



Republic of Mauritius

## Annual Report

# Employment Relations Tribunal

Year 2015

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# **Note from the President**

## Note from the President

It is with immense pride that I forward the annual report for the year 2015, a year that has been marked by more challenges. In line with our mission to provide an efficient, modern, reliable and quick means of arbitrating and settling industrial disputes between workers or trade unions of workers and employers or trade unions of employers, the Tribunal has successfully dealt with the increased number of disputes referred to it.

The Employment Promotion and Protection Division has witnessed an increased number of sittings and the Tribunal endeavoured despite all odds regarding time limit to issue awards within the statutory time frame. I seize this opportunity to thank the staff for their efforts and commitment to enable the Tribunal to deal successfully with such demanding exercises.

We are proud to have in our midst three young trainees with a passion to learn. Their contribution to the department is highly appreciated.

Indeed the dedicated team that stands behind me will spare no effort to excel in our mission and to be continued to be seen as the expert Tribunal for the settling of industrial disputes.

**Rashid Hossen**

# Mission

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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

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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 2008. 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 2009,

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).

Mr Hossen has read Private International Law (Hague Academy of International Law) (Holland) (1980). He followed a Course on American Legal System in New York and Washington D.C. Sponsored by United States Information Service (USA) (1987). He attended an Advanced Course on Technical Aspects of Legal Drafting at the International School of Bordeaux (France) (1992). He did a study tour on Judicial Administrative Tribunals (Italy) (1996). He attended UNDP's Seminar on the Australian Legal System (Australia) (2000). He attended a Conference organized by the Commission for Conciliation,

Mediation and Arbitration (CCMA) in collaboration with the International Labour Organization (ILO) on Regional Cooperation regarding Labour Dispute Resolution and Prevention (South Africa) (2005). He attended a seminar on Arbitration Chaired by Ben Beaumont Arbitrator from Hong Kong organized by the Mauritius Chamber of Commerce (Mauritius) (2010). He participated at the International Council for Commercial Arbitration Congress on "Arbitration & Other forms of Dispute Resolution" (Brazil) (2010). He attended the International Council for Commercial Arbitration Conference on "Arbitration and the next 50 years" (Switzerland) (2011). He participated at the International Conference of the Chartered Institute of Arbitrators (UK), European Branch on "Arbitration in Europe" (Spain) (2012). He also participated at the Basel, Swiss Arbitration Conference (Switzerland) (2013). Attended the International Conference on "Modernising Labour Law in 21st Century" (South Africa) (2014). Attended the Annual Labour Law Conference on "The Changing Face of Labour Law: Tensions and Challenges" (South Africa) (2014).

Attended the IBA Employment and Discrimination Law Conference (Italy) (2015).  
Attended the 17<sup>th</sup> ILERA World Congress on “The Changing World of work: “Implications for Labour and Employment Relations and Social Protection)”.  
(Cape Town, South Africa) (2015)



## VICE-PRESIDENTS

Indiren SIVARAMEN, LLB (Hons), MBA (Finance) (University of Leicester), MCI Arb, 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) MCI Arb 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' and Judges' Association (CMJA) since 2013 and the International Council for Commercial Arbitration (ICCA) since 2015.



# Members of the Tribunal

# Representatives of Workers

1. Mr Sounarain Ramana
2. Mr Ramprakash Ramkissen
3. Mr Raffick Hossenbaccus
4. Mrs Esther Hanoomanjee
5. Mr Vijay Kumar Mohit

# Representatives of Employers

1. Mr Rabin Gungoo
2. Mr Denis Labat
3. Mr Desire Yves Albert Luckey  
(Passed away on 23.01.16)
4. Mrs Rajesvari Narasingam Ramdoo
5. Mr Jay Komarduth Hurry

# Independent Members

1. Mr Triboohun Raj Gunnoo
2. Mr Khalad Oochotoya
3. Mr George Karl Louis
4. Mr Renganaden Veeramootoo

# Employment Promotion and Protection Division Members

1. Mr Arassen Kallee
2. Mr Ali Osman Ramdin

# Staff List

<b>1. Mr DABYCHARUN Taj Avinash</b>	<b>Registrar (On Leave)</b>
<b>2. Mrs BUXOO Farozia</b>	<b>Office Management Executive</b>
<b>3. Mrs BABOOA Nallinee</b>	<b>Finance Officer / Senior Financial Officer (Part –Time Posting – ERT)</b>
<b>4. Mrs JOKHOO Santa</b>	<b>Temporary Office Management Assistant</b>
<b>5. Mrs SOHAWON Rassool Bibi</b>	<b>Senior Shorthand Writer</b>
<b>6. Mrs WAN CHUN WAH Chong How Rosemay</b>	<b>Shorthand Writer</b>
<b>7. Mrs TOOFANY Bibi Ansoo</b>	<b>Confidential Secretary</b>
<b>8. Mrs DOSIEAH Deeneshwaree</b>	<b>Confidential Secretary</b>
<b>9. Mrs MOSAHEB Ruksana</b>	<b>Confidential Secretary</b>
<b>10. Mrs LUCHMUN Dhanwantree</b>	<b>Management Support Officer</b>
<b>11. Mrs LABONNE Mary Joyce</b>	<b>Management Support Officer</b>
<b>12. Mrs PATANSINGH Jayshree</b>	<b>Management Support Officer</b>
<b>13. Mr HAIRSOO Amez</b>	<b>Management Support Officer</b>
<b>14. Miss CHANDUL Ashwani</b>	<b>Management Support Officer</b>
<b>15. Mr BHUGALOO Mohammud Naguib</b>	<b>Head Office Care Attendant</b>
<b>16. Mrs KHETHA Naleenee</b>	<b>Office Care Attendant / Senior Office Care</b>
<b>17. Mr MOHUN Purmessursingh</b>	<b>Office Care Attendant / Senior Office Care</b>

## **Trainees under Youth Employment Programme**

**1. Miss SOCKALINGUM Yorgheshwaree - Give assistance at the Registrar Level**

**2. Miss MAHEEPUT Priya Ashwini - Give assistance at Word Processing Operator / Shorthand Writer Level**

**3. Mr LEE CHEE Steven William - Give assistance at Word Processing Operator / Shorthand Writer Level**

# 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 2015 are available at: <http://ert.govmu.org>**

### **ERT/ 88/14 - Mr Vishal Gobin And Cargo Handling Corporation Ltd**

The case was referred to the Tribunal pursuant to section 69(7) of the ERA 2008 and the terms of reference of the dispute, were as follows:

“Whether I, the Applicant, Mr. Vishal Gobin, Assistant I.T. Manager, ought to have been granted 3 or more increments instead of 1, to be at par with other incumbents who were thus upgraded and appointed in grade 5 following application of SRC 2008 Appeal Report and were granted 3 increments upon request; consequently moved further on their salary scale in grade 5 when compared to Applicant's; thereby disturbing the salary relativity and downgrading Applicant salary wise in relation to the others despite applicant was first to be appointed in the grade.”

