

# EMPLOYMENT RELATIONS TRIBUNAL

## RULING

**Before:-**

<b>Rashid Hossen</b>	-	<b>President</b>
<b>Pradeep Dursun</b>	-	<b>Member</b>
<b>Jean Paul Sarah</b>	-	<b>Member</b>
<b>Renganaden Veeramootoo</b>	-	<b>Member</b>

**In the matter of:-**

<b>ERT/RN 84/10 -</b>	<b>Jean Christian Agathe</b> <b>And</b> <b>Roman Catholic Education Authority</b>	<b>(Disputant No. 1)</b> <b>(Respondent)</b>
<b>ERT/RN 87/10 -</b>	<b>Miss Marie Lindsay Castel</b> <b>And</b> <b>Roman Catholic Education Authority</b>	<b>(Disputant No. 2)</b> <b>(Respondent)</b>
<b>ERT/RN 88/10 -</b>	<b>Joseph Allan Ladd Emilien</b> <b>And</b> <b>Roman Catholic Education Authority</b>	<b>(Disputant No. 3)</b> <b>(Respondent)</b>
<b>ERT/RN 89/10 -</b>	<b>Louis Philippe François</b> <b>And</b> <b>Roman Catholic Education Authority</b>	<b>(Disputant No. 4)</b> <b>(Respondent)</b>
<b>ERT/RN 90/10 -</b>	<b>Gaetan Jhabeemissar</b> <b>And</b> <b>Roman Catholic Education Authority</b>	<b>(Disputant No. 5)</b> <b>(Respondent)</b>
<b>ERT/RN 91/10 -</b>	<b>Mrs Jacqueline Prosper</b> <b>And</b> <b>Roman Catholic Education Authority</b>	<b>(Disputant No. 6)</b> <b>(Respondent)</b>

The above cases have been consolidated upon motion made by all parties.

In a letter dated 17<sup>th</sup> November 2010 the President of the Rodrigues Commission for Conciliation and Mediation informed the Employment Relations Tribunal that a dispute was reported to the Commission by the above named Disputants employed by the Roman Catholic Education Authority and no agreement was reached. By virtue of **Section 69 Subsection (7) of the Employment Relations Act 2008, Act No. 32 of 2008** and with the consent of the workers (to which Documents were annexed), the President of the Commission referred the dispute to the Tribunal for arbitration.

The common points in dispute are as follows:-

- “1. Whether the Roman Catholic Education Authority should reinstate the above named in their rightful occupation of which they have been excluded since they were elected as ordinary Members of the Rodrigues Regional Assembly in October 2002.*
- 2. Whether the Disputants who are employed as teachers should be entitled to claims addressed to the Roman Catholic Education Authority for:-*
  - (i) Loss of salary;*
  - (ii) Loss of pension right;*
  - (iii) Loss of years of service;*
  - (iv) Loss of right to promotion.”*

Disputant François deponed to the effect that he is aware that the **Rodrigues Regional Assembly Act** was passed on 20<sup>th</sup> November 2001 when he was a teacher at the primary school. He reached Rodrigues in 1980 and in 1981 he received a letter from the administrative authority informing him of his posting at the Government de Grand La Fourche Corail School. He has been working in various schools and in the year 2002 he was posted at the Sainte Famille R.C.A.

According to him he was simply transferred to the Roman Catholic Education Authority School without signing any paper with regard to the transfer. On the 29<sup>th</sup> September 2002 he participated as candidate to the regional election. He confirmed that according to a circular letter he was supposed to ask for permission to participate in the election. He was eventually elected as member of the Rodrigues Regional Assembly. On the 1<sup>st</sup> October 2002 he proceeded to work at the Ste Famille R.C.A. when he was asked to leave. He added that he only became aware of the content of the circular letter when he proceeded to work on the 1<sup>st</sup> October. He was not aware that he had to ask for leave without pay. Otherwise leave that was granted to him was actually imposed upon him. Some of his colleagues have reached the level of Deputy Head Master when he lost all his chances of promotion. If he were to leave the Rodrigues Regional Assembly and join the employer's department he would be at the level of teacher only. When leave was imposed on him he did not protest but only sought for some explanation. He would like to remain a member of the Rodrigues Regional Assembly and at the same time work as a teacher. He knows of teachers who actually do both. He agrees that he has not been dismissed from his work nor is he suspended. He is not asking for any salary during the period he was not working as teacher. He is only seeking for some explanation.

Disputant, Mrs Jacqueline Prosper was elected member of the Rodrigues Regional Assembly on the 12<sup>th</sup> October 2002 according to her testimony. She retired from her job in 2007 but was a member of the Regional Assembly since 2006. She confirmed that she is not willing to go back to her job of teaching.

