

EMPLOYMENT RELATIONS TRIBUNAL

AWARD

ERT/ RN 125/18, ERT/RN 127/18

Before

Indiren Sivaramen	Acting President
Francis Supparayen	Member
Rabin Gungoo	Member
Arassen Kallee	Member

In the matter of:-

Mr Gulshan Raj Anand Teeluck (Disputant No. 1)

And

Mauritius Institute of Training & Development (Respondent)

Mrs Pamela Narainsamy (Disputant No. 2)

And

Mauritius Institute of Training & Development (Respondent)

The above two cases were referred to the Tribunal by the Commission for Conciliation and Mediation under the then Section 69(7) (repealed since then by section 21 of the Employment Relations (Amendment) Act 2019) of the Employment Relations Act (hereinafter referred to as “the Act”). Section 29 of the Employment Relations (Amendment) Act 2019 which amends the *Transitional provisions* at section 108 of the Act provides (at section 108(9) of the Act as amended) that “*Any labour dispute pending immediately before the commencement of the Employment Relations (Amendment) Act 2019 before the Tribunal shall be dealt with in accordance with Part VI as if the definition of “labour dispute” in section 2 and sections 64, 65, 69, 70, 76, 78 and 88*”

have not been amended or repealed and replaced.” The present disputes were reported to the President of the Commission for Conciliation and Mediation on 19 October 2016 and 4 October 2016 respectively and were referred to the Tribunal on 24 September 2018 and 25 September 2018 respectively, that is, before the commencement of the Employment Relations (Amendment) Act 2019. The Tribunal thus proceeded to hear the cases on the basis that the then section 69 of the Act had not been repealed and replaced.

All parties were assisted by Counsel and the two cases which raise similar issues were consolidated. The terms of reference are similar in both cases and read as follows:

“Whether, I,[...], should be appointed as Coordinator at Ecole Hoteliere Sir Gaetan Duval (EHS GD) by the Mauritius Institute of Training and Development (MITD) since the post is vacant.”

Disputant No 2 deposed before the Tribunal and she stated that she went through a selection process for the post of Coordinator in 2006, and attended interviews but was never informed of the outcome of the selection process. She stated that on 7 September 2006, she was invited to act as Coordinator at the Ecole Hoteliere – Sir Gaetan Duval (EHS GD) and since then she is still acting as Coordinator. She described the duties she does when acting as Coordinator at the EHS GD. She stated that she has been performing the duties of Coordinator for 15 years. She suggested that the ‘coordinating duties’ are critical irrespective of the name which may be given to the post.

Disputant No 2 agreed that there was a vacancy for the post of Coordinator in 2006 and that, with the 2013 Pay Research Bureau (PRB) Report, the post of Coordinator (at the Respondent) has been made personal to officers in post. This was maintained with the PRB Report of 2016. She agreed that now there is no vacancy for the post of Coordinator but averred that since she has been doing the duties of Coordinator well before 2013 and is still performing same, she should also be considered for the post of Coordinator which was made ‘personal’. She conceded that she opted for the 2013, 2016 and latest 2021 PRB Reports. However, she suggested that she is fully qualified for the job and that she cannot be prejudiced and left to retire as an acting Coordinator because of an administrative error. Disputant No 2 agreed that before the present matter, she had not reported any dispute. She stated that she trusted Management. She prayed in terms of the prayers at paragraph 18 of her Statement of Case.

Disputant No 1 then adduced evidence before the Tribunal and he stated that he agreed with the contents of his Statement of Case and with what Disputant No 2 had stated in examination in chief. He referred to the duties he was performing and stressed on their

importance for the organisation. In cross-examination, Disputant No 1 agreed that he opted to be governed by the various PRB Reports. With the 2013 PRB Report, the post of Coordinator was made personal for those who were already in post as at 30 June 2008. This recommendation was again repeated in the 2016 PRB Report and the 2021 PRB Report. He agreed that there is currently no vacancy for the said post on the establishment of the Respondent and that there cannot be any appointment for the said post. He also agreed that prior to 2013 there could be an appointment to the said post of Coordinator. He accepted that his dispute was reported in 2016 when the post had already become personal to officers who were already in post.

