The role of the Employment Relations Tribunal in promoting harmonious industrial relations

The Tribunal plays an important role in the economy of the country and maintains 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 account reveals that 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. In his "Political History of Mauritius recollections and reflections)", Moonindra Nath Varma writes:-

> *"… some 716 buses were off the road and around 75,000 people deprived of transport. They included offices and nursing staff, police and school personnel, students and other*

workers as well as the sick and the injured. Most public and private sector offices were largely deserted. Economic and social activities were reduced. Mauritius stood almost at a standstill."

"…conciliatory meetings had ended in deadlock due to obstinacy, arrogance and the idea of confrontation. The Government now applied the Public Order Act. Anyone inciting workers for an illegal strike was to be detained…"

Michel Buy, Maître-Assistant à la Faculté de Droit et Science Politique d'Aix-Marseilles, provides a succinct overview of prevailing conditions governing industrial relations prior to and post independence era in Mauritius:-

"Les problèmes posés par les rapports collectifs de travail dominent la vie sociale et économique de l'ancienne ile de France. Sur le plan social ces problèmes sont ressentis avec une acuité toute particulière par une population au sein de laquelle les différences ethniques et sociales jouent un role de première importance. La population mauricienne est en effet très diversifiée; on y trouve des descendants de colons français, d'esclaves noirs, d'immigrés indiens et une forte minorité chinoise. Ces differences ethniques et sociales peuvent servir à expliquer, dans une large mesure, les relations entre employeurs et travailleurs car le patronat continue à être, en majorité, constitué d'éléments de descendance européenne, alors qu'au bas de la pyramide des salariés on trouve généralement des descendants d'indiens et d'africains. Sur le plan économique, le pays rongé par un chômage

endémique et une inflation galopante, est souvent paralysé par de fréquentes grèves formentées par des syndicats très politisés. Ces conflits sociaux ne font que détériorer encore plus une économie peu brillante et très instable du fait qu'elle repose essentiellement sur la culture de la canne à sucre. On a pourtant réglementé minutieusement les rapports collectifs de travail afin de réduire la plus possible les affrontements sociaux dans le pays.

……..En l'espace de quelques années, trois textes furent promulgués: Le Trade Union Ordinance (1954), le Regulation of Wages and Conditions of Employment Ordinance (1961) et le Trade Disputes Ordinance (1965). Mais ils se révélèrent peu satisfaisants. Ainsi, par example, les conflits collectifs n'étaient pratiquement pas réglementés……

Au lendemain de l'indépendance, en 1968, les dirigeants politiques confrontés aux problèmes du développement économique et de l'emploie laissèrent de côté la réforme de la réglementation des rapports collectifs de travail. Mais dès 1970, devant la recrudescence des conflits sociaux, ils en firent une priorité. Le Gouvernement demanda à un juriste anglais, M. Kenneth Potter, qui avait déjà effectué un travail similaire pour certains pays africaine, notamment le Kenya, de lui soumettre un texte de loi moderne pour régir les rapports collectifs de travail . C'est ce texte qui, voté par le Parlement, constitue aujourd'hui L'industrial Relations Act (IRA). Promulgué le 24 décembre 1973, l'IRA est entrée en vigueur le 7 février 1974.

Il s'agit d'une loi fondamentale qui ne comprend pas moins de 111 sections et qui réglemente les différents aspects des rapports collectifs de travail. Un Code de Conduite est annexé à la loi. Il donne d'utiles conseils aux partenaires sociaux sur la manière dont doivent se dérouler leurs rapports…..

….. l'IRA n'est pas marqué par le caractère traditionnellement mixte du droit mauricien, influencé à la fois par le droit français et le droit anglais…… Cet antécédent, auquel il convient d'ajouter la personnalité du rédacteur du projet de loi, ne pouvait que conduire à un texte d'inspiration anglo-saxonne. L'IRA est toutefois adapté à la situation originale de l'île Maurice. Ainsi, par exemple, on a tenu compte du fait que l'économie ne pouvait supporter une politique de hauts salaires, ni de trop fréquentes grèves: la loi reserve pratiquement à l'Etat le monopole de la fixation des salaires et interdit le déclanchement de la grève avant l'épuisement des procedures légales".

Indeed the strike in the transport sector started spreading like cancer to other sectors namely the Central Electricity Department, the sugar industry and the ports authority. In the sugar sector several factories have had to stop running threatening the whole industry which was the economic pillar of the country. The strike continued with disastrous consequences with ships and unloaded goods remaining immobilised in the harbour and had to be rerouted to Reunion Island. 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. An 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 stipulated 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. Justice Vallet resigned from the Supreme Court to take office as the first President of the Permanent Arbitration Tribunal. Alongside the Tribunal, the Act established also a Civil Service Arbitration Tribunal for the public service and civil service unions. Sir Henry Garrioch, a dignified Chief Justice foresaw as far back as 1976 in the case of Union of Labourers of the Sugar and Tea Industries versus Permanent Arbitration Tribunal:-

> ***"… the Tribunal is by its Constitution the main arbiter in the sphere of industrial relations. It is or is expected to become with time and experience, an expert body in that sphere and as such should be left, as far as possible, to determine what is required for the implementation of the purposes of the Act and the fulfilment of its objects."***

From Desforges Street to Astor Court and finally ending on a skyscraper level, the Newton Tower, the Permanent Arbitration Tribunal has been renamed the **"Employment Relations Tribunal"** dealing specifically with arbitration of industrial disputes in both the public and private sector. 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.

