

EMPLOYMENT RELATIONS TRIBUNAL

ERT/RN 20/2022

AWARD

Before: -

Shameer Janhangeer	-	Vice-President
Francis Supparayen	-	Member
Karen K. Veerapen (Mrs)	-	Member
Parmeshwar Burosee	-	Member

In the matter of: -

AIR MAURITIUS TECHNICAL SERVICES STAFF UNION (AMTSSU)

Disputant

and

AIR MAURITIUS LTD

Respondent

The present matter has been referred to the Tribunal for arbitration by the Commission for Conciliation and Mediation (“CCM”) pursuant to *section 69 (9)(b)* of the *Employment Relations Act* (the “Act”). The Terms of Reference of the dispute read as follows:

Whether the back pay between 2015 and 2018 is part of the Agreement signed in September 2018 in front of the Commission for Conciliation and Mediation and is due.

Both parties were assisted by Counsel. Mr N. Dulloo appeared for the Disputant together with Mr J. Mosaheb; whereas Mr D. Dodin appeared for the Respondent. Both parties have submitted their respective Statement of Case in the matter.

THE DISPUTANT'S AMENDED STATEMENT OF CASE

The Air Mauritius Technical Services Staff Union (“ATMSSU”) represents Junior Support Engineers, Support Engineers, Certifying Workshop Technicians and Workshop Controllers. On 27 September 2018, the Union and the Respondent made a Collective Agreement, which was duly registered at the CCM. The agreement applied to all permanent categories of employees in employment as at 1 April 2018 falling within the Union’s bargaining unit. The agreement runs from 1 April 2015 to 31 March 2019 except if the periodicity is extended to 31 March 2023. Parties have agreed, based on the company’s financial situation and capacity to pay, to meet and discuss.

A Technical Committee meeting was held on 3 December 2018, where the Head of HR, Mr Jean Bernard Sadien stated that the decision for backpay rests with the CEO. A second meeting was held on 17 December 2018, whereby management stated that they would revert on the issue of backpay at the next meeting. At the meeting of 15 February 2019, the Respondent informed the Union that once the decision on backpay is finalised, it will be made applicable. On 22 February 2019, a letter was sent to the then CEO, Mr Somas Appavou requesting a meeting to agree on the quantum, modality and timing of the backpay for the period 1 April 2015 to 31 March 2018. The Respondent replied, on 28 February 2019, acknowledging that the principle of backpay is accepted, however this was conditional on the company’s capacity to pay. In the Technical Committee meeting on 20 March 2019, the Union requested the modality for the payment of backpay. Another letter was sent to the then CEO on 29 April 2019 requesting a clear stand from management on the backpay as per the Collective Agreement. The CEO replied on 2 May 2019 stating that payment of backpay will be considered once the financial situation of the company improves and such payment can be sustained.

The matter was referred to the Ministry of Labour for their assistance to resolve the issues. Three meetings were held thereat, where the Respondent maintained that backpay is subject to their capacity to pay and the Union maintained its request in relation to the quantum. A deadlock was declared at the meeting of 22 July 2019. In the Technical Committee meeting of 16 September 2019, the Respondent agreed that backpay is due but was not willing to communicate the amount. The Union again declared a deadlock. The Respondent has showed no interest in applying the provisions of the Collective Agreement and has completely disregarded the Union’s concerns, requests and emails.

The Respondent's Board decided to place the company under voluntary administration and Administrators were appointed on 22 April 2022. The Union's members individually informed the Administrators of the issue of backpay due and same was done in their claims submitted to the latter on 1 May 2020. A variation of the Collective Agreement was signed on 9 July 2020. The amount of the backpay was not considered in the Deed of Company Arrangement ("DOCA"). At item 2 of the Watershed FAQ, the Administrators stated that the claims for backpay have not been admitted since these are not recognised as being due as per the company's book. An estimated amount, as remuneration and salary, of Rs 21,654,839.80, excluding overtime, is due to all 49 members. The Union discovered that the Administrators had not included the backpay in the company's book despite the engagement from management as per the letter dated 28 February 2019.

