Annual Report
Employment Relations Tribunal
Year 2017
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Note from the President
**Note from the President**

I have pleasure in forwarding the Annual Report for the year 2017, a year that has coincided with my 15\textsuperscript{th} year as President of the Tribunal.

We started off with the reconstitution of members of the Tribunal and I am delighted to see the increasing number of ladies representing employers and employees amidst its composition.

The Tribunal plays an enormously important role in the economy of the country as well as in maintaining social order through harmonious industrial relations. It deals with employers and employees and their representatives across the public and private sectors, in small and large organisations, and in both unionised and non-unionised employments.

A brief historical purpose of such an institution is always inspiring. Unofficial strikes in Britain known as the British disease led to the introduction by the Conservative Government of the Industrial Relations Act 1971. The Secretary of State stated that the objective of the Act was "essentially about regulating the eternal tension between on the one hand of the individual person and group for complete freedom of action, and on the other hand the need of the community for a proper degree of order and discipline". He added that the law was a vital element in the longer-term strategy for dealing with the underlying problem of achieving steady and sustainable growth. (*H.C.Debates.Vol.808.cols.961-2 14 December 1970*).

Mauritius as a newly born nation was crippled by a series of strikes in almost all sectors of the economy. The then Minister of Labour and Social Security presented the Industrial Relations Act 1973 as the response "to the consistent demand for more effective communication and more industrial democracy, and to the concepts and the legitimate aspiration of a modern society". (*Hansard, Debates No 38 of 1973*). The events of the early 1970’s demonstrate that the objectives of the Mauritian Government were similar to those of the British Government.

The Industrial Relations Act 1973 established an independent body called the Permanent Arbitration Tribunal with the main function of settling Industrial disputes through the process of arbitration. From 1938 to 1954, the Arbitrator had been appointed on an *adhoc* basis as and when it was required. A permanent Arbitration Tribunal was first set up under the Trade Disputes Ordinance of 1954 and carried on its function under the Industrial Relations Act 1973. While the Industrial Relations Act 1971 of Britain provided for the setting up of a National Industrial Relations
Court to be presided over by a High Court Judge, our Industrial Relations Act 1973 stipulates that no one is to be appointed President or Vice-President of the Tribunal unless he is qualified for appointment as a Judge of the Supreme Court. Alongside the Permanent Arbitration Tribunal, the Act established a Civil Service Arbitration Tribunal for the public service and civil service unions. The Employment Relations Act 2008 merged the two bodies as one with the appellation Employment Relations Tribunal. The aim of regulating industrial relations as part of the general management of the economy can be seen in the important role being played by the Tribunal in the determination of the terms and conditions of employment.

Despite the challenges that the Tribunal faces as an institution, the effective delivery of its statutory mandate has to remain the focus. The year 2017 saw the lodging before the Tribunal of some 174 Industrial Disputes out of which 96 were referred by the Commission for Conciliation and Mediation and one by the Rodrigues Commission for Conciliation and Mediation. The disputes cover a wide range of issues in particular in the Transport, Airline, Aviation, Port, Financial Regulatory, Hotel, Educational and Sugar sectors. These are Industrial Disputes resolved through the process of Arbitration.

Over and above its Arbitration function, informal dispute resolution remains an important part of the Tribunal’s operation and is used regularly during the processing of applications and complaints. The majority of the case load involves “expedite” matters such as unfair labour practice complaints and refusals to sign Procedural Agreements. These informal settlements discussions are on a “without prejudice” basis, that is to say, a party cannot subsequently raise what was said in such discussions in any formal proceeding. However settlement agreements reached on issues during the informal proceeding may be binding on the parties and will be enforced by the Tribunal. This informal dispute resolution process achieves a fairly high success rate. As shown in the Statistics sheet, some 129 cases were disposed of summarily through conciliation and agreements between parties for the year 2017. In addition to these, the Tribunal delivered some 18 Awards, 8 Orders and 7 Rulings.

All in all it has been a good year.

It is appropriate that I express my gratitude to the two Vice-Presidents and all the members of the Tribunal and the dedicated staff, including the three Youth Employment Programme (YEP) Trainees for their hard work and support during the year.

Rashid Hossen
Mission

To provide an efficient, modern, reliable and rapid means of arbitrating and settling disputes between workers or trade unions of workers and employers or trade unions of employers so that peace, social stability and economic development are maintained in the country.

Vision

To be the expert tribunal for the settling of industrial disputes.
Composition of the Tribunal
PRESIDENT

Abdool Rashid HOSSEN, LLB (Hons) (Buckingham), Barrister (Middle Temple) was called to the Bar in 1981. He joined the Civil Service as Crown Counsel at the Attorney-General’s Office in 1983. He was appointed District Magistrate in the Judicial Department in 1984 and promoted Senior State Counsel at the Attorney General’s Office in 1991. He has been Chairman of the Prison Board of Visitors in 1990 and 1991 and was promoted Senior District Magistrate in 1993. He was the Returning Officer for the 1991 Legislative Assembly Elections. Mr. Hossen was a Magistrate of the Intermediate Court during the period 1991 to 2002. In 2002, he was appointed Vice President of the Permanent Arbitration Tribunal. In 2003, he was appointed President of the Civil Service Arbitration Tribunal. He became a Member of the Commonwealth Magistrate and Judge Association in 2004 and was appointed President of the Permanent Arbitration Tribunal in 2006. He is since 2009 a Member of the Approved List of Arbitrators of the Mauritius Chamber of Commerce & Industry Arbitration Court. With the establishment of the Employment Relations Tribunal in 2000, Mr Hossen was appointed President. He is an Associate of the Chartered Institute of Arbitrator (UK) since 2010. In 2012, he was appointed Chairman of the Fact Finding Committee set up by the Government of Mauritius to inquire into and recommend on Security Access to Prisons. As from 2012, he is also a Member of the International Council for Commercial Arbitration. Member of the International Labour and Employment Relations Association (2014).

Attended the IBA Employment and Discrimination Law Conference (Italy) (2015).
Attended the CIETT World Employment Conference (New Delhi, India) (2016).
Part time Lecturer in Labour & Industrial Relations Law at the University of Mauritius (2017).
VICE-PRESIDENTS

Indiren SIVARAMEN, LLB (Hons), MBA (Finance) (University of Leicester), FCIArb, Barrister was called to the Bar in 1996. He practised at the Bar from 1996 to 1999. He was also acting as Legal Consultant for International Financial Services Ltd from 1998 to 1999. He joined the Civil Service in 1999 as Temporary District Magistrate and was appointed District Magistrate in 2000. In 2003, Mr Sivaramen was appointed Senior District Magistrate. He was also a part-time lecturer at the University of Mauritius from 2005 to 2007. He was the Returning Officer for Constituency No. 20 for the National Assembly Elections in 2005. After a brief span as Legal Counsel for Barclays Bank PLC, Mauritius Branch and Barclays Bank (Seychelles) Ltd in 2006, he occupied the post of Vice-Chairperson at the Assessment Review Committee from 2006 to 2010. In February 2010, he was appointed as Vice-President of the Employment Relations Tribunal.

