

EMPLOYMENT RELATIONS TRIBUNAL

RULING

Before: -

Shameer Janhangeer	-	Vice-President
Vijay Kumar Mohit	-	Member
Karen K. Veerapen (Mrs)	-	Member
Arassen Kallee	-	Member

In the matters of: -

ERT/RN 26/2021

Mr Georges Edouard CHRISTINE

Disputant

and

MAURITIUS TELECOM LTD

Respondent

ERT/RN 27/2021

Mr Kajeerow COONLIC

Disputant

and

MAURITIUS TELECOM LTD

Respondent

ERT/RN 28/2021

Mr Jean Joseph DAVASGAIUM

Disputant

and

MAURITIUS TELECOM LTD

Respondent

ERT/RN 29/2021

Mr Marie Sylvestre Elie JULIE

Disputant

and

MAURITIUS TELECOM LTD

Respondent

ERT/RN 30/2021

Mr Mosafat Hajmut DOMUN

Disputant

and

MAURITIUS TELECOM LTD

Respondent

ERT/RN 31/2021

Mr Samduth MOLAYE

Disputant

and

MAURITIUS TELECOM LTD

Respondent

The present matters have been referred to the Tribunal for arbitration pursuant to *section 69 (9)(b)* of the *Employment Relations Act* (the “Act”) by the Commission for Conciliation and Mediation (“CCM”). The six disputes have been consolidated. The identical Terms of Reference of the disputes read as follows:

*Whether my pension should be adjusted on basis of the extended salary scale of SS8
Rs 38,533 – Rs 83,903 to take into account –*

(i) The VRS agreement which has guaranteed my salaries;

- (ii) *The principle of salary adjustment on revised salary scales; and*
- (iii) *The fact that my junior colleagues will eventually draw pension more than I am entitled to.*

Both parties were assisted by Counsel. Mr M. Ramano appeared for the Disputants, whereas Mr A. Sookoo appeared for the Respondent together with Mr R. Pursem SC. Both parties have put in their respective Statement of Case in the matters. The Respondent has also submitted a notice of preliminary objection, in each of the disputes, which reads as follows:

1. *The Respondent is advised and verily believes that the present application or claim has been made outside the prescribed time limit so that the Tribunal is barred from adjudicating upon the matter.*
2. *For the above reasons, the present matter should be set aside.*

The Tribunal proceeded to hear arguments on the preliminary objection. Learned Counsel for the Respondent notably submitted that the Tribunal has to first address its mind to the act or omission which has triggered the labour dispute. Secondly, the Tribunal must then determine at what point in time the act took place. These issues are being canvassed in light of the definition of a labour dispute under *section 2* of the *Act*, item (c). He humbly submitted that the act which triggered the labour dispute is the Collective Agreement dated 17 October 2017 at Annex 10 of the Disputant's Statement of Case and also referred to paragraph 16 of the Statement of Case.

Counsel for the Respondent submitted that the basis of the Disputants' claim is the Collective Agreement and the entering into thereof on 17 October 2017 gives rise to the Disputants' cause of action. He also noted that the Collective Agreement came into effect on 1 July 2016. However, for the purpose of *section 2* of the *Act*, the act would be the signature of the Collective Agreement on 17 October 2017. The dispute therefore ought to have been reported by 16 October 2017. The disputes are therefore time-barred and should be set aside. Counsel also relied on the Tribunal's previous decision in *Mrs S. Veerasamy and MEDCO (ERT/RN 39/2015)*.

Learned Counsel for the Disputants, on the other hand, submitted that he agreed that the Tribunal has to consider what constitutes the act or omission in the present matter but the Tribunal has to do so with the Terms of Reference in mind. The dispute is about the effects of the correction of 2017 on the Disputants' pension, i.e. the effect of the Collective Agreement signed in 2017 on the pension. They contend that they were ignored in the Collective Agreement and no adjustments were made to their salaries and pensions. The Disputants have been prejudiced for every month

following October 2017 as they have not seen their pensions adjusted. For every month this was not done, the prejudice goes on, the effects are ongoing.

Counsel further submitted that the act or omission is not one event *per se* but is continuous in nature and referred to the Supreme Court decision of *Ramyead-Banymandhub v The Employment Relations Tribunal* [2018 SCJ 252] in support. He notably alluded to the second paragraph at page 6 of the judgment stating that the issue of time-bar does not therefore arise. In any event, the Tribunal will have to go on the substance of the case itself to determine the act or omission on the part of the Respondent. It would therefore be premature to consider the objection and this should be taken on the merits.