Disputant, Mr Jean Christian Agathe stated that his profession is that of teacher and he was serving as a Commissioner in the Rodrigues Regional Assembly. He maintained that he never asked for leave that was imposed upon

him. He is asking for privileges that he was entitled from the period 2002 to 2006. When he proceeded to his place of work after being elected, access to the attendance book was refused to him.

Disputant, Mr Joseph Allan Ladd Emilien also testified. His case rests on the fact that he was appointed a Commissioner of the Rodrigues Regional Assembly and was a simple member. He was also a teacher and retired in 2008. He is asking for a reinstatement with retroactive effect that would include all the privileges he was entitled during the period he was not working as a teacher. He regrets that the Roman Catholic Education Authority has recourse to supply teachers when he, himself, is available among others.

Mr Navin Gopall, the Secretary of the Rodrigues Regional Assembly deponed to the effect that the six Disputants have consolidated their cases and he produced a document certifying their respective dates of appointments within the Rodrigues Regional Assembly.

As regards Disputant, Miss Marie Lindsay Castel, her Counsel Mr Sunt only made a statement to the effect that she retired as teacher from the Roman Catholic Education Authority in 2010. Counsel also stated that with regard to the dispute of Mr Gaetan Jhabeemissar, the latter has also retired from service as teacher in the year 2010.

At the close of the Disputants' case, Mr King Fat submitted that in the light of the evidence adduced, the Tribunal has no jurisdiction to entertain the present matter and/or ought, pursuant to the powers which are vested onto it under **paragraph 6 (2) (b) of the Second Schedule of the Employment Relations Act, 2008,**

*“The Tribunal may in relation to any dispute or other matter before it –*

*(b) dismiss any matter or refrain from further hearing or from determining the matter, if it appears to the Tribunal that the matter is trivial, or that further proceedings are unnecessary, or undesirable in the public interest.”*

to dismiss the cases or to refrain from further hearing or from determining them on the grounds that proceedings are unnecessary and undesirable, inasmuch as:-

- the Orders which are being sought from the Employment Relations Tribunal (ERT) would, by reason of the present status of each of the Disputant, be inapplicable and/or unenforceable.
- In support thereof, the Respondent draws attention to the fact that the first limb of the terms of reference deals with the reinstatement of the Disputants to their posts.
- Pursuant to the amendments made by the Disputants to their own statement of case, and having regard to their own evidence before the ERT, it is gathered that –

**(a) Concerning Mr Louis Philippe FRANÇOIS (Mr François)**

Mr François was, at the time he deponed before the ERT, a member of the Rodrigues Regional Assembly.

He has, by way of letter dated 15 March 2011, informed the Respondent of his intent to resume duty since his mandate as member of the Rodrigues Regional Assembly had come to an end.

The Respondent has no objection to the request of Mr François to resume duty.

It is to be recalled that Mr François admitted under cross-examination that he did issue a letter – dated 01 October, 2002 – witnessing his agreement to the terms and conditions of his leave without pay. [Page 36 of the proceedings]

**(b) Concerning Mrs Jacqueline PROSPER (Mrs Prosper)**

Mrs Prosper was, at the time she deponed before the ERT, a member of the Rodrigues Regional Assembly; but she had, since 2007, already retired from her employment with the Respondent. [Page 76 of the proceedings]

Upon a question put by the ERT, she indicated that she was not insisting for reinstatement (i.e. on her only dispute). [Page 77 of the proceedings]

**(c) Concerning Mr Jean Christian AGATHE (Mr Agathe)**

Mr Agathe was, at the time he deponed before the ERT, a Commissioner of the Rodrigues Regional Assembly. He is still in office as a Commissioner.

**Section 23 (4) Rodrigues Regional Assembly Act** provides the following:-

*“A Commissioner or a Chairperson of a Regional Assembly shall not engage in any trade, business, occupation or other undertaking for*

*profit or remuneration other than that of serving as Commissioner or Chairperson.”*

Having regard to the clear wording of the terms of reference, it is submitted that the Employment Relations Tribunal cannot, having regard to **Section 23 (4) of Rodrigues Regional Assembly Act**, entertain the dispute of Mr Agathe.

As regards the second limb of the dispute – since, from page 79 of the proceedings, it is gathered that this Applicant is insisting on same – Respondent would rely on submissions set out in paragraphs 2.2 and 2.3 below.

