

EMPLOYMENT RELATIONS TRIBUNAL

RULING

ERT/ RN 46/21

ERT/ RN 47/21

ERT/ RN 48/21

Before

Indiren Sivaramen	Acting President
Francis Supparayen	Member
Rabin Gungoo	Member
Ghianeswar Gokhool	Member

In the matter of:-

Mrs Marie Francine Sarangue (Disputant No. 1)

And

**Rodrigues Educational Development Company Ltd
(Respondent)**

In presence of:- Private Secondary Education Authority (Co-Respondent)

Mrs Marie Claudette Azie-Guillaume (Disputant No. 2)

And

**Rodrigues Educational Development Company Ltd
(Respondent)**

In presence of:- Private Secondary Education Authority (Co-Respondent)

Mr Denis Claude Albert (Disputant No. 3)

And

**Rodrigues Educational Development Company Ltd
(Respondent)**

In presence of:- Private Secondary Education Authority (Co-Respondent)

The above cases have been referred to the Tribunal by the Rodrigues Commission for Conciliation and Mediation under Section 69(9)(b) of the Employment Relations Act, as amended (hereinafter referred to as "the Act"). The cases have been consolidated as the terms of the dispute are similar in all three cases and they involve the same issues. The Disputants, Respondent and Co-Respondent were all assisted by Counsel. The terms of reference of the disputes read as follows:

"Whether on obtention of my Bachelor in Business Administration, I should have been promoted as a fully qualified Educator eligible to cross the Qualification Bar (QB)."

A preliminary objection was taken on behalf of Respondent in all three cases and the objection reads as follows:

"The Respondent, whilst reserving its rights to file a Statement of Case in the above matter, states that there is no "labour dispute" between the Disputant and the Respondent as defined by the Employment Relations Act."

The Tribunal proceeded to hear arguments from all counsel on the preliminary objection taken. The Tribunal has examined the arguments offered by counsel and the Statements of Case of the Disputants and the Statements of Defence of Co-Respondent. For the purposes of the preliminary objection, the Tribunal will proceed on the basis that all the averments made by the Disputants in their Statements of Case are deemed to be admitted by the Respondent.

It is apposite to refer to the Statement of Case of Disputant No. 1 (very similar to Statements of Case filed on behalf of the other two Disputants apart from relevant applicable dates and that in the case of Disputant No 3, it was averred that the latter was informed in writing that his request for upgrading of his teaching licence was not approved by Co-Respondent) which reads as follows:

Disputant's Statement of Case:

1. *The disputant is an educator actually posted at Grande Montagne College Rodrigues. Being a Diploma holder teaching in the prevocational stream she was devotedly preparing for the advent of the nine year schooling, and she wanted to upgrade her qualifications and become more effective in teaching profession.*
2. *She started a Degree of Bachelor of Business Administration (BBA) in 2015 and successfully completed same in 2018. She graduated in October 2018. (Annex A)*
3. *The BBA course was a distance learning course run by YKBS for MANCOSA. (Annex B)*
4. *Only distance learning courses are available in Rodrigues and she was also limited in his (sic) choice of courses.*
5. *She chose this BBA course because some of her colleagues who had already completed the course were successfully promoted by PSEA (Co-Respondent). Furthermore, other colleagues who completed their studies after she started in 2015 were also successfully promoted by PSEA.*
6. *After her graduation, in November 2018 she sent letters to PSEA through her employer REDCO LTD (Respondent) requesting for her promotion (Upgrading our teaching license). This would enable her to become a grade A educator eligible to teach up to grade 13 and also be eligible to follow PGCE courses.*
7. *By way of a letter dated 17th January 2019, PSEA informed his colleague, Mr. Hans Denis Claude Albert, in the same situation as her, that his request was not approved.*
8. *The Disputant was informed of same only after she phoned PSEA. No letter was ever received. Also, only then she was informed that BBA was no more recognized for teaching as from 2017.*
9. *At no point in time during her studies she had ever been informed that her BBA will not be recognized for teaching, neither by her employer nor by the PSEA.*
10. *She informed her union UPSEE of the situation in a letter dated 19th March, 2019.*