The Tribunal has analysed the salary progression of incumbents in various posts. The Tribunal has also considered the percentage increase obtained by Disputant compared to other incumbents and the average overall increase in salary for the whole organisation. On the basis of evidence adduced, the Tribunal found no reason why Disputant should benefit from any promotion and/or upgrading which the holder of another post may have benefitted. For the reasons given in its award, the Tribunal found that the Disputant had failed to show that he should have been granted three increments and the dispute was set side.

### **ERT/RN 78/14 & ERT/RN 79/14 –(1) Mr Suraj Reedoo (2) Mr Rishi Dev Canhea And Irrigation Authority**

The case was referred to the Tribunal pursuant to section 69(7) of the ERA 2008 and the terms of reference of the dispute, were as follows:

“Payment for allowance for data entry and updating of information in the Irrigation Authority's computerized system for billing”

The Tribunal observed that whilst one may claim an allowance for performing additional duties, these duties should pertain to higher responsibilities or at least similar responsibilities to one's own duties/responsibilities. One cannot claim an allowance for performing the duties of a lower post unless there are very good reasons for same. In that case, the alleged additional duties, which were of a clerical nature resulting from computerization at the Respondent, did not constitute such good reasons. As per the 2008 PRB Report which was applicable, a Field Officer has a much higher salary scale than a Clerical/Higher Clerical Officer. Thus, the disputants could not claim an allowance for performing duties allegedly pertaining to Clerical Officer/Higher Clerical Officer.

The Tribunal however urged the Respondent to cause necessary amendments to be made, as soon as possible, to the scheme of service of the disputants so that the appropriate job description for the post of 'Field Officer' is available.

For the reasons given in its award, the Tribunal found that the disputants had failed to show that an allowance should be granted to them and the dispute was set aside.

#### **ERT/RN 95/14 - Mr Anant Kumar Udhin And Private Secondary Schools Authority**

The case was referred to the Tribunal pursuant to section 69(7) of the ERA 2008 and the terms of reference of the dispute, were as follows:

"Whether I, Mr. Anant Kumar UDHIN, Senior Supervisor at the Private Secondary Schools Authority (PSSA), am entitled to the grant of an increment in my basic salary after having successfully completed my Master in Business Administration (MBA) degree in March 2012 as in the case of my colleague Supervisor Mr. D.Patpur for his Master's degree, in line with the – recommendation of the Ministry of Education and Human Resources as regards Educators holding that certificate."

The Tribunal observed that at the time Disputant obtained his MBA and applied for an increment, his scheme of service had already been amended. It was not disputed that the MBA is a postgraduate qualification in the field of Administration and was as from 2008 (including at the material time in 2012) a qualification required for the post of Supervisor/Senior Supervisor.

The Pay Research Bureau (PRB) reviews the pay and grading structures and conditions of service at the Respondent. In its 2008 report, besides recommending the changes to the scheme of service of the Supervisor/Senior Supervisor, the PRB provided for the grant of incremental credit for additional qualifications. However, these additional qualifications had to be qualifications "which are higher than the qualifications specified in the scheme of service for the grade". As per the PRB recommendations, one may, in a few instances, be granted an increment despite not having acquired a qualification which is of a higher level than the qualification specified in the scheme of service. The qualification must be in a different field from those specified in the scheme of service and must be significantly relevant to the performance of the duties of the grade. In that case, the MBA was not a qualification in a different field but a postgraduate qualification in the field of Administration required in the scheme of service of Disputant. The disputant was thus not entitled to be granted an increment for his MBA. The dispute was thus set aside.

#### **ERT/RN 147/14 - Mr Jugdiss Chuttur And Cargo Handling Corporation Ltd**

The case was referred to the Tribunal pursuant to section 69(7) of the ERA 2008 and the terms of reference of the dispute, were as follows:

"Whether the Cargo Handling Corporation Ltd should recognize my length of service as from 1970 instead of 1975."

The Tribunal observed that absence of documentary evidence is no bar to establishing a contract of employment and oral evidence may, in an appropriate case, be sufficient to prove a contract of employment. The Tribunal thus proceeded to consider all the evidence before it including oral evidence. For the reasons given in its award, the Tribunal however was not satisfied that the Disputant had proved even on a balance of probabilities that he was employed by Société Noël Frères since 1970. The dispute was thus set aside.

### **ERT/RN 30/2015 - Chemical Manufacturing and Connected Trades Employees Union and Galvabond Ltd**

The Chemical Manufacturing and Connected Trades Employees Union prayed for an order from the *Tribunal* to stop all unfair labour practice pursuant to *section 54* of the *Employment Relations Act*. The application was made in the context of ongoing collective agreement negotiations between the two parties. The issues of unfair labour practice raised by the *Applicant Union* related mainly to false declarations made by the employer before the *Commission for Conciliation and Mediation*; and time-off for the President of the *Applicant Union* to allow him to discuss issues relating to the workplace with the union.

The *Tribunal* did not find that there was any unfair labour practice by the *Respondent* in relation to the issues raised by the *Applicant Union* in the matter. The application was accordingly set aside.

### **EMPLOYMENT PROMOTION AND PROTECTION DIVISION**

#### **ERT/EPPD/RN 01/15 - Mr Santaram Babboo, Mrs Luxeemee Balloo and Mrs Padmini Rajeeya And Sofitel Mauritius (Belle Rivière Hotel Ltd)**

In a written address dated 9th June 2014, Sofitel Mauritius (Belle Rivière Hotel Ltd), an employer of not less than 20 employees, gave notice of its intention to lay off three gardeners, that is, the Disputants on grounds of redundancy. Being of the opinion that the Disputants have a 'bona fide' case, the Permanent Secretary of the Ministry of Labour, Industrial Relations, Employment and Training in accordance with section 39B(6) of the Employment Rights Act 2008, as amended, decided to refer to the Employment Promotion and Protection Division of the Employment Relations Tribunal the aforesaid reduction of workforce case for determination. The point in dispute in the terms of reference read as follows:

*Whether the reduction of the workforce affecting the 3 disputants is justified or not in the circumstances.*

The Tribunal analysed in detail the procedural aspects and financial aspects of the reduction of workforce. Based on the observations of the Tribunal and the minimal impact of the redundancy on the financials of the company, the Tribunal found that the Respondent's claim for financial difficulties did not stand good inasmuch as the Tribunal was not satisfied even on a balance of probabilities that the financial constraints of the Respondent were such that the redundancy of the three Disputants had become inevitable for the company. Its reduction of workforce was in the circumstances unjustified. Given the

fact that the Disputants were agreeable to be reinstated in their former post, the Tribunal ordered, in accordance with Section 39B(9)(a) of the Employment Relations Act, that the three disputants be reinstated in their former employment with payment of remuneration from the date of the termination of their employment to the date of their reinstatement.