The backpay due was not admitted as same is apparently not recognised as being due. A debt which is due and management has recognised as being due cannot be simply erased or written-off unless parties have been expressly informed of same. On 8 February 2022, before the CCM, Mr Veerapen of Air Mauritius Ltd did engage that the outstanding issue would be addressed, and that management would give a final stand. On 8 March 2022, before the CCM, he stated that management would set up a committee to address the issue. Such promises have never materialised. It is evident that the backpay between 2015 and 2018 is part of the agreement signed in September 2018 before the CCM and same is due.

THE RESPONDENT'S STATEMENT OF DEFENCE

The Respondent has notably averred that as per the reply of management dated 28 February 2019, it stated that the principle of backpay is accepted but is conditional on the future profitability and financial state of affairs of the company. It is admitted that the AMTSSU requested the modalities of the backpay in the Technical Committee meeting of 20 March 2019. It is also admitted that a letter dated 29 April 2019 was sent to the CEO requesting a clear stand on backpay as is the reply dated 2 May 2019. It is admitted that there were meetings at the Ministry of Labour.

The Respondent has also averred that as per the Disputant's admission, eight Technical Committee meetings were held and it thus cannot be said that the Respondent showed no interest in complying with the provisions of the Collective Agreement; it is misleading to aver that the Respondent completely disregarded AMTSSU's repeated concerns, request and emails; it is misleading to infer that the Respondent made a claim that its financial situation was not good as, in January 2020, a Transformation Streeting Committee was setup to address its financial difficulties and to review its business model and in April 2020, it went into voluntary administration; and the Respondent still entertained informal discussions with the Disputant, well after a deadlock was declared, to resolve outstanding issues. The Respondent is not aware of the estimated amount of Rs 21,654,839.80 representing remuneration and salary for the period 1 April 2015 to 31 March 2018 due to the Disputant's members.

The Respondent has moreover averred that following meetings at the CCM, both parties entered into an Collective Agreement dated 27 September 2018; clause 3 of the agreement provides for salary revisions consisting a 10% salary increase as from 1 April 2015 on the March 2015 salary, making it a backpay, subject to certain conditions specified therein; clause 9 provides that the backpay will be subject to the Respondent's financial situation and its capacity to pay; on 22 April 2020, Administrators were appointed; with the Covid-19 pandemic and its effects, the Respondent's revenue base was practically wiped out and the Administrators took urgent and drastic measures to restructure the business to achieve their objectives; discussions held with trade unions have led, in most cases, to new Collective Agreements being signed; and a new Collective Agreement was entered into on 9 July 2020 with the Disputant purporting to vary the 2018 Agreement. On 28/29 September 2021, the Respondent's creditors approved the DOCA proposed by the Administrators.

The Respondent avers that the present dispute is misconceived and an abuse of process in view of the period of expiry provided under clause 9 of the 2018 Agreement. The 2018 Agreement has expired on 31 March 2019 and cannot form the basis of any claim by the Disputant, the more so its periodicity has not been extended in writing by mutual consent. Based on clause 3 of the 2020 Agreement, the 2018 Agreement, even if it were still in force, has been superseded and replaced with the 2020 Agreement and is no longer applicable. For the reasons detailed in the Statement of Reply, the Respondent avers that its financial situation and capacity to pay does not allow it to pay the backpay, which, according to the Disputant, amounts to Rs 21,654,839,80 (excluding overtime). As per clause 3 of the 2020 Agreement, the Disputant has agreed that a period of 4 years is fair, reasonable and required for a proper assessment of the financial health of the company. The 2020 Agreement is binding from 1 July 2020 to 20 June 2024.

THE EVIDENCE OF WITNESSES

Mr Ivor Tan Yan, Negotiator, was called to depone on behalf of the Disputant Union. He is the negotiator for AMTSSU since 2016 and started negotiations in 2017. There were along in-house discussions which resulted in a deadlock. The case was heard at the CCM, and a Collective Agreement was signed thereat on 27 September 2018. It contained a paragraph that the Union was ready to discuss backpay. The Collective Agreement (at Annex B of the Disputant's Statement of Case) was duly registered with the CCM. The agreement applied to all permanent categories in employment as at 1 April 2018. Section 9 of the Collective Agreement states that it runs from 1 April 2015 to 31 March 2019, except if the periodicity is extended to 31 March 2023 in writing by mutual consent.

