

**EMPLOYMENT RELATIONS TRIBUNAL  
(EMPLOYMENT PROMOTION AND PROTECTION DIVISION)**

**AWARD**

**Before:**

**Shameer Janhangeer**

**Vice-President**

**Ali Osman Ramdin**

**Member**

**Arassen Kallee**

**Member**

**In the matter of: -**

**ERT/EPPD RN 02/2016**

**Mr Sunil Lobin**

*Complainant*

**and**

**Barclays Bank Mauritius Ltd**

*Respondent*

The present matter is a referral by the *Permanent Secretary of the Ministry of Labour, Industrial Relations, Employment and Training* in relation to a reduction of workforce.

The terms of reference of the dispute read as follows:

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

The reasons for the reduction of the workforce given to the *Permanent Secretary* of the *Ministry of Labour, Industrial Relations, Employment and Training* (the “*Ministry*”) by the Respondent Employer read as follows:

- (i) *due to the increased use of emails and electronic imagery for its day to day activities which has resulted in a reduced use of its inter-branch courier service, it has become imperative to review and reorganize this service; and*
- (ii) *a comparison of the costs and benefits of maintaining the inter-branch courier service to outsourcing the service to an external service provider by the Respondent has concluded that it would be more efficient for the reduced scale services to be outsourced to Brinks (Mauritius) Ltd.*

Both parties are assisted by Counsel. Mr D. Ramano appeared on behalf of the Complainant. Messrs. S. Oozeer, N. Ramburn and A. Rawat appeared on behalf of the Respondent Employer. Both parties have respectively filed their statement of case in the present matter.

#### *THE COMPLAINANT’S STATEMENT OF CASE*

The Complainant/Disputant joined the Bank in April 1987 as a Cleaner in the non-clerical category; he was appointed Driver-Messenger in 1991; and as a Driver five years later also doing the duties of Messenger.

On 15 May 2015, he was informed by letter that ten members of the staff in the non-clerical category will be made redundant in view of the alleged restructuring plan. This redundancy has occurred as their work has been outsourced to a third party on the pretext that the latter will have a lower cost for the bank despite huge profits declared each year. It was proposed that severance allowance of 1 ½ months of basic salary per year of service and ½ of staff benefits were to remain the same until complete payment.

It has been averred that the Bank has refused to meet with the Union, i.e. the Mauritius Bank Employees Union (the “MBEU”) which is an affiliate of the Mauritius Labour Congress (the “MLC”), to discuss the matter and has instead chosen to negotiate collectively with each staff contrary to the provisions of the *Employment Rights Act 2008*.

It has also been averred that the Bank has also failed to follow the appropriate procedure based on the principle of last in, first out. Employees who have joined after the Complainant have retained their post. Examples of a Personal Driver provided to the Managing Director and that of another Messenger attached to the IT Department who both have fewer years of employment than the Complainant have been cited in the statement of case.

By way of a correspondence dated 23 September 2015 addressed to the Complainant, the conditions of termination as aforementioned were partly withdrawn. A letter of termination dated 30 September 2015 was issued to the Complainant wherein the severance allowance proposed was reduced to 15 days per year of service and the Complainant’s existing loan with the Bank was converted to one carrying the normal commercial rate.

The Complainant, 51 years old, is the main bread earner of his family. He is at present employed with no financial means to meet his family commitments. The rate of his home loan has been changed to 4.99% for 30 years and 6.5% for the remaining years from an initial rate of 3%. The Complainant also believes that he was victimised due to his position as the President of the MBEU which is the recognised Union representing the interests of the non-clerical at the Respondent Bank.

The Complainant considers the Respondent’s treatment towards him to be utterly unfair and arbitrary and is humbly praying for an order requesting the Respondent to reintegrate him in his post.

## *THE RESPONDENT'S STATEMENT OF CASE*

The Respondent has averred that at the date of termination of his employment on 30 September 2015, the Complainant was employed as a Driver together with nine other employees in the inter-branch courier service.

It has been averred that the use of this service has been reduced as a result of the increasing use of emails and electronic imagery for the Respondent's day-to-day activities. The Respondent has come to the conclusion that it would be more efficient for the reduced scale services to be outsourced to Brinks (Mauritius) Ltd after having compared the costs and benefits of maintaining the inter-branch courier service to those of outsourcing the services to an external provider. The Bank has had no alternative than that to make the ten employees in the inter-branch courier service redundant. The Complainant was given a written notice of termination on 27 August 2015 and his employment was accordingly terminated on 30 September 2015.