Shameer JANHANGEER, LLB (Hons) (London), MBA (Business Finance), Barrister (Lincoln's Inn) FCIArb was called to the Bar in the U.K. in 1999. He also holds a LLM in Law and Economics from Queen Mary University of London. After shortly practicing at the Bar, he joined the service as State Counsel at the Attorney-General's Office in 2002. In 2004, he joined the Judiciary as Acting District Magistrate and was later appointed as same. He was Deputy Returning Officer for Constituency No. 6 at the National Assembly Elections in 2005. He chaired a Board of Assessment in 2007 and upon returning to the Attorney-General's Office he was appointed Senior State Counsel in 2007. In 2009, he was appointed Temporary Principal State Counsel at the Attorney-General's Office/Office of the Director Of Public Prosecutions. In June 2011, Mr. S. Janhangeer joined and was appointed as Vice-President of the Employment Relations Tribunal. He is also a member of the Commonwealth Magistrates’ Association and (CMJA) Judges’ since 2013 and the International Council for Commercial Arbitration (ICCA) since 2015.
Members of the Tribunal
Representative of Workers

1. Ms Marie Désirée Lily LACTIVE
2. Mr Francis SUPPARAYEN
3. Mr Raffick HOSSENBACCUS
4. Mr Abdool Kader LOTUN
5. Mr Vijay Kumar MOHIT

Representatives of Employers

1. Mr Abdool Feroze ACHARAUZ
2. Mr Eddy APPASAMY
3. Mr Andy R. HAU KEE HEE
4. Mr Rabin GUNGOO
5. Mrs Karen K. VEERAPEN

Independent Members

1. Mr Kevin C. LUKEERAM
2. Mr Arassen KALLEE
3. Mr Parmeshwar BUROSEE
4. Mr Ghianeswar GOKHOOL
5. Mr Yves Christian FANCHETTE
6. Mrs Teenah JUTTON-SEEBURRUN
Staff List
<table>
<thead>
<tr>
<th>SN</th>
<th>NAME</th>
<th>TITLE</th>
<th>EMAIL</th>
<th>PHONE NO (230)</th>
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<tbody>
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<tr>
<td>12</td>
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<tr>
<td>18</td>
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Trainees under Youth Employment Programme

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<tr>
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<tr>
<td>1</td>
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<td>3</td>
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</tbody>
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Summary of Cases

NOTE: This summary is provided to assist in understanding the Tribunal’s decision. It does not form part of the reasons for that decision. The full opinion of the Tribunal is the only authoritative document. Awards are public documents, and the awards delivered in 2017 are available at: http://ert.govmu.org
ERT/RN 31/16 - Hotels and Restaurants Employees Union And Maritim Resort and Spa Mauritius (Maritim Mauritius Ltd)

This was a joint application made under Section 63 of the Employment Relations Act 2008 as amended for voluntary arbitration with regard to the following dispute:—

“Whether the management should revert back the schedule work 7.00 a.m. to 4.00 p.m. instead of 8.00 a.m. to 5.00 p.m.”

The Tribunal invited and assisted the parties through various meetings and negotiations in settling their differences. In the meantime there had been a change in the relevant remuneration order. On 22.11.2016, parties informed the Tribunal that an agreement had finally been reached between the parties and it read as follows: “… It is agreed that the respondent company would adjust the employees’ roster by fifteen minutes making the new working time schedule to be from 07H45 to 16H15 hours same being effective as from 1st December 2016 …” The Tribunal awarded in terms of the above written agreement.

ERT/ RN 136/16 - Saltlake Resorts Ltd (Applicant) And Organisation of Hotel, Private Club & Catering Workers Unity (Respondent)

The Applicant made an application for an order to revoke the recognition of Respondent which is a recognised trade union at the Applicant. The application was resisted by the Respondent.

The Tribunal has examined all the evidence on record including documents produced and the submissions of both counsel. The Tribunal examined lengthily the alleged “breaches” of the Procedure Agreement.

The Tribunal observed that the present application went against a joint statement which was made before the President of the Tribunal in another case ERT/ RN 111/16. Moreover, this application was based on alleged events (as per the Statement of Case of Applicant) which occurred before 8 November 2016 and the Tribunal had much difficulty in reconciling this application with the evidence adduced including evidence that negotiations would have continued between the parties so much so that matters raised would have been solved. The representative of Applicant hinted that the real issue was not the Respondent (that is the trade union) but that the issue was the relationship between the negotiator and management.

The Tribunal stated that the revocation of the recognition of a trade union is a drastic measure the more so in a case where there would be no other recognised trade union in a bargaining unit. The Tribunal however would not hesitate to proceed to a revocation should the circumstances of a case require same. In arriving at any decision under section 39 of the Act, the Tribunal would have regard to all the
circumstances of the case and may have regard to any relevant principles laid down in section 97 of the Act. For all the reasons given in its order, the Tribunal was not satisfied, apart from a letter dated 8 September 2016 which contained issues which should have been reported to management first, even on a balance of probabilities that there had been any default or failure on the part of Respondent to comply with any provisions of the Procedure Agreement. The Tribunal observed that the Applicant did attend on 16 September 2016 the meeting organized at the relevant Ministry and participated in another meeting with the Respondent to discuss issues raised in the letter of 8 September 2016. Ultimately, issues raised would have been solved. The Tribunal found that the breach was certainly not one which would warrant the revocation of the recognition of Respondent. The Tribunal had in mind all the circumstances of the case including the fact that parties were having meetings to discuss issues raised, were agreeable even on 8 November 2016 to enter into a new procedure agreement, that there was no issue as such with the Respondent but a relationship issue between the negotiator and management and principles and best practices of good employment relations and found that it would not be proper and judicious to revoke the recognition of Respondent. The Respondent however has to see to it that there is no recurrence of any breach of the Procedure Agreement on his side.

The Tribunal concluded that both parties should see to it that relationship issues be relegated to the background and that the interests of workers and that of the organization be upheld. For all the reasons given in its order, the application was thus set aside.

ERT/RN 06/2017 – Prisons Officers Association AND The State of Mauritius as represented by the Mauritius Prisons Service (Award)

The matter was referred to the Tribunal by the Commission for Conciliation and Mediation pursuant to section 70 (3) of the Employment Relations Act on the following terms of reference:

Whether constraining prisons officers irrespective of ranks to work only 40 hours per month on ‘Bank Scheme’ is in breach of the terms and conditions of these officers as laid down at paragraph 13.49 and under recommendation 6 at paragraph 13.50 of the Pay Research Bureau 2003.

The Disputant Association is duly recognised as a bargaining agent by the Respondent for employees serving under the Mauritius Prisons Service. The Disputant contended
that the Respondent has, by way of the Commissioner of Prisons Circular 14 of 2015 dated 12 June 2015, unilaterally modified the conditions attached to the Bank Scheme by restricting the number of hours of duty under the Scheme to 40 hours per month. This restriction breaches the terms and conditions of service of Prison Officers under the Bank Scheme as prescribed by the Pay Research Bureau (“PRB”) in its Reports since 2003.

The Tribunal, after having heard the parties and considered relevant provisions of the PRB Reports, did not find that the 40 hours per month constraint of work on Prisons Officers of the Bank Scheme is in breach of the terms and conditions of Prison Officers as laid down in paragraph 13.49 and in Recommendation 6 at paragraph 13.50 of the PRB Report 2003 Volume II Part I. The dispute was therefore set aside.