Mr Tan Yan furthermore stated, in relation to the backpay, that there were several Technical Committee meetings where management stated that the decision, whether to pay or not, rests with the CEO and another stand was mostly on capacity to pay. This was for the period 1 April 2015 to 31 March 2018. On 28 February 2019, the Union received a reply acknowledging that the principle of backpay is accepted conditional on the capacity to pay. There was another Technical Committee meeting on 20 March 2019 (Annex H to the Disputant's Statement of Case) whereby the AMTSSU requested the modality for payment of backpay. The purpose of the letter dated 29 April 2019 (Annex J to the Disputant's Statement of Case) was to know the quantum as the Respondent was not willing to pay. They were not asking for much having obtained a salary review with conditions; they wanted to settle the question of backpay.

Mr Tan Yan moreover stated that to settle this question, they had to know the quantum be able to move forward to define how the payment would be made. There were meetings at the Ministry of Labour to resolve the issue, where the purpose was to know the quantum and they were not asking for payment. There was nothing forthcoming from management, always having a good reason not to give them the figure. The Respondent maintained that that backpay was subject to the capacity to pay. A deadlock was declared on 22 July 2019 at the Ministry. They went to the CCM on 8 March 2022. When in administration, the Administrator was informed that there was backpay to be paid and claims were submitted for 46 or 47 of their members. The claims were regarding their salary not paid since administration had started as well as those for

backpay due since 1 April 2015. They did not get anything from the DOCA. They received a *communiqué* (Annex R to the Disputant's Statement of Case) from the Administrator informing them that the backpay was not part of the DOCA.

Mr Tan Yan notably stated that the backpay between 2015 to 2018 is part of the agreement signed in September 2018. It is due as these are unpaid salaries, there is very little that are allowances. An employee cannot renounce his salaries which is due. They are ready to fight for it as the backpay is due. The paragraphs of the Disputant's Statement of Case are the very gist of the case before the Tribunal, and he confirmed that everything is true to the best of his knowledge.

Mr Tan Yan was questioned by Counsel for the Respondent. He notably stated that no other union introduced a clause in their Collective Agreement saying that discussions on backpay would take place after its signature. He agreed with the reply of management as per the letter dated 28 February 2019 (Annex G to the Disputant's Amended Statement of Case). The condition of the company's financial situation for payment of the backpay was a condition laid by management before them and their stand was to have the figures and the terms of the payment. As per the Notes of Meeting dated 16 May 2019 (Annex L to the Disputant's Amended Statement of Case), the Union requested information in relation to the backpay in the form of the amount due to each member. Reference was also made to the Notes of Meeting of 25 July 2019 and 16 September 2019.

On whether the Union took exception to management's stand on backpay, Mr Tan Yan referred to a letter addressed to the Ministry of Labour dated 9 April 2019 (Annex K to the Disputant's Amended Statement of Case) whereby they protested against management's stand in writing. There is no writing addressed directly to management as a deadlock had been reached in-house. He agreed that there were Technical Committee meetings to discuss the backpay which met on, at least, eight occasions. The issue was also discussed in correspondences as well. He is aware that there was a Transformation Streeting Committee set up to address the Respondent's financial difficulties and that the Respondent went into administration on 20 April 2020. There have been no meetings with him as negotiator after the deadlock.

Mr Tan Yan moreover confirmed that the Collective Agreement of 2018 was signed on 27 September 2018 following a dispute reported at the CCM. As per clause 9 of same, he agreed

that the element of the company's financial situation and its capacity to pay was recognised in the Collective Agreement. He agreed to the *raison d'être* of the Collective Agreement 2020 and to clause 3 of same. However, the Collective Agreement 2020 does not suppress backpay salary that it is due. An employee cannot renounce his salary, the backpay is salary due between 2015 and 2017. The case for backpay is not based solely on the Collective Agreement 2018. He agreed that the Collective Agreement 2018 expired on 31 March 2019 as per clause 9. Annex 2 to the Collective Agreement 2018 does not mention backpay but mentions salary. Clause 8 (b) of the 2018 Agreement is not in the 2020 Agreement. He agreed that a period of 4 years is required for a fair assessment of the financial health of the company as per the 2020 Agreement and that this period expires on 30 June 2024.

