



Republic of Mauritius

# Annual Report 2011

## Employment Relations Tribunal



# **ANNUAL REPORT OF THE EMPLOYMENT RELATIONS TRIBUNAL FOR THE YEAR 2011**

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## **HISTORY**

The Tribunal was set up in 1973 as the Permanent Arbitration Tribunal, following the enactment of the Industrial Relations Act 1973. The President and Vice-President of the Tribunal must be qualified for appointment as Judges of the Supreme Court. The sittings of the Tribunal were held in Astor Court Building, adjacent to the Supreme Court, in Port Louis and as from April 2010, the Tribunal has moved to a new office location situated at Level 18, Newton Tower, Sir William Newton Street, Port Louis.

Since 2008, the President of the Tribunal has been Mr. Rashid Hossen.

The disputes referred to the Tribunal since its setting up, be it voluntary or compulsory, cover the key economic sectors like the Sugar Industry, Transport, Customs, Banking, Manufacturing and Hotel Industry. Some 1500 cases/disputes have been referred to the Tribunal and more than 500 cases have been disposed of summarily, i.e. by agreement reached between parties before the Tribunal. The Tribunal has delivered over 600 Awards. In the application of the Industrial Relations Act, 1973 to the Public Service, the functions of the Permanent Arbitration Tribunal were exercised by the Civil Service Arbitration Tribunal. The President of the Civil Service Arbitration Tribunal since 2008 was Mr. Rashid Hossen.

With the coming into force of the Employment Relations Act 2008 in February 2009, the Permanent Arbitration Tribunal and the Civil Service Arbitration Tribunal merged as one with the setting up of the Employment Relations Tribunal. The Tribunal was reconstituted and the law now provides that the Tribunal shall consist of a President, two Vice-Presidents and not more than thirteen members.

The President of the Employment Relations Tribunal is Mr. Rashid Hossen. Mr. Indiren Sivaramen and Mr. Shameer Janhangeer are the Vice-Presidents of the Tribunal. Currently the Tribunal is constituted of five members coming from the workers' side, five members from the employers' side and three independent members.

## WHAT'S NEW?

At its new premises at Level 18, Newton Tower, Sir William Newton Street, Port Louis, the Tribunal has embarked since the year 2010 on a process to become a fully-operational e-tribunal. Besides offering many services online (such as for lodging of new applications, filing of documents, easy access to copies of proceedings and previous Awards of the Tribunal and of its predecessor, the Permanent Arbitration Tribunal and so on), the Tribunal is being equipped with a digital recording system which would further enhance the service delivered to its stakeholders.

The appointment of a second Vice-President in the year 2011 is in line with the objective of the Tribunal to dispose of a larger number of labour disputes within the shortest delay whilst always keeping in mind various essential considerations such as the interests of the persons immediately concerned with the dispute and the community as a whole, the need to increase the rate of economic growth and to protect employment and provide greater employment opportunities, the need to prevent gains in the wages of workers from being adversely affected by price increases whilst at the same time taking into account the capacity to pay of enterprises and the principles and best practices of good employment relations among other things.

With recent developments in the field of industrial relations 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, 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 40 years since the setting up of the Tribunal, all efforts are being made, under the leadership of the President Mr. R.Hossen, 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.

**ANNUAL REPORT OF THE EMPLOYMENT RELATIONS  
TRIBUNAL FOR THE YEAR 2011**

**SUMMARY OF CASES**

***RN 941 - Dr K. M. S. Soyjaudah and The University of Mauritius i.p.o***

***(1) Prof. Dhanjay Jhurry***

***(2) Prof. Anwar Hussein Subratty***

***(3) Prof. Romeela Mohee***

The point in dispute was whether Dr. K.M.S. Soyjaudah should have been appointed Professor as from 1 September 2004 at the Faculty of Engineering, University of Mauritius.

In its Award (GN 212 of 2011), the Tribunal considered that there were reports from external assessors upon which the University of Mauritius had acted, and found nothing irregular on the part of the University for not appointing Dr. K.M.S. Soyjaudah as Professor in 2004. The dispute was thus set aside.

