complainant further observed that the position of Process Engineering Superintendent was never advertised in the local newspapers, which precluded nationals of this country the opportunity of applying for the said position. The Complainant also indicated that by not advertising the aforesaid position the Respondent breached its recruitment policy/procedure guide.
13. The Complainant averred that he met with the then Chairman of the Respondent and other high ranking officials to have this matter resolved without success. And in spite of his representations Mr. Brett's contract was renewed for another two years in April 2009.
14. Having been unable to have the Respondent's management resolved this matter, the Complainant made a complaint to the Equal Opportunity Commission (EOC). And subsequently wrote the then Minister of Energy and Energy Affairs but even though a report was generated, his matter remained unresolved. Moreover, this witness was comprehensively cross-examined by counsel for the Respondent and his responses were straightforward and consequently the Tribunal found this witness to be credible.

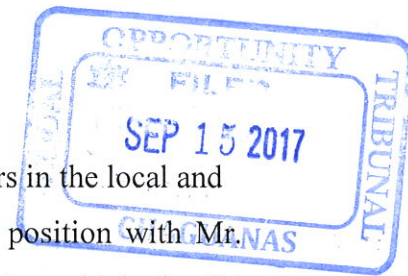
**RESPONDENT'S EVIDENCE:**

15. The Respondent's evidence on the other hand was presented by way of a Witness Statement of Carrol Jarvis, then Head, Human Resource Services (Ag.) dated and filed on October 1, 2012; and her Supplemental Witness Statement dated and filed on October 14, 2015.
16. In essence Ms. Jarvis averred that Mr. Brett was engaged on contract as a "*Process Engineering Consultant*" by the Respondent with effect from April 23, 2007. This witness put forward the position that this position required a higher level of skills. And based on the assessment of the current Process Engineering Superintendents, no one within the Respondent was found to have demonstrated the skills required. Ms. Jarvis maintained that the preferred candidate was required to transfer skills/knowledge to the

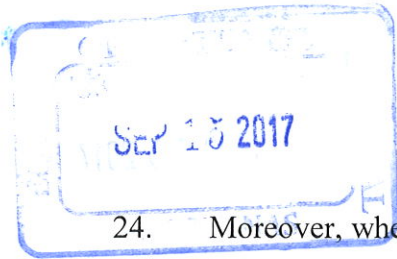


younger engineers in the Optimization Department. This included the provision of technical assistance and coaching for Process Engineers within the Hydro-processing, Conversion, Distillation, Utilities and Oil Movement area.

17. Furthermore, this witness advanced the position that the post of Process Engineering Consultant was not advertised having regard to the difficulty previously experienced by the Respondent in filling engineering positions for Reservoir Engineers, Chemical Engineers, Petroleum Engineers and Mechanical Engineers. The method used in the recruitment of the position of Processing Engineering Consultant was as follows:  
A job profile was prepared outlining the requirements of this temporary function; the Senior Managers in the organization were made aware of and provided with the profile of the position, names were provided by managers and also from the resident Consultant Shell Global Solutions. Ms. Jarvis further indicated that five (5), persons were selected for consideration and Mr. Vales was offered the position but declined.
18. Ms. Jarvis further asserted that the Respondent engaged the services of a local recruitment agency, Personnel Management Services Limited (PMSL) as well as consulted with senior engineering professionals within and outside the Respondent with the intention of identifying other potential candidates to fill the position of Process Engineering Consultant. From this exercise Mr. Brett and a local candidate Mr. Sooknanan were shortlisted and interviewed by the Respondent.
19. Ms. Jarvis further stated that Mr. Brett was selected because he had *“the minimum 15 years experience, proven ability in plant optimization, skilled with process simulation software for design and unit monitoring/optimization work and knowledge of different oil refinery processes. He had the requisite skill, qualification and experience. Mr. Brett was unique in that his experience was diverse, his 19 years experience spanned the engineering discipline from Process Straight through to Design. He has worked in countries such as LYBIA, CHICAGO, PARIS and VENEZUELA and his experience was not limited to one type of Refinery Process. His skills also included, mentoring and coaching”*.