**ERT/RN 161/2015 – Mrs Sushma Devi Hanadon AND BPML Freeport Services Ltd (Award)**

The matter was referred to the Tribunal by the Commission for Conciliation and Mediation on the following Terms of Reference:

*Whether Mrs. Hanadon should have been granted three increments on the scale of Marketing Executive (Grade 4) when she was appointed to the same post on 1st July 2014 as Management has not respected its agreement with the Union to promote her to the post of Assistant Corporate & Regulatory Affairs Officer (Grade 6) with effect from April 2011.*

The Disputant, a Marketing Executive at the Respondent Company, was seeking the grant of three increments pursuant to an agreement allegedly made by Management and the Union to promote her to the post of Assistant Corporate and Regulatory Affairs Officer at BPML Freeport Services Ltd.

The Tribunal, after having considered the evidence on record, did not find that there was an agreement between the Union and Management for Mrs Hanadon to be promoted to the post of Assistant Corporate and Regulatory Affairs Officer with effect from April 2011. The Tribunal did not therefore award that Mrs Hanadon should be granted three increments in the scale of Marketing Executive as from her date of appointment to the latter post on 1 July 2014. The dispute was therefore set aside.
ERT/RN 55/16 - Mr Etwaroo Gopaul (Disputant) And Hindu Girls’ College (Respondent) I.P.O. Private Secondary Education Authority

The Disputant had reported to the President of the Commission for Conciliation and Mediation a labour dispute between himself and the Respondent in accordance with Section 64(1) of the Employment Relations Act 2008, as amended. There was no settlement at the level of the Commission and the Commission referred the dispute to the Tribunal for arbitration in terms of Section 69(7) of the Employment Relations Act 2008, as amended. The point in dispute was:- “Whether I, Mr Etwaroo Gopaul, should have been appointed as Senior Educator at the Hindu Girls’ College.”

On 27 February 2017, the parties informed the Tribunal that an agreement had been reached and which was as follows:- The Respondent without any admission of the averments of the Disputant agrees to appoint the Disputant as Senior Educator subject to the approval being sought from the Private Secondary Education Authority i.e. the Co-Respondent.

The Disputant and Respondent moved for an Award in terms of the settlement and the Tribunal awarded accordingly.

ERT/RN 183/2015 – Chemical Manufacturing and Connected Trades Employees Union AND Dry Cleaning Services Ltd (Award)

The matter was jointly referred to the Tribunal for voluntary arbitration. The Terms of Reference of the dispute read as follows:

(a) WAGES

<table>
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<tr>
<td>Mechanic/Foreman</td>
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<td>Driver (lorry/van)</td>
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<tr>
<td>Vehicle Assistant/Factory Attendant/</td>
</tr>
<tr>
<td>Office Attendant</td>
</tr>
<tr>
<td>Security Guard/Factory Operator/</td>
</tr>
<tr>
<td>Skilled Worker</td>
</tr>
<tr>
<td>Cleaner</td>
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</tbody>
</table>

Whether all employees should have their wages readjusted in accordance to the proposed scale in the respective category on
a point to point basis in relation to their years of service or otherwise.

Whether all employees over 11 years of service should benefit from:

- 10% increase on their basic wages on 1 January 2016, or otherwise;
- 8% increase on their basic wages on 1 January 2017 after their wages have been readjusted in accordance to their respective wage scale.

(b) DISTURBANCE ALLOWANCE

Whether a disturbance allowance of Rs 75 daily should be paid to all employees who are called to start work before 7 am.

(c) VACATION LEAVE

Whether the issue of extension of provision of vacation leave to employees whose terms and conditions are governed by the Factory Employees (Remuneration Order) Regulations already provided to the employees governed by the 3 other Remuneration Order Regulations (Distributive Trades, Office Attendants and Road Haulage industry) applicable to the Employer or otherwise.

With regard to the first point in dispute, the Tribunal considered the arguments of the Union and the stand of the Employer as well as the supporting documentary evidence adduced before it. The Tribunal did not award that the workers at Dry Cleaning Services Ltd should be put on the proposed wage structure and those with over 11 years of service be granted a 10% increase on basic pay on 1 January 2016 and an 8% increase as from 1 January 2017. The dispute as to wages was therefore set aside.

The Union did not insist with the second point in dispute and same was set aside. In relation to the third point in dispute, the Tribunal did not award that the provision of vacation leave be extended to those employees falling under the Factory Employees (Remuneration Order) Regulations 2001 at the Employer. The Tribunal however strongly urged that the National Remuneration Board take appropriate steps to review
the aforementioned Remuneration Regulations, where the provision of overseas leave for employees who have 15 years and over of loyal service with the employer exists, and replace the impugned provisions by something more appropriate and realistic, such as vacation leave to be spent locally or abroad, so as to afford the employee a reasonable break from his service. The dispute as to vacation leave was otherwise set aside.

ERT/RN 03/17 - Union of Bus Industry Workers (Applicant) And UBS Transport Ltd (Respondent)

The Applicant applied to the Tribunal under Section 51(2) of the Employment Relations Act as amended for the making of a procedure agreement by way of an award. The Respondent resisted the application and averred that three other trade unions should be called as parties for the drawing up of a Procedure Agreement.

Counsel for Respondent argued that since no union had reached above 50% representativeness following the ballot organized by the Tribunal on 12th and 13th of July 2016 no union had been granted sole recognition. According to him, all of the existing unions were still recognized and could enter into negotiations and collective agreements.

The Tribunal rejected this proposition and did not find any legal basis to conclude that the Savings and Transitional Provisions (Section 37 of the Employment Relations (Amendment) Act 2013) required a threshold of 50%. The Tribunal stressed that workers were invited to choose their bargaining agent and this to the detriment of losing trade unions getting their status affected. The Tribunal found that Section 37(3) (of the Savings and Transitional Provisions) makes provision to the effect that the status of unions may be affected following the determination of the Tribunal after the exercise of the secret ballot referred to in Section 37(4)(b) (Savings and Transitional Provisions) 4(b). The three other unions having no business of negotiations to do with the Respondent, they could not therefore be put into cause.

The Tribunal also observed that the application was then outside delay, and it remitted it back to the parties to settle the matter in the light of its pronouncement. The Respondent and the Applicant had to proceed with the drawing up and signing of a procedure agreement.
ERT/ RN 64/16 - Mr Mohammad Reza Khan Mustun (Disputant) And Mauritius Institute of Training and Development (Respondent)

The above matter had been referred to the Tribunal by the Commission for Conciliation and Mediation under Section 69(7) of the Employment Relations Act. The terms of reference read as follows: “Whether I, working as instructor at the Mauritius Institute of Training and Development should be upgraded to the grade of Training Officer.”

After examining all the evidence on record including the submissions of both Counsel, the Tribunal stated that it will not linger over the reasons as to why the new structure at the Respondent had not yet been finalized despite what appears in the 2016 PRB Report. What was more important to the parties was the way forward. The Tribunal added that it was not there to create more problems when trying to find a solution in one particular case. The Tribunal continued by saying that it has always been cautious not to intervene unnecessarily in a matter where there were ongoing discussions between management and relevant trade unions, as was the case in the said matter as admitted by all parties before the Tribunal, the more so where the goal was to arrive at a new organizational structure for the organization.