It is to be recalled that Mr Agathe admitted under cross-examination that he did agree to being granted leave without pay in case of election at the Rodrigues Regional Assembly. [Page 87 of the proceedings]

**(d) Concerning Mr Joseph Allan Ladd EMILIEN (Mr Emilien)**

Mr Emilien was, at the time he deponed before the Employment Relations Tribunal, a member of the Rodrigues Regional Assembly; but he has, since 2008, already retired from his employment with the Respondent. [Page 99 of the proceedings]

Mr Emilien is seeking a reinstatement with retroactive effect, notwithstanding the fact that he had retired. [Page 101 of the proceedings]

The Respondent has difficulty to follow this request; save that to state that it is an infelicitous manner to claim monetary damages/compensation.

Attention is also drawn to the fact that Mr Emilien's request does not fall within the ambit of the terms of reference.

It is to be recalled that Mr Emilien admitted under cross-examination that he did issue letters witnessing his agreement to the terms and conditions of his leave without pay. [Page 108 of the proceedings]

**(e) Concerning Miss Marie Lindsay CASTEL (Miss Castel)**

Miss Castel did not depone.

But we have it from the statement of her counsel that she had, in 2010, already retired from her employment with the Respondent. [Page 9 of the proceedings]

**(f) Concerning Mr Gaetan JHABEEMISSAR (Mr Jhabeemissar)**

Mr Jhabeemissar did not depone.

But we have it from the statement of his counsel that he had, in 2006, already retired from his employment with the Respondent. [Page 12 of the proceedings]

The evidence adduced by the Disputants on the 25 February, 2011, coupled with the amendments made to Disputants' statement of case on the same date



(a) drive Disputants away from the terms of reference, as couched. It is to be recalled – as borne from pages 4 and 5 of the minutes of proceedings – that Disputants’ motion to amend the said terms of reference was rejected by the Employment Relations Tribunal.

In support thereof, it is submitted that the evidence by the Disputants, as well as the prayers sought, are not conducive with the terms of reference, as couched

(b) embark the Employment Relations Tribunal on a course which would best fall within the purview of a court of law vested with the competent jurisdiction to adjudicate on matters involving monetary damages/compensation.

Furthermore, having regard to the contentions of the Disputants as regards their alleged entitlement to monetary claims (as borne out from the terms of reference [second limb] and exchange of correspondence with the Respondent), it is further submitted that Disputants’ present initiative may be construed as an attempt to sever their cause of action and use the award of the Employment Relations Tribunal (if favorable to them) as a leverage to put any court of law which they may wish to seize for determining monetary damages/compensation before a *fait accompli*.

The Disputants are making an abuse of process of the Employment Relations Tribunal proceeding.

It is to be recalled that all the Disputants who deposed and who pressed on the adjudication of the disputes – i.e. Mr Louis Philippe FRANÇOIS, Mr Jean

Christian AGATHE and Mr Joseph Allan Ladd EMILIEN – had, during their respective cross-examination, confessed that they agreed to the conditions of leave without pay.

Respondent would thus take the view that these Disputants ought to be stopped from averring otherwise and from further making an abuse of the process of the Employment Relations Tribunal.

Accordingly, pursuant to **paragraph 7 (2) (a) of the Second Schedule of the Employment Relations Act, 2008,**

*“7. (1) Subject to subparagraph (2), the Tribunal may not order the payment of costs or expenses by any party to proceedings before the Tribunal.*

*(2) Where, in the opinion of the Tribunal –*

*(a) any proceedings before the Tribunal were unnecessary, improper or vexatious; or*

*(b) there has been unreasonable delay or other unreasonable conduct in bringing or conducting the proceedings,*

*the Tribunal may order a party to the proceedings to pay to any other party thereto such amount as it may specify towards the costs or expenses incurred by the other party in connection with the proceedings.”*

Respondent would, having regard to the costs and expenses which it has had to incur in furtherance to these present proceedings, pray that the Disputants be ordered by the ERT to pay for Respondent’s costs and expenses.

## **Tribunal's Considerations**

### **(A) Case of Mr Louis Philippe François**

Counsel appearing for Disputant Mr François amended the facts in the Disputant's Statement of Case to the effect that the Disputant is now asking to be reinstated in his employment at the Roman Catholic Education Authority between the period October 2002 and 2006.

A "labour dispute"

*"means a dispute between a worker, or a recognized trade union of workers, or a joint negotiating panel, and an employer which relates wholly or mainly to wages, terms and conditions of employment, promotion, allocation of work between workers and groups of workers, reinstatement or suspension of employment of a worker."* **Section (2) of the Employment Relations Act, 2008.**

To reinstate an employee for a past specific period is purely academic and it cannot be the intention of the legislator to stress the meaning of "reinstatement" as far as absurdity. The exercise of industrial relations cannot operate in the abstract and even if a worker is to go back to his place of work, there must be sufficient grounds that justify an order for reinstatement.

