

# EMPLOYMENT RELATIONS TRIBUNAL

**ERT/RN 107/23**

## ORDER

**Before:**

<b>Indiren Sivaramen</b>	<b>- Acting President</b>
<b>Greetanand Beelattoo</b>	<b>- Member</b>
<b>Chetanand K. Bundhoo</b>	<b>- Member</b>
<b>Ghianeswar Gokhool</b>	<b>- Member</b>

In the matter of:-

**Mr Shyam Teeluck**  
**(Appellant)**

**And**

**The President of the Commission for Conciliation and Mediation**  
**(Respondent)**

**i.p.o Ministry of Labour, Human Resource Development and**  
**Training (Co-Respondent)**

This is an appeal under section 66 of the Employment Relations Act against the decision of the President of the Commission for Conciliation and Mediation for rejecting a dispute reported by the Appellant on the 18<sup>th</sup> July 2023 and received by the Commission on the 24<sup>th</sup> July 2023.

The Co-Respondent, against whom the dispute had been reported, was joined as a party in the present matter in the interests of justice. The Appellant was not assisted by Counsel. The Respondent was initially assisted by a Senior State Attorney from the State Law Office but following a Statement of Case which was sent directly to the Tribunal by the Respondent, the said Senior State Attorney moved to withdraw on her own behalf as well as on behalf of Counsel from the case. There was no objection on the part of the Respondent to the said motion, and the motion to withdraw was granted. The Respondent was subsequently not assisted by Counsel and the representative of Respondent informed the Tribunal that the Respondent would not resist the appeal lodged against the decision of the Respondent. The Co-Respondent was not assisted by Counsel before the Tribunal, and the representative of Co-Respondent did not put in an appearance at the hearing of the matter. The representative of Co-Respondent had informed the Tribunal at an earlier sitting that the Co-Respondent would not file any Statement of Case, and that the said appeal did not concern the Co-Respondent.

The Tribunal proceeded to hear the appeal. The only ground for appeal against the rejection of the dispute in the present matter is that the decision of the Respondent was notified to the Appellant after the statutory delay of 14 days provided by section 65(3) of the Employment Relations Act which reads as follows:

*“The President of the Commission shall give written notice of any rejection within 14 days of receipt of the report of the dispute to all the parties to the dispute.”*

The appeal however does not contain any ground to challenge the grounds/reasons given by the President of the Commission for Conciliation and Mediation to reject the report of the dispute. Now, the Appellant in his appeal avers that the dispute was received by the Commission on 24 July 2023. The President of the Commission for Conciliation and Mediation thus had up to 6 August 2023 to give written notice of the rejection of the dispute. The Tribunal takes note that 6 August 2023 was a Sunday. Section 38(1) of the Interpretation and General Clauses Act provides as follows:

### **38.Computation of time**

*(1) In computing time for the purposes of any enactment or document-*

*(a) where the time limited for the doing of an act expires or falls on a Saturday or a public holiday, the act may be done on the following day that is not a public holiday.*

As per section 2 of the Interpretation and General Clauses Act and the Public Holidays Act, as amended, Sunday is a day described as a public holiday. Thus, the President of the Commission for Conciliation and Mediation had up to 7 August 2023 to give written notice of the rejection. It is not denied that the written notice of rejection is dated 4 August 2023 but it was posted only on 9 August 2023 according to the unchallenged evidence of Appellant. The written notice for the purposes of section 65(3) of the Employment Relations Act was thus given on 9 August 2023, that is, after the delay prescribed in section 65(3) of the said Act.

Now, the question to be addressed is whether this would be fatal to the rejection of the dispute by the President of the Commission for Conciliation and Mediation so that the Tribunal would have no alternative than to revoke the decision of the President of the Commission for Conciliation and Mediation. The Tribunal is of the considered opinion that this cannot be the case. Indeed, section 66 of the Employment Relations Act provides as follows:

***66. Appeal to Tribunal***

- (1) Any party aggrieved by a rejection of the dispute under section 65 may, within 21 days of the date of the notice under section 65(3), appeal against the rejection to the Tribunal and the Tribunal shall, on hearing the appeal, confirm or revoke the decision of the President of the Commission.*
- (2) The Tribunal shall make an order under subsection (1) within 60 days of receipt of the application of the appeal.*

The party “must be aggrieved by a rejection of the dispute under section 65”. The party must be aggrieved by the rejection of the dispute itself so that the said party thus believes, rightly or wrongly, that the dispute must have been considered at the level of the Commission for Conciliation and Mediation under section 69(1) of the Employment Relations Act. The party must be aggrieved by the rejection of the dispute *per se* and in this case there is no single reason or ground put forward as to why the rejection of the dispute itself was wrong or could not stand.