For all the reasons given in its award, the Tribunal found that the Disputant had failed to show on a balance of probabilities that he should be upgraded to the grade of Training Officer. However, the Tribunal added that the said case had revealed the need and hopefully the true willingness of all parties to embrace a change in the organizational structure of the Respondent for the betterment of the organization as a whole, promotion of good employment relations, and for the highest standards of training and development. The Tribunal referred to the often quoted award of Mrs D.C.Y.P And The Sun Casinos Ltd, RN 202 where the Permanent Arbitration Tribunal stated the following: “There is no doubt that employers have a discretion and powers in matters of appointment and promotion. Such discretion and powers must, however, be exercised in such a way as not to cause prejudice and frustration to employees whose only “fault” would seem to be loyalty, expertise and efficiency. Whenever, as in the above case, officers are recruited and employed to work, they are entitled to expect a normal reward for their good work and acquired experience, and this necessarily includes access to promotion upon occasion arising. Unless such a basic concept of employer/employee relations is present in modern enterprises, industrial disputes and bad blood are bound to be the order of the day.”

For all the reasons given in the award, the case was set aside.
ERT/RN 30/2017 – Mr Manish Meeheelaul AND Maubank Ltd (Ruling)

The matter was referred to the Tribunal by the Commission for Conciliation and Mediation on the following amended Terms of Reference:

Unconditional reinstatement as Head of Private Banking Unit with the Maubank Ltd.

The Respondent raised a threefold preliminary objection to the dispute to the effect that the Tribunal does not have jurisdiction to stay a disciplinary committee; the Tribunal does not have the jurisdiction to hear the dispute between the Disputant and the Respondent inasmuch as same constitutes a labour dispute for which the Industrial Court has exclusive jurisdiction to hear and determine; and the prayers raised under paragraph 4 and paragraph 104 of the Disputant’s amended Statement of Case do not fall within the scope of the amended Terms of Reference referred to the Tribunal.

The Tribunal, having considered the arguments of the parties, went on to find that the Terms of Reference did not concern the Disciplinary Committee nor of any order to prohibit same from continuing. Under the first point of the preliminary objection, the Tribunal, in view of its jurisdiction conferred, could not therefore make an interim order to prohibit the Respondent from continuing with the Disciplinary Committee until its final determination.

Under the second point of the preliminary objection, the Tribunal notably considered section 71 (a) of the Employment Relations Act as well as section 3 of the Industrial Court Act. Although the labour dispute referred to the Tribunal concerned the reinstatement of the employee, being given that the Disputant’s case related mainly to the issue of the Disciplinary Committee being held against him, the Tribunal found that it would fall within the exclusive jurisdiction of the Industrial Court. The Tribunal could not therefore hear and enquire into the dispute referred between the Disputant and the Respondent.

Under the third limb of the preliminary objection, the Tribunal did not find that the prayers set in the Disputant’s Statement of Case, save for the prayer of unconditional reinstatement, fell within the scope of the amended Terms of Reference of the dispute. The preliminary objections raised by the Respondent were therefore upheld. The dispute was accordingly set aside.
ERT/RN 34/2017 – Artisans & General Workers’ Union AND SOGE International Limited (Ruling)

The Applicant Union had applied for recognition as a bargaining agent in respect of a bargaining unit of employees in the manual grade employed at SOGE International Limited pursuant to section 38 of the Employment Relations Act. The Employer raised a preliminary objection to the effect that the Applicant has failed to disclose in what capacity the application was being made and moved that the application be set aside.

The Tribunal, after having heard the arguments of the parties and considered the requirements of the law regarding an application for recognition, found that the Applicant Union had failed to disclose in what capacity it applied for recognition to the Employer nor did it precise that the bargaining unit applied was for the manual grade of employees. The Tribunal upheld the preliminary objection raised by the Respondent. The application was therefore set aside.

ERT/RN 45/17 - Radio and Television Services Station Workers Union (Applicant) And Multi Carrier Mauritius Ltd (Respondent)

The Applicant is seeking for an order requiring the Respondent to comply with a provision of a procedure agreement signed by both parties. Reference was made to article 3 of the said procedure agreement which provided:

"Managerial Functions

It is understood that the Company shall have the sole right to conduct its business and manage its operation, to hire, control and direct the workforce, to introduce technical improvements, to determine the time, methods and manner of working and type of work to be done.

(i) In the exercise of rights specified above, Management shall have prior discussion with the Union when the decisions of the company will impact in a significant manner on the employees working conditions of employment except in circumstances requiring urgent decision and this only after discussion with the representatives of the Union."

It was averred that on two occasions the Respondent convened a meeting with the employees regarding decisions relating to wages, terms and conditions of employment and which decisions impact in a significant manner on the employees working conditions of employment. This was allegedly done without discussion with the Union.
After analyzing the evidence, the Tribunal stated that although there might not have been any need for discussion in the mind of Management, it could not be overlooked that the implementation of the Pay Research Bureau Report did impact in a significant manner on the working conditions of the employees. To that extent, Management would not have overdone it in convening the Union and informing it of its initial decision to withhold implementation and eventually to proceed with it. The Tribunal was of the view that such communication in future would dissipate tense if not hostile relationship between Management and the Union and that this would be to the credit of an efficient Management. The Tribunal was also satisfied that the Respondent had by then already implemented the contents of the Report, and it considered that there was no reason to deal further with the said application. The dispute was accordingly set aside.

ERT/RN 109/13, ERT/RN 110/13, ERT/RN 111/13 - - Mrs Hemrowtee Maudhoo & others (Disputants) And Sugar Industry Labour Welfare Fund (Respondent)

The Disputants reported to the President of the Commission for Conciliation and Mediation the existence of a labour dispute between themselves and the Respondent as per section 64 (1) of the Employment Relations Act 2008 as amended. As no settlement could be reached, the Commission referred singularly the labour disputes to the Tribunal for arbitration in terms of section 69 (7) of the Employment Relations Act 2008 as amended. The three cases were consolidated and had a common point in dispute: Whether the Disputants should be paid one additional increment with effect from 1st July 2003 as they reckon 25 years of service in the same post continuously without promotion with the Committee of Social Welfare Centre/Sugar Industry Labour Welfare Fund.

After considering the testimonial and documentary evidence adduced, the Tribunal found that the recommendation of the Pay Research Bureau Report 2003 does not confirm an automatic right to additional increment to a worker claiming to be so entitled. The worker has to satisfy the requirements set out therein and in particular that he has been in the service for 25 years in a single grade and has been drawing the top salary scale.

The Tribunal found evidence which supported the contention that whilst the Disputants were under the employment of the Community Social Welfare and Community Centres, they were at all times being paid by the relevant Ministry and not by the Respondent.