The Respondent Employer has submitted, in its statement of case, that the reduction of workforce is justified given the costs which would have been sustained by the Respondent in keeping the inter-branch courier service as opposed to outsourcing the services. The latter is more cost efficient and saves the Respondent millions of rupees in costs. This rationale is also demonstrated by the cost-benefit analysis carried out by the Respondent.

The Respondent has also averred that it has respected its statutory duties under section 39B (2) of the *Act* in having given written notice of its intention to reduce the number of workers to the *Permanent Secretary* together with a statement of reasons for the reduction of workforce. The Respondent has also fulfilled its consultation obligations with the MBEU as well as explored the possibility of avoiding reduction of workforce under *section 39B (3)(a)* of the *Act*.

It has been averred that it did engage with the MBEU to explore the options listed under the law and engaged individually with each impacted employee in an endeavour to agree to a settlement regarding the payment of compensation. Not less than four meetings were held with the MBEU between May – July 2015. The meetings were followed with a letter documenting the discussions held.

It has also been averred that whilst acknowledging the order of discharge on the basis of last in first out, all the employees of the inter-branch courier service were impacted and made redundant. Regardless of the order of discharge, the employee would have been made redundant along with the other employees in the inter-branch courier service.

The Respondent denies the allegations of the Complainant to the effect that he was victimised and treated unfairly and arbitrarily. The Respondent contends that it is the Complainant who is of bad faith and has systematically refused to negotiate and agree on an appropriate compensation. All the affected employees have reached an agreement with the Respondent except for the Complainant.

The initial settlement proposal made was the starting point for negotiations and was subject to review and discussion. The Complainant failed to accept or make any counter proposal. The Complainant was made an enhanced offer of MUR 1,667,909 instead of the offer of MUR 1,490,546. It was also offered that the preferential interest rates on the loans disbursed to all impacted employees be converted to (lesser) preferential rates.

Upon the Complainant being made redundant on 30 September 2015, the Respondent in all good faith decided not to charge the normal commercial home loan interest rate of 6.55% and the preferential rate of 4.99% per annum for a period of 36 months and at a variable rate of 6.50% fluctuating in line with the Prime Lending Rate thereafter was applied to his home loan.

The Complainant, in a meeting on 30 September 2015, refused to accept any of the compensation proposals offered nor the re-offer of the enhanced which had lapsed. The Complainant acknowledged receipt of the redundancy letter and compensation paid to him.

The compensation was computed on the basis of the Recycling Fee which would otherwise be payable to him together with all accrued benefits.

Annexed to the Respondent's statement of case is the notice of termination given to the Complainant dated 27 August 2015 (Annex A); the letter of termination dated 30 September 2015 (Annex B); a letter from the *Ministry of Labour, Industrial Relations, Employment and Training* (Annex C); the notice dated 24 April 2015 given by the Respondent to the *Ministry of Labour, Industrial Relations, Employment and Training* (Annex D); two letters from the Respondent (Annex E and E<sub>1</sub>); a letter dated 4 September 2015 from employees addressed to the HR Director of Barclays Bank Mauritius Ltd (Annex F); a letter dated 29 September 2015 detailing the compensation package offered to the Complainant (Annex G); and the redundancy letter dated 30 September 2015 sent to the Complainant (Annex H).

#### *THE EVIDENCE OF WITNESSES*

Mr Sunil Lobin was examined in relation to the dispute. He stated that his version of the facts is correct as stated in his statement of case. He related that he went to see Mrs Sadna Tirvengadam in presence of Mr Sewgobind and his team and he was asked to his views on the bank and the Union. Mr Lobin answered that he alone is not the Union there is the executive team and that they must be called to discuss an issue. It is on the 15<sup>th</sup> that he received the letter dated 15 May 2015 (Annex E to the Respondent's Statement of Case) with the list. Nothing was discussed in the meeting, not even the list. He agreed that according to the undated letter (Annex E<sub>1</sub> to the Respondent Statement of Case) that he made propositions.

A reply to the letter on behalf of the Union was sent on 17 June (2015) by himself and the other employees concerned (produced as Document A). Between these two letters, there were no meetings with the Union's executive to discuss the issues. The MBEU together with the MLC requested a meeting (with the bank). There was no meeting held on 31 July 2015. A request was made to have consultations with the bank by way of a letter dated 1 June 2015 (produced as Document B). He stated that there was no meeting on 31 July 2015. He agreed that on 14 August 2015, the bank replied that they have accepted to meet. There was no meeting, he was written to by the bank, informing him that there was no meeting. There was no meeting to discuss and to consult.