The Acting Managing Director of the Respondent deposed at another sitting and he confirmed as to the correctness and accuracy of the contents of the Statements of Reply filed by Respondent in the two cases. He stated that both disputants applied for the post of Coordinator in 2005 and were called for interviews but the Respondent did not proceed to fill the post. There was a change in Government in 2005 and there was a change in Government Programme. There was going to have the *Institut de Formation et d'Education Tertiaire*. They were given “policy writing” that pending the setting up of that Institute and the restructuring of the Industrial and Vocational Training Board (the “IVTB”- as the institution was then called prior to its merger with the Technical School Management Trust Fund to create the Respondent), they should not fill any position. He stated that only “critical” positions could be filled and that is why they were not able to fill the position of Coordinator even though interviews were held. He stated that only the posts of Assistant Managers, Training Officers and Instructors were critical and filled. Following a change in Minister in 2007 or 2008, the Institute was not set up and instead the Respondent was created.

The Acting Managing Director averred that submissions were made to the PRB on or about 2011 to the effect that they required the post of Coordinator. Despite this, the post of Coordinator was made personal in the 2013 PRB Report. He stated that the finalization of the organisational structure of the Respondent took a long time and that a structure was approved by the Board but was not accepted by the unions. He added that for the 2016 PRB Report, management made proposals for the creation of a new post of Senior Training Officer and yet no decision was taken in the report for the said new post nor in relation to the post of Coordinator. He stated that during discussions with the PRB for the purposes of the PRB Report 2021 which was initially due in 2019, management proposed to re-instate the post of Coordinator and to create a new post of Senior Training Officer. He was under the impression that the post of Coordinator was going to be reinstated but finally the post was not reinstated. For the post of Senior Training Officer, there are certain legal issues to be cleared as per the recommendations of the 2021 PRB Report.

The Acting Managing Director stated that there are vacancies in the posts of Assistant Manager and Training Centre Manager and to which the disputants may aspire provided they are qualified. Since the end of 2019, the Respondent falls under the aegis of the Ministry of Labour, Human Resource Development and Training. He referred to paragraph 44.9 of the 2021 PRB Report and to the stand of the relevant Ministry. He stated that there are again changes in policy directives and that an Institute of Technical Education and Technology is being proposed whilst some of the centres of the Respondent will then be taken over for the purposes of the new Institute. He averred that the Ecole Hoteliere Sir Gaetan Duval will be under the aegis of the Ministry of Tourism. Despite this, there were recommendations in the 2021 PRB Report for the creation of two new posts at the Respondent, that is, the post of Quality Assurance Officer and the post of Project Officer.

The Acting Managing Director of Respondent stated that the Board of the Respondent is agreeable for the reinstatement of the post of Coordinator and that representations will be made to that effect for the purposes of the Errors and Omissions Report which will follow the 2021 PRB Report. If the post is reinstated, then the post will be filled as per the scheme of service for the post. He produced copies of extracts of the 2008, 2013, 2016 and 2021 PRB Reports (Docs B, C, D and E).

In cross-examination, the Acting Managing Director agreed that the disputants were not informed of the outcomes of the interviews they attended for the posts of Coordinator. The disputants have been discharging the duties of Coordinator ever since they have been offered the position as Acting Coordinator and there has been no adverse report against them. He stated that the post of Coordinator has been made personal so that no new employees can be appointed as Coordinator in the substantive post. He stated that for administrative convenience, and because management did not expect that it would take so long to finalise the new structure, the disputants were asked to carry out the duties and were paid the necessary allowances. The training of the trainees had to continue. He stated that the disputants were doing an important job but not a critical one. He stated that actingship is usually for a short period of time but in the present case in the light of the changes which have taken place over the years, it has taken a long time. He also stated that in the internal advertisement dated 12 May 2006 for the relevant posts of Coordinator, it was mentioned that the IVTB reserves the right not to make any appointment following the said advertisement.