### **ERT/RN 102/2014 - Mr Joseph Roger Elsmi Aglar and The Medine Sugar Estates Co. Ltd**

This was a matter referred to the *Tribunal* by the *Commission for Conciliation and Mediation*. The terms of reference of the labour dispute read as follows:

*Whether following my retirement at the age of 60 from Medine Sugar Estate Co. Ltd, I should have contributed 50% of (montant de la prime annuelle du plan médical des membres retraités et leurs dependents) Health & Catastrophe Schemes, instead of 100% from year 2004 to date.*

Mr J.R.E. Algar, a personnel manager, retired from Medine Sugar Estates Co. Ltd in March 2002. He was entitled to a Medical Health Care Insurance, wherein the employer contributes towards half of the annual premium, among the pension benefits attached to the *Protocol d'Accord* agreed between the MSPA and the SISEA. The Disputant thereafter opted for the Voluntary Retirement Scheme ("VRS") upon being invited to do so in August 2004. He later noticed that he was paying the full premium of the medical cover instead of half. The Respondent contended that Mr Algar had renounced to the benefits that had accrued to him prior to entering the VRS.

The Tribunal did not find that the Disputant should have contributed only half of the premium to his medical scheme instead of the full amount he had been contributing to as from 2004. The dispute was accordingly set aside.

### **ERT/RN 15/15 - Mrs Dineshwaree Ramyeed-Banymandhub And Air Mauritius Ltd**

The above case had been referred to the Tribunal for arbitration in terms of Section 69(7) of the Employment Relations Act 2008. The terms of reference read as follows:

- (1) "Whether Air Mauritius should have appointed me in the post of Senior Administrative Officer in a permanent capacity since 2001 or otherwise; and
- (2) Whether Air Mauritius should compensate me with back-pay, dating from 2001 or otherwise, the relevant wages, all the relevant increments, allowances, benefits, salary increases and adjustments thereto pertaining to the post of Senior Administrative Officer, as advertised, evaluated and assessed on the prevailing scale of AM5/LS4."

Respondent has raised preliminary points in law which read as follows:

A. The respondent avers that "ex-facie" the averments of the Applicant, the Tribunal cannot be seised (seized) of this matter and has no jurisdiction to entertain the present Dispute

since the first limb of the Dispute, as couched, is time barred to the extent that it is in the nature of a “personal action”.

B. The Respondent avers that the Tribunal cannot even proceed to entertain the second limb of the Dispute in as much as the remedy being sought is, in itself, time barred.

C. Act No 5 of 2013 - The Employment Relations (Amendment) Act 2013 has amended Section 2 of the Employment Relations Act 2008 by adding a new paragraph 2(c) to the definition of a “Labour Dispute” namely:

“does not include a dispute that is reported more than 3 years after the act or omission that gave rise to the dispute.”

The Tribunal examined extensively the principles in relation to limitation periods and came to the conclusion that both disputes were excluded from the definition of ‘labour dispute’ by the proviso at paragraph (c) of the definition of ‘labour dispute’ under section 2 of the Employment Relations Act. The Tribunal thus had no jurisdiction to hear the said matters and the disputes were set aside.

### **ERT/RN 37/2014 Galvabond Ltd and Chemical Manufacturing and Connected Trades Employees Union**

The *Applicant* in the present matter is seeking an order for revocation of recognition of the *Respondent* trade union pursuant to *section 39 (1)* of the *Employment Relations Act 2008* on the ground that the union no longer meets the criteria of representativeness having less than 30 per cent support of the workers in the bargaining unit.

The Tribunal went on to find that as per *section 39* of the *Employment Relations Act 2008*, an employer can only make an application for revocation of recognition of a trade union of workers where there has been a ‘*default or failure to comply with any provisions of a procedure agreement*’. The *Applicant* company has not relied on any procedure agreement or any provision thereof in support of the present application. Nor has any default of a procedure agreement been invoked by the *Applicant*. The application was therefore set aside.

### **ERT/RN 42/15 - Organisation of Hotel, Private Club & Catering Workers Unity And VLH Ltd – Heritage Awali**

The Applicant made an application under section 44(1) of the Employment Relations Act (the “Act”) for an order that a check-off agreement shall have effect between Applicant and Respondent. The Respondent objected to the application on the ground that a check-off agreement can only apply to a trade union which is registered and has been granted recognition.

The Tribunal found that the law is clear and there is absolutely no need to read into section 44(1) or 43 of the Act the additional requirement that the trade union must also be recognised by the employer.

The Tribunal added that though there is much emphasis on collective bargaining in the Act, this certainly did not authorise an employer whose workers are members of a registered trade union to refuse to enter into a check-off agreement with that trade union because the trade union had not been recognised by the employer. Entering into a check-off agreement may foster good employment relations and in an appropriate case may lead to a formal recognition of the trade union without the need for a balloting exercise or dispute resolution process.

For the reasons given in its decision, the Tribunal ordered that a check-off agreement shall have effect between Applicant and Respondent as per section 44 of the Act.

### **ERT/ 17/15 - Dr Sailush Sookmanee And State of Mauritius, I.P.O Pay Research Bureau**

The case was referred to the Tribunal pursuant to section 69(7) of the ERA 2008 and the terms of reference of the dispute, were as follows:

*“Whether, my salary as a Senior Specialist, appointed in the service of the Ministry of Health and Quality of Life, on 05 March 2003, be adjusted in compliance with recommendation EOAC 225, paragraph 34.46 B of the Errors, Omissions, Anomalies Committee 2013.”*

With the release of the PRB report 2008, he averred that an anomaly had been created in the salaries of specialists/senior specialists inasmuch as the salaries of officers, including that of Disputant, appointed in the grade of specialists/senior specialists prior to 1st July 2008 were lower to those of officers appointed in the same grade after the 1st July 2008.

The parties informed the Tribunal that an agreement had been reached between the parties and the Tribunal made an award in terms of the agreement reached.

### **ERT/ 18/15 - Dr (Miss) Wong Kwee Young, W.S.N And State of Mauritius**

The case was referred to the Tribunal pursuant to section 69(7) of the ERA 2008 and the terms of reference of the dispute, were as follows:

*“Whether, my salary as a Senior Specialist, appointed in the service of the Ministry of Health and Quality of Life, on 26 April 2005, be adjusted in compliance with recommendation EOAC 225, paragraph 34.46 B of the Errors, Omissions, Anomalies Committee 2013.”*

With the release of the PRB report 2008, she averred that an anomaly had been created in the salaries of specialists/senior specialists inasmuch as the salaries of officers, including that of Disputant, appointed in the grade of specialists/senior specialists prior to 1st July 2008 were lower to those of officers appointed in the same grade after the 1st July 2008.

The parties informed the Tribunal that an agreement had been reached between the parties and the Tribunal made an award in terms of the agreement reached.

### **ERT/ 20/15 - Dr Vijayesing Dinassing And State of Mauritius**

The case was referred to the Tribunal pursuant to section 69(7) of the ERA 2008 and the terms of reference of the dispute, were as follows:

*“Whether, my salary as a Senior Specialist, appointed in the service of the Ministry of Health and Quality of Life, on 05 March 2003, be adjusted in compliance with recommendation EOAC 225, paragraph 34.46 B of the Errors, Omissions, Anomalies Committee 2013.”*

With the release of the PRB report 2008, he averred that an anomaly had been created in the salaries of specialists/senior specialists inasmuch as the salaries of officers, including that of Disputant, appointed in the grade of specialists/senior specialists prior to 1<sup>st</sup> July 2008 were lower to those of officers appointed in the same grade after the 1<sup>st</sup> July 2008.