In relation to the list submitted by the bank, Mr Lobin did not agree that there are only ten employees. There are about thirteen employees. The three remaining employees have less years of service than him. The three employees, namely Messrs. Flore, Auchumbit and Acharuz are in his same category of Driver/Messenger. The department rotates, (the employees) doing a year here and seven months here. They also perform the same duties as himself and have the same job title.

As to the contention of the bank that eight of the employees concerned did not believe that the Complainant as the President of the MBEU was not acting in their best interests, he commented that Mr Sewgobind stated that if they do not accept the offer, they will be paid fifteen days per year of service and had frightened the workers. There were direct negotiations with the workers and had direct meetings with the workers. Referring to the letter dated 4 September 2015 (Annex F to the Respondent Statement of Case), it is not stated that he was not working in the interests of the employees. He stated as President of the MBEU, that there is no right to bypass the Union and talk directly with the employees.

Mr Lobin also elaborated on how he has been victimised on the negotiations and the issue of redundancy as the workers and the Union were not consulted as required. They were bypassed, a letter was given here and there and they left. Then they had meeting(s) after with many. As President of the Union, he felt hurt, the bank did not do its job as it should have.

Mr Lobin did not agree that outsourcing the work is more cost effective to the bank. They were performing their despatch twice a day in a branch; in Port Louis, there were 6 – 7 despatches (per day). According to him, in branches such as Rose Belle, despatch was performed 2 – 3 times a week. The despatch is now done by DHL about 3 times (a day). Brinks was doing the despatch in the countryside such as the Flacq branch. The contractor does less despatching thrice per week and they despatched twice a day. According to him, it was more advantageous for the bank with them according to the number of despatches effected. The email facilities have been available since 2000, for 20 years.

Mr Lobin was also questioned by Counsel for the Respondent. He was not aware of the notice sent by the bank dated 24 April 2015 to the *Ministry*. After receiving the letter dated 15

May 2015, he discussed with colleagues and went to the *Ministry*. He agreed that he was working in the inter courier department transmitting couriers as Messenger or Driver. He never wrote to the bank to say that there were no meetings held up to today. After receiving the letter dated 15 May 2015, he transmitted same to everyone concerned telling them what to do; he then went to meet with Mr Ravin Dajee after the 15 May 2015 in presence of Mrs Sadna (Tirvengadam). They then had a meeting, Mr Dajee and the ten workers but not with the Union.

Mr Lobin went on to state, that the bank replied in the undated letter (Annex E<sub>1</sub> to the Respondent Statement of Case). Referring to the letter dated 25 May 2015 from Mr Sewgobind, he stated that he did not write the letter dated 18 May 2015 (Annex 3 to the Complainant's Statement of Case) addressed to the bank. He agreed that according to the letter dated 18 May 2015, it was stated that following advice from the *Ministry* no proposal would be considered for the time being. On the 14 May 2015 at 0900 hrs, there was no meeting between Mr Sewgobind & others and the MBEU, it was only talk ('*cosé, cosé*'). He does not remember having met with Mr Sewgobind on 19 May 2015 at 1230 hrs.

Referring to a letter dated 25 May 2015, he stated having replied by letter dated 1 June 2015 (Document B). He agreed that according to the letter, Mr Peerun of the MLC asked to be involved in the negotiations. He went to see Mr Peerun to act as a negotiator and the Union wrote the letter dated 1 June 2015 to the bank. He wrote the letter dated 25 May 2015 for the MLC to negotiate and afterwards went on holiday from August to September. There was no meeting held on 18 June and 31 July as have been stated by the bank. Referring to a letter from the bank dated 14 August 2015 (produced as Document C) whereby a meeting held on 31 July 2015 was referred to, he stated that there was no meeting only talk. He did not agree that his colleagues were not happy with how things were, they solicited a meeting with the bank and the bank as an employer was obliged to meet the employees.

He agreed that the undated letter from the bank (Annex E<sub>1</sub> to the Respondent's Statement of Case) stated the words '*counter proposal of the MBEU*'. Referring to the letter dated 17 June 2015 (Document A), he agreed that the MBEU made a counter proposal with Mr Sewgobind and the Managing Director ("MD"). There was a meeting, talk with Messrs. Dajee and Sewgobind, they were written to asking for a proposal for the workers to regain their employment and thereafter an attendant wrote the letter. The meeting was between Mr Dajee and the ten employees concerned, thereafter the letter was written with the heading of the MBEU and they received a reply three weeks after.



