

EMPLOYMENT RELATIONS TRIBUNAL

RULING

ERT/ RN 04/23

Before

Indiren Sivaramen	Acting President
Francis Supparayen	Member
Abdool Feroze Acharauz	Member
Kevin C. Lukeeram	Member

In the matter of:-

Mr Sewkumarsing Dinassing (Disputant)

And

Central Water Authority (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 terms of reference of the point in dispute read as follows:

“Whether I should perform the duties as Chief Engineer based on an acting allowance of 100% or otherwise.”

Both parties were assisted by Counsel and the Respondent has taken a preliminary objection in law which reads as follows:

Preliminary Objection

- A. *The Respondent avers that the nature of the present case, namely the issue of payment of the alleged correct amount of the responsibility allowance and hence remuneration of the Disputant/Claimant, is such that the Industrial Court has exclusive Jurisdiction thereof.*

B. The Respondent moves that the present case be set aside as the issue of payment of responsibility allowance and hence remuneration is within the exclusive Jurisdiction of the Industrial Court.

The Disputant has replied the following in relation to the preliminary objection in law:

- 1. The Disputant avers that the present dispute is in respect of the stand/conclusion of the Respondent that the Disputant does not possess the 7 years' experience in civil engineering works as per the terms and conditions of the scheme of service for Chief Engineer and the issue of payment of the correct amount of responsibility allowance is simply in consequence of the stand/conclusion of the Respondent as stated above.*
- 2. The Disputant avers that the issue raised in his statement of case falls within the definition of "labour dispute" as defined under the Employment Relations Act 2008, as subsequently amended and therefore within the jurisdiction of this Tribunal.*

The Tribunal proceeded to hear arguments from both Counsel.

The Tribunal has examined the arguments submitted by both Counsel. In his submissions, Counsel for Respondent relied on section 27(6) of the Workers' Rights Act which reads as follows:

27. Payment of remuneration to worker

...

(6) Where a claim of non-payment or short payment of wages is made to the Court, the Court may, where it thinks fit, order an employer to pay interest at a rate not exceeding 12 per cent in a year on the amount of remuneration due from the date of non-payment or short payment to the date of payment.

A careful reading of the terms of reference (see above) reveals that the present dispute is not a claim of non-payment of wages or short payment of wages. The present dispute is a "*revendication salariale*" which relates to a claim for an increase in allowance which may or may not be granted. It is very different from a claim of non-payment or short payment of wages which will be in the nature of a debt. The Tribunal will refer to the definition of "labour dispute" in section 2 of the Act which reads as follows:

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) ...
- (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

In the present case, the dispute is between a worker and an employer and relates wholly or mainly to wages. Thus, unless the dispute is excluded from the jurisdiction of the Tribunal under section 71 of the Act, the Tribunal has to enquire into the dispute and make an award thereon (section 70(1) of the Act).

Under section 71(a) of the Act, the Tribunal cannot enquire into any labour dispute where the dispute relates to any issue within the exclusive jurisdiction of the Industrial Court.

Section 3 of the Industrial Court Act provides as follows:

3. Establishment of Industrial Court

There shall be an Industrial Court with exclusive civil and criminal jurisdiction to try any matter arising out of the enactments set out in the First Schedule or of any regulations made under those enactments and with such other jurisdiction as may be conferred upon it by any other enactment.

The First Schedule to the Industrial Court Act includes the Workers' Rights Act 2019 in so far as it does not relate to section 69A. As seen above, section 27(6) of the Workers' Rights Act refers to a claim of non-payment or short payment of wages and is different from a "*revendication salariale*" as made in the present case. There is no suggestion made on behalf of Respondent of any other sections under the Workers' Rights Act which could have been applicable in relation to the present matter. The Tribunal thus has no difficulty in finding that the present dispute as per the terms of reference is not a matter which would fall within the exclusive jurisdiction of the Industrial Court. There is no evidence that the present matter is the subject of pending proceedings before the

Commission or any court of law and thus section 71 of the Act (Exclusion of jurisdiction of Tribunal) simply does not apply in the present matter.

The Tribunal has examined carefully the preliminary objection as drafted and as argued before us. There is no preliminary objection on the basis that the dispute is not a labour dispute as defined in section 2 of the Act. A fortiori, there is no suggestion that the dispute has been made as a result of the exercise by Disputant 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.

For all the reasons given above, the Tribunal is not satisfied even on a balance of probabilities that the nature of the case before it is such that the Industrial Court would have exclusive jurisdiction to deal with that matter. The Tribunal will thus proceed with the hearing of the matter on its merits.

Indiren Sivaramen

Acting President

Francis Supparayen

SD Member

Abdool Feroze Acharauz

SD Member

Kevin C. Lukeeram

SD Member

27 April 2023