11. UPSEE referred the Disputant's case and those of 2 other colleagues, **Mr. Hans Denis Claude Albert, Marie Claudette Azie Guillaume** in the same dilemma to the PSEA and had a meeting with the director of PSEA. The Union was informed that the employees' case was still being considered.
12. Following a dead silence from PSEA, together with UPSEE the Disputant and the other 2 colleagues decided to refer the case to the Rodrigues Commission for Conciliation and Mediation on 14th February 2020.
13. A preliminary meeting was held on the 4th of May. All Disputants agreed that the cases be consolidated.
14. A conciliation meeting was then organized by the Commission on 17th September 2020 in the presence of REDCO LTD and UPSEE. The PSEA was also invited but no representative attended the meeting.
15. At the level of the commission, (**Annex 3**)
 - Mr Evenor the Manager of Respondent averred that he submitted to the PSEA copies of certificate of Bachelor of Business Administration in respect of the 3 Disputants for necessary action. According to him, he was not aware of any circular from the PSEA with regard to the non-recognition of the BBA to teach in private secondary schools
 - Mr Evenor added that it was only when he wrote to the PSEA for the upgrading of the three disputants that he was made aware of this decision. However, the cut-off date of the decision was not mentioned to him in the letter. He also stated the disputants have good conduct and performance, are regular at work. He further added that the Respondent is the employer of the disputants whereas the PSEA is the paying agent and that consequently the matter for non-recognition does not arise.
16. The Respondent, as employer of the disputants has accepted the qualification of the disputants as being sufficient to cross the Qualification Bar.
17. On 26th November 2020, by way of a letter, we were made aware of the Commission's conclusions after assessing all the elements related to the matter i.e. **"the Commission proposes and recommends the Private Secondary Education Authority (PSEA) to recognize Marie Francine Sarangue (Mrs),**

Marie Claudette Azie Guillaume (Mrs) and Hans Denis Claude Albert (Mr) as fully qualified Educator eligible to cross the Qualification Bar (QB) with effect from 13 October 2018, at latest 22 December 2020. (Annex 3)

18. On 28th December, a meeting was held by the Commission where we were informed that the PSEA was not agreeable to the Commission's decision.
19. If the upgrading is not considered and implemented the Disputant will face quite a hardship and all her sacrifices and efforts to achieve the BBA degree would be waste.

The Tribunal will refer to the definition of "labour dispute" under section 2 of the Act:

"labour dispute" –

(a) means a dispute between a worker, a recognised trade union of workers or a joint negotiating panel, and an employer which relates wholly or mainly to –

(i) the wages, terms and conditions of employment of, promotion of, or allocation of work to, a worker or group of workers;

(ii) the reinstatement of a worker, other than a worker who is appointed by, or under delegated powers by, the Judicial and Legal Service Commission, the Public Service Commission or the Local Government Service Commission –

(A) where the worker is suspended from employment, except where the alleged misconduct of the worker is subject to criminal proceedings; or

(B) where the employment of the worker is terminated on the grounds specified in section 64(1A);

(b)

(c) ...

As per the referrals to the Tribunal, the disputes are averred to be between each of the disputants and Respondent. It is unchallenged before us that Respondent is the employer of the disputants so that *ex facie* the referrals, the disputes would appear at first sight to be between workers and an employer. However, the Statements of Case filed on behalf of the Disputants give a completely different version in relation to the

disputes. Indeed, disputants aver at paragraph 16 of their respective Statement of Case (paragraph 15 in the case of Disputant No 3) that:

The Respondent, as employer of the disputants has accepted the qualification of the disputants as being sufficient to cross the Qualification Bar.

The averments made in paragraphs 5, 6, 7, 8, 11, 12, 15 and 19 of the Statement of Case of Disputant No. 1 are telling in that the dispute is all along averred to be with the Co-Respondent. The request was made to the Co-Respondent (paragraph 5), the refusal was from Co-Respondent (paragraphs 7 and 8), and a meeting was held by the relevant union with the director of Co-Respondent (paragraph 11) and the “*Union was informed that the employees’ case was still being considered.*”

The unavoidable conclusion from the Statements of Case of the disputants is that the disputants are, in fact, seeking to challenge a decision of the Co-Respondent in relation to the Bachelor of Business Administration which was not or no longer being recognized by Co-Respondent for teaching purposes.

Even before the Rodrigues Commission for Conciliation and Mediation, very interestingly, as per Annex 3 to the Statement of Case of each disputant, the disputes were reported directly against the Co-Respondent (as Respondent) whilst Respondent (here) was then only put as a Co-Respondent.

“Dispute” as per the ordinary dictionary meaning refers to disagreement or argument (Concise Oxford English Dictionary). Ex facie paragraph 16 (paragraph 15 in the case of Disputant No 3) of the Statements of Case of the disputants, there is no dispute between the disputants and the employer, that is, Respondent.