The parties informed the Tribunal that an agreement had been reached between the parties and the Tribunal made an award in terms of the agreement reached.

### **ERT/ 22/15 - Dr Oomesh Reebye And State of Mauritius**

The case was referred to the Tribunal pursuant to section 69(7) of the ERA 2008 and the terms of reference of the dispute, were as follows:

*“Whether, my salary as a Senior Specialist, appointed in the service of the Ministry of Health and Quality of Life, on 05 March 2003, be adjusted in compliance with recommendation EOAC 225, paragraph 34.46 B of the Errors, Omissions, Anomalies Committee 2013.”*

With the release of the PRB report 2008, he averred that an anomaly had been created in the salaries of specialists/senior specialists inasmuch as the salaries of officers, including that of Disputant, appointed in the grade of specialists/senior specialists prior to 1<sup>st</sup> July 2008 were lower to those of officers appointed in the same grade after the 1<sup>st</sup> July 2008.

The parties informed the Tribunal that an agreement had been reached between the parties and the Tribunal made an award in terms of the agreement reached.

### **ERT/ 23/15 - Dr Santosh Kumar Chuckowry And State of Mauritius**

The case was referred to the Tribunal pursuant to section 69(7) of the ERA 2008 and the terms of reference of the dispute, were as follows:

*“Whether, my salary as a Senior Specialist, appointed in the service of the Ministry of Health and Quality of Life, on 05 March 2003, be adjusted in compliance with recommendation EOAC 225, paragraph 34.46 B of the Errors, Omissions, Anomalies Committee 2013.”*



With the release of the PRB report 2008, Disputant averred that an anomaly had been created in the salaries of specialists/senior specialists inasmuch as the salaries of officers, including that of Disputant, appointed in the grade of specialists/senior specialists prior to 1st July 2008 were lower to those of officers appointed in the same grade after the 1st July 2008.

The parties informed the Tribunal that an agreement had been reached between the parties and the Tribunal made an award in terms of the agreement reached.

### **ERT/ 19/15 - Dr Dharamraj Lutchmun And State of Mauritius**

The case was referred to the Tribunal pursuant to section 69(7) of the ERA 2008 and the terms of reference of the dispute, were as follows:

*“Whether, my salary as a Senior Specialist, appointed in the service of the Ministry of Health and Quality of Life, on 26 April 2005, be adjusted in compliance with recommendation EOAC 225, paragraph 34.46 B of the Errors, Omissions, Anomalies Committee 2013.”*

With the release of the PRB report 2008, he averred that an anomaly had been created in the salaries of specialists/senior specialists inasmuch as the salaries of officers, including that of Disputant, appointed in the grade of specialists/senior specialists prior to 1st July 2008 were lower to those of officers appointed in the same grade after the 1st July 2008.

The parties informed the Tribunal that an agreement had been reached between the parties and the Tribunal made an award in terms of the agreement reached.

### **ERT/ 21/15 - Dr Vinod Kumar Dwarkasingh Allgoo And State of Mauritius**

The case was referred to the Tribunal pursuant to section 69(7) of the ERA 2008 and the terms of reference of the dispute, were as follows:

*“Whether, my salary as a Senior Specialist, appointed in the service of the Ministry of Health and Quality of Life, on 05 March 2003, be adjusted in compliance with recommendation EOAC 225, paragraph 34.46 B of the Errors, Omissions, Anomalies Committee 2013.”*

With the release of the PRB report 2008, the Disputant averred that an anomaly had been created in the salaries of specialists/senior specialists inasmuch as the salaries of officers, including that of Disputant, appointed in the grade of specialists/senior specialists prior to 1st July 2008 were lower to those of officers appointed in the same grade after the 1st July 2008.

The parties informed the Tribunal that an agreement had been reached between the parties and the Tribunal made an award in terms of the agreement reached.

## **ERT/RN 120/15 - Mr Yousouf Ibne Abdulla Cheddy And Ministry of Labour, Industrial Relations, Employment & Training**

The above case had been referred to the Tribunal for arbitration in terms of Section 69(7) of the Employment Relations Act 2008 (the "Act"). The terms of reference read as follows:

- 1) *"Whether the Ministry of Labour, Industrial Relations, Employment and Training should submit the proposals for restructuring of the Specialist Support Services Unit to the Public Sector Re-engineering Bureau of the Ministry of Civil Service and Administrative Reforms for an in-depth study;*
- 2) *Whether the Ministry of Labour, Industrial Relations, Employment and Training has committed a wrong (faute) when it considered that the funds provided in the Estimates 2008-2009 would not be sufficient to meet a full financial year's salary for the post of Head, Specialist Support Services but only 4 months salary in view of the revision in salary by the Pay Research Bureau Report 2008, although it is noted that for the implementation of Pay Research Bureau Reports the Ministry of Finance and Economic Development provides additional funds to meet the increase in salaries upon appropriate request being made;*
- 3) *Whether the Ministry of Labour, Industrial Relations, Employment and Training has committed a wrong (faute) by postponing the filling of the post of Head, Specialist Support Services in the year 2009 by informing the Public Service Commission officially, with a copy of the official request to the Ministry of Finance and Economic Development, to stay action with respect to the filling of the post of Head, Specialist Support Services; and*
- 4) *Whether the Ministry of Labour, Industrial Relations, Employment and Training should accede to my request for compensation to the prejudice caused to me by making the effective date of my promotion to the post of Head, Specialist Support Services be on or around 19 March 2009 instead of 1st October 2010."*

Respondent raised preliminary objections which read as follows:

*"The Respondent avers that –*

- (a) point (1) of the present dispute is premature in that the Public Sector Re-engineering Bureau of the Ministry of Civil Service and Administrative Reforms has not yet been set up;*
  - (b) points (2) and (3) of the present dispute are not within the jurisdiction of the Tribunal as Disputant is claiming redress for alleged "wrong" (faute) by the Respondent;*
  - (c) the remedy sought in point (4) is not a remedy within the jurisdiction of the Tribunal;*
  - (d) point (4) is an indirect way of appealing against a decision of the Public Service Commission (appointment of Disputant to the post of Head, Specialist Support Services) and such appeal lies within the jurisdiction of the Public Bodies Appeal Tribunal;*
  - (e) points (2), (3) and (4) of the dispute are time barred;*
  - (f) all interested parties have not been put into cause despite reference having been made to "Co-Respondents" in the Statement of Case of Disputant;*
  - (g) the dispute does not comply with section 64(2) of the Employment Relations Act.*
- In the circumstances, Respondent moves that the dispute be set aside."*

The Tribunal ruled that point 1 of the dispute as drafted was clearly premature since the relevant Public Sector Re-Engineering Bureau had not yet been set up. The Tribunal also observed that Disputant was seeking an award which is of a declaratory nature. The Tribunal has on numerous occasions highlighted that it does not generally give declaratory awards (**vide Mr Ugadiran Mooneepen and Mauritius Institute of Training and Development, ERT/RN 35/12 and Mr Abdool Rashid Johar and Cargo Handling Corporation Ltd ERT/RN 93/12**). Moreover, an award of a declaratory nature would serve no purpose in relation to point 1 of the dispute when the Public Sector Re-Engineering Bureau had not yet been set up.