With recent developments in the field of industrial relations and information communication technology and as the Government embarks further in modernizing and amending our employment laws, the role of the Tribunal can only be called upon to increase in the future. Indeed, with globalization and the unprecedented financial crisis which has hit the global economy and the yet persisting insecure state of the economy in the Eurozone especially with the Brexit impact, the Mauritian economy is not immune from a downturn. In any crisis, those at the lower levels of the economy are the ones to suffer the most and workers are particularly at risk. The Government has the responsibility to take measures to ensure that the environment in the country remains favourable for investment whilst at the same time ensuring that this is not done at the expense of workers. Good employment laws and relations are more than ever crucial in this era of uncertainty and the role and responsibility of the Tribunal are sine qua non to ensure peace, social stability and economic development. As we approach the 45th year since the setting up of the Tribunal, all efforts are being made to develop the Tribunal into a more efficient, modern, reliable and rapid means of arbitrating and solving disputes between relevant stakeholders so that every party is in a win-win situation and

that peace, social stability and economic development are maintained in the country.

It is now an eTribunal and establishes a rapid and effective arbitration procedure and it is of particular benefit to disputants, lawyers and the Tribunal. It suffices that one clicks to our website and receives instant information on how to proceed with his dispute and the service remains free. The Tribunal allows the user to manage the full life cycle of his dispute before the hearing takes place. Most Barristers and Solicitors dealing with industrial disputes are now registered on our system and others are invited to visit our website. The aim of the Tribunal is to provide best services to users. It helps to minimize disruption at work and avoid wasting of resources whereby parties to disputes may be allowed not to be physically present in the Tribunal room for most of the "formal" proceedings and be present only when the case is in shape and ready for arbitration.

Despite the challenges that the Tribunal faces as an institution, the effective delivery of its statutory mandate has to remain the focus. 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.

Arbitration is a form of alternate dispute resolution (ADR). It resolves disputes through the issuing of an award that becomes binding on the parties and enforceable in the courts. It can be either voluntary or mandatory (although mandatory arbitration can only come from a statute or from a contract that is voluntarily entered into). The Tribunal deals with both

voluntary and statutory arbitration. In the latter case, the Commission for Conciliation and Mediation has power to refer an unresolved labour dispute of an individual for arbitration before the Tribunal if the latter consents to it. Although some common principles of arbitration may hail from international arbitration and our Code de Procédure Civil, the arbitration before the Tribunal emanates from the statutory provision of the Employment Relations Act 2008 where further considerations may be taken into account in deciding over any dispute. They are the need to promote decent work and decent living, the need to ensure the continued ability of the Government to finance development programmes and recurrent expenditure in the public sector, the capacity to pay of enterprises and the principles and best practices of good employment relations, amongst others.

Central to the voluntary or compulsory arbitration process under the former Industrial Relations Act 1973 and the present Employment Relations Act 2008 is the fundamental distinction between disputes of rights which are disputes about legal rights and disputes of interests which are economic disputes which relate to claims by workers or recognised trade unions of workers which relate wholly or mainly to wages, terms and conditions of employment, promotion, allocation of work between workers and groups of workers, reinstatement or the suspension of employment of a worker.

Not every dispute is arbitrable.

This was so under the former Act of 1973 which had introduced the concept of an industrial dispute which has since 2008 been termed a labour dispute but with a statutory three-year time bar after the act or omission that gave rise to the dispute and the notable and express exclusion of disputes

made as a result of the exercise of options to be governed by the recommendations of the Pay Research Bureau or of a salary commission by whatever name called.

These are salutary exclusionary clauses as the former Permanent Arbitration Tribunal and Civil Service Arbitration Tribunal were both routinely flooded with such cases.

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 settlement 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

Following the closing down of the Termination of Contract Service Board, the Employment Rights Act makes provision for the creation of an Employment Promotion and Protection Division within the Tribunal. It deals with all cases of reduction of workforce, whether temporarily or permanently and closing down of enterprises, referred to the Tribunal by the Ministry of Labour, Industrial Relations and Employment. For the purposes of this new division the law defines the word *"employer"* as an employer with no less than 20 workers. An unjustified reduction of the workforce will entail either the reinstatement of the worker to his former employment and that with his

consent or the obligation to pay to him severance allowance. The new law also introduces the principle of Last in First Out, that is the last one recruited will be the first one through the exit door. The Tribunal has only 30 days with an extra 30 days in exceptional cases to consider whether the employer's decision is justified. The time limit is itself a challenge the more so as the Tribunal has to take into account the Constitutional and other legal rights of parties. The Employment Promotion and Protection Division is presided by the President or the Vice-President of the Tribunal together with 2 members well versed in the field of employment relations and finance respectively.

On a concluding note, the Tribunal, in spite of its wide powers provided under the Employment Relations Act, does not see itself as a sanctioning body, but rather the bridge that supports and improves harmonious industrial relations between management and employees.

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Employment Relations Tribunal