***ERT/RN/104/10 - Port Louis Maritime Employees Association and Cargo Handling Corporation Ltd, i.p.o. Port Louis Harbour & Docks Workers Union & others***

The applicant applied to the Tribunal for an order directing the respondent to recognise the applicant as a bargaining agent in relation to a bargaining unit at the respondent.

For the reasons given in its order, the Tribunal ordered that the applicant is to be granted recognition by the respondent as bargaining agent for the bargaining unit comprising of manual employees and staff employees excluding top management employees. Parties were required to meet at such time and on such occasions as the circumstances may reasonably require for the purposes of collective bargaining.

### ***ERT/RN 965 - Telecommunications Workers Union and Call Services Ltd***

There were no less than fourteen points in dispute in relation to the grading, salary structure and conditions of service of workers at Call Services Ltd.

The Tribunal after due consideration has awarded (GN 483 of 2011) a few changes in the grading structure but declined to amend the salary structure as from 1 July 2004 as was being claimed. Instead the Tribunal awarded that parties have to undertake collective bargaining for a salary increase which may be effective immediately after Respondent started to make net profits. The Tribunal has awarded part of the claims as per the terms of reference whilst setting aside others.

### ***RN 1055 – Philippe Jean Richard Grizzel and Beach Casinos Ltd***

### ***RN 1056 – Churaman Bagha and Le Grand Casino Du Domaine Ltée***

### ***RN 1057 – Ramraj Daby and Beach Casinos Ltd***

### ***RN 1059 – Nathalie Moosary and Sun Casinos Ltd***

The above four cases were consolidated and they related to a common dispute namely whether the disputants who were slot cashiers should each have been promoted to the post of Slot Supervisor with effect from 1<sup>st</sup> September 2007, on grounds agreed in the collective agreement between the Casino Employees Union and the SIC Management Services Co. Ltd.

The Tribunal found that the disputants' case falls short of establishing any wrong on behalf of the Respondents in conducting the relevant selection exercise. The disputes were accordingly set aside.

### ***ERT/RN 81/10 - Mr Gerard Patrick François Bienvenu and Cargo Handling Corporation Ltd***

There were two points in dispute and the first one was in relation to whether the Cargo Handling Corporation Ltd should waive the letter reverting disputant from the post of Assistant Terminal Superintendant where he was assigned higher duties to his substantive post of Senior Supervisor Operations of the Multipurpose Terminal. The second point in dispute was whether disputant, being the senior most in the grade of Senior Supervisor Operations of the Multipurpose Terminal should be granted assignment of higher duties in the promotional post of Assistant Terminal Superintendent in priority over his six colleagues junior to him in the same grade.

The Tribunal found that the Cargo Handling Corporation Ltd always had the discretion to revert the disputant to his substantive post and there was no evidence that the discretion had been wrongly exercised. Both points in disputes were set aside. (GN 1107 of 2011)

***ERT/RN 85/10 - Mr Louis Christian D'Avoine and Cargo Handling Corporation Ltd***

The dispute was whether on the basis of seniority, the disputant should have been promoted to the post of Head of Logistics or otherwise. In its Award (GN 1108 of 2011), the Tribunal considered the posts previously held by the disputant and the officer who had since then been appointed Head of Logistics. The Tribunal found that the disputant is not to be regarded as junior to the officer who had been appointed Head of Logistics and this had to be borne in mind by the employer in the future. The Tribunal also considered the appropriateness of some form of compensation for the disputant.

***ERT/RN 31/11 - Central Statistical Office Staff Association and Government of Mauritius***

The dispute was whether the amendment of the scheme of service for the post of Statistician adversely affects the acquired rights of the serving officers by opening the selection both to internal and external candidate.