Counsel for Respondent has raised objections in law and parties were informed that objections taken would be considered together with the merits of the case. The objections read as follows:

- (i) The present matter does not fall within the ambit of the definition of a labour dispute as provided in Section 2 of the Employment Relations Act;
- (ii) This Tribunal does not have jurisdiction to grant an award in terms of the prayer set out in paragraph 13 of the Statement of Case of Disputant No. 1 and paragraph 18 of the Statement of Case of Disputant No. 2;
- (iii) The terms of the dispute referred to the Tribunal are not the same as the terms of the dispute reported to the President of the Commission for Conciliation and Mediation on 19 October 2016 and subsequently amended on 25 October 2016; and
- (iv) the present dispute should be set aside on the ground that it does not disclose any cause of action to the extent that the post of Coordinator, though existing on the establishment of the Respondent, is personal to officers in post as at 30 June 2008 and therefore no new appointment can be made in that grade.

The relevant version of the definition of “labour dispute” for the purposes of the present matter (at section 2 of the Act before the 2019 amendment) reads as follows:-

“labour dispute” –

- (a) means a dispute between a worker, or a recognised trade union of workers, or a joint negotiating panel, and an employer which relates wholly or mainly to wages, terms and conditions of employment, promotion, allocation of work between workers and groups of workers, reinstatement or suspension of employment of a worker;*
- (b) does not, notwithstanding any other enactment, include a dispute by a worker made as a result of the exercise by him of an option to be governed by the recommendations made in a report of the Pay Research Bureau or a salary commission, by whatever name called, in relation to remuneration or allowances of any kind;*
- (c) does not include a dispute that is reported more than 3 years after the act or omission that gave rise to the dispute*

Under the first limb, it was argued by Counsel for Respondent that the definition of labour dispute does not include ‘appointment’. True it is that paragraph (a) above does not refer specifically to “appointment”, but there is mention of “terms and conditions of employment” and “promotion” and the Tribunal is of the view that the present matter concerns disputes which relate mainly to the ‘promotion’ or absence of promotion of the disputants. Indeed, it is apparent from the pleadings, responsibility allowance paid to the disputants (as per the relevant annexes in the Statements of Case of the disputants)

and the documents produced that appointment in the grade of Coordinator would amount to a 'promotion' for both disputants who are Training Officers. The dispute is also closely related or related mainly to the terms and conditions of employment of the disputants the more so that they have been required to act as Coordinator at the Respondent for long periods of time and this despite the 2013 and 2016 PRB Reports. The Tribunal is not satisfied that the disputes are not labour disputes simply because the word "appointment" does not appear in the definition of labour dispute under section 2 of the Act.

Also, Counsel for Respondent argued that the dispute is not a labour dispute since it has been reported more than three years after the act or omission that gave rise to the dispute. Counsel for Respondent relied on part (c) of the definition of labour dispute under section 2 of the Act (see above). Counsel for disputants however relied all along on the fact that the disputants were not informed that Coordinators would not be appointed and were not informed about the outcomes of their applications for the then vacant posts of Coordinator.

Indeed, the Tribunal is not satisfied in the present matter that there was a precise cut-off date in terms of an act or omission which led to the present disputes. Indeed, it is not disputed that the Respondent did not inform the disputants about the outcomes of the selection exercises in which they participated and there is no evidence either that someone else apart from the disputants was at any given date appointed in the post of Coordinator following the said selection exercises. Instead, Disputant No. 1 was already acting as Coordinator and this was simply continued despite the abovementioned selection exercise and Disputant No. 2 was on her side offered to act as Coordinator with effect from 25 August 2006, that is, after her interviews, and this actingship was from then on continued by the Respondent without any interruption. This was so even after the 2013 and 2016 PRB Reports and whose recommendations the disputants opted to be governed by. Bearing in mind the manner in which the terms of dispute have been drafted and the pleadings before us, the Tribunal cannot identify a cut-off date for the act/s or omission/s which gave rise to the present disputes. The disputants instead seem to be relying to a large extent on the long lapse of time that they have been requested to act as Coordinator to buttress their case before the Tribunal. The particular circumstances of the case are such that they make the present matter fall, in our opinion, within such cases which the Supreme Court in the case of **Ramyead-Banymandhub v The Employment Relations Tribunal 2018 SCJ 252**, contemplated as cases where the act or omission could be continuous in nature. The Tribunal is thus not satisfied that the Respondent has shown positively or at least identified the act/s or omission/s which led to the present disputes. The Tribunal is thus not satisfied that the present disputes are not labour disputes and the objection under this limb is set aside.