Mr King Fat informed us that on the 15<sup>th</sup> of March 2011, Mr François expressed his intention in writing to the Respondent that he wished to resume duty since his mandate as member of the Rodrigues Regional Assembly had come to an end.

The Tribunal is pleased to note that the Respondent has no objection to the request of Mr François to resume duty.

This dispute, therefore, has no more its “*raison d’être*” and is accordingly set aside.

As regards the dispute under the second limb, the Tribunal finds that Disputant, Mr François did agree to the terms and conditions of his leave without pay and he cannot now be claiming loss of salary, pension right, years of service or right to promotion.

The dispute under the second limb is also set aside.

**(B) Case of Mrs Jacqueline Prosper**

The evidence reveals that Disputant, Mrs Jacqueline Prosper, was at the time she deponed before the Tribunal, a member of Rodrigues Regional Assembly but had since 2007 already retired from her employment with the Respondent.

She confirmed before the Tribunal that she was no more insisting to be reinstated.

The dispute with regard to Disputant, Mrs Jacqueline Prosper is therefore set aside.

**(C) Case of Mr Jean Christian Agathe**

Disputant, Mr Jean Christian Agathe was at the time he deponed before the Tribunal a Commissioner of the Rodrigues Regional Assembly and was still in office as Commissioner.

**Section 23 (4) of the Rodrigues Regional Assembly Act** provides that:-

*“A Commissioner or a Chairperson of a Regional Assembly shall not engage in any trade, business, occupation or other undertaking for profit or remuneration other than that of serving as Commissioner or Chairperson.”*

The words of **Section 23 subsection (4)** (supra) speak for themselves.

With regard to the second limb of the dispute that is whether he is entitled to claims with regard to loss of salary, loss of pension right, loss of years of service and loss of right to promotion, it is clear that Disputant, Mr Agathe agreed to be granted leave without pay in case he was to be elected at the Rodrigues Regional Assembly. The issue that he had never asked for such leave does not hold water.

Annex A is a document dated 7<sup>th</sup> November, 2001 addressed by the Respondent to the teaching and non-teaching staff informing them of the requirement to ask for leave without pay should they consider participating in the Rodrigues Regional Assembly.

Disputant, Mr Agathe confirmed under oath that he expressed his agreement to the conditions laid down by the Respondent with regard to participation at the Rodrigues Regional Assembly and he did follow the procedure as requested.

The disputes under both limbs are thus accordingly set aside.

**(D) Case of Mr Joseph Allan Ladd Emilien**

This Disputant was a member of Rodrigues Regional Assembly at the time he deponed before the Tribunal. He has since 2008 already retired from his employment with the Respondent. He was at some stage a Commissioner

within the Rodrigues Regional Assembly. The Disputant is seeking a reinstatement with retroactive effect notwithstanding the fact that he had retired. To quote his own words, we refer to proceedings before the Tribunal -

*“Oui, Monsieur le Président, mais je voudrai avec votre permission apporter quelques éclaircissements à cette Cour par rapport au recours to be reinstated as a full fledged primary school teacher. Of course this cannot be now.”*

This clearly shows that it is not his wish to be presently reinstated but he is seeking for compensation, should he be reinstated retroactively and hypothetically. He admitted during cross-examination that he did issue letters witnessing his agreement to the terms and conditions of his leave without pay. Mr Emilien added that he is also representing Disputants, Miss Marie Lindsay Castel and Mr Gaetan Jhabeemissar.

The Tribunal finds no merit in Mr Emilien’s case and for the reasons given above and in the case of Mr Jean Christian Agathe, the disputes under both limbs are set aside.

**(E) Case of Miss Marie Lindsay Castel**

This Disputant did not depone but we have it from the statement of her Counsel that she had in 2010 already retired from her employment with the Respondent.

For the reasons given in the case of Messrs François, Agathe and Emilien we find that her dispute under limb one has no more its “*raison d’être*” and dispute under limb two cannot be entertained and is set aside.

**(F) Case of Mr Gaetan Jhabeemissar**

This Disputant also chose not to depone and his Counsel stated that he had in 2006 already retired from his employment with the Respondent.

Likewise for reasons given in the case of Messrs François, Agathe and Emilien we find that there is no “*raison d’être*” for the dispute under limb one and the dispute under limb two cannot be entertained and both disputes are accordingly set aside.

**(Sd) Rashid Hossen  
(President)**

**(Sd) Pradeep Dursun  
(Member)**

**(Sd) Jean Paul Sarah  
(Member)**

**(Sd) Renganaden Veeramootoo  
(Member)**

**Date: 31 January 2012**