The Tribunal found that the amendment of the relevant scheme of service did not adversely affect any acquired rights of the serving officers. There was also no evidence that Management acted unreasonably or perversely when it amended the scheme of service as it did with a view to having the best candidates to fill the vacant posts. The dispute was thus set aside. (GN 1270 of 2011)

***ERT/RN/39/11 – Mrs Callowtee Dassyne and University of Mauritius***

The dispute was whether the disputant should perform the duties of Library Clerk (Personal) under salary Code 17 (PRB Report 2008) from 9.00 a.m. to 4.00 p.m. as conveyed to her in a letter and agreed between the parties instead of the duties of Library Clerk (Roster) staggered hours under Code 20 as decided unilaterally by the University of Mauritius on 28 June 2010.

In its Award (GN 1473 of 2011), the Tribunal referred to the “pouvoir de direction” of management and to the fact that respondent was merely complying with relevant recommendations of the 2008 PRB Report. The Tribunal awarded that the disputant should operate on a roster basis as Library Clerk (Roster) under salary Code UNI 20.

***RN 64/10 – Mrs Banumattee Rungee and the Municipal Council of Quatre Bornes***

The point in dispute was whether Mrs Rungee should maintain her system of work up to 9 February 2009 or otherwise whether she should be paid overtime each day she has to attend duty on Saturday. The Tribunal held that the sine qua non condition is to perform work for such number of hours, irrespective of it being on a five-day, six-day or even on a roster basis in order to qualify for either time-off or overtime. Work done on a Saturday that qualifies the worker for time-off is to be compensated by the same number of hours put in. The dispute was thus set aside. (GN 1548 of 2011)

***ERT/RN 103/11 -Mr Vicky Damree and Mauritius Revenue Authority***

The dispute concerned whether the disputant should be paid at a particular salary scale as from 1 July 2008 or otherwise. In its Award (GN 1835 of 2011), the Tribunal found that the disputant had failed to show that he should be on the said salary scale as from 1 July 2008 or otherwise.

The dispute was thus set aside.

***ERT/RN 264/11 – Syndicat des Travailleurs des Etablissements Privés and Boulangerie St. Esprit Co. Ltd.***

The applicant applied to the Tribunal for an order directing the employer to recognise the trade union as a bargaining agent. For the reasons given in its order, the Tribunal ordered that the applicant union be granted recognition as a bargaining agent in respect of the bargaining unit of manual grade workers. The union and the employer were also required to meet at such time and on such occasions as the circumstances may reasonably require for the purpose of collective bargaining.

- ERT/RN 06/11 – **Mr Kaoiray Manraknah and The One & Only Le Touessrok Hotel**
- ERT/RN 07/11 – **Mr Kissan Achambit and The One & Only Le Touessrok Hotel**
- ERT/RN 08/11 – **Mr Yogen Murden and The One & Only Le Touessrok Hotel**
- ERT/RN 09/11 – **Mr Satyam Balgobin and The One & Only Le Touessrok Hotel**
- ERT/RN 10/11 – **Mr Beelur Dindiyalsing and The One & Only Le Touessrok Hotel**
- ERT/RN 11/11 – **Miss Suzy Fortuno and The One & Only Le Touessrok Hotel**
- ERT/RN 12/11 – **Mr Danraj Samma and The One & Only Le Touessrok Hotel**
- ERT/RN 13/11 – **Mr Anand Gangaram and The One & Only Le Touessrok Hotel**
- ERT/RN 14/11 – **Mr Seeven Ramsamy and The One & Only Le Touessrok Hotel**
- ERT/RN 15/11 – **Mr Sanjay Sobrun and The One & Only Le Touessrok Hotel**
- ERT/RN 16/11 – **Mr Vishnu Chellen and The One & Only Le Touessrok Hotel**
- ERT/RN 17/11 – **Mr ParmasivenBoddy Reddy and The One & Only Le Touessrok Hotel**
- ERT/RN 18/11 – **Mr SatyadevJagta and The One & Only Le Touessrok Hotel**
- ERT/RN 19/11 – **Mr Prem Haradenand and The One & Only Le Touessrok Hotel**
- ERT/RN 20/11 – **Mr Dhanraj Manraknah and The One & Only Le Touessrok Hotel**
- ERT/RN 21/11 – **Mr Ramesh Chowdary and The One & Only Le Touessrok Hotel**
- ERT/RN 22/11 – **Mr Joy Doorga and The One & Only Le Touessrok Hotel**
- ERT/RN 23/11 – **Mr Navin Kubareea and The One & Only Le Touessrok Hotel**
- ERT/RN 24/11 – **Mr Chundun Gobin and The One & Only Le Touessrok Hotel**
- ERT/RN 25/11 – **Miss Liseby Laida and The One & Only Le Touessrok Hotel**