Under points in dispute 2 and 3, the Disputant is asking the Tribunal to award that the Respondent has committed a “faute”. The disputes under points 2 and 3 did not relate wholly or mainly to wages, terms and conditions of employment of Disputant, promotion, allocation of work between workers and group of workers, reinstatement or suspension of Disputant’s employment. The Tribunal ruled that these were not labour disputes and are not within the jurisdiction of the Tribunal.

In relation to point in dispute 4, the Tribunal referred to the cases of **Mrs Dineshwaree Ramyeed-Banymandhub And Air Mauritius Ltd, ERT/RN 15/15** and **Mr Rama Valaydon And Cargo Handling Corporation Ltd, ERT/RN 49/13** and quoted extensively from the former case. The Tribunal observed that though Disputant had the possibility of reporting a dispute under point 4 before the amendment to the law (which included a time limit as a proviso to the definition of ‘labour dispute’), yet he did not crystallise that right. He sat on his rights all this time and thus had only a “mere possibility of availing himself of a specific statute”. This was not a case where he had a vested right to report his dispute. There was no crystallisation of Disputant’s rights and obligations. By reporting the dispute only in December 2014, the Disputant was reporting a dispute more than three years after the act that gave rise to the dispute. The Tribunal thus ruled that point 4 of the present dispute was not a ‘labour dispute’ and did not fall within the jurisdiction of the Tribunal.

For the reasons given in its ruling, the Tribunal has set aside all the points in dispute.

### **ERT/RN 130/2014 - Chemical Manufacturing and Connected Trades Employees Union and Indian Oil (Mauritius) Ltd**

The *Chemical Manufacturing and Connected Trades Employees Union* (“*CMCTEU*”) has made an application for an order of recognition in respect of workers employed by *Indian Oil (Mauritius) Ltd* pursuant to section 38 (1) of the *Employment Relations Act*. The *Applicant Union* claims to have over 30 per cent recognition in the bargaining unit applied for.

The Tribunal was satisfied that the *Applicant Union* had produced evidence that it is wholly representative of the workers in the bargaining unit in respect of which it has applied for recognition as a bargaining agent. The Tribunal therefore made an order granting recognition to the *CMCTEU* by *Indian Oil (Mauritius) Ltd* as sole bargaining agent for the employees in the bargaining unit applied for.

**ERT/RN 39/2015 - Mrs Soopamah Veerasamy and Mauritius Educational Development Co Ltd (MEDCO) Ipo: - 1. Private Secondary School Authority (PSSA)  
2. State Insurance Company of Mauritius Ltd (SICOM)**

This was a matter referred to the *Tribunal* by the *Commission for Conciliation and Mediation*. The terms of reference of the dispute read as follows:

*Whether pursuant to the agreement reached between MEDCO and myself by way of letter dated 25.02.09 signed by the then Chairman of MEDCO, Mr R. Daureeawoo, I should be entitled to claim a full pension on the date of retirement, that is:*

- (a) a lump sum of Rs 1,104,250.00 instead of Rs 977,264.00;*
- (b) a monthly pension of Rs 18,399.00 instead of Rs 15,859.25.*

A preliminary objection was taken by the Respondent, as follows:

- (i) the application or the claim has been made outside the time limit so that the Tribunal is barred from adjudicating upon the matter; and*
- (ii) prayer 11 is in the nature of an order for specific performance and this matter can only be trashed out before a Court of Law.*

The *Tribunal* went on to find that the present labour dispute was not reported within the three years which gave rise to its act or omission. The more so the Disputant had reported another dispute against her employer in 2012. The Tribunal could not therefore find that the present dispute as referred is a labour dispute within the meaning of the law. The dispute was therefore set aside.

**ERT/RN 131/2015 - Private Enterprises Employees Union and Supercash Ltd**

The *Applicant Union* was seeking an order for recognition as a bargaining agent on behalf of a bargaining unit of workers employed by Supercash Ltd. The bargaining unit for which the present application was made is in respect of employees based at the Camp du Roi, Rodrigues outlet of the *Employer*.

The Tribunal did not find the application to be in order inasmuch it had not considered nor included the other workers employed by Supercash Ltd in its other outlets who are entitled to be part of the bargaining unit for being in the same job categories for which recognition was being sought by the *Applicant Union*. The application was therefore set aside.

**ERT/RN 8/15, ERT/RN 9/15, ERT/RN 10/15, ERT/RN 11/15, ERT/RN 12/15 - Mrs Marie Dominique Wendy Bien Aime & others And Airports of Mauritius Co Ltd**

The above five cases were referred to the Tribunal pursuant to section 69(7) of the ERA 2008. The terms of reference were the same in all the cases and read as follows:

*“Whether my monthly salary presently on the AML Grade 09 salary scale must be revised to the corresponding salary point on the AML Grade 08 salary scale following the recent revision of salary and terms and conditions of service at Airports of Mauritius Co. Ltd.”*

The disputants were each offered the post of Fire Safety Controller in the salary scale AML 09 but they claimed that the post should have been in the salary scale AML 08. The Tribunal has examined all the evidence adduced including the comments of the salary consultant. The consultant’s comments were as follows: “The job has been evaluated and validated with Mgt at AML 09.” The Tribunal observed that what appeared to the incumbents to be an anomaly had been considered by the salary consultant and the decision was to validate the post at AML 09.

The Tribunal nevertheless perused all the documents produced including documents in relation to the main duties and minimum qualifications and experience required for the various posts graded at AML 08 and AML 09, and did not find anything to suggest that the post of Fire Safety Controller should have been at AML 08 instead of AML 09. On the contrary, everything militated towards the post of Fire Safety Controller being graded at AML Grade 09 salary scale. This also avoided any anomalies, for example, in relation to another post of Terminal Airside Supervisor. The dispute was thus set aside for the reasons given in the award of the Tribunal.

**ERT/RN 101/2015 - Baboo Anoop Kumarsingh RAMDOUR and IRRIGATION AUTHORITY**

This was a matter referred to the *Tribunal* by the *Commission for Conciliation and Mediation*. The terms of reference of the disputes read as follows:

- 1. Whether an unreasonable warning was issued to me by the Irrigation Authority as per letter 09 January 2013 and whether same should be withdrawn or otherwise.*
- 2. Whether I should have been called for interview for the post of Vehicle Controller by the Irrigation Authority following an internal notice issued on 22 November 2012 and my application for the said post or otherwise.*

Mr B.A.K. Ramdour, a driver at the Irrigation Authority, was given a warning following a refuelling incident whereby irrigation operations were affected on the day concerned. He contended that he was not at fault for the lack of fuel in vehicle 165 JN 08 in the morning of

Wednesday, 24<sup>th</sup> of October 2012. Furthermore, the Disputant did not insist with the second aspect of the dispute.

The Tribunal went on to find that Mr Ramdour was not completely at fault in not refuelling the van during the second shift on Monday, 22<sup>nd</sup> October which led to normal irrigation operations being affected on Wednesday, 24<sup>th</sup> October 2012. In reviewing the procedure which led to the sanction, the *Tribunal* could not conclude that the warning issued to Mr Ramdour was reasonable. The *Tribunal* could only find that the warning must be withdrawn and awarded accordingly.