As regards the objection under the second limb, Counsel for Respondent referred to Sections 13 and 14 of the Mauritius Institute of Training and Development Act and to the “*Pouvoir de direction et de gestion*” of the Respondent as employer. Counsel for Respondent also referred to another point which we may deal with under this second limb. Counsel suggested that an order against a statutory body like the Respondent to take action as per the prayers of the disputants will be in the form of a mandamus and in the nature of a judicial review procedure, and which this Tribunal cannot make.

The Tribunal will refer to a ruling delivered in the consolidated cases of **Mr Danny Clarel Agathe and Others And The State of Mauritius as represented by The Ministry of Finance, Economic Planning and Development, in presence of Pay Research Bureau & others, ERT/RN 107/20- 135/20**, where the Tribunal highlighted the powers of the Tribunal under the Act, as amended, and the special nature of the disputes which come before the Tribunal for arbitration. The Tribunal will quote extensively from the ruling delivered in the above-mentioned cases of **Mr Danny Clarel Agathe and Others (above)**:

“The Tribunal when enquiring into the dispute, as required under section 70(1) of the Act, will be very cautious not to usurp the powers or jurisdiction of Co-Respondent No 3, or for that matter, of any other party. The Tribunal will refer to the case of **Government Servants’ Association And The Master & Registrar & Anor, RN 298** where the Permanent Arbitration Tribunal stated the following:

“These proceedings have involved a number of institutions, including the Public Service Commission and we are grateful to all those concerned for their utmost cooperation. The Tribunal is conscious that it should not be seen as seeking to usurp the exclusive rights of other authorities. Our sole aim is and can only be industrial peace and the promotion of Justice.”

The Tribunal has wide powers and may, for example, in relation to any dispute or other matter before it, remit the matter, subject to such conditions as it may determine, to the parties for further consideration by them with a view to settling or limiting the several issues in dispute (section 6(2)(a) of the Second Schedule to the Act). Sections 6(2)(b) of the Second Schedule to the Act even provides as follows:

6. (1) ...

(2) *The Tribunal may in relation to any dispute or other matter before it –*

(a) ...;

(b) dismiss any matter or refrain from further hearing or from determining the matter, if it appears to the Tribunal that the matter is trivial, or that further proceedings are unnecessary, or undesirable in the public interest;

The Tribunal will have to ensure, when, and only if, it will have to deliver an award after hearing all the parties, that its award does not contain any provision inconsistent with any enactment in line with section 72(5) of the Act. This objection is, at best, premature and is set aside.

...

Once the Tribunal is satisfied that a dispute falls within the definition of a labour dispute and is not expressly excluded from the jurisdiction of the Tribunal (under say section 71 of the Act), the Tribunal shall proceed with the matter. It is apposite to note that section 85(1) of the Act provides that “The Permanent Arbitration Tribunal established under section 39 of the repealed Industrial Relations Act is deemed to have been established under this Act and is renamed as the Employment Relations Tribunal.” The functions of the Tribunal as per the Act include making awards (section 86 of the Act) and the Tribunal has been given wide powers to deal with labour disputes and other matters before it. Thus, under section 15 (of Part IV) of the Second Schedule to the Act, the Tribunal “*may conduct its proceedings in a manner it deems appropriate in order to determine any matter before it fairly and promptly and may deal with the substantial merits of such matter with a minimum of legal formalities.*”

...

The Tribunal deals with employment relations matters and is given wide powers which are consonant with the settlement of labour disputes whilst it has also to uphold the principles and best practices of good employment relations. The Tribunal, for instance, is not bound by the law of evidence in force in Mauritius (section 20(1) (of Part IV) of the Second Schedule to the Act) and may, in the exercise of its functions in relation to a matter before it under the Act have regard to the principles of natural justice, the interests of the persons immediately concerned and the community as a whole and other principles (section 97 of the Act).

...

