

**EMPLOYMENT RELATIONS TRIBUNAL**

**ORDER**

**ERT/ RN 16/22**

**Before**

<b>Indiren Sivaramen</b>	<b>Acting President</b>
<b>Vijay Kumar Mohit</b>	<b>Member</b>
<b>Abdool Feroze Acharauz</b>	<b>Member</b>
<b>Ghianeswar Gokhool</b>	<b>Member</b>

**In the matter of:-**

**Mauritius Institute of Training and Development Employees Union  
(Applicant)**

**And**

**Mauritius Institute of Training and Development (Respondent)**

This is an application made by the Applicant union under section 51(8) of the Employment Relations Act, as amended (the "Act"), for an order requiring the employer, that is, the Respondent to comply with Articles 7, 9, 18 and 19 of the procedure agreement set out in the Seventh Schedule to the Act. The Respondent is resisting the application and was assisted by counsel before the Tribunal whereas the Applicant was assisted by a negotiator. The Applicant has filed a Statement of Case whilst the Respondent has filed a Statement of Reply. The Tribunal proceeded to hear the parties.

Dr Madhow, the President of the Applicant union deposed on behalf of the Applicant and he stated that on 18 April 2022, they ("we") received a letter dated 15<sup>th</sup> of April 2022 from the Respondent, calling upon employees of Respondent, from the former Industrial and Vocational Training Board (IVTB) and the former Technical School Management Trust Fund (TSMTF) to exercise their option to give their final say in relation to them joining the Respondent. He suggested that from 2009 when the Respondent was set up till date, there is no approved and final organisation structure at the Respondent. He added that

there is a correspondence dated 21 February 2022 signed by the Permanent Secretary of the Ministry of Labour, Human Resource Development and Training (Annex 3 to the Statement of Case of Applicant) whereby the latter notified the union that the Respondent was 'in the process of a restructuring phase'. He suggested that the Applicant has not been consulted even though the Respondent is undergoing a phase of transformation with the advent of the phasing out of the pre-vocational education (PVE) project.

Dr Madhow stated that since the issue is about transfer of staff, management should have started negotiations with the union through a staff negotiation committee. He averred that conditions of work, transfer of staff and organisation structure are very pertinent issues and are work related issues and that there should have been negotiation by the Respondent with the Applicant. He added that the Respondent was duty bound, to at least, inform the union of any business projects that were likely to affect the conditions of employment of its employees. He stated that there were no negotiations with the union and that there was thus, in the circumstances, a breach of the procedure agreement.

In cross-examination, Dr Madhow agreed that the Applicant was granted recognition by the Respondent only in the year 2020. The Applicant was not a party to negotiations and consultations which may have taken place prior to 2020 at the Respondent. He agreed that in 2011 a letter was issued to all employees. He stated that, as per the said letter bearing the heading "**Transfer of services to MITD**", a moratorium period of one year was given to the relevant employees to exercise an option to which the employees were entitled as per the law (referring to section 28(6) of the Mauritius Institute of Training and Development (MITD) Act). He agreed when it was put to him that the letter of 15 April 2022 refers to a letter of 25 July 2011 and is a continuation of what started in 2011. He agreed that as per the letter dated 15 April 2022 (Doc B), the moratorium period has been extended on various occasions. He accepted that there were three other trade unions which were recognised at the Respondent and that most of the employees of the bargaining unit of Applicant are represented by the other unions as well. He also accepted that these unions were granted recognition prior to the Applicant union being recognised by the Respondent. He identified copies of certificates of recognition issued to the Applicant (Docs C, C1 and C2).