**ERT/RN 120/14, ERT/RN 121/14, ERT/RN 122/14, ERT/RN 124/14, ERT/RN 125/14, ERT/RN 126/14, ERT/RN 127/14, ERT/RN 128/14, ERT/RN 129/14, ERT/RN 130/14, ERT/RN 131/14, ERT/RN 132/14, ERT/RN 133/14, ERT/RN 134/14, ERT/RN 135/14, ERT/RN 136/14, ERT/RN 137/14, ERT/RN 138/14, ERT/RN 139/14, ERT/RN 140/14, ERT/RN 141/14, ERT/RN 142/14, ERT/RN 143/14, ERT/RN 144/14, ERT/RN 145/14, ERT/RN 146/14 - Mr Ashvin Varma Pydegadu and others And Air Mauritius Ltd, in presence of: Licensed Aircraft Engineers Association**

The above twenty-six cases were referred to the Tribunal pursuant to section 69(7) of the ERA 2008. The terms of reference were the same in all the cases and read as follows:

*“Whether my entry point salary as Licensed Aircraft Engineer (LAE), Aircraft Type Rating allowance and increment as years of service, to be equalized with the majority of LAEs appointed prior April 2012 that is a starting salary of Rs 53869, each aircraft type rating allowance inclusive of first type rating of Rs 5000 and actual yearly increment of Rs1972 (5% of Rs 39453), or otherwise”.*

The Tribunal examined all the evidence on record. As regards the aircraft type rating allowance, the Tribunal took note that Respondent had agreed that the allowance would be aligned for each and every LAE irrespective of when they had been promoted. Allowance for each aircraft type rating inclusive of first type rating would thus be Rs 5000 as per the “New Type Rating Allowance” subject to a maximum allowance of Rs 20,000 for four type ratings and above. The Tribunal thus awarded accordingly.

On the issue of starting salary, the Tribunal observed that there must be very good reasons for a LAE to have one starting salary point and another one another starting salary point on the same salary band especially when both have the same qualifications (to be appointed LAE) and duties. This might happen exceptionally for example because of the ‘personal equation’ of a particular LAE. In the above matter, this was not the case and we had two artificially created batches of LAEs who had different starting salary points. Progression along a salary band is a different matter but the starting salary point for a particular grade should generally be the same. The Tribunal was not satisfied with the explanations put forward to justify the different starting salary points for the two batches the more so in the absence of evidence that the Respondent had enforced the conditions which were imposed in the acceptance form or employment agreement of a former batch of LAEs. Also, the Tribunal found that the aircraft type rating allowance already catered for LAEs with more type ratings. The Tribunal found that uniformity among LAEs in relation to the starting

salary point was warranted for good employment relations, and to “ensure operational and industrial peace and harmony, improved overall efficiency, performance and productivity with a common objective to ensure proper and successful functioning of the company.”

Disputants raised the issue of a ‘retention adjustment’ granted to other LAEs. The Tribunal found that the Respondent had adduced evidence which could justify a retention allowance when the number of LAEs kept on declining. Acute attrition in relation to a particular grade of workers particularly where these workers perform critical functions within an organization may in an appropriate case constitute a valid reason for treating that particular grade of workers differently. This may take the form, for example, of a retention allowance which may well not be justified indefinitely. The Tribunal however observed that the Disputants are not seeking a retention allowance or retention adjustment per se.

The claims of the Disputants as per the terms of reference were in relation to the entry point salary and the Tribunal found that there was nothing to suggest that the “entry point salary” for the Disputants should be higher than Rs 39,453. The Tribunal for the reasons given in its award thus awarded that:-

(1) the entry point salary as LAEs for Disputants shall be Rs 39,453 irrespective of whether they have obtained three full type aircraft ratings;

(2) allowance for each aircraft type rating inclusive of first type rating shall be Rs5000 as per the “New Type Rating Allowance” subject to a maximum of Rs20,000 for four type ratings and above; and

(3) the yearly increment for Disputants shall be as per their contracts of employment with the exception that the basic starting salary shall be Rs 39,453.

### **ERT/EPPD/RN 02/15 - Mr Deepacksing Ramjeet And Sugar Investment Trust**

In a letter dated 4th June 2015, the Sugar Investment Trust, an employer of not less than 20 employees, gave notice to the Permanent Secretary of the Ministry of Labour, Industrial Relations, Employment and Training of its intention to restructure the company and to reduce its workforce due to financial and economic downturn.

Being of the opinion that one of the redundant workers, Mr Deepacksing Ramjeet, who was made redundant on 21 July 2015 has a ‘bona fide’ case, the Permanent Secretary of the said Ministry has, therefore, in terms of section 39B(6)(a) of the Employment Rights Act 2008, as amended, decided to refer to the Employment Promotion and Protection Division of the Employment Relations Tribunal the aforesaid reduction of workforce case for determination. The point in dispute in the terms of reference reads as follows:

*Whether the reduction of workforce affecting the disputant is justified or not in the circumstances.*

After probing into the documentary and testimonial evidence adduced, the Tribunal observed, inter alia, that :-

- (i) As per the annual reports of the Respondent, the evidence fell short of establishing any shortcoming with regard to the financial situation at the Respondent Company.
- (ii) The company’s assets were more than sufficient to meet its liabilities.
- (iii) The company had been profitable and was solvent as per the very statement of the current Officer-in-Charge himself.



- (iv) It appeared to the Tribunal that the Company has not sufficiently explored other possibilities in reducing its liquidity issues.
- (v) The Company had made a constant profit for the last 4 years (2015 being only an exception).
- (vi) The duties of the Complainant who holds the required qualifications are now being carried out by people who are less qualified.
- (vii) The notice given to the Minister was flawed.

The Tribunal thus concluded that the Respondent was unjustified in declaring the Complainant redundant in the circumstances it did and for the reasons given above. The Tribunal added that an employer may declare an employee or employees redundant while still making a profit if a need to restructure is called for. But good faith should prevail.

The Tribunal however did not consider reinstatement to be the best course to adopt in that case in particular given the animosity that might now exist between the Complainant and the current Officer in Charge. The Tribunal opted for the alternative course which is that of payment of severance allowance in accordance with Section 46(5) of the Employment Rights Act 2008. The Tribunal thus awarded that Respondent had to pay Complainant severance allowance.

**ERT/RN 145/15 - Mr Cadrivel Munisamy And The State of Mauritius as represented by (1) Ministry of Civil Service & Administrative Reforms (2) Ministry of Health & Quality of Life**

The case was referred to the Tribunal pursuant to section 69(7) of the ERA 2008 and the terms of reference of the dispute, were as follows:

1. *“Whether the additional casual leave applied in accordance with recommendation 22.15 of the 2013 PRB Report at the Ministry of Health & Quality of Life denied to me since last year, be granted to me with effect from the same date as I am still suffering from disability.”*
2. *“Whether the allowance denied to me in accordance with Paragraph 10.12 of Recommendation 2 of the 2008 PRB Report, be paid to me since the year 2014.”*
3. *“Whether the duties of Assistant Manager, Human Resources assigned to my seniors/juniors since last September 2014, be made to me with effect from the same date my seniors/juniors were assigned the higher duties.”*

The Tribunal observed that ‘disabilities’ as used in the PRB Report need to be established and same can only be done through medical evidence. There is no reference to the word “disability” in the medical certificate produced and the Tribunal found the certificate to fall short of showing that Disputant was actually suffering from a disability. A claimant has to show that he suffers from a disability before benefitting from provisions applicable to employees with disabilities. The Tribunal found that Disputant had failed to prove on a balance of probabilities that he was an employee with a disability and point in dispute No 1 was set aside.