On the issue of last in first out, he did not agree that Mr Flore is attached to the MD as a Driver since 2003 but recognised that he is not in the inter courier department. Mr Acharaj is a Messenger/Driver and works in the inter courier service. He agreed that Mr Auchumbit is attached to the IT Department and not the inter courier service. He did not agree that all the employees attached to the mailing and the inter courier service were impacted. He is not aware when the inter courier service was created nor is it stated on his pay slip. He agreed that the shift system was stopped in 2013, although he is not aware if they were informed that a specific department was being created for the employees concerned. He wishes to regain his post. He agreed that since his employment has been terminated, he does not benefit from preferential terms which is important for him.

Mr Lobin, under questions in re-examination from his Counsel, notably produced two emails dated 2 September 2015 and 8 September 2015 (Documents D & E respectively). The former email he was informed that management will meet with the MBEU and their legal representative on Tuesday, 8 September. However, the meeting was cancelled. The second email from the Head of HR produced informs the Complainant the meeting will not be held. He maintained that there were no formal meetings.

Mr Shyam Damree, Principal Labour Officer at the Ministry of Labour, Industrial Relations, Employment and Training, was called to adduced evidence on behalf of the Complainant. He stated that Mr Lobin made a complaint at the *Enforcement Division* of the *Ministry* on 1 October 2015. There were meetings held between the parties at the *Conciliation Section* in view of a possible settlement. There was a deadlock, the matter was referred to the *Enforcement Division* which referred the case to the Tribunal. Present at the meetings were the MD and Mr Sewgobind on the bank's side. He produced a letter dated 26 October 2015 addressed to the *Permanent Secretary* of the *Ministry* which enclosed a list of all Messengers/Drivers employed by the Respondent (Document F & F<sub>1</sub>) which was provided by the bank. There are 13 employees in all. The document also showed the compensation package offered to the impacted employees.

With regard to the notice dated 24 April 2015, Mr Damree stated that the names of the workers concerned should have been mentioned therein. The Respondent did state that they

had had meetings. According to him there was complete connexity between the ten impacted employees and the three other employees.

Mr Damree, upon questions from Counsel for the Respondent, notably stated that the notice sent by the bank to the *Ministry* was not refused. The impacted employees may be each on their own terms and conditions at the bank and the question of whether they fall within the same category was raised with management. Not all the employees on the list were attached to the impacted department. Mr Lobin made a representation asking for reinstatement and was the only one who made a complaint to the *Ministry*. There was no letter from the MBEU or the MLC protesting that there were no negotiations or meeting with them to carry out the reduction of workforce following the notice sent by the bank on 24 April 2015.

Mr Damree gave further clarification on the list of Drivers/Messengers attached to the letter dated 20 October 2015 from the Employer (Document F). Referring to the 13 employees employed as Messenger/Driver, he stated that the Complainant did say at the *Ministry* that he also worked in other departments and there was a roaster. As they are all Messengers/Drivers, they are all concerned. The issue was taken up with the bank. Mr Damree also stated that Mr Lobin is number seven on the list and agreed that if included in the first ten he is in. The list is in chronological order and Mr Lobin is included in the ten employees.

Mr Dev Krishen Sewgobind, Head of Human Resources at Barclays Bank Ltd, was called to adduce evidence on behalf of the Respondent Employer. He confirmed that the statement of case submitted on behalf of the Respondent and signed by him is correct and to its annexures. He notably stated that there were consultations with the Union as required under the law. There were four meetings held between the Employer and the Union between May to July whereby time was spent to explain the rationale of the project and to explore the possibilities to avoid the redundancies. Referring to Annex E, he stated that there was a meeting on 14 May.

Mr Sewgobind went on to state that at least four meetings with the Union held on 14<sup>th</sup> May; 19<sup>th</sup> May; 18<sup>th</sup> June and 31<sup>st</sup> July (2015), excluding informal meeting held in between. The purpose was to discuss with the Union about the option available to the bank to avoid this kind of redundancy and to look at the package they have to offer. A list of proposals was sent to the Bank in June, having considered the options it made more financial sense to go ahead with the

project as confirmed in the undated letter, which is meant to be dated 31 July following the meeting they had in June.

He stated that the ten people impacted are purely Drivers, employed as drivers for the Bank. Of the three others, Mr Flore is the MD's Driver; and Messrs. Acharuz and Auchumbit are employed as messengers with the Bank. They are not concerned with the inter courier service. The whole department was impacted, so the Complainant would remain in the list of ten applying last in first out or the first in last out. In the meeting of the 14<sup>th</sup> May, Mr Lobin as President of the Union and other executive members were present.

Mr Sewgobind also referred to the letter dated 15 May 2015 (Annex E) and the undated letter (Annex E<sub>1</sub>) as well as the letter dated 17 June 2015 (Document A) from the Union as documenting the consultations that were held between themselves and the MBEU. Annex E<sub>1</sub> refers to a meeting held on 18 June and to the items raised by the Union. This was preceded by a letter dated 17 June from the Union with their proposals.