Regarding the requirement of 25 years to be counted continuously from any previous employment of the Disputants, the Tribunal found that this should be confirmed employment of any department which falls under the purview of the Pay Research
Bureau Report 2003 whereas Section (v) (1) (A) of the Government Social Welfare Centres Act (Act No 67 of 1961) provided: “Officers and servants so employed under Section (1) (B) shall be under the administrative control of the Committee and shall not be deemed to be government servants”. Although there was an agreement between the Union and the Sugar Industry Labour Welfare Fund regarding the length of service of the employees being counted as continuous service for all intents and purposes, the time spent at the Social Welfare Centre could not therefore be taken into account.

Whilst it was not disputed that the Disputants were formerly employed with the Community of Social Welfare and Community Centres and as from the 13th of August 1987 with the Sugar Industry Labour Welfare Fund, the Tribunal found that the Disputants had not successfully adduced sufficient evidence to show the exact date of employment with their respective Social Welfare Centres.

The Tribunal concluded that it would be precarious to venture and conclude on the exact date of confirmation in the circumstances. For all the reasons given in the award, the disputes were thus set aside.

ERT/RN 33/2016 – Mr Bye Pharad Kurreemun AND Central Electricity Board (Award)

The matter was referred to the Tribunal by the Commission for Conciliation and Mediation on the following Terms of Reference:

*Whether I, Mr Bye Pharad Kurreemun, should be reinstated in my substantive post of “Chief Internal Auditor” at the Central Electricity Board with effect from 17 June 2015.*

The Disputant claimed that his contract of employment was unilaterally modified when transferring him from his substantive position of Chief Internal Auditor to the post of Budget and Management Reporting Manager effective 17 June 2015 at the Central Electricity Board. He was asking to be reinstated to his substantive post of Chief Internal Auditor.

The Tribunal, after having considered the evidence on record, found that Mr B.P. Kurreemun was not transferred to take charge of another Department contrary to what has been stated in the General Staff Information Circular No. 1954/05/2015; that his
concurrence in transferring him to the post of Budget and Management Reporting Manager was not sought; and that there has been a unilateral modification of his contract of employment without having obtained his consent.

The Tribunal therefore awarded that Mr B.P Kurreemun should be reinstated to his post of Chief Internal Auditor at the CEB with effect from 17 June 2015.

ERT/ RN 52/17, ERT/ RN 53/17, ERT/ RN 54/17, ERT/ RN 55/17 - Mr Louis Rudolph Rose & others (Disputants) And Mauritius Cane Industry Authority (Respondent)

The above four cases had been referred by the Commission for Conciliation and Mediation (CCM) to the Tribunal for arbitration in terms of Section 69(7) of the Employment Relations Act 2008 (the “Act”). The terms of reference in all the cases which were consolidated read as follows: “Whether the piece rate should be increased by 27% as recommended by Edge Consulting Report 2014 effective as from 1st of July 2013 instead of 15% as wrongly adjusted by the Mauritius Cane Industry Authority (Sugar Storage Handling Unit, ex. Bagged Sugar Storage and Distribution Co. Ltd.”

The Respondent has taken a preliminary objection in law in all four cases which reads as follows: “The Respondent moves that the dispute be set aside in as much as the dispute does not constitute a labour dispute, the Disputant having already signed the option form following the salary review effective as from July 2013.”

After examining the evidence adduced and the arguments offered by both counsel and relevant case-law, the Tribunal found that the Edge Consulting Report 2014 (a copy of which was produced) was a report of a salary commission. The report dealt with the issue of piece rate both in a main report and in a supplementary report. The four disputants signed option forms following the Edge Consulting Report 2014 and certified copies of the relevant option forms were produced and marked Docs A to D.

The dispute arose directly from and because of the exercise by the disputants of the option to be governed by the recommendations made in the Edge Consulting Report 2014. If they had not exercised the relevant options there would have been no dispute before us as to “[whether the piece rate should be increased by 27% as recommended by Edge Consulting Report 2014 as from 1st of July 2014 ....” The Tribunal found that the dispute arose clearly as a result of the exercise by the disputants of an option to be governed by the recommendations made in a report of a salary commission. The dispute was in relation to remuneration or allowances of any kind. The Tribunal thus found that the dispute, ex facie the terms of reference, pleadings and evidence adduced so far, was not a labour dispute. The dispute was thus set aside.
ERT/RN 65/17 – Government Services Employees Association (Disputant) And The State of Mauritius As represented by: The Mauritius Fire and Rescue Services (Respondent) I.P.O. The Ministry of Civil Service & Administrative Reforms

The Commission for Conciliation and Mediation referred a labour dispute to the Employment Relations Tribunal for arbitration in terms of section 70 (3) of the Employment Relations Act 2008 as amended. The point in dispute read as follows: “Non-implementation of Recommendation 24.1.6 of Pay Research Bureau (PRB) Report 2016 from the date of effective date of the report which is 01 January 2016”.

The Ministry raised the point that the said dispute did not fall within the definition of labour dispute as provided under the Employment Relations Act 2008 as amended. Counsel for the Ministry submitted that the signing of the option form in relation to the PRB Report debarred the Disputant and anyone who did so from declaring a labour dispute. After analyzing relevant case law, the Tribunal concluded that the terms of reference dealt specifically and only with the issue of implementation. The labour dispute relates to the implementation which incidentally has a bearing on the allowance but not directly related to it.

As regards the facts of the case, the Tribunal found that there was nothing specifically stated in the Pay Research Bureau Report relating to the timing of implementation of recommendations made for the Lead Firefighters. If in principle the Report was to be implemented as from 1st January 2016, clearly the Bureau was fully aware that some recommendations could only be implemented in a prospective manner. Following the publication of the said Report, the Ministry informed all Heads of Ministries/Departments amongst others and that as early as the first week of April that should there be any difficulty in relation to the implementation of recommendations in the Report other than salary, this should be referred to the Central Implementation and Monitoring Committee of the Ministry.

In this case, the Respondent had difficulties in proceeding to the implementation of the Report and sought clarification from the Ministry. It is only through various exchanges of documents and a meeting held in December 2016 that a proper structure had been set up in relation to the “designate post”. The Lead Firefighters had to be designated and there were certain conditions that needed to be met for it to take effect. The Tribunal observed that it was not a situation whereby the Respondent could rush and start effecting payment without the proper structure having been set up. Much was said with regard to Lead Firefighters having already engaged themselves in such task and that they are currently required to perform as Lead Firefighters. However, the Tribunal was not in presence of sufficient evidence that would justify that certain officers are deemed to have been designated Lead Firefighters. The mere fact of stating that some Firefighters have been doing the task before is far from satisfying the
standard of proof for the Tribunal to conclude that those officers are “designated” officers.

The notes of meeting at the Ministry revealed that the request for Lead Firefighters was made in a bid to motivate the Firefighter leading a team. The Respondent noticed that previously Firefighters were not giving quality services and submitting proper reports and were not showing commitment as they were not paid for same. The Tribunal thus found that they were not willing to lead a team of Firefighters as required and which called for the granting of the Special Allowance. The Tribunal concluded that the application of the Allowance Scheme on a retrospective basis would thus not satisfy the criteria of performance. After considering all the documentary and testimonial evidence, the Tribunal found no reason to intervene and the case was set aside.