Bearing in mind our conclusion that the disputes are labour disputes as defined, and that the Tribunal is not prepared, at this stage of the proceedings and without having heard any evidence at all, to find that the disputes constitute disguised applications for Judicial Review and/or for constitutional redress, the Tribunal finds that the objection under this limb is at best premature. It is apposite to note that

there is no direct averment either that the current disputes do not constitute other actions (other than constitutional redress) which were lawfully available to the disputants.

It is apposite to refer to the recent judgment of the Supreme Court in the case of **Mr Sebastien Teycheney v The Director of Private Secondary Education Authority & Anor 2021 SCJ 110**, where Mr Teycheney had sought leave to apply for Judicial Review of a decision of The Director of the Private Secondary Education Authority rejecting Mr Teycheney's request to adjust his salary. The Supreme Court stated the following:

With regard to the second limb of the objection, we need only reiterate that it is well-settled that judicial review is a remedy of last resort and that alternative remedies should therefore be exhausted before an application is made for leave to apply for judicial review. As rightly submitted by learned Counsel for the respondent and co-respondent, the applicant, whose grievance is in substance that he has been discriminated against allegedly on the basis of creed in view of the treatment given to the six new Quality Assurance Officers, could therefore have lodged a complaint at the Equal Opportunities Commission or a case before the Employment Relations Tribunal.

...

The objections taken under this limb, as well as, the case law of the Supreme Court referred to us by Counsel for Respondent and which has been referred to in numerous awards of the Tribunal (for example, **vide Central Statistical Office Staff Association And Government of Mauritius, RN 31/11**) that unless there had been a departure from established rules and procedures, it was not the function of the Court to direct Ministries or Government departments how schemes of service should be prepared or amended to suit the changing needs of society, are matters to be addressed on the merits of the case.

The Tribunal will have to hear evidence and in the light of same and any prayer being pressed can then decide on the merits of the case and the appropriateness of granting any award. If the Tribunal proceeds to make an award, it will obviously ensure that its award complies with section 72(5) of the Act (...)"

In the light of the ruling of the Tribunal under the first limb of the objections above, the Tribunal shall enquire into the dispute and consider all the evidence adduced on the merits before determining the matter. In view of the wide powers of the Tribunal which deals with employment relations matters where emphasis is on the settlement of labour disputes to uphold good employment relations, the objections taken as preliminary points cannot stand and are set aside. It is apposite at this stage to refer to the award

delivered in the case of **Mr S.P Mootoosamy And The Bank of Baroda, General Notice No. 596 of 1984**, where the then Permanent Arbitration Tribunal stated the following:

“This Tribunal is not here to award damages, it must only see how, by using whatever wisdom and experience it may have, an employee who has had every reason of feeling frustrated, who, in this case, even had to put up a very courageous but trying and tiring battle, may relinquish his frustration, feel safe and relaxed in his employment, recover his dignity and at the same time recover also even if it is only part of what could have been payable to him over a certain period, had his case been given a consideration similar to that given to others.”

This, in our humble opinion, sheds some light on the powers and role of the Tribunal in the field of employment relations matters. The Tribunal will have to enquire into the matter on the merits as opposed to determining the matter based solely on the preliminary objections taken under this limb.

As regards the third limb, counsel for Respondent informed the Tribunal that she was not insisting on the said limb and this limb is thus set aside.

As regards the fourth limb of the objections taken, the Tribunal will necessarily have to consider all the evidence adduced by the parties before reaching any decision on the point taken. The point taken is intrinsically linked with the merits of the case and the Tribunal proposes to deal with the objection when enquiring into the merits of the case.

The Tribunal has examined all the evidence on record including the submissions and arguments of both counsel. The facts in the present matter are straightforward. In relation to Disputant No.1, he took employment in October 2000 as Training Officer on a two-year contract with the Respondent, formerly the IVTB and was posted at the EHS GD. The post of Coordinator (Tourism) became vacant in 2005. With effect from 15 July 2005, Disputant No. 1 was assigned responsibilities as Coordinator (Tourism Studies). Following an advertisement for the post of Coordinator–Tourism and Leisure, Disputant No. 1 applied for the said post as he was fully qualified for it and was called for an interview on 6 July 2006. The then IVTB did not proceed further with the selection exercise for the said post of Coordinator. Meanwhile, as per the 2013 PRB Report, the post of Coordinator was made “(Personal to officers in post as at 30.06.08)” (Doc C). This was maintained in the 2016 PRB Report and the recent 2021 PRB Report. The terms and conditions of employment at the Respondent are governed by the relevant PRB Reports and Disputant No.1 has opted to be governed by the various PRB Reports. As from 2005 up to now, that is for over 16 years, Disputant No. 1 has been acting as Coordinator. There has been no adverse report against Disputant No. 1 since he has been discharging the duties of Coordinator at the Respondent.