The witness of the Respondent Employer was also questioned by the Complainant's Counsel. He confirmed that paragraph 8 of his statement of case sets the essentials of the consultations as far as the formal consultations are concerned done between May – June 2015. With regard to the consultations, letters were sent but there were no minutes of proceedings. Mr Sewgobind believed that the letter reflects the nature of the discussion and if the Union were not agreeable they should have reverted to the bank which they did not. There were no notes of meeting which suggest at what time or date or who were present during the meetings. He maintained that there was a formal meeting held on the 14 May 2015 which was the first meeting of consultation. Mr Lobin and his executive members were called to explain. Referring to Annex E<sub>1</sub>, he maintained that the letter confirmed the nature of the discussion.

Mr Sewgobind also referred to the emails (dated 8 September 2015) produced as Document E whereby the meeting was cancelled as 8 employees came forward to management and sent a letter to management requesting individual consultation. As per the request, he dealt directly with the employees. The employees did not believe that the President of the MBEU was acting in their best interests and the bank decided to deal directly with the members. Barclays being a responsible organization does not exploit its employees.

Referring to the letter dated 26 October 2015 (Document F), Mr Sewgobind confirmed that a full list of all Messengers/Drivers employed by the bank was enclosed irrespective of the departments to which they were actually affected. All were given the same rate of compensation except for 4 impacted employees and a minimum of Rs 700,000 was established to be paid to them. With regard to the issue of last in first out, the three other employees are not Drivers, they are Messengers and one of them is contractually employed as the MD's Driver.

In re-examination by the Respondent's Counsel, Mr Sewgobind produced a pay slip dated 5 August 2015 (Document J) of Mr Acharuz, who is among the three other employees, showing that he does not work in the courier department. In being asked whether it is the usual practice to have minutes of proceedings in meetings between the bank and the Union, Mr Sewgobind also stated that it would depend on the kind of meeting you have; as per the procedure agreement there are regular meetings with the Union as per the ongoing discussions on topics affecting terms and conditions, there they have minutes of meetings or sometimes they use email confirmations or use letter to confirm the discussion, it depends.

#### *THE SUBMISSIONS OF COUNSEL*

Counsel for the Complainant lengthily submitted on three aspects of the reduction of workforce affecting Mr S. Lobin, namely the notice dated 24 April 2015 sent to the *Ministry*; the issue of whether consultations had actually taken place as required under the law; and whether the order of discharge based on the '*last in first out*' principle had been respected. In his submissions, Counsel has notably relied on the awards of the EPPD of this Tribunal in *Mr D. Ramjeet and Sugar Investment Trust (ERT/EPPD/RN 02/2015)* and *Mr D. Kissoon & Ors.* and *The Mauritius Shipping Corporation Ltd (ERT/EDDP/RN 01/2016)*. Mr Ramano has also relied upon the Supreme Court judgments of *Edouard Trading v Tang Yat Hee & Ors.* [1994 MR 40] on the issue of notice and *Concorde Tourist Guide Agency Ltd v Termination of Contracts Service Board & Ors.* [1985 MR 70].

Counsel for the Respondent, on the other hand, has submitted the Employer has acted in accordance with the law in terminating the employment of Mr S. Lobin. The issue of last in first out does not arise as Mr Lobin would be included in the ten impacted employees as per the list submitted by the bank. Referring to *section 39B (3)* of the *Act*, Mr Oozeer stated that the law provides that you need to have a consultation to explore the possibility to avoid redundancy. As per the letters enclosed as Annex E and E<sub>1</sub> of his statement of case, he submitted that the law has been satisfied.

### *THE MERITS OF THE DISPUTE*

The present matter has been referred to the *Employment Promotion and Protection Division* of the Tribunal pursuant to *section 39B (6)(a)* of the *Employment Rights Act 2008* (the 'Act') by the *Permanent Secretary of the Ministry of Labour, Industrial Relations, Employment and Training*. Upon a referral, the Tribunal is to proceed to hear the matter and give its award. The terms of reference of the present dispute is asking the Tribunal to find whether the reduction of the workforce affecting the Complainant is unjustified or not, in the circumstances.

