

## EMPLOYMENT RELATIONS TRIBUNAL

### AWARD

RN 147/14

Before

**Indiren Sivaramen** Vice-President

**Raffick Hossenbaccus** Member

**Rajesvari Narasingam Ramdoo** Member

**Triboohun Raj Gunnoo** Member

In the matter of:-

**Mr Jugdiss Chuttur (Disputant)**

**And**

**Cargo Handling Corporation Ltd (Respondent)**

The present matter has been referred to the Tribunal by the Commission for Conciliation and Mediation under Section 69(7) of the Employment Relations Act (hereinafter referred to as "the Act"). The Disputant and the Respondent as represented have not been able to reach an agreement and the Tribunal thus proceeded to hear the matter. Both parties were assisted by counsel. The terms of reference read as follows:

*"Whether the Cargo Handling Corporation Ltd should recognize my length of service as from 1970 instead of 1975."*

The Disputant deposed before the Tribunal and he stated that he started working in the port in December 1969 for Société Noël Frères. He was a casual worker then. He averred that in May 1970 he was given a card which he identified before the Tribunal. The card was produced and marked Doc A. Disputant also referred to an affidavit (Doc B) solemnly affirmed by two colleagues of his in relation to his name which was not properly written on Doc A. Disputant maintained that in May 1970 he was confirmed in his job and no longer a casual worker. He was then given work every day. He was being paid weekly whereas previously

as casual worker he was paid daily. Another company (meaning Consolidated Cargo) then took over the activities of Société Noël Frères and accepted all the conditions of work and length of service of the workers. The Respondent later took over the activities of Consolidated Cargo with its employees. The Respondent has taken over the employees with all their rights including their length of service.

When confronted by his counsel with his date of entry as put forward by Respondent (3 January 1975), Disputant stated that there could have been a mistake as the services of the employees were taken over by two entities successively. He added that Doc A was lost initially and that he only found it some two to three years back. Disputant also adduced evidence to the effect that workers who were there before him (at page 5 of the proceedings of 28 January 2015) stood as witnesses for him to say that he was working there and affirmed an affidavit to that effect. He requested Respondent to accept his length of service as from May 1970 but the company refused. Disputant produced his pay slip for the month of November 2014 (Doc C) and averred that if his length of service is not recognized as from 1970, he will lose a significant sum when he proceeds on retirement.

In cross-examination, Disputant explained that Doc A meant that he had worked at least 80 days when requested to work for say 100 days. He added that the card confirmed that he was an employee and had to be given work. When confronted with a document where his signature appears, Disputant stated “mo pas trop cone lire” and that he did not go to school. He agreed however that the information on the document shown to him must have been provided by him. Disputant was cross-examined on the long period of time that has elapsed since Respondent took over the employees and since he signed the document which is an information sheet regarding him. Disputant could not say when he actually complained to the Respondent about his length of service. He then added that if he had his card, he would not have been a mere worker but would have reached the grade of Foreman at Respondent.

Two witnesses for Disputant then deposed at another sitting of the Tribunal and they confirmed that they had solemnly affirmed the affidavit as per Doc B. They both stated that when they joined Société Noël Frères (in January 1973 and January 1971 respectively), the Disputant was already working there.

Mr Seegoolam, Assistant Human Resources Manager, then deposed and he admitted that it is difficult for him to state what Doc A means. He

stated that the company did not accept that the date appearing on Doc A was the date Disputant joined Société Noël Frères. He stated that Respondent was handed over a “file payroll” from the previous employer of Disputant whereby the personal data including the date of entry of every employee was provided. He produced copies of the ‘personal record form’ for Mr “Jagdish Chuttur” and an ‘information sheet’ for the same worker (Docs F and G respectively). According to Doc G which is dated 11 April 1986, the date of entry of Disputant is given as 3 January 1975. Mr Seegoolam averred that Doc F was drawn in 1996 following an updating of the personal record forms of employees. He averred that information was verified and the exercise was carried out in collaboration with the employee. As per Doc F, the date of entry for Disputant was still 3 January 1975. The Respondent is relying on the payroll record from the previous employer.

In cross-examination, Mr Seegoolam stated that it was Consolidated Cargo which gave the payroll database to Respondent. He conceded that on Doc G, the surname of the employee was amended (from “Chattar”) with no initial by the side of the amendment. Even the first name of the worker was still written as “Jagdish”. Mr Seegoolam agreed that there were mistakes in the record but he added that as from 1999 the system has been computerized and that all amendments and updates which need to be done are made directly on the system. He added that apart from the payroll from the previous employer, he had nothing to show that Disputant did not join in 1970. Mr Seegoolam explained how Disputant was referred to him on a first occasion after the latter had made his complaint.

The Tribunal has examined all the evidence on record including the submissions of both counsel. Absence of documentary evidence is no bar to establishing a contract of employment and oral evidence may, in an appropriate case, be sufficient to prove a contract of employment. Indeed, “agreement” is defined in section 2 of the Employment Rights Act as “a contract of employment or contract of service between an employer and a worker, whether oral, written, implied or express”. This definition is not much different from the definition which existed under the now repealed Labour Act where “agreement” was defined as “a contract of employment, whether oral or written, implied or express”.