Dr Madhow agreed that the Applicant union has attended meetings with management, but he averred that they also complained that they were not having regular meetings as they used to and that they were not having a negotiating committee. However, he agreed that in his email dated 23 March 2022 (Annex 4 to the Statement of Case of Applicant) addressed to the Ministry of Labour, he made mention of several issues but did not refer to Applicant having any difficulties to have meetings with management. He was then questioned in relation to the Articles in the procedure agreement which he averred were not being complied with. Dr Madhow suggested that it was only late 2020 that some of

the schemes of service were finalized by the Respondent. He did not agree that the organisation structure of the Respondent has been finalized and endorsed by the Pay Research Bureau (PRB). He agreed that he was asking to have consultation with management on one specific point whilst there are other recognised trade unions representing the same bargaining unit which were not before the Tribunal. When it was put to him that the organisation structure of the Respondent has been the subject matter of consultations with unions since a long time, he stated the following: “*For sure, yes we have been delayed legally on this issue.*” He accepted that the organisation structure has been the subject matter of consultation with unions since 2011. He however stated that there was a contradiction in relation to when exactly the organisation structure which the Respondent is referring to was finalized.

The acting director of Respondent then deposed as to the correctness and accuracy of the contents of the Statement of Reply filed on behalf of Respondent. He stated that the Respondent was set up in 2009 and a new structure was worked out. However, the trade unions which were recognised at that time appealed to the Commission for Conciliation and Mediation against this ‘first’ structure and it was agreed that there were going to be negotiations between management and the recognised trade unions on a new structure. He stated that there was no consensus with the unions to arrive at a final structure. The acting director suggested that this was the reason why it took so long to finalise the structure which was finally approved by the Board on 17 November 2017. He stated that there was a transfer of services to Respondent and a moratorium period of one year was given to employees in individual letters in July 2011 for them to decide whether they wished to be redeployed to any other statutory body or to retire on grounds of abolition of office. He stated that a moratorium period of one year was given because it was expected that the organisation structure of Respondent would be finalised within one year. The structure was not finalised and the moratorium period was successively renewed until around 2016. Then a decision was taken for the moratorium period to be extended until the Pay Research Bureau (PRB) endorsed the organisation structure. The relevant parent Ministry was written to, and the latter agreed for the moratorium period to be extended until the next PRB report, that is, the PRB Report 2021. The acting director averred that the PRB in its 2016 Report however did not give the full report management was expecting in relation to the Respondent. The Respondent thus had to continue negotiations and some adjustments were made and the final structure was adopted in 2017.

The acting director referred to the frustration which the absence of an organisation structure has caused to the staff whereby some of them had performed duties in an acting capacity for 10 to 15 years. There was no filling of posts except for two grades. He maintained that the organisation structure which was finalised in 2017 is the same

organisation structure which is today being referred to. He stated that the Applicant was not a recognised trade union then and that the Respondent had negotiated with all trade unions which were already there at that time. He stated that some 80 to 82% of the staff have replied to the letter of 15 April 2022 and have exercised their option. He stated that it would be a real catastrophe for the Respondent if the process was put on hold now and that management was required to re-negotiate in relation to the same structure which took around eight years to be finalised. The acting director stated that since the Applicant has been recognised at the Respondent, management is having meetings with the Applicant whenever the latter requests for meetings with management. He produced copies of documents in relation to meetings sought by the Applicant and where Respondent would have entertained such requests (Docs E, E1, F and G). The views of the Applicant were also sought on omissions/errors relevant to their members following the publication of the PRB Report 2021 and on proposed schemes of service (Docs H and I).

In cross-examination, the acting director of Respondent stated that the transfer of services was to avoid the staff being in a vacuum. There were negotiations with the unions which explain why a moratorium period was given to the staff on the understanding that the structure was going to be finalized but unfortunately following the negotiations, there was no consensus and matters have dragged out. He suggested that there were consultations with the trade unions and that is why the organisation structure was approved by the Board only in November 2017 and not in 2010/2011. He maintained that there had been several negotiations and steps before the final organisation structure was approved by the Board on 17 November 2017. He stated that the unions were initially not agreeable with the organisation structure even though a consultant (BCA Consultant) had been appointed to work out the structure. The acting director explained that the organisation structure is in fact the first organisation structure of Respondent as a new organisation. He suggested that matters did not start with the letter dated 15 April 2022 but with the letter of 25 July 2011. He maintained that the letter of 25 July 2011 was a letter of transfer of services and that the moratorium was extended because there was no consensus with the unions and the organisation structure was not finalised.