As for Disputant No. 2, she took employment as Training Officer in the Housekeeping Section on 15 July 1996 with the Respondent, formerly the IVTB. She was confirmed in her post on 15 July 1997 on the permanent and pensionable establishment of the IVTB. In 2005, the post of Coordinator (Front Office & Housekeeping) became vacant. Following an advertisement for the post of Coordinator–Front Office and Housekeeping, Disputant No. 2 applied for the said post as she was fully qualified for it and was called for two interviews on 14 June 2006 and 6 July 2006. The then IVTB did not proceed further with the selection exercise for the said post of Coordinator. Meanwhile, just like in the case of Disputant No. 1, the post of Coordinator was made “(Personal to officers in post as at 30.06.08)” in the 2013 PRB Report and this was maintained in the 2016 PRB Report and the recent 2021 PRB Report. The terms and conditions of employment at the Respondent are governed by the relevant PRB Reports and Disputant No.2 has opted to be governed by the various PRB Reports. With effect from 25 August 2006, Disputant No. 2 was assigned responsibilities as Coordinator (Housekeeping). As from 2006 up to now, that is for over 15 years, Disputant No. 2 has been acting as Coordinator. There has been no adverse report against Disputant No. 2 since she has been discharging the duties of Coordinator at the Respondent.

The disputes in the present matter have been reported to the President of the Commission for Conciliation and Mediation on 19 October 2016 and 4 October 2016 respectively. This was more than ten years (underlining is ours) after the interviews which the Disputants attended. The then IVTB then decided not to proceed with the said selection exercises. The representative of Respondent has sought to explain why the then IVTB did not proceed with the selection exercises and referred to changes in Government policies over time in relation to vocational education and that there were directives to the effect that pending the setting up of the *Institut de Formation et d’Education Tertiaire* and the restructuring of the then IVTB, management should not fill any position, save for “critical” positions. Management was thus not able to fill the position of Coordinator (which was not considered by the Respondent to be a ‘critical position’) even though interviews of candidates had been held for the said post. The disputants stated that they trusted management and believed that they would finally be appointed. However, this was clearly not enough on their part. We may here refer to the Code of Practice under the Fourth Schedule to the Act as guidance. It includes provisions in relation to the obligations of an individual worker. Article 41 of the Code thus provides as follows:

41. Every worker shall-

(a) satisfy himself that he understands the terms of his contract of employment and abide by them; and

(b) make himself familiar with any arrangements for dealing with grievances and other questions which may arise out of his contract of employment, and make use of them as and when the need arises.

Similarly and to an even larger extent, the Respondent has its own responsibilities in the matter. As guidance, we will refer to Articles 27, 31 and 70 of the same Code of Practice which provide as follows:

27. While good employment relations are a joint responsibility, the primary responsibility for their promotion rests with management.

31. Effective organisation of work is an important factor in good employment relations. Management shall therefore ensure that-

(a) responsibility for each group of workers is clearly defined in the organisational structure;

(b) each manager understands his responsibilities and has the necessary authority and training to do his job; and

(c) individual workers or work groups know their objectives and priorities and are kept informed of progress towards achieving them.

70. Management shall, as far as is reasonably possible, regularly provide workers with information on-

(a) the performance and plans of the establishment in which they work and, so far as they affect it, of the whole undertaking;

(b) working environment and conditions; and

(c) any changes in organisation and management affecting workers.