As regards point in dispute NO 2, even from a cursory reading of paragraphs 10.11 and 10.12 of the PRB Report 2008 (Volume 1), it was clear that it is when an officer in a grade has a technical or professional qualification which is higher than what is required for the grade and his competency/ability on account of the possession of that qualification is effectively used by the organization through allocation of relevant duties that an allowance may be paid subject to the required recommendation and approval.

The competency of the officer on account of his higher qualification must be effectively used and this necessarily implies that the relevant duties will be duties of a higher position distinct from the normal duties of that officer. There was no evidence in that case that Disputant was performing duties of a higher position distinct from his normal duties. Point in dispute No 2 was thus set aside.

As regards point in dispute No 3, the prayer of the Disputant was that higher duties be assigned to him with effect from September 2014. The Tribunal failed to see how higher duties could be assigned retrospectively to the Disputant with effect from September 2014. Also, the Tribunal could not award that the said higher duties be assigned to Disputant with effect from September 2014 when such an assignment still requires under regulation 22(4) of the Public Service Commission (PSC) Regulations (as amended) and PSC Circular No 1 of 2011 the approval of the PSC. For the reasons given in its award, all the points in dispute were thus set aside.

**ERT/ RN 31/15 - Mr Devendra Nath Busgeeth And The Mauritius Cane Industry Authority in the presence of:- 1. Pay Research Bureau 2. Ministry of Agro-Industry and Food Security (representing the State of Mauritius)**

The case was referred to the Tribunal pursuant to section 69(7) of the ERA 2008 and the terms of reference of the dispute, were as follows:

*“Whether the MCIA should grant me, as per para 18.9.11 and 18.9.12 of EOAC 65, (2013) incremental credits effective as from January 2013 for continuous assignment of duties as Deputy General Manager during period 31 March 2008 to 15 February 2011 at the Ex Cane Planters and Millers Arbitration and Control Board.”*

Co-Respondents No 1 and No 2 have been joined as parties with the agreement of both the Disputant and Respondent’s Counsel.

The Tribunal examined all the evidence on record and came to the conclusion that before 1 January 2013, Disputant had in fact no right whatsoever to the incremental credits under Recommendation EOAC 65. Also, the terms and conditions of employment of Disputant (assuming Disputant was ‘transferred’ when he agreed to the offer of appointment as Manager, Cane Payment at the Respondent) had to be no less favourable than those obtained by him before his transfer. However, at that time, he was not eligible or entitled to the incremental credits and Disputant thus could not pray in aid the Memorandum of Understanding entered into among the relevant parties.

Also, the Tribunal observed that Disputant was now occupying the post of Manager, Cane Payment at the Respondent whilst previously he held the post of Deputy General Manager

at the *Cane Planters and Millers Arbitration and Control Board* of the Ministry of Agro Industry and Food Security. The Respondent was a new organisation which had been set up as a body corporate under The Mauritius Cane Industry Authority Act. Despite what had been averred by Disputant that he was holding an equivalent post, Disputant cannot be said to be occupying the same office in the present matter.

The dispute was thus set aside for the reasons given in the award of the Tribunal.

### **ERT/RN/171/15 - Air Mauritius Managers Association And Air Mauritius Ltd**

This was an application under Section 38(1) of the Employment Relations Act for an Order directing the Respondent to recognise the Applicant as sole bargaining agent in respect of Managers falling under the Management C Grade Staff, Technical Grade 4 Management Staff, Management MCC1 and MCO Grades of employees at the Respondent. The Respondent objected to recognition being granted to the Applicant. The Tribunal proceeded to hear the parties.

The Tribunal observed that it was for the Applicant to make his case with sufficient evidence that will justify an order in his favour (**vide Private Enterprises Employees Union and Tropic Knits Ltd, ERT/RN 85/13; Organisation of Hotel, Private Club & Catering Workers Unity And Beau-Port Industries Ltd/Le Prince Maurice Hotel, ERT/RN 100/14**). The Applicant had the burden to show that he should be granted (sole) negotiating rights for the bargaining unit he claimed he had the required representativeness.

After examining the evidence adduced, the Tribunal found that there was nothing conclusive as to the list of employees in the alleged bargaining unit as at the date the application for recognition was made to the employer or as at the date of hearing. In the absence of an adequate list of employees, the Tribunal could not ascertain the effective representativeness of the Applicant the more so that the Respondent was challenging that the union had the required percentage for representativeness for recognition.

Before considering any issues in relation to the membership forms produced, the Tribunal had to be satisfied first that the forms emanated from employees who were in the bargaining unit as described by Applicant. The Tribunal had to be in possession of a reliable and appropriately updated list of all employees in the bargaining unit as described and put forward by Applicant. The Applicant had failed to produce such evidence and for the reasons given in the Tribunal's order, the application was set aside.

## **ERT/RN 05/14 - University of Technology Mauritius Employees' Union And University of Technology Mauritius**

The two parties lodged the present dispute before the Tribunal for voluntary arbitration. The terms of reference read as follows:

*“Whether the excess payment as per UTM’s Policy Practice since 2008 should be payable by UTM to Heads of Schools/Heads of Department/Officers in Charge in post during the period January 2012 to July 2013 for Excess Work Done at the University (UTM).”*

After considering all the documents produced, the Tribunal invited the parties to endeavour through conciliation to resolve the matter in dispute. The parties held discussions and negotiations under the supervision of the Tribunal. They willingly expressed their common desire not to pursue the dispute referred above and instead, decided to work towards an agreement in order to put an end to the dispute. The parties after several mutual and reciprocal concessions have therefore negotiated a *“transaction”*.

Both parties having moved for an award in terms of the said agreement, the Tribunal awarded accordingly.

## **ERT/RN 117/14 - Mr Jean Claude Elias And Municipal Council of Beau Bassin/Rose Hill**

The case was referred to the Tribunal pursuant to section 69(7) of the ERA 2008 and the terms of reference of the dispute, were as follows:

*“Whether the contract of employment of Mr. Elias Jean Claude as Caretaker concerning his duties and hours of work should be respected.”*

The Tribunal examined all the evidence on record and analysed the relevant law on working hours and overtime work. The Tribunal also cited extensively the case of **Banumattee Rungee (Mrs) and The Municipal Council of Quatre Bornes (ERT/RN 64/10)**. The Tribunal concluded that fairness required that consideration be given for the overtime work effected. However the Tribunal did not find any legal basis in considering the former overtime performance of Disputant as part of a novated contract.