In re-examination by his Counsel, Mr Tan Yan was notably referred to the letter dated 28 February 2019 (Annex G to the Disputant's Amended Statement of Case), the Notes of Meetings of 20 March 2019 and 3 December 2018 (Annexes H and C to the Disputant's Amended Statement of Case), the letter dated 29 April 2019 (Annex J to the Disputant's Amended Statement of Case) on the issue of backpay. In the meetings of 20 May 2019, 7 June 2019 and 22 July 2019, the Union maintained its request in relation to quantum/amount of the backpay. The Respondent was not willing to communicate the amount and they declared a deadlock. The backpay was requested from the Administrators but they did not include it in the payments. Discussions were held with the Administrators, who stated that same would not be considered as perimeters were set in the *Insolvency Act*. When signing the new Collective Agreement, it was not made live to them that the claims between 2015 and 2018 will collapse. There is no letter specifically concerning this and no communication that this will not be paid.

Mr Rakesh Ramkurrun, Senior Labour and IR Officer at the CCM, was also called to depose by the Disputant. He stated that a dispute was reported to the CCM on 31 May 2018, where there were meetings between the parties and finally, an agreement was reached and signed at the Commission on 27 September 2018. The agreement has been registered at the Tribunal and the Ministry of Labour. He produced a copy of the Collective Agreement (Document A).

Mr Jean Bernard Sadien, Head of Human Resources at Air Mauritius Ltd, was called on behalf of the Respondent. He notably stated that as per the Collective Agreement 2018, there were a number of conditions linked to the backpay among them being the capacity to pay. He was referred to the Notes of Technical Committee meeting of 15 February 2019 (Annex E to the Disputant's Amended Statement of Case) and to what management informed the Disputant as

to the backpay issue; there was no reply from AMTSSU for same. He was also referred to the letter dated 28 February 2019 (Annex G to the Disputant's Amended Statement of Case) whereby the Board had confirmed the Staff Committee's position on the principle of backpay. He also referred to the stand of management as per the Notes of Meeting dated 16 September 2019 (Annex L to the Disputant's Amended Statement of Case).

Mr Sadien moreover stated that the Respondent went into voluntary administration on 22 April 2020. There were eight Technical Committee meetings with the Disputant, whereby they were discussing and trying to find solutions to the issues brought by the Union, including the backpay issue. He did not agree that it was merely a claim that its financial situation is not good as the company thereafter went into voluntary administration. There were informal discussions with the Union after the last Technical Committee meeting. Referring to the expiry date of the Collective Agreement 2018 at clause 9, there has been no extension of the agreement to 31 March 2023 in writing by mutual consent. The Collective Agreement 2020 was negotiated by the Administrators, and he confirmed that it does not mention the issue of backpay. As per clause 3 of same, it constitutes the entire Collective Agreement between the parties and supersedes and replaces all previous Collective Agreements. He also referred to the duration of the Collective Agreement 2020 and the purport of the last paragraph.

Mr Sadien was cross-examined by Counsel for the Disputant. He notably referred to the amount of Rs 21 million mentioned by the Disputant as the amount due to latter's members. The Respondent went into voluntary administration as its financial situation was not good. As per information, the financial situation is still not positive. He confirmed that ATMSSU is claiming outstanding wages for its members. All terms and conditions are now governed by the Collective Agreement 2020, which supersedes any previous agreements. Wages is mentioned in the Annex to the Collective Agreement 2020. As per the Notes of Meeting dated 3 December 2018 (Annex C to the Disputant's Amended Statement of Case), the decision on backpay rests with the CEO. He confirmed that backpay was not considered at the Watershed Meeting. Regarding the need to sign a new Collective Agreement in 2020, he referred the Preamble of the agreement. As per the correspondences, there was an intention to pay the outstanding wages and salaries. Voluntary administration caused the incapacity to pay this.

Mr Sadien also stated that they are now bound by the Collective Agreement 2020, which is valid to 2024. After 2024, the issue has to be discussed and formally agreed so that they engage into bargaining discussions for a new Collective Agreement; he cannot pre-empt the items for

discussions between the parties. The Collective Agreement 2020 concerns all elements in its annex. On whether the 2020 Agreement was a strategy developed by the Respondent to avoid backpay, Mr Sadien referred to what the agreement mentions and the reason why it has been entered into.