- ERT/RN 26/11 – Mr Dario Robertson and The One & Only Le Touessrok Hotel**
- ERT/RN 27/11 – Mr Itanand Kurumun and The One & Only Le Touessrok Hotel**
- ERT/RN 28/11 – Mr Kamlesh Sew and The One & Only Le Touessrok Hotel**
- ERT/RN 29/11 – Mr Steeve Auffray and The One & Only Le Touessrok Hotel**

The twenty four disputes were consolidated. The disputes were in relation to the work roster of the Hotel employees posted at the restaurant in the kitchen department at Ile aux Cerfs. In its Award (GN 2734 of 2011), the Tribunal considered the laws and regulations applicable in relation to hours of work of the workers concerned as well as the right of the employer to organise its business. The Tribunal found no cause to intervene and the disputes were set aside.

***RN 258/11 – Mr Purussram Greedharee and (1) Mauritius Ports Authority  
(2) Cargo Handling Corporation***

The points in dispute were (1) whether the Mauritius Ports Authority should have calculated disputant's retirement pension and benefits on the hypothetical salary of a workshop supervisor equivalent to the grade of plant supervisor at the Cargo Handling Corporation and (2) whether these should have been calculated on his last monthly earnings at the Cargo Handling Corporation or otherwise.

Counsel for the Mauritius Ports Authority has raised a formal objection to the effect that the matter should not be proceeded with. After hearing arguments on the three limbs of the objection, the Tribunal has ruled that the referral of the matter to the Tribunal was not in accordance with law and the disputes were set aside. (GN 2938 of 2011)

***ERT/RN/279/11 – Mrs Bibi Schenaze Annaruth and United Bus Service Ltd***

The dispute was in relation to whether the transfer of the disputant, a traffic officer, was unfair and tantamount to a punitive transfer; and whether she should be transferred to her previous position.

The respondent raised two preliminary objections in relation to the jurisdiction of the Tribunal to hear the matter, firstly pursuant to section 71 (b) of the

Employment Relations Act; and secondly, in relation to the referral of the matter by the Commission for Conciliation and Mediation to the Tribunal.

After having heard arguments from Counsel appearing for both parties, the Tribunal ruled that the first preliminary objection to the effect that the dispute allegedly relates to an issue which is the subject of pending proceedings before a court of law was premature. In relation to the second preliminary objection, the Tribunal ruled in favour of the respondent to the effect that the referral of the labour dispute was wrong and the matter was set aside. (GN 2985 of 2011)

***ERT/RN 248/11 - Mrs Mary Joyce Lai Chuck Choo and Mauritius Sugar Authority***

The point in dispute was whether the monthly travel grant paid to Mrs Mary Joyce Lai Chuck Choo on a personal basis by the Mauritius Sugar Authority since January 1997 should be reviewed from Rs 6000 to Rs 7350 with effect from July 2008.

The Tribunal held that once Management has agreed on the principle of a travel grant on a personal basis, it is understood that any variation in the price of the travel grant is to be taken into account not only for some employees but for all those whom Management has agreed to grant such allowance. The Tribunal thus awarded (GN 3017 of 2011) the disputant an increase in her travelling allowance as per the terms of reference.

