

# EMPLOYMENT RELATIONS TRIBUNAL

ERT/RN 65/12

## RULING

Before:-

Shameer Janhangeer	-	Vice-President
Christian Bellouard	-	Member
Jheenarainsing Soobagrah	-	Member
Renganaden Veeramootoo	-	Member

In the matter of:-

Mr Ashok Seesaghur  
Mr Kripanund Mathon Jeewon  
Mr Hemraj Thakooree  
Mr Mario Rock Harold Jean  
Mr Gerard Georginio Shredrick Sakoury  
Mr Louis Eliel Prevost  
Mrs Marie Medgee Nanette  
Mrs Samantha Gontran  
Mrs Kwan Mee Yak Lan Hing Kong

(Appellants)

and

The President, Rodrigues Commission for  
Commission and Mediation

(Respondent)

The Appellants have put in an Application of Appeal dated 9 August 2012 before the *Tribunal* following a decision of the President of the *Rodrigues Commission for Conciliation and Mediation* (the “RCCM”) on 2 August 2012 not to proceed any further with a dispute reported before it by the Appellants inasmuch as the labour dispute should not have been submitted to the *Commission* according to *section 67 (b)* of the *Employment Relations Act* (the “Act”).

The dispute reported was whether the Rodrigues Educational Development Co. Ltd (REDCO) could lawfully and unilaterally remove or curtail rent allowance, disturbance allowance, return airfare to Mauritius and gratuity, which form part of the conditions of employment of the employees.

Both parties were represented by Counsel and Attorney. The Respondent has submitted a statement of case wherein it is objecting to the appeal and has raised a preliminary objection in law, which reads as follows:

*The appeal of the Applicant cannot be entertained by the Employment Relations Tribunal as it is an appeal under section 66 of the Employment Relations Act 2008 and does not find its application in the present matter since the Respondent No.3 could not entertain the labour dispute by virtue of section 67 (b) of the Act. Consequently, the procedure adopted by the Applicants is incorrect and the case ought to be set aside.*

Upon motion from Counsel for the Appellants, Appellant no.8 has been put out of cause in the present matter. The preliminary objection raised has been argued at the outset of this Application of Appeal.

Counsel for the Respondent submitted on the procedure for the reporting of a dispute under the Act, notably under *section 64* and on the power of the President of the Commission to reject a labour dispute under *section 65*. On the matter of the rejection of the dispute, he stated that the bone of the contention was on whether the rejection was under *section 65* or *section 67* of the Act. He produced the letter of the RCCM dated 2 August 2012 (Document A) wherein he relied on the last paragraph of the report as well as the Appellant's application in stating that the case was not considered by the RCCM by virtue of *section 67 (b)* of the Act. He further went on to state that if the Applicants do not agree with the rejection of the dispute under the aforesaid *section* by the RCCM, *section 66* of the Act does not find its application and the only avenue open would be to seize the Supreme Court with regard to the reasonableness of the decision of the Commission.

On the other hand, Counsel for the Appellants has submitted that the Commission does not have any power to reject a labour dispute under *section 67* of the Act. The power of the Commission to reject a labour dispute is to be found at *section 65* of the Act, more particular in *subsections (1)(b)* and *(d)* of the aforesaid *section*. He stated that the RCCM's recourse to *section 67 (b)* is not fit and proper. He did not dispute that the Appellants may have recourse to the Supreme Court, however all possible avenues must be exhausted before

proceeding for judicial review. He further disagreed that the *Commission* had made a determination in the previous matter, although this is to be decided on the merits of the case.

It is not disputed that the *RCCM* has given a report on 2 August 2012 (*vide* Document A) informing the Disputants that it will not proceed any further with this case according to *section 67 (b)* of the *Act* (*vide* paragraph 6 of the Application of Appeal dated 9 August 2012), the more so the Applicants are contending that there has been no determination of the labour dispute and that the *RCCM* has erred in law inasmuch as *section 67 (b)* of the *Act* does not find its application in the present matter. The relevant paragraph of the aforesaid report reads as follows:

*However, your labour dispute cannot be entertained according to section 67 (b) of the Employment Relations Act 2008.*

*Section 67 (b) of the Employment Relations Act 2008 clearly stipulates that “where a labour dispute is reported to the president of the Commission under Section 64, no party may report a labour dispute on the same issue between the same parties within a period of 24 months following the date of the determination of the dispute”.*

*Therefore, we regret to inform you that we will not proceed any further with your case, because your most recent labour dispute should not have been submitted to the Commission according to section 67 (b) of the Employment Relations Act 2008.*

Nevertheless, the Disputants have opted to challenge the decision of the *RCCM* by way of an appeal before the *Tribunal*. Under the *Act*, an appeal to the *Tribunal* against a decision of the *Commission* has been provided for at *section 66* of the *Act*. This *section* reads 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.