The acting director did not agree when it was put to him that the Respondent never discussed with the unions on terms and conditions which were to be not less favourable than those which employees were benefitting under their 'previous employment'. In re-examination, the acting director produced copies of a series of documents to suggest that there had been consultations all along with the unions which were already recognised prior to the year 2020 (Docs J to P). He stated that there were even requests from the unions that three increments should be granted to those who were joining the Respondent and it was finally agreed that one increment would be given as an incentive to all employees to be transferred to the Respondent. He also stated that prior to the

employees being transferred to the Respondent, their terms and conditions of employment were governed by the relevant PRB Reports. Currently, the conditions of service are as per the recommendations of the PRB Report 2021 which everyone at the Respondent had opted for and accepted. He stated that the organisation structure of the Respondent is finalised and that the Respondent is now proceeding to fill the various posts depending on availability of budget.

The Tribunal has examined all the evidence on record including the submissions of counsel and the statement made by the negotiator. The Applicant has averred that the procedure agreement set out in the Seventh Schedule to the Act applies to the parties. The Applicant relies on section 108(2) of the Act to suggest that the parties are regulated in accordance with the said procedure agreement. Section 108(2) (Savings and transitional provisions) of the Act reads as follows:

*108(2) Where a trade union or a joint negotiating panel has obtained recognition from an employer before the commencement of the Employment Relations (Amendment) Act 2019 and no procedure agreement is in force, the employer and the trade union or the joint negotiating panel, as the case may be, shall be regulated in accordance with the procedure agreement set out in the Seventh Schedule.*

From the evidence on record including Docs C, C1 and C2, the Applicant was recognised by the Respondent only in the year 2020. The Employment Relations (Amendment) Act 2019 came into force with effect from 27 August 2019 (Proclamation No. 34 of 2019). Thus, section 108(2) of the Act does not find its application in the present case. However, the Tribunal takes note of section 51(1) of the Act which reads as follows:

### **51. Procedure agreements**

*(1) Where recognition has been obtained under sections 36(3), 37(4) or 38, the relationship between a trade union or group of trade unions and an employer or a group of employers, as the case may be, shall, subject to subsection (2), be regulated by the procedure agreement set out in the Seventh Schedule, with such modifications and adaptations as may be necessary.*

Subsection (2) (above) is not relevant to the present case.

As per Annex 2 to the Statement of Case of Applicant, the Applicant was granted recognition (for grades and categories of employees as per Docs C, C1 and C2) pursuant to section 36(3) of the Act. Thus, the Tribunal will proceed with the present application on the basis that section 51(1) of the Act (see above) applies to the present case and that the relationship between the Applicant and the Respondent is regulated by the procedure agreement set out in the Seventh Schedule to the Act. It is unchallenged that parties have not brought any modifications or adaptations to the agreement.

The negotiator made it clear that the Applicant was not pressing with alleged breach of Article 9 of the procedure agreement so that the three Articles which were allegedly breached by Respondent would be Articles 7, 18 and 19 of the procedure agreement (under section 51 of the Act and at the Seventh Schedule to the Act). The Articles read as follows:

**Article 7 –Collective bargaining**

*(1)The employer and the union both agree to conduct collective bargaining and, for this purpose, to set up a Staff Negotiating Committee (SNC) to discuss any matter concerning work related issues and other issues contained in this Agreement.*

*(2) (a)The SNC shall be composed of such number of representatives of the employer and of the recognised union, as may be agreed by both parties.*