The Tribunal also observed that ‘overtime’ in the public sector is governed by the conditions of service laid down in the Pay Research Bureau Report and not by the Employment Rights Act 2008, as amended.

The Tribunal held that the Disputant was to be paid all overtime he performed that were due to him, if any, up to 18 March 2013 subject to the criterion of eligibility, that is, that he had performed the minimum required hours of work to be entitled to overtime. The dispute was otherwise set aside.

**ERT/RN 104/2014 - Mr Mukesh RAMDHUNY and AGRICULTURAL MARKETING BOARD**

This was a matter referred to the *Tribunal* by the *Commission for Conciliation and Mediation*. The terms of reference of which read as follows:

*Whether following my interview of Senior Human Resource Officer (SHRO) on 08 February 2013, I, Mr. Mukesh Ramdhuny, should have been appointed to the post of SHRO by virtue of my qualification, experience, actingship, performance and to my knowledge being the sole qualified candidate.*

A preliminary objection was raised by the Respondent in this matter relating to the prayers included by the Disputant in his statement of case which was mostly on the ground that the prayers were *ultra vires* the terms of reference.

The *Tribunal* found no reason to go beyond the terms of reference of the present labour dispute and to determine the matter on the contested prayers set in the Disputant's statement of case. The preliminary objection was therefore upheld and the matter was to be proceeded with for hearing into the dispute as per the terms of reference.

**ERT/RN 05/2015 - Mr Girish LUCHMEE and IRRIGATION AUTHORITY**

**ERT/RN 06/2015 - Mr Maheswarnath MISTRY and IRRIGATION AUTHORITY**

The two disputes were referred to the *Tribunal* by the *Commission for Conciliation and Mediation*. The terms of reference of the disputes were:

- (i) *Whether I should have been assigned duties of the post of Executive Officer based on seniority, from 18 February 2011 till the date I was appointed Executive Officer i.e. 11 June 2013 or otherwise.*
- (ii) *Whether I should have been given the option to join the grade of Office Management Assistant (OMA) as per EOAC Report 2013 – Recommendation 15A (Parastatal Bodies & Other Statutory Bodies) or otherwise.*

The second case was referred to the *Tribunal* solely on the second terms of reference. The Respondent raised a preliminary objection as follows:

- (a) *the terms of dispute (i) be set aside inasmuch as it is time barred;*
- (b) *the present dispute be set aside inasmuch as-*
  - (i) *there is no live issue;*
  - (ii) *the terms of dispute is vague and therefore ought not to be considered by the Tribunal;*
  - (iii) *the Tribunal does not have the jurisdiction to entertain the terms of dispute (ii) inasmuch as the option to join the grade of Office Management Assistant is applicable to Executive Officer in post as at 31 December 2012.*

The Disputant in the first matter, Mr G. Luchmee, did not insist on the first point in dispute admitting that it was time barred. Both cases were thereafter consolidated and the arguments were heard in relation to the second point in dispute on the second limb of the preliminary objection raised.

The *Tribunal* ruled that it cannot at this stage give a preliminary adjudication that will determine the case without having respected its statutory duty to enquire into the matter and adjudicate in terms of *section 70(1)* of the *Employment Relations Act*.

The *Tribunal* did not find that a labour dispute that has been duly referred in accordance with the *Act* by the *CCM* to be vague and that it ought not to be considered. The *Tribunal* therefore did not find that it has no jurisdiction in law to hear the present matter based on factual reasons pertaining to the merits of the present labour dispute. The preliminary objection in law was therefore set aside.

# Statistics



This annual report is published in accordance with Section 86(2)(d) of the Employment Relations Act 2008.

During the year 2015:

- The number of disputes lodged before the Tribunal was 197 out of which 108 cases were referred to the Tribunal by the Commission for Conciliation and Mediation and 12 by the Rodrigues Commission for Conciliation and Mediation.
- The number of cases disposed of summarily (through conciliation and agreements between parties) was 77.
- There were 21 Awards and 7 Orders delivered and the Tribunal had to deliver 8 Rulings.
- The Tribunal has disposed of 135 cases during the period January to December 2015.

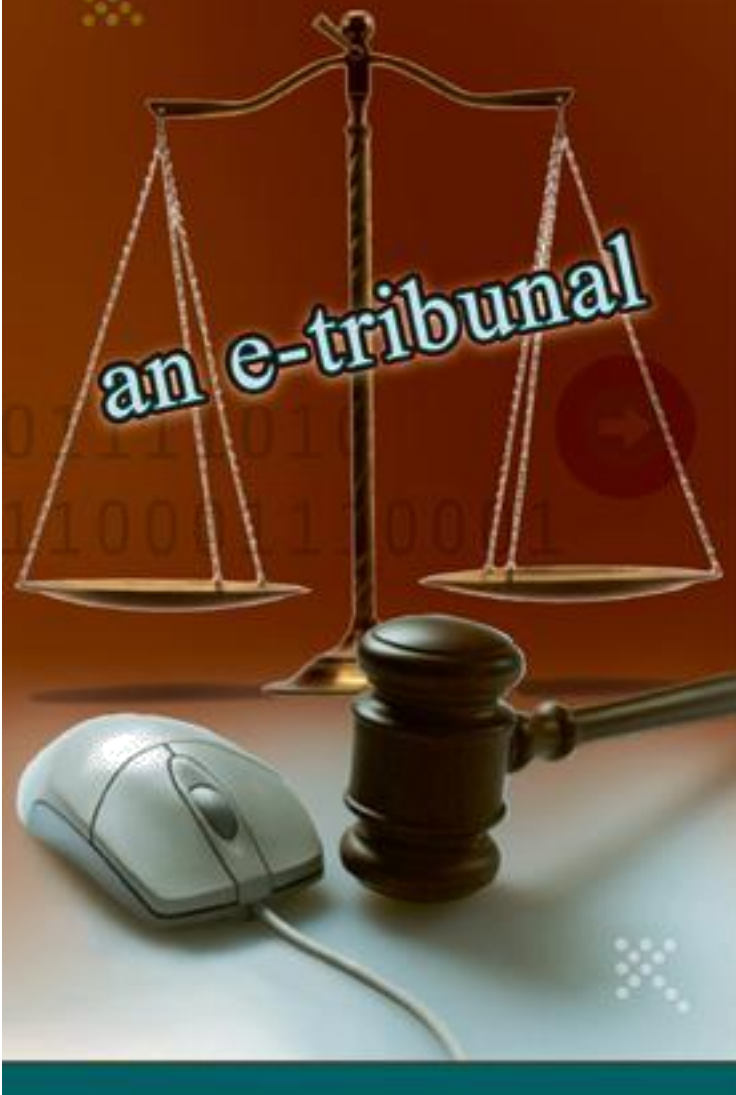
As at 31st December 2015, there were 111 cases/disputes pending before the Tribunal.

# What is an e-tribunal?

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# Employment Relations 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 lesser time and exchange of documents can be done any time.
- Pleadings 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 deadline imparted to it by law to deliver Awards and Orders.

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


Witness: Oral

Judge: Who is your employer?

Witness: Oral







## 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 <http://ert.gov.mu>) has been submitted, the user will receive notification that his/her application has been received and he/she 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.