In re-examination, Mr Sadien referred to clause 4 of the Collective Agreement 2020, where a reduction in salary has been agreed with the Union. As per this reduction, backpay is no longer a live issue as it is not mentioned anywhere. There is no reference to backpay in the Collective Agreement 2020 signed by the parties.

The Respondent's also called Mr Leckrajall Narain, Senior Manager, to depose. He is responsible for the Revenue Accounting Section at Air Mauritius Ltd, which falls under the Finance Department. The Respondent's audited accounts for the financial years 2019/20 and 2020/21 show losses. A loss is being forecasted for the year 2022/23 of nearly EUR 63 million. He produced the Annual Report 2019/2020 (Document B), the Annual Report 2020/2021 (Document C) and an email dated 25 May 2023 (Document D) to which is attached a Revenue & Cost Statement. For 2019/20, the loss is EUR 249,439,000; and for 2020/21, the loss is EUR 66,838,000. As per the second page of Document D, the forecast loss is EUR 63,849,474. Referring to the DOCA, he stated that Airport Holdings Ltd has given the Respondent a loan of Rs 9.5 billion to help with the company's operations with an annual interest of Rs 95 million.

Upon questioning by Counsel for the Disputant, Mr Narain notably agreed that the Respondent is purchasing two Airbus A330-200, one ATR 72-600 and two helicopters. He does not form part of the committee for the purchase of these aircraft. He has heard from the press that the Respondent has made a profit. Looking at the figures, he cannot see that there is a profit. He cannot answer if the Respondent, in looking at the accounts, will be able to be on level for the next 25 to 30 years.

THE SUBMISSIONS OF COUNSEL

Both Counsel have put in written submissions in the present matter. Learned Counsel for the Disputant has notably submitted that a duly registered Collective Agreement was made

between the parties and the principle of backpay is not denied. Backpay is a live issue and is to be considered once the financial situation of the company improves and that such payment can be sustained. The issue of backpay was subject to its quantum and amount due; the Disputant having communicated an estimated amount for the period 1 April 2015 to 31 March 2018 of Rs 21,654,839.80/- to the Respondent. The backpay is a debt which is due and it cannot be simply written-off or erased unless parties agree expressly. There is no document stating that the backpay is not due. Mr Veerapen stated, at the CCM on 8 March 2022, that management would set up a committee to address the outstanding issue of backpay. The present Collective Agreement binds both the Disputant and the Respondent, and contracts of employment cannot have stipulations contrary to those contained in the Collective Agreement. The backpay is part of the Collective Agreement signed in September 2018 before the CCM and is in fact due and there is no evidence to the contrary.

Learned Counsel for the Respondent has, on his part, notably submitted that the Collective Agreement of 2018 has expired and any award would be academic, hypothetical and/or declaratory. The decisions of the Tribunal in *Mooneepen and MITD (ERT/RN/35/12)* and *Cheddy and The State of Mauritius (ERT/RN 92/17)* were notably relied upon. It was also submitted that the claim for backpay is time-barred by virtue of *Article 2279* of the *Civil Code*. Counsel notably referred to the test of applicability of *Article 2279* in *The Bay Ltd v Abramovitz & Ors [2018 SCJ 412]*. Moreover, it was held in *Amarshi v Firemount Textiles Ltd [2003 SCJ 24]* that the prescription period is of three years and starts to run as from the time payment is due; as per the Disputant's averment, it is due since 2018. Counsel also contends that the present dispute is an application for an interpretation of a Collective Agreement disguised as a labour dispute.

Learned Counsel for the Respondent has furthermore submitted that the dispute has been reported outside the mandatory delay of three years imposed by *section 2* of the *Act* in the definition of '*labour dispute*' as the backpay is due since 2018 for the period 1 April 2015 to 31 March 2018. The three years started to run as from 31 March 2018 at the latest and the matter was reported to the CCM in 2022. Even if the delay were to start as from the coming into force of the 2018 Collective Agreement on 27 September 2018, the Disputant would still be outside the delay of three years. It has also been submitted that the Collective Agreement of 2018 is no longer in existence and has been superseded by the Collective Agreement of 2020, referring, in particular, to clauses 2 and 3 of the latter agreement. Counsel finally allured as to the Respondent's profitability whereby the Respondent's witness, Mr V. Narain has confirmed that the Respondent has been operating at a loss.