ERT/RN 72/17 to ERT/RN 74/17 – Mr Udesh Emrith and Others AND Casela Limited (Award)

The three consolidated disputes were referred to the Tribunal by the Commission for Conciliation and Mediation on the following common Terms of Reference:

Whether my Employer, Casela Limited will re-instate back my normal daily starting time of work which was 06.30 in the morning and my daily ending time of work which was 15.00 hours in the afternoon.

The Disputants’ daily starting and ending times of work had been changed by their employer from 0630 hrs and 1500 hrs to 0830 hrs to 1700 hrs respectively. They were seeking to be reverted to their former daily starting and ending times. Casela Limited argued that the change in the pattern of work does not affect the terms and conditions of the employees which includes remuneration, number of hours worked and nature of the work.

The Tribunal, having considered the Catering and Tourism Industries Remuneration Regulations 2014, the power of the employer to manage the enterprise within the labour law and its remuneration orders as well as the evidence adduced before it, found that employer has not modified the number of hours of work but has only shifted the daily starting and ending times of the Disputants; and that this cannot be deemed to be a substantial modification to the Disputants’ contract of employment.
The Tribunal did not find any reason to intervene in the matter and the disputes were therefore set aside.

**ERT/ RN 77/17 - Port Louis Maritime Employees Association (Applicant) And Freeport Operations (Mauritius) Limited (Respondent) in presence of (1) Private Enterprises Employees Union (2) The Maritime Transport and Port Employees Union (Co-Respondents)**

This was an application by the Port Louis Maritime Employees Association under section 38 (1) of the Employment Relations Act (the “Act”) for an order directing the Respondent to recognise the Applicant as the sole bargaining agent in a bargaining unit in relation to employees of the Respondent. The application was resisted by the Respondent on the following grounds:

1. the Respondent already have two recognised trade unions namely Co-Respondent No 1 and Co-Respondent No 2; and
2. the Applicant does not have the support of 50% of employees for sole recognition.

The Co-Respondents had no objection for every trade union to be recognised but objected to Applicant being granted sole recognition. Co-Respondents were already recognised trade unions at the Respondent and the evidence suggested that they were acting as a Joint Negotiating Panel (JNP). Applicant did not want to join the JNP and insisted to be granted sole recognition. The representative of Applicant adduced evidence and produced a set of documents in relation to 59 employees in the said bargaining unit who would be members of Applicant.

The Tribunal proceeded for a ballot exercise in the circumstances and as suggested by the parties. The employees were asked which trade union or group of trade unions they wished to be their sole bargaining agent. It was also agreed that Co-Respondents No 1 and 2 would be referred to as the Joint Negotiating Panel consisting of Co-Respondents No 1 and 2. The secret ballot exercise was organized and supervised by the Tribunal at the seat of the Respondent on Thursday 24 August 2017. Out of a total number of 90 employees in the relevant bargaining unit as agreed by all parties, 62 employees participated in the ballot exercise. The Applicant secured the support of 64% of the workers in the bargaining unit, that is, a support of more than 50% of the workers in the said bargaining unit.

The Tribunal thus ordered that the Respondent is to recognise the Applicant as the sole bargaining agent in the relevant bargaining unit at the Respondent. The Respondent and the Applicant are to meet at such time and on such occasions as the circumstances may reasonably require for the purposes of collective bargaining.
ERT/ RN 78/17 - Hotels and Restaurants Employees Union (Applicant) And Le Prince Maurice Hotel (Beauport Industries Ltd) (Respondent)

This was an application by the Hotels and Restaurants Employees Union under section 38 (1) of the Employment Relations Act (the “Act”) for an order directing the Respondent to recognise the Applicant as the sole bargaining agent in a bargaining unit in relation to employees of the Respondent.

The employees were asked if they wished that the Hotels and Restaurants Employees Union to be their sole bargaining agent. A secret ballot exercise was organized and supervised by the Tribunal at the seat of the Respondent on Thursday 7 September 2017. Out of a total number of 231 employees in the relevant bargaining unit as agreed by all parties, 161 employees participated in the ballot exercise. The Applicant secured the support of 68.4% of the workers in the bargaining unit, that is, a support of more than 50% of the workers in the said bargaining unit.

The Tribunal thus ordered that the Respondent is to recognise the Applicant as the sole bargaining agent in the bargaining unit as described. The Respondent and the Applicant are to meet at such time and on such occasions as the circumstances may reasonably require for the purposes of collective bargaining.

ERT/ RN 100/17 - Artisans and General Workers’ Union (Applicant) And SOGE International Limited (Respondent)

This was an application made by the Applicant union under section 38 (1) of the Employment Relations Act (the “Act”) for an order directing the Respondent to recognise the Applicant as the bargaining agent in a bargaining unit in relation to employees of the Respondent. The application was resisted by the Respondent on the ground that the Applicant did not have the relevant support of workers in the bargaining unit as prescribed under section 37(1) of the Act.

Witnesses deponed and in the light of the evidence adduced and the Statements of case filed, the Tribunal found that this was a fit and proper case for the Tribunal to organize a secret ballot in the relevant bargaining unit. The Tribunal in the circumstances thus proceeded for a secret ballot exercise as agreed on behalf of both parties.

Following the secret ballot exercise, the Applicant secured the support of 32% of the workers in the bargaining unit, that is, a support of not less than 30% of the workers in the said bargaining unit. The Tribunal thus ordered that the Respondent is to recognise the Applicant as the bargaining agent in the bargaining unit consisting of manual grade workers working as machinists, sorters and helpers at the Respondent at Plaine-Magnien and La Sourdine, L’Escalier. The Respondent and the Applicant are
to meet at such time and on such occasions as the circumstances may reasonably require for the purposes of collective bargaining.

**ERT/RN 91/17 – Mrs Malini Venkiah And Tertiary Education Commission**

The Commission for Conciliation and Mediation referred the labour dispute to the Tribunal for arbitration in terms of Section 69 (7) of the Employment Relations Act 2008 as per the following Terms of Reference:

“Whether my 6 years continuous services and benefits from year 2010 to 2016 on contractual basis at the Tertiary Education Commission should be considered as pensionable upon my appointment as Assistant Secretary on 29th September 2016 on permanent basis or otherwise”

On 12 September 2017, Senior Counsel who appeared for the Respondent informed the Tribunal that the Respondent was agreeable to make good the request of the Disputant and that her contractual years of service for the period 22nd February 2012 to 28th September 2016 be considered pensionable. The Disputant has ratified this agreement. The Tribunal then awarded in terms of the agreement.

**ERT/RN 96/2016 – Mrs Naseema Banon Carim Bacor AND Mauritius Institute of Training and Development, in presence of: The Union of Staff of the Mauritius Institute of Training and Development (Award)**

The matter was referred to the Tribunal by the Commission for Conciliation and Mediation on the following Terms of Reference:

> Whether I, working as Instructor at the Mauritius Institute of Training and Development should be upgraded to the grade of Training Officer.

The Disputant, an Instructor at the Mauritius Institute of Training and Development, was seeking to be upgraded to the post of Training Officer as she was performing the duties of the latter post as per its Scheme of Service. The Respondent contended that there was no automatic upgrading and that the Disputant was being paid an *ad hoc* allowance for performing higher duties.