The Tribunal will also refer to the relevant PRB Reports. Besides the fact that since 2013, the post of Coordinator has been kept personal to officers already in post as at 30 June 2008, the Tribunal notes the following:

- in the 2016 PRB Report, the PRB had the following to say (we take notice of same since this part of the extract at page 247 was not produced on behalf of Respondent):

37.4 In the context of this review exercise, requests were made by both Management and the staff side for the creation and restyling of a number of grades. Management also informed that the new organisation structure of the MITD has recently been finalised by the Board. However, the profiles for the new grades requested were not submitted to the Bureau for grading and for inclusion in this Report. Positions pertaining to this new structure would, therefore, be graded by the Bureau whenever requested, on an ad hoc basis.

37.5 We are, in this Report, maintaining the present organisation structure and other provisions while reviewing the salary of existing grades.

- in the 2021 PRB Report, the PRB stated the following:

44.13 The main contention, since its creation, is that the MITD could not operate with an appropriate structure. It was noted that on several occasions, Management made proposals on the organisation structure and schemes of service for all existing and new grades but was not implemented due to outcry from the Unions. The Bureau has, nonetheless, carried out an in-depth study of all proposals received in the context of this Report and considers that, though the parent Ministry has requested to stay action on the current organisation structure, this situation cannot continue since the staff side are operating in a vacuum (sic). The Bureau has also noted that it is stated in the Government Programme 2020/2024 that, in line with the education reform policy, an Institute of Technical Education will be set up to create opportunities and pathways for learners to pursue studies in technical education. Subsequently, Management of the MITD informed that some Training Centres would be transferred to the new Institute of Technical Education. However, to date, all Training Centres are still operating under the MITD.

44.14 We are, therefore, in the ensuing paragraphs, making appropriate recommendations such that the MITD is equipped, to some extent with a proper organisation structure so as to better deliver on its mandate. (...)

Evidence has been adduced by the representative of Respondent that representations were made to the PRB for the reinstatement of the grade of Coordinator and for the creation of a grade of Senior Training Officer. The PRB does refer to the request made for the creation of the grade of Senior Training Officer and for the reinstatement of the grades of Trainer (Personal) and Senior Trainer (Personal). After taking note of the issue, the PRB stated that the Respondent was advised to seek the views of the Attorney-General's Office on the matter and opined

“that the Management of the MITD [Respondent] may consider the advisability of dealing with this matter expeditiously in consultation with all relevant stakeholders.”

Mention has also been made by the representative of Respondent of issues which are currently being discussed at the level of the Board of the Respondent in relation to submissions which may be made by the Respondent in the wake of the 2021 PRB Report. The Tribunal takes note of same the more so in the light of the observations made by the Tribunal above on the obligations and responsibilities of an employer and the observation made by the PRB in its 2021 report (see above at paragraph 44.13) that this situation cannot continue since the staff side are operating in a vacuum.

The Tribunal will quote from the award delivered in the case of **Mrs D.C.Y.P And The Sun Casinos Ltd, R.N 202 (GN No. 1390 of 1988)** where the then Permanent Arbitration Tribunal (as the Tribunal was then called) stated the following:

“There is no doubt that employers do have a discretion and powers in matters of appointment and promotion. Such discretion and powers must, however, be exercised in such a way as not to cause prejudice and frustration to employees whose only ‘*fault*’ would seem to be *loyalty, expertise and efficiency*.”

Whenever, as in the above case, officers are recruited and employed to work, they are entitled to expect a normal reward for their good work and acquired experience, and this necessarily includes access to promotion upon occasion arising.

Unless such a basic concept of employer/employee relations is present in modern enterprises, industrial disputes and bad blood are bound to be the order of the day.”

The Tribunal however takes note of the reasons given for the non-filling of the posts of Coordinator. The Tribunal also notes that the then IVTB had indeed reserved its right not to make any appointment following the internal advertisement dated 12 May 2006 for different posts including for the posts of Coordinator- Tourism and Leisure and Coordinator- Front Office & Housekeeping (Annex C to the statement of case of Disputant No. 2) and for which posts Disputant No. 1 and Disputant No. 2 had applied for respectively.