## **CONSOLIDATED CASES**

- ERT 271/11 – *Mrs Savitah Seewoosungkur-Jagutpal and (1) Ministry of Health & Quality of Life (2) Ministry of Civil Service & Administrative Reforms*
- ERT 272/11 - *Mr Harilall Mungroo and (1) Ministry of Health & Quality of Life (2) Ministry of Civil Service & Administrative Reforms*
- ERT 273/11 - *Mrs Manorama Bhuttoo and (1) Ministry of Quality of Life & Quality of Life (2) Ministry of Civil Service & Administrative Reforms*
- ERT 274/11 – *Mrs Soobhadra Ramdoyal and (1) Ministry of Health & Quality of Life (2) Ministry of Civil Service & Administrative Reforms*
- ERT 275/11 - *Mrs Satiabama Mungroo and (1) Ministry of Health & Quality of Life (2) Ministry of Civil Service & Administrative Reforms*
- ERT 277/11 - *Mr Jaylall Shirao and (1) Ministry of Health & Quality of Life (2) Ministry of Civil Service & Administrative Reforms*

The disputes were in relation to whether payment of retention allowance to the disputants who were in the Nurse Educator Cadre should be backdated as from September 2008 (RN 271/11, 274/11, 275/11) and as from August 2005 (in other cases).

In the absence of any express provision that the Nurse Educator Cadre should not only be put onboard but also retroactively, the Tribunal found that the only reasonable conclusion is that following the recommendation in the Errors, Omissions and Clarifications of the 2008 PRB Report (the “EOC”), the Nurse Educator Cadre shall be eligible to the same retention allowance as other grades in the Nursing Officer Cadre and Community Health Nursing Cadre but only as from 1 July 2009 (as per paragraph 1.29 of the EOC).

The Tribunal has thus set aside the claims and found that the recommendation for retention allowance in favour of the disputants is effective as from 1 July 2009. (GN 3018 of 2011)

***ERT/RN 77/10 - Jacques Rudyard Harrison and State Investment Corporation Management Services Ltd***

The point in dispute was whether Mr Jacques Rudyard Harrison should be appointed as Assistant Head Maintenance on grounds of seniority, experience, merit and conduct or otherwise.

The Tribunal awarded as per agreement reached between the parties.

***RN 78/10 - Miss Mahentee Boolakee and Central Electricity Board***

The disputes were in relation to whether the disputant should be appointed Engineer with effect from 7 June 2001 and confirmed as Engineer and a CEB employee at latest on 7 June 2002.

The Tribunal held that since disputant accepted the post of Cadet Engineer offered to her and was appointed as such, she cannot be said to have been appointed as Engineer as from 7 June 2001. However, bearing in mind the Bundhoo Report and the fact that disputant was eligible for appointment as Engineer instead of Cadet Engineer, her cadetship period of one year was deemed to have been accepted by the Central Electricity Board in its memorandum of 17 September 2002 as the probationary period of one year for the post of Engineer. The claim that disputant should be appointed Engineer with effect from 7 June 2001 was thus set aside but the Tribunal awarded that the disputant should be confirmed as Engineer and an employee of the CEB as from 7 June 2002. (GN 3040 of 2011)

***ERT/RN/289/11 – Hotels & Restaurant Employees Union and Long Beach Hotel (Sun Resort Ltd)***

The applicant union applied to the Tribunal for an order directing the employer to recognise the trade union as a bargaining agent. Following the holding of a secret ballot, the Tribunal made an order granting recognition to the applicant union as a bargaining agent in respect of the bargaining unit applied for. The union and the employer were also required to meet at such time and on such occasions as the circumstances may reasonably require for the purpose of collective bargaining.

## **STATISTICS**

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

During the year 2011:

- The number of disputes lodged before the Tribunal was 305 – out of which 252 cases were referred to the Tribunal by the Commission for Conciliation and Mediation.
- The number of cases disposed of summarily (through conciliation and agreements between parties) was 68.
- There were 14 Awards and 3 Orders delivered and the Tribunal had to deliver 6 Rulings.
- The Tribunal has disposed of a total of 116 cases/disputes during the period January to December 2011.

As at 31<sup>st</sup> December 2011, there were 223 cases/disputes pending before the Tribunal.