The Tribunal, having *inter alia* considered the powers of the employer in matters of appointment, found that there has been an abuse on the part of the employer and its management in assigning duties higher to her grade of Instructor to the Disputant
inasmuch as the evidence adduced before the Tribunal has clearly borne out that she has been performing the duties of Training Officer.

The Tribunal therefore awarded that the Disputant be upgraded to the post of Training Officer as per the Terms of Reference of the dispute.

**ERT/RN 92/2017 - Mr Yousouf Ibne Abdulla Cheddy and The State of Mauritius as represented by The Ministry of Labour, Industrial Relations, Employment and Training, in presence of: (1) The Ministry of Civil Service and Administrative Reforms and (2) The Pay Research Bureau (Ruling)**

The matter was referred to the Tribunal by the Commission for Conciliation and Mediation on the following Terms of Reference:

1. **Whether the draft Schemes of Service prepared by the Ministry of Labour, Industrial Relations, Employment and Training for the Post of Deputy Director, Occupational Safety and Health should be in line with decisions reached with the Permanent Secretary of the Ministry of Labour, Industrial Relations, Employment and Training during a meeting held on 3 November 2016 so as to have one post of Deputy Director, Occupational Safety and Health (Specialist Support Services) and one post of Deputy Director, Occupational Safety and Health (Occupational Safety and Health Inspectorate); and**

2. **Whether the Schemes of Service for the post of Deputy Director, Occupational Safety and Health should be in line with paragraphs 38.24 to 38.35 of the Chapter 38 of the Pay Research Bureau Report 2016 Part I – Civil Service (REVIEW OF PAY AND GRADING STRUCTURES AND CONDITIONS OF SERVICE IN THE PUBLIC SECTOR).**

The Respondent raised a preliminary objection to the dispute to the effect that there is no live issue in the case as the scheme of service for the post of Deputy Director, Occupational Safety and Health has already been prescribed and the effective date is as from 01 August 2017.
The Tribunal found, after having heard the arguments of the parties, that at the time of the reporting of the dispute and the referral of the matter, the scheme of service in question was still at a draft stage and not finalized. However, the scheme of service has been prescribed on 1 August 2017 and as at now, the Terms of Reference of the dispute does not reflect the current state of affairs regarding the scheme of service of the aforesaid post. The Tribunal went on to find that it would therefore amount to an academic and hypothetical exercise for it to enquire and deliver an award in relation to the present Terms of Reference inasmuch as the scheme of service for the post of Deputy Director, Occupational Safety and Health has already been finalized and prescribed since the 1 August 2017 and is no longer at a draft stage as is reflected in the Terms of Reference.

The Tribunal found that the preliminary objection raised by the Respondent to be well taken and upheld same. The dispute was therefore set aside.

ERT/RN 125/2017 – Sugar Industry Labourers Union and Ors. AND (1) Mauritius Sugar Cane Planters Association and (2) Mauritius Co-operative Agricultural Federation Ltd, in presence of: Cane Growers Association

The three Applicants were seeking an order for the extension of a Collective Agreement dated 19 June 2017 to the whole of the industry pursuant to section 60 of the Employment Relations Act. The Collective Agreement was reached between the Applicants and the Cane Growers Association and provided for an increase of 17.5% in salaries to agricultural and non-agricultural workers of the sugar industry with effect from 1 January 2017. The Respondents did not object to the application.

The Tribunal was satisfied that the parties to the Collective Agreement represented a substantial proportion of the workers or of the employers of the industry; that the employers engaged in the industry were not bound by the Collective Agreement; and that it is necessary and desirable in the interests of uniformity of terms and conditions of employment within the industry that the Collective Agreement be extended.

The Tribunal therefore ordered that the Collective Agreement reached between the three Applicant Unions and the Cane Growers Association on 19 June 2017 be extended to the whole of the sugar industry.
ERT/RN 112/17 to ERT/RN 113/17 – Mrs Vimasing SK HEERAH and Another AND Mauritius Mental Health Association (Award)

The two consolidated disputes were referred to the Tribunal by the Commission for Conciliation and Mediation on the following common Terms of Reference:

*Whether the Mauritius Mental Health Association should increase my basic wage to not less than Rs 6850 monthly which is equivalent to the grant provided by the Ministry of Education as a complementary to the wage of each individual Assistant Teacher and that all outstanding amount as from July 2016 be refunded.*

The Disputants are employed as Assistant Teachers at the Mauritius Mental Health Association (“MMHA”). The MMHA receives Grant-In-Aid from the Ministry of Education for its Assistant Teachers. The Disputants contend that the MMHA has refused to increase the basic wage of the Disputants by at least the minimum contribution made by the Ministry of Education.

The Tribunal, after hearing the parties to the dispute as well as witnesses, found that the MMHA should increase the basic wage of the Disputants to the amount of not less than Rs 6,850 monthly. This amount being the equivalent of the grant being provided by the Ministry of Education for Assistant Teachers under the Grant-In-Aid Formula of 2016. The Tribunal awarded accordingly.

The Tribunal, in the absence of relevant evidence of when arrears were due and what is the outstanding amount the Disputants are asking for as arrears, did not award that all outstanding amount as from July 2016 be refunded.

ERT/RN 105/17 to ERT/RN 111/17 - Mrs Noorjahan Chuttoo and Others AND Mauritius Mental Health Association (Award)

The seven consolidated disputes were referred to the Tribunal by the Commission for Conciliation and Mediation on the following common Terms of Reference:

*Whether the Mauritius Mental Health Association should increase my basic to not less than Rs 10,250 monthly which is equivalent to the grant provided by the Ministry of Education as a complementary to the*
The Disputants are employed as Teachers at the Mauritius Mental Health Association ("MMHA"). The MMHA receives Grant-In-Aid for its Teachers from the Ministry of Education under the Grant-In-Aid Formula for Special Education Needs Schools. The Disputants contend that the MMHA has refused to increase their basic wage by at least the minimum contribution made by the Ministry of Education.

The Tribunal went on to find that the MMHA receives a grant from the Ministry of Education under the Grant-In-Aid Formula for the salary of their staff, which includes the Disputants. The evidence has also borne out that the Ministry expects that the Association pays its staff at least the minimum amount of the contribution it receives.

The Tribunal therefore awarded that the MMHA should increase the basic of the Disputants to not less than Rs 10,250 monthly which is equivalent to the grant provided by the Ministry of Education as a complementary to the wage of each individual Teacher. The Tribunal, in absence of any evidence to this effect, did not award that all outstanding amount as from July 2016 be refunded.

ERT/RN 133/17 - Hotels and Restaurants Employees Union (Appellant) And Commission for Conciliation and Mediation (Respondent)

The Appellant made an application under Section 66 of the Employment Relations Act 2008, as amended (the “Act”) against the rejection of a dispute by the Commission for Conciliation and Mediation (the “CCM”). The present matter was thus an appeal against the rejection of the report of a dispute by the President of the CCM under Sections 64(2) and 65 (1)(d) of the Act.