*(b)The employer shall be represented by members of his management and the union by its accredited officers.*

*(3)Every party shall have the right to be assisted by its negotiators and counsels.*

*(4)The SNC shall meet once every 2 months or as often as may be required.*

*(5)The SNC shall meet under the chairpersonship of the General Manager or his accredited representative.*

*(6)The SNC shall consider any grievance and dispute, whether individual or collective and whether of right or interest, issues related to collective bargaining, enforcement of Agreements and enactments.*

*(7)Either party may request a meeting of the SNC by giving written notice to the other party, stating the reasons thereof and specifying the issues to be discussed at the meeting.*

*(8)The parties shall, within 2 weeks of receipt of the notice, mutually agree on the date and time of the meeting.*

*(9)The meetings of the SNC shall be held on the employer's premises and the employer shall provide suitable accommodation for that purpose.*

*(10)Draft minutes of proceedings shall be prepared by the employer and submitted to the union representatives at least one week prior to the next meeting, for approval at the subsequent meeting.*

*(11)Any Agreement reached at the level of the SNC shall be binding and shall be implemented without undue delay on such date as agreed between the parties, and in any way not beyond one month of the date of the Agreement.*

**Article 18 –Union's right to be informed**

*(1)The employer may, subject to the consent of the worker concerned and where practicable, provide the union with a copy of the following documents concerning its members–*

*(a)any written warning;*

*(b)any letter of suspension;*

*(c)any written notification of gross misconduct;*

- (d) any letter of dismissal;*
- (e) any internal circular relating to conditions of employment;*
- (f) minutes of proceedings of meetings between the union and the employer;*
- (g) any documented verbal warnings where such warnings are recorded in the worker's personal file;*
- (h) any vacancy circular; and*
- (i) any information related to appointments and promotions effected.*

*(2) The employer agrees to inform the union of any business projects likely to affect the conditions of employment of its members.*

### **Article 19 – Appointment and promotion**

#### **General Considerations**

*(1) The employer shall seek guidance from the Code of Practice found in the Fourth Schedule to the Employment Relations Act regarding principles and procedures relating to employment policies.*

*(2) The employment policies shall include policies prohibiting discrimination on the grounds specified in the employment legislation and the Equal Opportunities Act.*

The application of the Applicant union before the Tribunal reads as follows:

*“Mauritius Institute of Training and Development (The Employer) is offering an option to all staff who were previously employed on the permanent and pensionable establishment of the ex-Industrial and Vocational Training Board (ex-IVTB) and ex-Technical School Management Trust Fund (ex-TSMTF) to join a new organisation structure without prior consultation and negotiation with the Mauritius Institute of Training and Development Employees Union (The “Union”), a trade union duly recognised by the Employer.*

*The union is of the reasoned view that the employer has, in so doing, breached Articles 7, 9, 18 and 19 of the Procedure Agreement under the Employment Relations Act 2008 (Amended) (the “Act”). Pursuant to section 51(8) of the Act, the union applies for an order of the tribunal requiring the employer to comply with the aforementioned sections.”*

The crux of the matter (as confirmed by the negotiator) is the alleged offer of options in the letter of 15 April 2022 to relevant staff to join ‘a new organisation structure’ without prior consultation and negotiation with the Applicant union. The Tribunal has examined carefully all the evidence adduced. Much evidence has been adduced of meetings which were held with different trade unions. The Tribunal will refer to copies of documents pertaining to meetings held on 18 November 2016 and 25 January 2017 with trade unions (batch marked Doc O) and where the representatives of four trade unions acknowledged receipt of various documents. The Tribunal notes that apart from the Mauritius Institute of Training and Development Non Training Staff Union (MITDNTSU), the Union of Staff of the Mauritius Institute of Training and Development (USMITD) and the Mauritius