THE MERITS OF THE DISPUTE

The Terms of Reference of the present matter is asking the Tribunal to determine whether the backpay between 2015 and 2018 is part of the Agreement signed in September 2018 at the CCM and whether it is due.

It has not been disputed that a Collective Agreement was signed before the CCM between the Disputant and the Respondent on 27 September 2018. Despite having been signed in September 2018, it was provided, at clause 9, that the agreement would be implemented with effect from 1 April 2015 and remain in force up to 31 March 2019, except if its periodicity is extended up to 31 March 2023 in writing by mutual consent.

At clause 3 of the Collective Agreement 2018, the following was notably provided for:

3. Salary Revisions

- (a) Parties have agreed to apply a 10% Basic Salary increase, as per Annex 1, with effect from 1st April 2015 on the salary of March 2015 subject to:*
 - i. the salary increase will be paid separately from current basic salary for period from 1st April 2018 to 31 December 2018 (the payment thereof will be made as from September 2018) and will be included in the basic monthly salary as from 1 January 2019.*
 - ii. Upon signature of the present agreement, payment for the period between April 2018 to September 2018 will be made within 15 days.*
 - iii. The above increase as per (a)(i) will be computed for the purpose of payment of overtime, extra pay, end of year bonus and payroll earnings benefits.*
- (b) A further meeting will be held between the parties in October 2018 to agree on the quantum/amount, modality and timing of the payment*

for the period from 1 April 2015 to 31 March 2018. Parties will endeavour to make a first part payment as soon as possible.

Although subparagraph (b) of clause 3 does not expressly state that there is a backpay for the period 1 April 2015 to 31 March 2018, as the agreement is for the period 1 April 2015 to 31 March 2019 and was signed on 27 September 2018, the salary increase which has been provided for in the agreement would apply as from 1 April 2015. Thus, the payment of the salary increase agreed upon for the period 1 April 2015 to 31 March 2018 as per clause 3 (b) would constitute a backpay.

It must not also be overlooked that it has been expressly provided, at clause 9 of the Collective Agreement 2018, that *'parties agree that based on the financial situation of the Company and its capacity to pay, they will meet and discuss'*. Indeed, the Disputant has recognised, in its written submissions, that the principle of backpay is conditional upon the capacity to pay.

The Respondent has not disputed the fact that the backpay for the period 1 April 2015 to 31 March 2018 is part of the agreement. The following has notably been averred as per the Respondent's Statement of Defence at paragraph 18:

- b. Clause 3 of the 2018 CA provides for a "salary revisions" consisting of a 10% salary increase, with effect as from 1 April 2015 on the salary of March 2015, making it a backpay, subject to certain conditions specified in the said clause.*
- c. Clause 9 of the 2018 CA provides that its implementation, including the payment of the backpay, will be subject to the financial situation of the Respondent and its capacity to pay.*

The Respondent's representative, Mr Sadien has, in his evidence, notably referred to the conditions linked to the backpay and to a letter dated 28 February 2019 from the Respondent's EVP Legal, whereby that the Board accepted the principle of backpay. It is not therefore disputed that the backpay for the period 1 April 2015 to 31 March 2018 does form part of the Collective Agreement signed in September 2018.

The Tribunal now has to determine whether the backpay for the period 1 April 2015 to 31 March 2018 as contained in the Collective Agreement of 2018 is due. It has not been disputed that the aforesaid Collective Agreement was meant for a determined period as witnessed by the duration of the agreement at clause 9. As noted, this clause provides that the agreement will expire on 31 March 2019 except if its periodicity is extended up to 31 March 2023 in writing up to mutual consent.

As per the evidence adduced, there is nothing to show that the periodicity of the Collective Agreement 2018 had been extended. The Disputant's witness has moreover acknowledged the existence of this clause and agreed that the agreement expired on 31 March 2019. In the same vein, it has been confirmed by the Respondent's representative that there was no extension of the agreement to 31 March 2023 by mutual consent in writing.

The AMTSSU and Air Mauritius Ltd have recognised that there are now bound by a new Collective Agreement signed on 9 July 2020 (Annex P to the Disputant's Amended Statement of Case). This agreement has notably referred to the Collective Agreement 2018 in the following terms in its Preamble at clause 2:

The Collective Agreement signed on 27th September 2018 has been revisited to adapt the conditions of employment due to the failure of the Company and its inability to meet its wage bill both before and after the advent of the COVID-19 pandemic.