The present preliminary objection raised by the Respondent avers that the present application or claim has been made outside the prescribed time limit so that the Tribunal is barred from adjudicating on the matter.

It has not been disputed that the objection raised is grounded on the definition of a labour dispute at *section 2* of the *Act*. A labour dispute does not include a dispute that is reported more than three years after the act or omission that gave rise to the dispute as can be noted from the following provision:

2. Interpretation

...

“labour dispute” –

...

(c) does not include a dispute that is reported more than 3 years after the act or omission that gave rise to the dispute;

It would also be apposite to note what the Supreme Court stated in the relation to this provision in the matter of *Ramyead-Banymandhub* (*supra*):

Whilst considering the nature of the objections raised by the co-respondent, the Tribunal was therefore first called upon to spell out the act or omission which triggered the applicant’s labour dispute and to then determine at what point in time such act or omission took place. This is in line with the provisions of article 2271 of the Code Civil which provides as follows:

“Le délai de prescription court à compter du jour où le droit d’action a pris naissance.”

It would therefore be incumbent on the Tribunal, in considering the ambit of the preliminary objection, to identify the act or omission which has given rise to the labour dispute; and to ascertain at what point in time the act or omission took place. The Tribunal is also aware that it is bound to enquire into the substance of the objection within the limits of its Terms of Reference. This may be gleaned from the aforementioned Supreme Court decision itself:

The Tribunal therefore had the duty to enquire into the “substance” of the arguments put forward by the parties with regard to the objections raised by the co-respondent, and it could only adjudicate on these objections within the limits of its terms of reference.

As may be noted from the Terms of Reference of the present matter, the Tribunal is being asked to determine whether the Disputants’ pension should be adjusted on the basis of the extended salary scale of SS8 Rs 38,533 – Rs 83,903 to take into account the VRS agreement guaranteeing their salaries; the principle of salary adjustment on revised salary scales; and the fact that their junior colleagues will eventually draw pension more than what they are entitled to.

A perusal of the Disputants’ Statement of Case has revealed that the present dispute arose from an anomaly created in 2008 during a salary revision exercise, whereby the grade of Chief Technician was downgraded to a lower salary scale of SS8A on salary range PB3, while other cadres were placed on SS8B in the salary range PB4 (*vide* paragraph 4 of the Statement of Case). The Disputants, being Chief Technicians, opted for the early retirement they were offered in early 2016 (*vide* paragraph 9 of the Statement of Case). Moreover, the matter of the anomaly was resolved in the Collective Agreement signed by the Unions and Management on 17 October 2017 (enclosed as Annex 10 to the Statement of Case), which took effect as from 1 July 2016 (*vide* paragraph 12 of the Statement of Case).

It has further been averred that the Collective Agreement placed all other technicians, who did not opt for the Voluntary Retirement Scheme (“VRS”), in the higher salary band of Rs 38,522 – Rs 83,903 (*vide* paragraph 13 of the Statement of Case). This salary band corresponds to salary scale SS8 and pay band PB5 as per a table of the salary structure enclosed as Annex 11 to the Disputants’ Statement of Case. The higher salary band was not extended to the Disputants (*vide* paragraph 14 of the Statement of Case); although the VRS agreement included a provision that their pension be adjusted in case of a salary review by the Respondent (*vide* paragraph 15 of the Statement of Case).

The Disputants are therefore contending that they should have moved up the salary scale with the Collective Agreement signed on 17 October 2017 and that as per the same agreement, their pension should have been adjusted taking into account the new higher salary scale that should have been extended to them (*vide* paragraph 16 of the Statement of Case).

The sequence of events as noted from the Disputants' Statement of Case has notably revealed that the signing of the Collective Agreement on 17 October 2017 should have allowed the Disputants to move into the SS8 salary scale and that their pensions should have been accordingly adjusted on the basis of this higher salary scale. This is more so in accordance with what the Disputants are asking the Tribunal to arbitrate upon as per the Terms of Reference in the present matter.

The act which gave rise to the present dispute would therefore be the signing of the Collective Agreement on 17 October 2017, which is as from when the Disputants assert that their pensions should have been adjusted. The date of the signing of the Collective Agreement would thus be the point in time when the act giving rise to the dispute took place.

This is moreover consistent with the submissions of Counsel for the Disputants to the effect that the dispute is about the effects of the correction of 2017 on the Disputants' pension, i.e. the effect of the Collective Agreement signed in 2017 on the pension; that the Disputants contend that they were ignored in the Collective Agreement and no adjustments were made to their salaries and pensions.