20. This witness far maintained that due to the scarcity of Process Engineers in the local and international market the Respondent negotiated a 2 year contractual position with Mr. Brett which included a basic salary, housing and the provision of a motor vehicle; he did not have the benefit of a medical package or pension plan which are the main advantages of a permanent employee. Further, in her Supplemental Witness Statement, Ms. Jarvis exhibited copies of the two contracts of the Respondent and Mr. Brett.
21. This witness was extensively cross-examined by counsel for the Complainant and it came out that she did not have any knowledge of the job specification of the position of Processing Engineering Consultant; and she was not privy to any such information, since that was done at the level of the Managers and Vice President of Refining and the Vice President of Human Resources at the time. In essence, she did not know what the criteria was for employing this person.
22. When Ms. Jarvis was asked how she formed the opinion that Mr. Brett possessed a minimum of 15 years experience, proven ability in optimization and so on; she indicated that it was based on information she received at the time from the existing line. The "line" she explained was the President at the time and the Vice President of Refining. Furthermore, when asked when she became involved in the process of recruiting Mr. Brett, her response was that *"based on the fact that they were going outside for this level that was taken out of the hands at the time of my section ok, what we were asked to do after the recruitment was done was to prepare the relevant documents and to get the work permit because the work permit was within my section as well as to organize to have the contract prepared"*.
23. Further, when counsel for the Complainant indicated to Ms. Jarvis that according to you no one could coach and mentor in Petrotrin. She responded by stating *"According to me based on what the management was saying they did not have anybody in their section right now that they felt could do that for them"*. When it was pointed out to her that a part of the Complainant's CV indicated *"Coaches and mentors Process Engineers and identifies training needs for career development"*. Her response was that she did not deal with any of his skills in her Witness Statement.



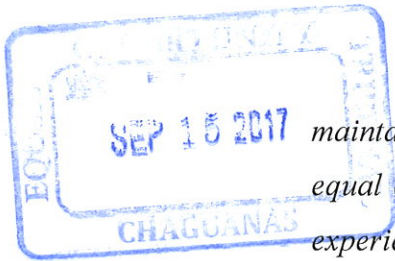
24. Moreover, when Ms. Jarvis was asked whether she produced any documentary evidence to show that Mr. Brett performed a job that was different from the Complainant. She responded; *"no I did not produce anything that showed anything like that"*.
25. Based on the contradictions that emanated from the cross-examination of Ms. Jarvis the Tribunal found that this witness was less than credible.

**FINDINGS OF FACT:**

26. (a) That the Complainant is a citizen of Trinidad and Tobago and an employee of the Respondent; and at all material times held that substantive position of Process Engineering Superintendent, and at various times also acted as Chief Process Engineer. And while so acting Mr. Brett reported to him.
- (b) That Mr. Brett was an employee on two consecutive 2 year contracts functioning in the position of Process Engineering Superintendent-Heavy Oils; which said position was confirmed by an email of April 20, 2017 sent to members of staff of the Engineering Department indicating that Mr. Brett had joined Petrotrin as the Process Engineering Superintendent-Heavy Oils.
- (c) That Mr. Brett did not engage in coaching or mentoring any of the Process Engineers. In fact the only written reports in evidence demonstrated quite clearly that the said reports had Mr. Brett signing as *"Reviewed by"*, *"Checked by"*, but *"Prepared by"* various Process Engineers and *"Approved by"* either the Complainant as Acting Chief Process Engineer or by the substantive Chief Process Engineer. And the said reports dealt with process engineering matters and not coaching /mentoring.
- (d) In all of the written reports in evidence Mr. Brett signed the said reports as *"Processing Engineering Superintendent"* and not as *"Consultant Process Engineer"*, or *"Consultant Engineer"*.