The Tribunal cannot intervene in the present matter, however pathetic the situation may be for the Disputants, as referred to by Counsel for Respondent herself, because contrary to what is suggested in the terms of reference before us in both cases, there is strictly, as per the evidence adduced, no vacant post of Coordinator at the Respondent and this since the implementation of the PRB Report 2013. The

Tribunal is thus at a loss to understand how the 'Acting Appointment' to act as Coordinator (Annex B to the statement of case of Disputant No. 1 and Annex E to the statement of case of Disputant No. 2) was continued in 2013 and afterwards. Indeed, for there to be an acting appointment there must be a vacant post. The Tribunal may, for example, refer to paragraph 16.10.2 (Volume 1) of the PRB Report 2021 which provides as follows:

16.10.2 An acting appointment is a non-substantive appointment in which an officer is appointed to undertake the duties of a vacant post. Acting appointments are administrative arrangements made at the discretion of Management. It is not obligatory that acting appointment must be made whenever a post is vacant. On the contrary, an acting appointment may be resorted to whenever there is operational need and where the duties of a vacant post must be undertaken by another officer. (underlining is ours)

The explanation of the Acting Managing Director as to why the acting appointments of the disputants have been continued even after the PRB Report 2013 has not impressed the Tribunal. Be that as it may, in the letters addressed to the disputants (Annexes B and E mentioned above), it was clearly mentioned that:

“Please note that this acting appointment does not give you any claim for an eventual substantive appointment as Coordinator [Coordinator (Housekeeping) in the case of letter to Disputant No. 2] and may be terminated at any time.”

Moreover, since both disputants applied for the said post and attended interviews, they are fully aware that appointment to the grade of Coordinator (even if at that time there were vacancies) is by way of selection.

Also, at this stage, much will depend on the policy which will be adopted in relation to technical education. This Tribunal will be careful not to pronounce or interfere with policy decisions which should be left to those who have been duly mandated to take such decisions. The Tribunal also takes note of the creation of a new grade of Quality Assurance Officer at the Respondent following the PRB Report 2021 (Doc E) and the still pending issue concerning the creation of the grade of Senior Training Officer as per the 2021 PRB Report.

The Tribunal finds it apposite at this stage to refer to the cases of **Mr P.E Fidèle & others And Cargo Handling Corporation Ltd, RN 1062-RN1064**, where the Tribunal quoted from a previous award in the case of **Mr E. Cesar And Central Water Authority, RN 785**, where the then Permanent Arbitration Tribunal stated the following:

“It is worth stressing that for the sake of good industrial relations, vacancies should be filled in as soon as possible and period of actingship should not be made to last for more than is necessary.”

In the light of the particular facts in the present case including the relevant PRB reports and that currently there is in fact no vacancy in the post of Coordinator at the Respondent, the Tribunal cannot award that the disputants “should be appointed as Coordinator at EHS GD by the Respondent since the post is vacant”. The Tribunal however hastens to add that for an institution like the Respondent which “envisions to be the leader in human capital development in the region and beyond for global employability” (as per the extracts of the PRB Reports produced), the manner in which the two disputants have been treated deserves no applause but great concern. The Tribunal is however confident from the own testimony of the representative of Respondent that management is going to assume his responsibilities and make necessary representations in good faith as per the requirements of Respondent. Otherwise, there would have been no point in keeping the disputants for years in an ‘acting’ capacity as Coordinators. The Respondent must see to it that matters are dealt with expeditiously so that the disputants may at long last know where matters stand for their organisation in terms of organisation structure and for them in terms of promotional prospects. This is a *sine qua non* for harmonious employment relations and from which all parties and stakeholders of the Respondent may only benefit.

The Tribunal will conclude by referring to the observation made by the Tribunal in the case of **Mrs Bacor (above)** in its award delivered since 26 October 2017 (underlining is ours):

“The Tribunal would, however, wish to remind the parties to assure themselves that the aim of reaching a new organisation structure at the MITD, which is since long being awaited, is attained without any undue delay in the interest of the persons immediately concerned and in a spirit of good and harmonious employment relations.”

For all the reasons given above, the Tribunal finds that the disputants have failed to show on a balance of probabilities that the Tribunal should award that they should be appointed by the Respondent as Coordinators since the posts are vacant. The disputes are thus set aside.

SD Indiren Sivaramen

SD Francis Supparayen

Acting President

Member

SD Rabin Gungoo

SD Arassen Kallee

Member

Member

12 January 2022