Although Counsel for the Disputants has submitted that the Disputants are being prejudiced following October 2017 as their pensions have not been adjusted, he has also contended that the act is not a single event and is continuous in nature notably relying on the following passage from the case of *Ramyeed-Banymandhub (supra)*:

The respondent therefore failed to consider the possibility that the co-respondent's alleged omission could have been continuous, thereby seriously affecting the whole basis of the Tribunal's computations whilst determining the objections related to time limits.

Despite the Disputants' contention that the dispute is continuous since October 2017, no evidence has been adduced to substantiate same during the course of the arguments on the preliminary objection. There has also been no averment in relation to whether the dispute is continuous or ongoing in the Disputants' Statement of Case. Moreover, nowhere have the Disputants averred, as per their Statement of Case, that they are being prejudiced due to their pension not having been adjusted.

Although, in the case of *Ramyead-Banymandhub (supra)*, it was held that the Tribunal had failed to consider the possibility that the employer's alleged omission could be continuous, the Supreme Court notably had the following to say:

The Tribunal therefore appears to have been inexplicably selective when it considered the purport of its terms of reference, especially with regard to the words "or otherwise", since the ruling does not indicate why the Tribunal chose to favour 2001 as the point at which time would have started running whilst clearly ignoring the words "or otherwise". In the absence of the Tribunal's line of reasoning on that issue, we must conclude that it incorrectly equated the year on which the applicant was assigned to her current post with the year on which the dispute would have arisen.

It should be noted that in abovementioned decision, the Terms of Reference mentioned the words 'or otherwise' in relation to the date 2001. However, it can clearly be noted from the Terms of Reference of the present disputes that these particular words have not been used. The Tribunal also notes that the context in which the Supreme Court found that the dispute was found to be continuous in *Ramyead-Banymandhub (supra)* cannot be automatically imported to the distinct facts of the present matter.

Counsel for the Disputants has also contended that it is premature for the Tribunal to deal with the present preliminary objection as the Tribunal would have to go into the substance of the matter to determine the act or omission and that the objection would have to be taken on the merits.

As noted from the case of *Ramyead-Banymandhub (supra)* itself, the Tribunal cannot be precluded from adjudicating on the preliminary objection at this stage. As seen earlier, it was notably held by the Supreme Court that the '*Tribunal therefore had the duty to enquire into the "substance" of the arguments put forward by the parties with regard to the objections raised...*'. Furthermore, the Tribunal has jurisdiction to arbitrate on labour disputes as defined under the Act

and it would be perfectly in order for the Tribunal to determine whether a particular dispute reported or referred before it falls under the definition of a labour dispute under the *Act*.

Besides, if it were the case that the Tribunal could not determine the act or omission that gave rise to the dispute and the point in time thereof, then it would have been a preferred course for the objection raised to be considered on the merits of the dispute. However, the Tribunal, as may be noted from above, has been able to ascertain the required elements of the act or omission in relation to the present dispute from the averments made by the Disputants' themselves in their Statement of Case. Moreover, Counsel for the Disputant has not disputed that the dispute is in relation to the effects of the Collective Agreement signed in 2017 following which no adjustments were made to the Disputants' salaries and pensions.

The Tribunal has noted that Messrs G.E. Christine, K. Coonlic and J.J. Davaşgaium, reported the present dispute to the CCM on 3 November 2020 as per their respective referral letters. Mr M.S.E. Julie reported the dispute on 5 November 2008 as per his referral letter. Whereas Messrs M.H. Domun and S. Molaye reported their dispute on 13 November 2020 as per their respective referral letters. The Tribunal has, as previously noted, identified the date of the act that gave rise to the present disputes to be 17 October 2017.

In considering the dates on which the present disputes were reported by each Disputant, it is clear that the disputes have clearly been reported more than 3 years after the act that gave rise to them. The Tribunal cannot therefore find the present disputes to amount to a labour dispute pursuant to sub-*paragraph (c)* of the definition of a labour dispute under *section 2* of the *Act* and upholds the preliminary objection raised.

The disputes, in each case, are therefore set aside.

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SD Shameer Janhangeer
(Vice-President)

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SD Vijay Kumar Mohit
(Member)

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SD Karen K. Veerapen (Mrs)
(Member)

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SD Arassen Kallee
(Member)

Date: 16th December 2021