However, there is more to it. Indeed, the Tribunal only has jurisdiction as granted to it under the law, that is, under the Act. The Tribunal certainly has no powers to interfere with the execution of the powers of the Co-Respondent (which is not the employer) under the Private Secondary Education Authority (PSEA) Act. The Tribunal is not empowered to rule as to whether the Co-Respondent has exceeded its powers under the PSEA Act or on the reasonableness of rules, guidelines and directives made by Co-Respondent or standards and conditions set by the latter under the PSEA Act (underlining is ours). There is no suggestion in the Statements of Case of the disputants that the Respondent (the employer) alone has the power to upgrade the teaching licences of the disputants. To that extent, the Tribunal has no power to award or order that the teaching licences of the disputants, as Educators, should be upgraded.

The Tribunal takes note of the objects, functions and powers of the Co-Respondent under the PSEA Act including the responsibility of the Co-Respondent under section 4(f) of the PSEA Act for “*the registration and inspection of secondary or pre-vocational*

schools, their managers, rectors and members of teaching and non-teaching staff.” “Inspection” is defined at section 2 of the same PSEA Act as including “pedagogical inspection and quality assurance”. In the case of **Dhurun v Private Secondary Schools Authority and Shibchurn 1991 MR 147**, the Supreme Court confirmed that the then Private Secondary Schools Authority (PSSA) was not the employer of a teacher who was in the employment of a secondary school. That case was in relation to an appeal from a decision of the Intermediate Court dismissing a claim which had been entered by Mr Dhurun, who was running a secondary school, against the PSSA in the presence of a teacher, Mr Shibchurn. The claim was for an amount, as part of the statutory grant payable by the PSSA and representing an increase in salary alleged to have been due to Mr Shibchurn, by reason of an enhancement in his qualifications. Though the Supreme Court referred in that case to “a claim for salary which Mr Shibchurn alone could have entered directly against the PSSA” by virtue of the statutory right conferred on him by section 16 of the Private Secondary Schools Authority Act (very similar to the corresponding section 16 in the current PSEA Act), there is nothing to suggest, even remotely, that a teacher or educator can report a ‘dispute’ against his employer, which is agreeable with the contention of the teacher/educator, to seek an award forcing the Private Secondary Education Authority (which may or may not be joined as a party to the case) to review his decision pertaining to objects, functions and powers of the Private Secondary Education Authority under the PSEA Act.

As properly suggested by Counsel for Respondent, other avenues were available to the disputants if they were not satisfied with the decision or standards set by the Co-Respondent. The Tribunal also bears in mind section 21B and 21C of the PSEA Act.

Also, the use of the word “promoted” (which could only just bring the dispute within the definition of “labour dispute” as per section 2 of the Act) in the terms of reference is not in order. Indeed, it does not sit comfortably with what later follows in the same terms of reference, that is, “*Whether ... , I should have been promoted as a fully qualified Educator eligible to cross the Qualification Bar (QB)*”. The word ‘promoted’ is being used when the case of Disputant does not relate to an appointment in a grade higher than Educator (be it in a class-to-class promotion or a grade-to-grade promotion) but to crossing the Qualification Bar within the same grade (Educator). The Tribunal also notes that though disputants knew that the Co-Respondent was not their employer, the disputants averred in their Statements of Case that they requested Co-Respondent for their ‘promotion’ or that other colleagues of theirs had been successfully ‘promoted’ by the Co-Respondent.

For all the reasons given above, the Tribunal has no jurisdiction to hear the present matter since each dispute, *ex facie* the Statements of Case filed, is not a dispute between a worker and an employer. Also, the Tribunal has no jurisdiction to enquire

into whether the decision of the Co-Respondent (which is not the employer, but an authority set up under the PSEA Act with the responsibility, among others, to register and inspect secondary or pre-vocational schools, their managers, rectors and members of teaching and non-teaching staff) is proper, fair and reasonable. Also, there is no averment that the Respondent (the employer) is deliberately and wrongfully refusing to upgrade the teaching licences of the disputants or more simply that the Respondent has the power/discretion to upgrade the teaching licences of the disputants.

For all the reasons given above, the three cases are purely set aside.

SD Indiren Sivaramen
Acting President

SD Francis Supparayen
Member

SD Rabin Gungoo
Member

SD Ghianeswar Gokhool
Member

6 June 2022