- (e) That at all material times Mr. Brett was a citizen of Venezuela and did not have citizenship or residency status of Trinidad and Tobago; but operated as an employee of the Respondent on a contract of service on a work permit.
- (f) Mr. Brett's first contract of service commenced on April 23, 2007 and ended on March 31, 2009. His monthly salary was USD8,000 per month or TT equivalent of TT \$50,670.00, a fully maintained rental vehicle and a cellular telephone, a partially furnish house at its residential camp at Point-a-Pierre, a lump sum payment of 10% of basic salary in lieu of certain employee benefits on completion of agreement, two weeks vacation leave after each six month of continuous service. The second contract of service was for the period April 1, 2009 to March 31, 2011 and its conditions were materially similar to the first contract.
- (g) That as of April 2007 the Complainant was in receipt of a Basic Salary of \$24,334.00 per month, Travelling Allowance of \$3,000.00 per month and a Nontax Travelling Allowance of \$1,500.00 per month giving him Total Earnings of \$28,834.00 per month.
- (h) Apart from copies of Mr. Brett's Contract of Service the Respondent failed to produce to the Tribunal any documentary evidence to support Mr. Brett's work as a "*Consultant Engineer*"; or the process whereby he was selected for the position.
- (i) That the selection of Mr. Brett for employment with the Respondent was done outwith the Human Resource Department of the Respondent.
- (j) That the Respondent deviated from its employment policy of appropriate public advertisement having determined that it would recruit an appropriate person externally to fill the so-called position of "*Consultant Engineer*". It's employment policy further indicated that the Respondent "*will establish and*



*maintain employment practices which are non-discriminatory and which affords equal opportunity to all eligible persons on the basis of their qualifications and experience”.*

**ISSUE:**

Whether the Claimant was discriminated against on the basis of his origin in the remuneration package paid to his comparator Mr. Brett.

**ANALYSIS:**

27. Discrimination in Employment is dealt with in Part III of the Equal Opportunity Act, Chap. 22:03 and since the Complainant has specifically prayed in aid Sections 8 and 9 of the Act, it is therefore necessary to set out those Sections of the Act. Section 8 states as follows:

*“An employer or a prospective employer shall not discriminate against a person:-*

- (a) in the arrangements he makes for the purpose of determining who shall be offered employment;*
- (b) in the terms or conditions on which employment is offered; or*
- (c) by refusing or deliberately omitting to offer employment”.*

However, Section 9 goes on to state:

*“An employer shall not discriminate against a person employed by him –*

- (a) in the terms or conditions of employment that the employer affords the person;*
- (b) in the way the employer affords the person access to opportunities for promotion, transfer or training or to any other benefit, facility or service associated with employment, or by refusing or deliberately omitting to afford the person access to them; or*
- (c) by dismissing the person or subjecting the person to any other detriment.*

28. In addition, Section 5 of the Act goes on to indicate what the term discrimination encompasses, the Section states as follows:

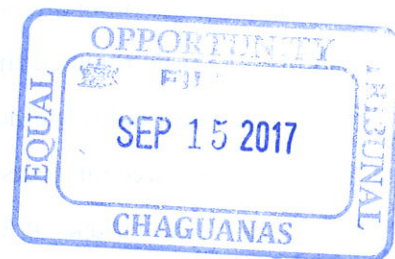
*“For the purpose of this Act, a person (“the discriminator”) discriminates against another person (“the aggrieved person”) on the grounds of status if, by reason of-*

- (a) the status of the aggrieved person;*
- (b) a characteristic that appertains generally to persons of the status of the aggrieved person; or*
- (c) a characteristic that is generally imputed to person of the status of the aggrieved person,*

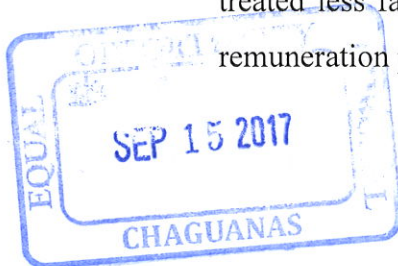
*the discriminator treats the aggrieved person, in circumstances that are the same or are not materially different, less favourably than the discriminator treats another person of a different status”*

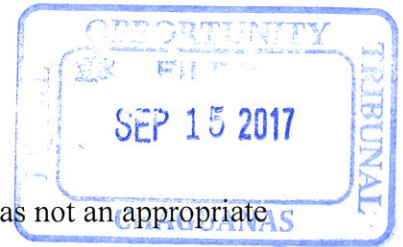
29. Moreover, the term STATUS is defined in Section 3 of the Act and in relation to a person means:

- “(a) the sex;*
- (b) the race;*
- (c) the ethnicity;*
- (d) the origin, including geographical origin;*
- (e) the religion;*
- (f) the marital status; or*
- (g) any disability of that person.”*



30. In essence, the Act is saying that if (as in this case) you fall within the employment relationship, and you are of an appropriate status (Origin) and your employer in circumstances that are the same or are not materially different, treats you less favourably than he treats another person of a different status; then once you could adduce evidence to prove on a balance of probabilities that the above characteristics apply to you, then you would have proven your case that you were discriminated against.
31. In this case the Complainant has pleaded that he was discriminated against by the Respondent on the basis of origin, in that he is a citizen of Trinidad and Tobago, while his comparator is a citizen of Venezuela. This term has been explained judicially, for instance in *Ealing LBC -v- Race Relations Board* [1972] A.C. 342 Lord Simon suggested that within Great Britain, Scots, Welsh and English could each be defined by national origins. While in *Northern Joint Police Board - v – Power* [1997] I.R.L.R, 610, EAT, the Employment Appeal Tribunal held that an Englishman could claim that he was discriminated against in Scotland on the ground of his national origin.
32. Furthermore, the term less favourable treatment has also been explained judicially; for instance in *R –v- Birmingham City Council, Ex P. EOC* [1989] A.C. 1155, the council provided more grammar school places for boys than for girls. It argued that the girls had not been treated less favourably because there was no evidence that grammar schools were better than the other schools.
- The House of Lords rejected this argument, holding that as the girls were denied a choice – which they reasonably valued – they were treated less favourably than the boys. In addition, the more recent decision in *Chief Constable of West Yorkshire -v- Khan* [2002] 1 W.L.R. 1947 the House of Lords held that an employer’s refusal to give a reference amounted to less favourable treatment, even though that reference would have been negative and lessened the candidate’s chances for a position in another police force.
33. In the instance case it is the considered opinion of the Tribunal that the Complainant was treated less favourably by the Respondent when he requested that he be paid the same remuneration package of his comparator Mr. Brett and was refused.





34. A lot has been made by counsel for the Respondent that Mr. Brett was not an appropriate comparator as he was on a limited contract of service while he Complainant was a permanent employee with certain benefits e.g. pension that Mr. Brett was not entitled to. In terms of the Equal Opportunity Act, Chap. 22:03 as it relates to discrimination in employment no distinction is made between permanent and temporary employees. The Act is clear and speaks in mandatory term by indicating that: *“An Employer **SHALL NOT** discriminate against a PERSON EMPLOYED BY HIM... in the terms or conditions of employment that the employer affords the person”*.
35. It is pellucidly clear to the Tribunal that Mr. Brett was indeed an employee of the Respondent in that he was announced to the entire Process Engineering Department of the Responded by an email emanating from the then Chief Process Engineer dated April 23, 2007 that Mr. Brett has *“joined Petrotrin as the Process Engineering Superintendent – Heavy Oils... effective April 23, 2007. Your cooperation and support will be kindly appreciated”*. In addition, the position of Process Engineering Superintendent – Heavy Oils is an integral part of the approved organization chart of the Process Engineering Department of the Respondent.
36. Furthermore, all of the reports signed by Mr. Brett was Signed as *“Process Engineering Superintendent”* and not as *“Process Engineering Consultant”* or *“Consultant Engineer”* as the two copies of Mr. Brett’s contract of service documents exhibited to the Supplemental Witness Statement of Ms. Jarvis would have us believe. In fact all of the written reports in evidence had Mr. Brett signing as *“Process Engineering Superintendent”* these reports are as follows:
- (a) PER No. 082/2009 dated June 16 2009, entitled No. 3 Vacuum Distillation Unit Process Engineering Monthly Performance Report, April 2009.  
Prepared by : Christopher Chandoo, Process Engineer 1.  
Reviewed by: Luis Cuauro Brett, Process Engineering Superintendent.  
Approved by: Derek Salandy, Chief Process Engineer (Ag.)