

EMPLOYMENT RELATIONS TRIBUNAL

AWARD

ERT/ RN 60/21

Before

Indiren Sivaramen	Acting President
Raffick Hossenbaccus	Member
Abdool Feroze Acharauz	Member
Arassen Kallee	Member

In the matter of:-

Mr Nidishwar Ramphul (Disputant)

And

Airports of Mauritius Co Ltd (Respondent)

The above case has been referred to the Tribunal by the Commission for Conciliation and Mediation under Section 69(9)(b) of the Employment Relations Act, as amended (hereinafter referred to as “the Act”). The Disputant and Respondent were assisted by Counsel. The terms of reference of the point in dispute read as follows:

“Whether Mr Nidishwar Ramphul should be reinstated in his position of Airport Security Officer having been dismissed on 18 March 2020 without reference to any disciplinary committee, on the charge of gross misconduct.”

A preliminary objection was taken on behalf of Respondent. The Tribunal has already delivered a ruling in writing to the effect that the preliminary objection was premature and that the objection could be taken, if need be, together with the merits of the case. The Tribunal thus proceeded with the hearing of the matter and Counsel for Respondent raised anew the objection in his submissions.

The Tribunal has examined all the evidence adduced on record including the submissions of both Counsel. Evidence was adduced to the effect that Disputant was doing his job as Airport Security Officer and stopped a passenger from carrying a liquid container which

was larger than what was permissible as per relevant regulations. This is in no way denied by the Respondent. However, evidence was adduced on behalf of the Respondent that during the incident, Disputant had made use of abusive language towards the passenger. This is what, according to the representative of the Respondent, led the Respondent to suspend and eventually terminate the contract of employment of Disputant for gross misconduct. The representative also stated that the Respondent considered that the bond of trust between Disputant and Respondent had been broken. Disputant, on the other hand, stated that he was doing his job. He stated that the passenger was not happy but that there was no heated discussion at all. He agreed that even the police attended the scene but he suggested that this was without his consent ("*sans mo consentement*"). He was requested by his supervisors to apologize to the passenger and he did so. When cross-examined on this issue, he stated that there was no reason at all for his supervisor to ask him to apologize to the passenger. He was requested by his superior officer to give a written report on the incident. The main averments of the Disputant pertained to the Respondent failing to follow procedures provided by law following the alleged incident until his contract of employment was terminated. A bank transfer was made on the account of the Disputant and a cheque was also issued to him. In his letter of termination (Annex 3 to the Statement of Case of the Disputant), the Disputant was informed that he shall be paid, amongst others, severance allowance at the prescribed rate for one year and one month of service.

The Tribunal, after having heard the parties, has not been convinced at all that Disputant was suspended from his work and his contract terminated "by reason of" or because he was exercising rights provided under any enactment including any regulations or even under an airport security directive. There is no single hint as to why, in the particular circumstances of the present matter, this would have been the case. The Tribunal listened carefully to the evidence and it is agreed that Disputant was at the Cabin Baggage Screening and rightly stopped a passenger from carrying a liquid container. However, evidence has been adduced that Disputant used abusive language towards the passenger. There is undisputed evidence that Disputant did apologize to the passenger even though he suggested that he was told what he had to do by his supervisors.

The representative of the Respondent has deposed in a straightforward and convincing manner. He conceded straightaway that the liquid container with the passenger was larger than what was permissible as per relevant regulations. He accepted that procedures which were put to him in cross-examination may not have been followed but stated that the Respondent instead decided to terminate the contract of Disputant whilst paying the latter relevant severance allowance. He maintained that the reason for the termination of the contract of employment was because of the use of abusive language by the Disputant against a passenger. This version appears to be much more plausible in the light of all the circumstances of the case and the Tribunal has no reason to doubt

the version of Respondent that the reason for the termination of the contract of employment of Disputant was the use of abusive language by Disputant against the said passenger. There would have been no reason for the police to come to the scene if the matter had been dealt with calmly, for example.

The Tribunal will refer to section 64(1A) of the Act which reads as follows:

64(1A) No dispute on the reinstatement of a worker in relation to the termination of his employment shall be reported except where the termination is effected by reason of –

- (a) discrimination on the ground of a worker's race, colour, caste, national extraction, social origin, pregnancy, religion, political opinion, sex, sexual orientation, HIV status, marital status, disability or family responsibilities;*
- (b) a worker being on maternity leave or by reason of the worker's absence for the purpose of nursing her unweaned child;*
- (c) a worker's temporary absence from work because of injury sustained at work or sickness duly notified to the employer and certified by a medical practitioner;*
- (d) a worker becoming or being a member of a trade union, seeking or holding of trade union office, or participating in trade union activities;*
- (e) the worker filing, in good faith, a complaint, or participating in proceedings against an employer involving alleged breach of any terms and conditions of employment;*
or
- (f) a worker's exercise of any of the rights provided for in this Act or other enactment, or in such agreement, or collective agreement or award.*

The Disputant is relying on section 64(1A)(f) of the Act to suggest that the dispute is thus within the jurisdiction of the Tribunal. It is important to note that subsection (f) of section 64(1A) does not refer to **breach** (underlining is ours) of any of the rights provided for in this Act or other enactment, or in such agreement, or collective agreement or award. Instead, it refers to a worker's **exercise** of any of the rights mentioned above. If for instance procedures, as per the Workers' Rights Act, for terminating a contract of employment have not been complied with, then this Tribunal simply has no jurisdiction at all (also by virtue of section 71 of the Act) and the matter is to be dealt with before the Industrial Court which will have exclusive jurisdiction in the matter. Section 64(1A)(f) caters only for cases where the termination of employment is by reason of the worker's exercise of any of the rights provided under that sub-section.

The Tribunal has no hesitation in finding that the termination of employment in the present case is not by reason or because Disputant was exercising any of the rights provided for

under section 64(1A)(f) of the Act. The Tribunal thus simply has no jurisdiction to hear the matter since the dispute is not a labour dispute. Also, in the circumstances, the Tribunal cannot enquire into the dispute which, as per section 71 of the Act, relates to an issue which is within the exclusive jurisdiction of the Industrial Court. For all the reasons given above, the dispute is set aside.

SD Indiren Sivaramen

Acting President

SD Raffick Hossenbaccus

Member

SD Abdool Feroze Acharauz

Member

SD Arassen Kallee

Member

14 June 2022