

# **EMPLOYMENT RELATIONS TRIBUNAL**

**ERT/RN 21/14**

**APPEAL**

**JUDGMENT**

**Before:**

<b>Rashid Hossen</b>	<b>-</b>	<b>President</b>
<b>Ramprakash Ramkissen</b>	<b>-</b>	<b>Member</b>
<b>Rajesvari Narasingam Ramdoo (Mrs)</b>	<b>-</b>	<b>Member</b>
<b>Triboohun Raj Gunnoo</b>	<b>-</b>	<b>Member</b>

**In the matter of:-**

**Mr Hemandar Kumar Madhow**

**(Appellant)**

**And**

**The President of the Commission for  
Conciliation and Mediation**

**(Respondent)**

This is an appeal against the decision of the President of the Commission for Conciliation and Mediation for rejecting a labour dispute reported to it by the Appellant on the 20<sup>th</sup> December 2013. The labour dispute was in relation to Appellant's reinstatement following interdiction from the Mauritius Institute of Training and Development (MITD) since 13<sup>th</sup> May 2013 and for a declaration that the warning inflicted on Appellant is null and void and further for the MITD to implement a pledge made before the Commission for Conciliation and Mediation for his immediate reinstatement in a conciliation report dated 24<sup>th</sup> December 2013.

The representative of the State Law Office is not supporting the decision of the President of the Commission for Conciliation and Mediation. Counsel submitted that without admitting that there is any merit in the present dispute which has been set aside by the Commission, the more so that it is believed that the dispute was reported in July 2013 on the first two points forming part of the present dispute and which was made at that point in time by the Appellant's union on behalf of the Appellant it would appear that at least one of the two points initially reported is still alive before the Commission, nonetheless the President of the Commission from a purely technical point of view is not resisting the present appeal and the President of the Commission will have therefore no objection to his decision to reject the present dispute be set aside.

The appeal is on four grounds, namely:-

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

- (ii) that the letter informing the Appellant of the rejection of the dispute refers to the lodging of the dispute to be on the 23<sup>rd</sup> December 2013 instead of 20<sup>th</sup> December 2013;
- (iii) that there is no live issue pending before the Commission and what was lodged was by the Federation of Civil Service and other Unions on his behalf; and
- (iv) that the Respondent failed to comply with the requirement to have the agreement in writing and signed by the parties.

We have difficulties in following the submission made by Counsel for the State Law Office in particular with regard to the “technical point of view” and on which ground it is not supporting the decision of the President of the Commission for Conciliation and Mediation. All in all the State Law Office representing the Respondent is not resisting the appeal.

**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).*

Ground two refers to the letter whereby the Appellant was informed of the rejection of the dispute and where the date of the lodging of the dispute had been wrongly inserted. We hold that this in no way affects the effective date of the dispute which remains the 20<sup>th</sup> December 2013. This ground of appeal is accordingly set aside.

The Appellant's third ground of appeal relates to the fact that no dispute had been reported by him to the President of the Commission prior to the one *in lite*. The President of the Commission for Conciliation and Mediation in his concluding remarks stated that this new dispute had been reported on the same issue and that though the parties reporting the dispute may not be the same as in the fresh dispute, yet the "aggrieved person" and the Respondent are the same as in the first dispute. He further added that the dispute *in lite* does not comply with the provision of **Section 67** of the **Employment Relations Act 2008**, "*Limitation on report of labour disputes*" subparagraph (b) which provides that:-

*"Where a labour dispute is reported to the President of the Commission under section 64, no party to the dispute may report –*

*(b) 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."*

The President conceded that the parties reporting the dispute may not be the same as in the fresh dispute. He fundamentally erred in departing from the unambiguous provision of the law which necessitates consideration of the exact wording of a legislative intention. The interpretation to be given cannot be by cross-reference. According to the Concise Oxford English Dictionary a party is a person or group forming one side in a dispute. Even the **Employment Relations Act 2008** refers specifically to the term “party” in **Section 6(2)(d)** of the **Second Schedule** to the **Act**. Thus, the Tribunal may order any (relevant) person to be joined as a party to a case where the latter ought in the interests of justice to be joined as a party. **Section 2** of the **Interpretation and General Clauses Act** defines “person” as follows:-

*“person” and words applied to a person or individual shall apply to and include a group of persons, whether corporate or unincorporate.”*

A federation of unions is distinct to an individual.

The Appellant was not a party (as opposed to the Federation of Civil Service and other Unions) – not even an intervening party - to the dispute before the Commission prior to the one *in lite* and this ground of appeal should succeed. The Tribunal will add that proper compliance with **Section 67(b)** of the **Employment Relations Act 2008** as amended is a prerequisite to a dispute being reported to the President of the Commission for Conciliation and Mediation. It is not a technical matter or a matter of procedure. It is a matter of substance. All in all the reporting of the dispute is the initiating process that gives access to the Commission for

**Conciliation and Mediation. (SS Chadien v The Commissioner of Police and The State of Mauritius [2013 SCJ 351]).**

The last ground of appeal refers to an agreement that has not been recorded in writing and signed by the parties. In his concluding remarks the President of the Commission for Conciliation and Mediation refers to the report of the Commission for Conciliation and Mediation whereby “*the point in dispute no. 2 in respect to the reinstatement of Mr H K Madhow has been resolved to the satisfaction of both parties.*” We find no reference made to any agreement save and except that the Commission had been negotiating with the parties for the signing of such an agreement. We have been kept in the dark with regard to the fate of that agreement, if any. We therefore cannot give further consideration to this ground of appeal.

We conclude that the President of the Commission for Conciliation and Mediation was plainly wrong in mixing and mingling the parties to the dispute with the “aggrieved person”. By virtue of **Section 66(1)** of the **Employment Relations Act 2008** as amended the Tribunal revokes the decision of the President of the Commission for Conciliation and Mediation and remits the matter back to him to reconsider the dispute *in lite* in the light of our decision.

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

**(Sd)Ramprakash Ramkissen  
(Member)**

**(Sd)Rajesvari Narasingam Ramdoo (Mrs)  
(Member)**

**(Sd)Triboohun Raj Gunnoo  
(Member)**

**Date: 29<sup>th</sup> May 2014**