It is essential to note the task of the former *Termination of Contracts of Service Board* in relation to matters of reduction of workforce under the then *Labour Act 1975*. In *La Bonne Chute Ltd v Termination of Contracts of Service Board and Anor.* [1979 MR 172], the Supreme Court stated the following:

*We accordingly hold that, in determining whether an employer is justified in reducing his work force, the Board should not limit its exercise to a mathematical computation, but consider also whether the employer has shown good cause to lay off the particular worker or workers concerned.*

Likewise, in *Concorde Tourist Guide Agency v Termination of Contracts Service Board & Ors.* [1985 MR 70], the Supreme Court stated the following with regard to the functions of the then *Termination of Contract of Service Board*:

*What the Board is to decide in cases of intended reduction of work force referred to it by the Minister under subsection 3 is not whether the dismissal, as such, of any particular worker is justified or not, but whether the employer's reduction of the number of workers in his employment is justified or not.*

*It results, however, from the decision of this Court in the cases of La Bonne Chute Ltd v TCSB [1979 MR 172] and Madelen Clothing Co Ltd v TCSB [1981 MR 284] that the Board, although finding a reduction of workforce by a certain number to be justified, is still entitled to consider whether the decision by the employer to dismiss a particular worker(s) within that number is the correct one.*

More recently, the following was stated by the Supreme Court in *Lo Fat Hin T. K. v The Termination of Contracts of Service Board* [2009 SCJ 70]:

*The jurisdiction of the Board is limited to the extent of finding whether the employer's plan to reduce the number of his employees for the reasons given by him is justified or not.*

With the repeal of the *Labour Act 1975*, the *Termination of Contracts Service Board* is no longer in existence. Following the proclamation of the *Employment Rights Act 2008*, which came into effect on 2 February 2009 and the subsequent amendments (*Act No. 5 of 2013*) brought thereto, a new division of the Employment Relations Tribunal, namely the *Employment Promotion and Protection Division*, was created to deal with cases referred to it in matters of reduction of workforce or closing down of an enterprise.

In the present matter, the Respondent Employer has put forward technological reasons for having reorganised and restructured its inter-branch courier service and thereby having made the staff working therein redundant.

On the issue of reduction of the workforce due to structural and technological reasons, it would be pertinent to note the following from Dr D. Fok Kan in *Introduction au Droit du Travail Mauricien 1/ Les Relations Individuelles Du Travail, 2eme édition, 390, 391*:

*Il est à remarquer que la suppression de poste n'implique pas nécessairement l'abolition du travail qui était effectué par l'employé précédemment. Constitue ainsi une suppression d'emploi, le cas où l'employeur fait assurer une fonction précédemment*

*occupée par un employé par des collaborateurs bénévoles. Il y a ici un motif "structural".*

*La suppression de poste ne doit pas non plus être assimilée à une compression d'effectif. Si dans la plupart des cas la suppression de poste a un tel effet, celle-ci n'est pas une conséquence nécessaire. On peut en effet envisager l'hypothèse d'une entreprise qui d'une part licencie des employés mais crée par ailleurs de nouveaux emplois suite à des considérations technologiques.*

The pertinent issue which has emerged in this matter is of whether proper consultations have taken place as required *under section 39B (3) of the Act*. It would thus be appropriate to consider the requirements of this provision:

**39B. Reduction of workforce**

*(3) Notwithstanding this section, an employer shall not reduce the number of workers in his employment, either temporarily or permanently, or close down his enterprise unless he has —*

- (a) in consultation with the trade Union recognised under section 38 of the Employment Relations Act, explored the possibility of avoiding the reduction of workforce or closing down by means of —*
  - (i) restrictions on recruitment;*
  - (ii) retirement of workers who are beyond the retirement age;*
  - (iii) reduction in overtime;*
  - (iv) shorter working hours to cover temporary fluctuations in manpower needs; or*
  - (v) providing training for other work within the same enterprise;*
- (b) where redundancy has become inevitable —*
  - (i) established the list of workers who are to be made redundant and the order of discharge on the basis of the principle of last in first out; and*
  - (ii) given the written notice required under subsection (2).*

The Complainant has throughout contended that there have been no consultations between the Union and the Employer during the reduction of workforce effected to the inter-

branch courier service. Although, Mr Lobin, who is also President of the MBEU, did meet with the MD Mr Dajee, Mr Sewgobind and the Head of Employee Relations Mrs Tirvengadum on a few occasions, he did not consider same to be consultations and termed these meetings as 'cosé, cosé', which one would understand to mean only mere talk. He has even related how he had to go to see the President of the MLC, to which the MBEU is affiliated, to be involved in the negotiations and informed the bank of same via a letter dated 1 June 2015.

On the other hand, the Head of Human Resources representing the Employer in this matter has maintained that the consultation requirements have been complied with basing himself on the Respondent's two letters dated 15 May 2015 and 31 June 2015 (the undated letter) as well as the letter dated 17 June 2015 from the MBEU. Mr Sewgobind did however recognise that there were no notes of minutes documenting the four meetings held nor of the issues discussed thereat nor of the persons present on either side, although it is the practice to have notes of minutes depending on the type of meeting with the Union.