It is also apposite to note that the Collective Agreement 2020, at clause 3 'Duration of Agreement', stipulates as follows:

This Collective Agreement (together with its annexures) is a mutually agreed variation of existing collective agreements between the Parties. It constitutes the entire Collective Agreement between the Parties and supersedes and replaces all previous collective agreements signed between the two Parties.

The aforementioned paragraph of clause 3 shows it to have a very wide reach and ambit inasmuch as the Collective Agreement 2020 is a variation of existing Collective Agreements between the parties and notably supersedes and replaces all previous Collective Agreements signed between the parties. Replacing all previous agreements would obviously include the Collective Agreement signed in September 2018. It should also be noted that the Disputant's

witness and negotiator has agreed to the *raison d'être* of the Collective Agreement 2020 and to clause 3 of same despite his contention that the current agreement does not suppress the backpay.

Furthermore, a perusal of the Collective Agreement 2020 does not reveal any clause or provision on the issue of backpay for the period 1 April 2015 to 31 March 2018. The Disputant has throughout contended that the backpay is part of the Collective Agreement 2018 and has never asserted that same is also to be found in the current Collective Agreement. Likewise, the Respondent's representative clearly stated that the Collective Agreement 2020 does not mention the backpay.

It is also appropriate to note that the Collective Agreement 2018 notably provided for the following at clause 8 (b):

- (b) *Any existing employment condition already implemented and which is not referred to, modified or varied by this Agreement shall remain in force unless mutually agreed in writing by both parties.*

This particular clause has, however, not been reproduced in the Collective Agreement 2020 as has been recognised by the Disputant's witness in evidence.

It cannot be denied that the Collective Agreement 2020 is binding on the parties to the agreement and the workers in the bargaining unit to whom the agreement applies (*vide section 56 (1) of the Act*). This principle has also been acknowledged by the Disputant in its written submissions as follows:

10. *It is submitted that the present Collective Agreement bind both the Disputant and the Respondent, and those on whose behalf the agreement is concluded.*

It is also apposite to note the following from what the Supreme Court stated in *State Bank of Mauritius Limited v Jagessur* [2008 SCJ 8] regarding the effect of a Collective Agreement:

We take the view that any collective agreement which does not go against the spirit of the law must be adhered to by the parties.

The Collective Agreement 2020 is therefore binding on the parties and has replaced and superseded the Collective Agreement 2018. As the Collective Agreement 2020 does not make any mention of the backpay relating to the period 1 April 2015 to 31 March 2018, it cannot be said that same is due under the current agreement in force. Nor can it be said to be currently due under the previous Collective Agreement 2018 which has expired since 31 March 2019.

The Tribunal has noted that the Respondent, in its written submissions, has notably raised the issue of whether the present dispute has been reported within the three-year period as provided in the definition of a labour dispute under *section 2* of the *Act*. If ever the Respondent was minded to contest the Tribunal's jurisdiction to hear the present dispute on this ground, it should have, in all fairness, raised the issue at the outset of the matter or have at least given notice that it intended to canvass this particular issue on the merits of the dispute. The Tribunal does not therefore find it necessary to probe into this issue.

It has also been contended by the Respondent that the present matter is an application for the interpretation of a Collective Agreement disguised as a labour dispute. Although the arbitration of the matter has involved the interpretation of two Collective Agreements signed between the parties, a labour dispute comprises a dispute relating to wages and the backpay is the salary increase for the period 1 April 2015 to 31 March 2018 as per the provisions of the Collective Agreement 2018. The present matter is thus a labour dispute in its own right.

In view of the above, the Tribunal has notably found that the backpay for the period 1 April 2015 to 31 March 2018 was part of the Collective Agreement signed on 27 September 2018 before the CCM. However, the Tribunal has not found the backpay to be due.

The dispute is otherwise set aside.

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SD Shameer Janhangeer
(Vice-President)

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SD Francis Supparayen
(Member)

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SD Karen K. Veerapen (Mrs)
(Member)

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SD Parmeshwar Burosee
(Member)

Date: 14th August 2023