Whatever be the merits of the decision of the *RCCM* to have discarded the dispute under *section 67 (b)* of the *Act*, it is clear from the procedures that have been set out under the *Act* that an appeal to the *Tribunal* can only lie to a party aggrieved by a rejection of a dispute by the *Commission* under *section 65* of the *Act*.

Although it must be borne in mind that the courts have been encouraged to be less technical and more flexible in their approach to jurisdictional issues and objections (*vide M. Toumany & anor. v M. Veerasamy* [2012 UKPC 13]), it must not be overlooked that the *Tribunal* does not cease to be an administrative tribunal in spite of the fact that it acts and is bound to act judicially and follow substantially the procedure of a Court of Law (*vide Mauritius Breweries Ltd v Commissioner of Income Tax and six other cases* [1996 SCJ 402] followed in *D. Bagha And Ministry of Education, Culture and Human Resources and Anor.* [RN 1023 of 2009]).

Furthermore, with regard to the facts giving rise to the preliminary objection, it cannot be said that the redress being sought is due to a mistake in documentation which would preclude the hearing of the matter on its substance.

It may also be noted that the *Tribunal* is established under *section 85* of the *Act* and its functions as set out under the *Act* reads as follows:

**86. Functions of Tribunal**

- (1) *The Tribunal shall have such functions as are specified in this Act or as may be prescribed.*
- (2) *Without prejudice to the generality of subsection (1), the Tribunal shall -*
  - (a) *make awards;*
  - (b) *make orders in relation to recognition, check-off agreement, agency shop order, minimum service and any other issues under this Act;*
  - (c) *interpret collective agreements, awards and orders; and*
  - (d) *publish on or before 31 March of every year, an annual report providing summaries of cases and rulings.*

It is apposite to quote from *Elliot and Phipson Manual of the Law of Evidence* by D. W. Elliot (at page 319) cited in *C. Sooknah v The CWA* [1998 SCJ 115]:

*“A court includes not only the regular superior courts of judicature but also inferior courts and tribunals, even domestic tribunal, provided they have jurisdiction either by the law or by the parties consenting to submit their affairs to adjudication by such tribunals. Thus the principle of conclusiveness has been held to be applicable to decisions of courts-martial, arbitrators and domestic tribunals such as the General Medical Council. In the present context, the awards of any such tribunal, however lowly, “are as conclusive and unimpeachable (unless and until set aside on any of the recognised grounds) as the decisions of any of the constituted courts of the realm.””*  
(The underlining has been added)

Moreover, from the definition of an “administrative tribunal” in the *Oxford Dictionary of Law, fifth edition*, the following may be noted:

*A body established by or under Act of Parliament to decide claims and disputes arising in connection with the administration of legislative schemes, normally of a welfare or regulatory nature. Examples are employment tribunals and rent assessment committees. They exist outside the ordinary courts of law, but their decisions are subject to judicial control by means of the doctrine of ultra vires and in cases of error of law on the face of the record.*

In contrast, it must be borne in mind that the Supreme Court has unlimited jurisdiction to hear and determine any civil or criminal proceedings under any law other than a disciplinary law. It furthermore exercises general powers of supervision over all District, Intermediate and Industrial Courts and other special courts.

In the circumstances, having regard to the functions of the *Tribunal* as specified under the *Act*, that there is no specific right of appeal provided under the *Act* in relation to a decision taken under *section 67 (b)* of the *Act*, and that the *Tribunal*, in view of its jurisdiction, is not the proper forum to challenge the decision *in lite* of the *RCCM*, the preliminary objection raised by the Respondent is upheld.

The present Application of Appeal is therefore set aside.

**(Sd) Shameer Janhangeer**  
**(Vice-President)**

**(Sd) Christian Bellouard**  
**(Member)**

**(Sd) Jheenarainsing Soobagrah**  
**(Member)**

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

**Date: 27<sup>th</sup> September 2012**