In the present matter, it would be necessary to consider the letters referred to for the Tribunal to be satisfied whether there were actual consultations or not with the recognised trade Union to explore the possibility of avoiding the reduction of workforce by the means listed in *section 39B (3)(a)* of the *Act*.

The letter dated 15 May 2015 from the Employer addressed to Mr Sunil Lobin, President of the MBEU refers to a meeting held on in the morning of 14 May 2015. The following may be noted from this letter:

*We refer to the meeting held yesterday morning with **Ajay Beegun, Dev Sewgobind and Sadhna Tirvengadum** and are writing to you pursuant to our obligations under the Procedural Agreement between the Barclays Bank Mauritius Limited ("BBML") and the Mauritius Bank Employees Union ("MBEU") and under section 39B (2) of the Employment Rights Act 2008 ("ERA 2008").*

...

*As a caring and people-centric organisation and in order to explore the possibility of avoiding any reduction of workforce, BBML has explored the various options listed under Section 39B (3) of the ERA 2008 coupled with a complete review of BBML's structures. Redundancy has, regrettably, become inevitable for the following 10*



*impacted employees whose roles are associated with BBML's inter-branch courier service:*

...

*With the best interest of the impacted employees in mind, BBML is currently holding discussions with Brinks on the possibility of these colleagues being employed by them under the new terms and conditions and subject to its screening requirements.*

*We are, in the meantime, initiating the process to make the employees impacted redundant and the Bank is proposing the following package for the impacted colleagues subject to the signature of all applicable documentation:*

...

*The Bank will be meeting with the 10 impacted colleagues on an individual basis as from Tuesday 19th May to give them their respective termination letter and compensation package. The Bank will also schedule a meeting with the executive members of the MBEU on Thursday 21<sup>st</sup> May to address any additional concerns or issues raised by members of the MBEU following the meetings with impacted colleagues.*

The letter from the MBEU dated 17 June 2015 (Document A) has notably stated that the 'ten non-clerical staff impacted are actually attached to the CRES department and not to courier services as mentioned by the bank'. It lists certain issues with comments made to therein under various headings, i.e. Brinks, Everial, Taxi, etc. and ends with the following:

***Analyzing all these situations, we don't think it's normal for only ten non clerical staff to bear the actual consequences.***

***Hope these will be taken into consideration.***

In reply, the undated letter (Annex E<sub>1</sub> to the Respondent's statement of case) addressed to Sunil Lobin, President MBEU bears the subject matter 'Outsourcing of the courier services' and thanks him 'for the meeting held on 18<sup>th</sup> June 2015 and for the counterproposal of the MBEU on the outsourcing of the courier services. Management has reviewed the counterproposal with the below comments'. There is nothing stated in relation to the matter of the ten impacted workers or to the reduction of workforce being effected. Nor are there any notes of meeting to enable us to know what was actually discussed in the meeting on 18 June 2015 or who were present.

Another letter from Mr Sewgobind dated 14 August 2015 (Document C) also refers to a meeting held on 31 July 2015 '*whereby Management shared its stand on the proposal of the MBEU on the outsourcing on the courier services*'. It was also stated therein that a joint meeting with the MLC will be fixed at the end of August 2015, exact date of which would be communicated. In this letter, reference is only made to the proposed settlement package for impacted employees with management intending to schedule individual meetings.

The letter dated 15 May 2015 from the Employer does no doubt refer to a meeting held on the 14 May 2015. Although *section 39B (2), (3)* of the Act has been referred to, we are not clear as to whether the meeting was solely in relation to the requirements for consultation under the aforementioned section nor are we aware with whom did the Employer meet on behalf of the Union on 14 May 2015. It was also stated that BBML has explored various options listed under *subsection (3)*, however, it is not clear whether this was done in consultation with the MBEU.

It is important to note that the aforesaid letter does not expressly reflect any consultations or discussions that may have been held as to the issue of exploring the possibility of avoiding the reduction of workforce. A list of ten employees associated with the inter-branch courier service was listed in the letter.

The meeting of the 14 May 2015 was the first of four meetings held between the Employer and the Union. It is not disputed that three other meetings were held on 19 May 2015, 18 June 2015 and 31 July 2015. The letter dated 15 May 2015 amply shows that the decision to make the employees redundant was already made at the first meeting and the process of redundancy being initiated. The letter clearly stated that a proposed package was made to the impacted employees, scheduling the 19 May as the date the bank would be meeting with the employees individually to give them their respective termination letter and compensation package.