The Tribunal was not satisfied that there had been meaningful negotiations on the issue of salary increase. Management had not even given its stand on the merits of a salary increase. Management was instead suggesting the finalization and signing of a Procedure Agreement and negotiations for a Collective Agreement. The Tribunal failed to see how this could be interpreted as a deadlock in negotiations. The appellant averred at ground of appeal 5 that “There is no mandatory period setting law to go to a Procedural Agreement.”

The Tribunal did not agree with this and stated that all along in the Employment Relations Act, emphasis was on collective bargaining and on the need for parties to enter into a procedure agreement. The Tribunal then referred to Sections 51, 108(5), 108(6) of the Act which included delays in relation to the drawing up and signing of a
procedure agreement or to the amending of an existing procedure agreement to include mandatory provisions. The Tribunal agreed that collective bargaining includes negotiations in relation to the subject matter of a procedure agreement (section 2 of the Act) and that a procedure agreement is thus not a prerequisite for collective bargaining, but the Tribunal found that what is essential is for an employer and a recognised trade union to engage in collective bargaining. The Tribunal was of the view that the evidence before it, suggested that this was what the employer was trying to convey in his letter to the union.

The Tribunal was unable to find that the President of the CCM was wrong on the basis of materials then available to him to reject the dispute under sections 65(1)(d) and 64(2) of the Act. The Tribunal also observed that the Act already provided that an application may be made directly to the Tribunal where one party refuses to start negotiations with a view to reaching or reviewing/revising a collective agreement within the delay prescribed by law (section 53(5) of the Act).

For the reasons given in its order, the Tribunal was not satisfied that the President of the CCM had wrongly rejected the dispute and the appeal was thus set aside.

**ERT/RN 14 /17 – Abdool Fakrudhin Subratty (Disputant) And Financial Services Commission (Respondent)**

The Commission for Conciliation and Mediation referred the labour dispute with the consent of the worker to the Tribunal for arbitration in terms of Section 69 (7) of the Act with the following terms of reference:- “Whether I Mr. Abdool Fakhrudin Subratty, should be reinstated as lead examiner at the Financial Services Commission.”

Following a hearing of the Disciplinary Committee set up by the Respondent, the charges of gross misconduct imputed at the Disputant were found to be proved and the Disputant was demoted from the position of Lead Examiner to Examiner.

After hearing all the evidence, the Tribunal was satisfied that Disputant must have been made aware of the existence of the Policies and Procedures Manual at Respondent prior to 2016 although he kept denying it. Disputant also admitted having signed a declaration entitled “Adherence to FSC Code of Conduct” as far back as 2004. The Tribunal thus concluded that to all intents and purposes, the Code of Conduct was binding upon him.

The charges against Disputant were proved before the committee. The Respondent decided on two actions simultaneously: the demotion and the suspension and which suspension was ostensibly in the nature of a mise à pied. Although a mise à pied conservatoire is not interpreted to be a sanction per se since its purpose is to continue
paying an employee his basic salary pending the outcome of an enquiry and following which an employer is to start any sanction, the Tribunal found that in the present case the suspension came after the disciplinary hearing which gave the mise à pied un caractère de mise à pied disciplinaire and it thus amounted to a sanction. This was against the principle of double sanctions for a wrong doing (Non bis in idem).

The Respondent had put the cart before the horse, i.e., it had sanctioned and had decided simultaneously to demote and suspend awaiting a police enquiry which to all intents and purposes amounted to it envisaging further sanctioning if need be for the same wrong doing. The Tribunal was of the view that after initially demoting the Disputant without his consent and after the disciplinary committee had run its course, the Respondent acted beyond his power, not only when it imposed the demotion but when it added the suspension to it. The Tribunal found that this offended the fundamental principles of fair employment.

However, Disputant having then confirmed in writing to the acceptance of his demotion, the Tribunal concluded that it could not go beyond such agreement. Disputant’s assent was confirmed by the very fact of Disputant resuming work in the demoted position so that he cannot now contest what he had willingly agreed to. For all the reasons stated above, the Tribunal was unable to intervene in Disputant’s favour. The dispute was thus set aside.

**ERT/RN 136/17 - Mrs Deepti Ramtohul (Disputant) And Université des Mascareignes (Respondent)**

The point in dispute was whether Disputant “should be employed as Lecturer at Université des Mascareignes on a permanent basis”. On 12th December 2017, both parties informed the Tribunal that an agreement had been reached and that Disputant will be employed as Lecturer at Université des Mascareignes on a permanent and pensionable basis and that the appointment will take effect as from the 14th of April 2014. Both parties having moved for an award in terms of the settlement, the Tribunal awarded accordingly.
December 14, 2017: End of Year Lunch at Le Grand Bleu Hotel

January 13, 2018: Sitting held in Rodrigues
Statistics
This annual report is published in accordance with Section 86(2)(d) of the Employment Relations Act 2008.

During the year 2017:

- The number of disputes lodged before the Tribunal was 174 out of which 96 cases were referred to the Tribunal by the Commission for Conciliation and Mediation. There was one case referred by the Rodrigues Commission for Conciliation and Mediation.

- The number of cases disposed of summarily (through conciliation and agreements between parties) was 129.

- There were 18 Awards and 8 Orders delivered and the Tribunal had to deliver 7 Rulings.

- The Tribunal has disposed of 164 cases during the period January to December 2017.

As at 31st December 2017, there were 63 cases/disputes pending before the Tribunal.
What is an e-tribunal?
Employment Relations Tribunal

an e-tribunal
What is an E-Tribunal?

- An e-tribunal is a modern Tribunal where electronic means of communication is allowed between parties to a case and the Tribunal.
- Parties can exchange pleadings by e-mail and the physical attendance of parties is not required until a matter is fully in shape for hearing.
- Counsel can e-mail copies of relevant case law that they intend to use or written submissions. Requests for minutes of proceedings, summoning of witnesses or postponements can also be made by e-mail.
- Awards of the Tribunal are available online on the website of the Tribunal (http://ert.gov.mu)
**WHO CAN HAVE ACCESS?**

- The service is free, and open to anyone who is a party to a labour dispute which has been or is being referred to the Tribunal.

- A user will be able to use the system once he/she has provided relevant information and registered with the Tribunal.

**THE ADVANTAGES OF ELECTRONIC SYSTEM**

- Workers, Trade Unions, and representatives of Employers do not have to leave work to attend the Tribunal for formal and pre-hearing matters.
The formal process takes less time and exchange of documents can be done any time.

- Proceedings are greatly facilitated and the scope to narrow down issues right from the start is greater.
- Communication of minutes of proceedings is facilitated (paperless) thus enabling the fixing of continuation cases within short periods.
- The Tribunal can meet strict deadlines imposed on it by law to deliver Awards and Orders.

Judge: "Remember all your answers, must be oral.
Where do you work?"

Witness: "Dral"

Judge: "Who is your employer?"

Witness: "Dral"
How to get into the E-Tribunal System?

The system has been devised with the main objective that it must be user-friendly.

At the same time, strict parameters in relation to security of information exchanged by e-mail have to be respected.

The pre-registration system has been adopted to ensure that the identity of any particular user can be ascertained.

Once a registration form (available on https://www.gov.net) has been submitted, the user will receive notification that his/her application has been received and hence will be able to make use of the system.

A detailed user guide for the e-tribunal is available on the website of the Tribunal.