Institute of Training and Development Training Officers and Instructors Union (MITDIOIU) (which are all mentioned in the Statement of Reply of Respondent), there is also reference in the batch of documents marked Doc O (and in Doc K) to a fourth trade union (apart from Applicant union) which is the Mauritius Institute of Training and Development Staff Association (MITDSA). This latter trade union is not mentioned in the Statement of Reply of Respondent and the Tribunal has no further information on the said trade union. There are also copies of minutes of meetings held with different trade unions on 17 March 2017 and 19 May 2017 in relation to the Organisation Structure and Schemes of Service (Docs L and K respectively). There was mention, inter alia, that “*discussions with Unions have been held on different occasions to finalise the Organization Structure and Schemes of Service...*” (Doc K). It is apposite to note that these meetings were held when the Applicant was not yet recognised by the Respondent.

The acting director of Respondent has stated that since there was no consensus with the unions, the organisation structure of the Respondent could not be finalised. The Respondent which has been set up by the MITD Act has taken an inordinate delay to come up with an organisation structure. There is no reliable evidence before us to contradict the evidence of the acting director that the organisation structure of the Respondent is the same structure which was approved by the Board of directors in November 2017. We have examined carefully the relevant PRB reports and here again there is nothing to suggest on a balance of probabilities that the organisation structure which was adopted in 2017 has changed. Annex 3 to the Statement of Case of Applicant (mentioned above) cannot be of much help in the present case in the absence of evidence from the relevant Ministry or other supportive evidence to that effect, the more so that the Respondent, as per the evidence on record including evidence led on behalf of the Applicant, has not had a proper organisation structure (continuously) since it was set up. Obviously, if the Respondent is now (underlining is ours) contemplating changes to its structure which is likely to affect terms and conditions of service of its employees, then the Respondent shall consult the relevant recognised trade unions.

The option given to the relevant employees by way of the letter dated 15 April 2022 is no doubt a continuation of the process started by the letter of 25 July 2011 and emanates from section 28(6) of the MITD Act (though that provision may not have been complied with *stricto sensu* in this particular case). There is unchallenged evidence on record that all the staff of the Respondent opted for the recommendations in the PRB Report 2021. The PRB in its 2021 report was convinced that the Respondent simply could not continue operating without a proper organisation structure and made recommendations such that the Respondent is equipped to some extent with a proper organisation structure to deliver on its mandate (paragraph 44.14 of PRB report 2021 Vol. 2 Part II).

As per documents produced, there were discussions and exchanges between management and the already recognised trade unions in relation to the organisation



structure of the Respondent and the relevant schemes of service. The acting director maintained that the organisation structure which was approved on 17 November 2017 is the structure which the Respondent is proceeding with. Explanations have been given as to why no action was taken immediately in 2017 (management was waiting for the endorsement of the PRB and obtention of salary grading from the PRB). The Tribunal notes that the PRB stated in its 2016 report that it was ready to grade positions pertaining to the new structure on request on an *ad hoc* basis. The acting director added that even after the 2016 PRB report, some adjustment was made, and negotiations continued until the final organisation structure was adopted in 2017. In its 2021 report under the heading 'Mauritius Institute of Training and Development', the PRB did refer to several schemes of service which were submitted to the Bureau for consideration on an *ad hoc* basis.

In the present application there is an averment that Article 7 of the procedure agreement has been breached because the Respondent has offered an option to all staff who were previously employed on the permanent and pensionable establishment of the ex-Industrial and Vocational Training Board (ex-IVTB) and ex-Technical School Management Trust Fund (ex-TSMTF) to join a new organisation structure without prior consultation and negotiation with the Applicant. There is evidence that the option being complained of, in fact emanated from the option which was offered to all relevant employees in 2011 and where employees were given successive moratorium periods until at least this year (vide Doc B - letter dated 15 April 2022 issued to Dr H. K Madhow) to exercise any such options. It is not challenged that a few employees have not yet exercised the option but, very importantly, it has not been shown even on a balance of probabilities by the Applicant that the option given in 2022 relates to a different organisation structure than the one adopted by the Board of Respondent in 2017. The Applicant could easily have adduced evidence in relation to the above by calling the other already recognised trade unions which could have enlightened the Tribunal.