It is apposite to note that section 65 of the Employment Relations Act at subsections (1) and (2) provides as follows:

**65. Rejection of labour disputes**

*(1) The President of the Commission may reject a report of a labour dispute made under section 64 where he is of the opinion that –*

*(a) the dispute is not a labour dispute or does not comply with section 67;*

*(b) the report is made by or on behalf of a party who is not entitled to be a party to the labour dispute;*

*(c) the report does not contain sufficient particulars of the issues giving rise to the labour dispute;*

*(d) the party reporting the dispute has failed to comply with the dispute procedures specified in this Act or provided for in a procedure agreement;*

*(e) the dispute is in relation to a collective agreement to be concluded with the employer in an enterprise where no trade union is recognised as a sole bargaining agent and the trade union reporting the dispute has refused to form part of a joint negotiating panel;*

*(f) the dispute relates to any issue within the exclusive jurisdiction of the Industrial Court.*

*(2) Notwithstanding subsection (1), the President of the Commission may –*

*(a) reject only that part of a dispute which is not a labour dispute;*

*(b) in the case of a labour dispute which includes a party which is not entitled to be a party to the labour dispute, strike out the name of such party from the report of the dispute.*

Though the Respondent is not resisting the appeal before us, it is apposite to note that the Statement of Case which was sent by Respondent includes the following:

3. *Instead of appealing against the grounds of rejection which are laid down in the President's letter dated 4<sup>th</sup> August 2023 at para. 3 and 4 which is being reproduced for the sake of clarity:-*

***“labour dispute”***

(a) *.....*

(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.*

*“By virtue of the above subsection (b), the non-payment of the annual increment to you is the result of your non-filling of the PMS forms for the years 2016 and 2017, which, was a recommendation of the PRB Report 2016. Also, your labour dispute is time barred by virtue of subsection (c) above.”*

4. *So it is clear that given that the disputant did not deem it fit to appeal against the above, the grounds of rejection stand firm and justify the decision of the President of the CCM. ...*

10. (...) *Therefore the provision of Section 65(3) is to be considered directory and not mandatory. Assuming that there has been non compliance stricto senso of Section 65(3), the applicant by not challenging the grounds of rejection as per the letter of the President, has impliedly admitted that his dispute is not a “labour dispute” amenable and receivable by the CCM, therefore, his only ground based on procedure fails lamentably. ....*

Also, and very importantly, the Tribunal will refer to section 105(3) of the Employment Relations Act which provides as follows:

105(3) *No order, award, recommendation or other decision made by the Tribunal, Commission or the Board, outside the delays provided for in this Act, may be challenged or declared invalid for such reason.*  
(Underlining is ours).

Thus, notwithstanding certain time limits which may be provided for in the Employment Relations Act, a decision of the Commission for Conciliation and Mediation may not be challenged or declared invalid based solely (underlining is ours) on the reason that it was made outside the delay provided by the said Act. There is no reason for this not to apply in the present matter in relation to the written notice provided under section 65(3) of the Employment Relations Act. The Tribunal will here refer to a previous decision of this Tribunal in the case of **Mr Hemandar Kumar Madhow And The President of the Commission for Conciliation and Mediation, ERT/RN 21/14** where the Tribunal stated the following:

*The appeal is on four grounds, namely:-*

- (i) *that the Respondent rejected a dispute outside the legal time frame of 14 days;*
- (ii) *...*
- (...)

**Section 105 (3) of the Employment Relations Act 2008 as amended disposes of the first ground of appeal in that it provides as follows:**

*(3) "No order, award, recommendation or other decision made by the Tribunal, Commission or the Board, outside the delays provided for in this Act, may be challenged or declared invalid for such reason."(Underlining is ours).*

The Appellant in the present case should have appealed against the rejection of the dispute he reported, that is, bearing in mind the grounds/reasons given by the President of the Commission for Conciliation and Mediation for rejecting his dispute. In the absence of any challenge to the rejection of the dispute reported *stricto sensu*, the Tribunal cannot intervene under section 66 of the Employment Relations Act, the more so in the light of section 105(3) of the said Act. For all the reasons given above and in the light of the only ground of appeal in the present case, the Tribunal is not satisfied that the President of the Commission for Conciliation and Mediation wrongly rejected the dispute, and the appeal is set aside. The Tribunal thus cannot do otherwise than

confirm the decision of the President of the Commission for Conciliation and Mediation.

**(SD) Indiren Sivaramen**

**Acting President**

**(SD) Greetanand Beelatoo**

**Member**

**(SD) Chetanand K. Bundhoo**

**Member**

**(SD) Ghianeswar Gokhool**

**Member**

**18 October 2023**