In the circumstances, the Tribunal cannot be satisfied that the Employer has engaged itself in proper consultations with the Union as required under *section 39B (3)* of the Act. The

Tribunal cannot therefore find that the Employer has respected its statutory duty under *section 38B* of the Act in making the Complainant redundant.

The issue of the whether the principle of last in first out in the order of discharge of the workers who were to be made redundant has been properly applied was also canvassed during the proceedings. The facts have clearly borne out that the redundancy was effected to the ten employees of the inter-courier service of the Employer's. Although, there were three other workers which have been said to be in the same category as the ten impacted employees, it has been clearly shown that they were not attached to the department concerned. Referring to the list of the thirteen employees submitted to the *Ministry* in the letter dated 26 October 2015, it must also be noted that the representative of the *Ministry* did acknowledge that Mr Lobin would have fallen within the ten employees being made redundant.

On this issue, it would be pertinent to note what was stated in *Concorde Tourist Guide Agency v Termination of Contracts Service Board & Ors [1985 MR 70]*:

*We may say however that, in the context of what we have already observed, it must stand to reason that the application of the "last in, first out" principle requires a sufficient connexity in the specifics of particular posts, including their relative status, existing as between the workers concerned. Whether the required connexity exists or not would be a matter for the Board to consider in any particular case and its decision on the point would only be reversed by the Court on review if it appeared that the Board had manifestly misdirected itself.*

It has also been contented that the notice was not properly served upon the *Permanent Secretary*. In the present case, the Employer did serve a notice dated 24 April 2015 stating its reasons for the reduction of workforce.

The requirement for the Employer to serve notice is mandatory under *section 39B (2)* of the *Act*. Except for the requirement that the notice must be served at least 30 days before the reduction, the provision is couched in similar terms to *section 39 (2)* of the repealed *Labour Act 1975* which read as follows:

*Any employer who intends to reduce the number of workers in his employment either temporarily or permanently shall give written notice to the Minister, together with a statement of reasons for the reduction.*

In the matter of *Edouard Trading Ltd. v G. Tang Yat Hee & Ors* [1994 SCJ 284], the Supreme Court stated the following with regard for the requirement embodied in section 39 (2) of the *Labour Act 1975*:

*Clearly this can only refer to an intention to reduce the number of workers by actively terminating their employment, i.e. by dismissing them. It cannot refer to a situation where the employer proposes to canvass lawful means of finding employment for the workers, or enabling them to do so. It follows that the obligation to notify the Minister only arises when the employer forms the intentions to dismiss one or more workers.*

Although, in view of the above it cannot be said that the notice sent to *Permanent Secretary* of the *Ministry* was not in order, the Tribunal cannot find the reduction of workforce affecting Mr Lobin in the present matter to be justified.

The Complainant having been formally dismissed on 30 September 2015 is seeking his reinstatement at the bank. On this issue, it may be noted what was stated in *Concorde Tourist Guide Agency v Termination of Contracts Service Board & Ors*. [1985 MR 70]:

*This interpretation of the Board's powers raises the question as to how is an employer expected to excise the option of reinstatement given to him by section 39 (6) (b) when the Board has found (as it has in the case of each of respondents Nos 2 and 3) that the specific job of worker A has become redundant and is justifiably to be abolished. The employer under that interpretation, only then "reinstate" worker A in some alternative – and comparable – employment in his enterprise.*

In the matter of *Nestlé Products (Mtius) Ltd. v Mrs N. Dabysingh* [1988 SCJ 423], the following may also be noted as to the issue of reinstatement:

*The amendment made by Act 8 of 1982 provides also for the reinstatement of the worker in his former employment as an alternative measure to the payment of severance allowance at the punitive rate.*

...

*It is clear to us that the intention of the legislator is to give the Minister a "droit de regard" on the reduction of workforce by employers who are employing more than ten employees so that, in a proper case, the employee who has been unjustly dealt with*

*may have the chance to be reinstated in his job or be paid severance allowance at the punitive rate.*

Upon the finding that the reduction of workforce vis-à-vis the Complainant is unjustified, the Tribunal orders that Mr Sunil Lobin be reinstated in his former employment with the payment of remuneration from the date of his termination of employment to the date of his reinstatement. This payment must take into account payment of the recycling fee already effected to the Complainant and be adjusted accordingly.

The Tribunal therefore awards accordingly.

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**Sd Shameer Janhangeer**  
**(Vice-President)**

.....  
**Sd Ali Osman Ramdin**  
**(Member)**

.....  
**Sd Arassen Kallee**  
**(Member)**

**Date: 11<sup>th</sup> August 2016**