There is no reliable evidence that the Applicant formally requested Respondent for the setting up of a Staff Negotiating Committee (SNC) and that there was a clear refusal on the part of the Respondent to set up such a SNC (the more so in the light of the evidence of meetings and consultations being held between the parties). Article 7 however also and, more importantly, refers to both parties agreeing "to conduct collective bargaining". The Tribunal finds that since there had already been negotiations between Respondent and the recognised (prior to 2017) trade unions (some already representing members in the bargaining unit of Applicant) over a long period of time before the organisation structure was adopted by the Board of Respondent in 2017, there was no need for the Respondent to start negotiations anew in relation to the same organisation structure with the Applicant (which was not recognised in 2017) or any other newly recognised trade union. There is evidence that there are meetings between the parties and that the views of the Applicant are being sought, for instance, in relation to the errors/omissions following

the PRB Report 2021. The Tribunal is thus not satisfied that the Respondent has failed to conduct collective bargaining with the Applicant. There is no evidence of a breach of Article 7 of the procedure agreement and the application under this limb is set aside.

Article 18(1) of the procedure agreement does not find its application in the present matter since there is here no averment of refusal to provide copies of documents as mentioned in that provision. Article 18(2) of the procedure agreement is also not relevant. Indeed, without having to delve into the term “business projects” (the Tribunal simply notes that the PRB in both its 2016 and 2021 reports refers to the “activities/business” of the Respondent (paragraph 7.3 Vol. 2, Part II and paragraph 44.4 Vol. 2, Part II respectively)) as used in the said Article, the Tribunal notes that even Article 18(2) refers to a right to be informed (underlining is ours). In the present case, we are concerned with the option in relation to transfer of services to Respondent and there is no suggestion that Applicant was not informed of the transfer of services. Moreover, the setting up of Respondent to take over the activities or part of the activities of the ex-TSMTF and the activities of the ex-IVTB was done by an Act of Parliament (the MITD Act) and the transfer of services is catered for by the said Act. The Applicant cannot pretend ignorance of same. The standard procedure agreement provided at the Seventh Schedule to the Act has not been amended by the parties to cater for their specific requirements. There is thus no evidence on record of any breach of Article 18 of the procedure agreement.

As regards Article 19 of the procedure agreement, this Article refers to ‘Appointment and promotion’. Subsection (2) of Article 19 provides an indication of what is contemplated under this Article when reference is made to policies including policies prohibiting discrimination on the grounds specified in the employment legislation and the Equal Opportunities Act. There is no suggestion of any of the above in the present case and no suggestion that the real issue between the parties is in relation to the appointment and promotion of certain employees. The issue has more to do with options which by law were given to employees following the setting up of Respondent and which options, the employees were free to exercise as they wanted. There is no suggestion that, say, options were given only to some of the employees concerned which might have led to an averment of discrimination. Also, Article 19 of the procedure agreement is clear and refers to the employer having to seek guidance from the Code of Practice and there is nowhere mentioned that the Respondent shall apply the Code of Practice. The Tribunal thus finds that the Applicant has not proved on a balance of probabilities that the Respondent has failed to comply with Article 19 (bearing the heading ‘Appointment and promotion’) of the procedure agreement.

For all the reasons given above, the Tribunal finds that the Applicant has not proved on a balance of probabilities that the Respondent has failed to comply with any of the relevant provisions of the procedure agreement. The application is thus purely and simply set aside.

**SD Indiren Sivaramen**

**Acting President**

**SD Vijay Kumar Mohit**

**Member**

**SD Abdool Feroze Acharauz**

**Member**

**SD Ghianeswar Gokhool**

**Member**

**14 July 2022**