The Tribunal thus has to consider all the evidence before it including Doc A. Doc A is an old document which is almost illegible. Even the colour of the card cannot be stated with certainty (pale blue or pale green). What is important is that even the allegedly wrongly written

name "CHATTAR" does not appear on the card as opposed to what the two witnesses for Disputant have averred in their affidavit (Doc B). What we see with much difficulty for "NOM" is "J" then "C" or "G" then a letter which appears to be an "A" and "TTAR". The first name ("PRENOM") appears to be "JACKDISH". On the verso however, curiously the handwriting is much easier to read and bolder. We note for instance that the horizontal line in the figure "7" in "1970" seems to have been drawn twice. Disputant was confronted with the handwritings on the card which he stated was lost for quite some time. Initially he did state that the writing was partially erased and that "ler la ine marker ladans". He also stated that the writing "pas ti pe bien paraitre" and referred to "relève sa". However, later he maintained that Doc A was in the same state that it was initially. Apart from what we understand to be the signature of Disputant (even though he signed as "Chattar" or "Chuttar") on the card, there is absolutely no mark or signature from the issuer. Indeed, the dotted line and space reserved for the signature or mark on behalf of the issuer (marked S.N.F which we understand to be Société Noël Frères) has been left completely blank.

The second witness for Disputant stated that on his card he received from Société Noël Frères, there was only his name and a number ("ene ti numéro"). He made no reference to date of birth or date of issue on his card. On Doc A however, the reference number (written in French "NO REF") has not been filled. For reasons given above, it would be most unsafe to rely in any manner on Doc A.

Now, the two witnesses for Disputant averred that Disputant was already working there when they joined Société Noël Frères (in line with their affidavit). Disputant gave a different version. Indeed, as highlighted above, Disputant stated that workers who were there before him were his witnesses and affirmed an affidavit to say that he was working there. This is a major discrepancy. Despite the defects in Doc A (and even discarding Doc A), the Tribunal will still be prepared to act in favour of Disputant provided that there is reliable evidence to award for a change in the date of entry of Disputant. This requirement is even greater bearing in mind the inordinate delay from 1983 or even 1996 when particulars were checked in collaboration with workers (and where Disputant signed Doc F) to the time Disputant reported the dispute to the Commission for Conciliation and Mediation on 21 May 2014 (as per the letter of referral from the Commission).

Though the Tribunal bears in mind the averment of Disputant as to his inability to read properly, the Tribunal has not been impressed by his

testimony before the Tribunal. The Disputant maintained that he started working as casual worker since December 1969 and would have been employed on a regular basis in May 1970. However, he could not say when (which would be more recently) he made complaints concerning his length of service. The Respondent took over in 1983 and we have documents Docs G and F dated 11 April 1986 and 4 November 1996 where Disputant would have affixed his signature. Disputant admitted that workers were regularly briefed by the trade union as to their rights and yet he allowed such a long time to elapse before reporting a dispute. This bears all its importance when considering his own evidence that with his length of service he could have been appointed as Foreman. He stated "*Parski si vraiment mo ti ena sa carte la mo pe dimande la cour coma missier Seegoolam mo ti besoin ene Foreman dans travaille, mo pas ti pou ene simple travailleur.*" This was an additional reason for him to act diligently.

Disputant gave us the impression to be someone who deliberately avoided answering questions whose answers might be prejudicial to him such as when he actually complained about his date of entry. He was, for example, hesitant in the beginning to concede facilities extended to him by Respondent following his injury. His stand when confronted with writings on Doc A is also quite revealing.

His witnesses deposed in a fairly casual manner and gave no precise indication as to why or how they could remember exactly that some 40 years back Disputant, who was not doing the same work as them, was already working in the port when they themselves joined Société Noël Frères. They struck us as being more concerned to affirm that Jackdish Chattar and Jugdiss Chuttur referred to one and the same person the more so that they could recognise the photo of Disputant when he was young on Doc A (also in line with the purpose of the affidavit as per paragraph 2(ii) of Disputant's Reply to the Respondent's Statement of Case). This is so even though, as stated earlier, the name ("Nom") of the holder of the card is not written as "CHATTAR" on Doc A. Also, the first witness realized the difficulty he had when he answered that on his own card the date written was 1973 because he had joined in 1973. Indeed, he had stated that he joined as a casual worker in 1973 and became a "regular" worker only after four to five years. Later, he preferred to say that he does not know what date was mentioned on his own card but yet he averred that his length of service was considered right from 1973. This again undermines the case of Disputant since the latter maintained throughout that the card was issued when one was employed regularly and not as a casual worker. In any event, Disputant

stated clearly that his witnesses were working there before he joined which is in contradiction to their evidence before us.

The evidence of Mr Seegoolam to the effect that amendments and updates to records of the Respondent are done directly on Respondent's computerized system is supported by the copy of Disputant's pay slip which has been produced by Disputant (Doc C). Indeed, despite Doc F, the name of the Disputant is properly written on his pay slip.

For the reasons given above, the Tribunal is not satisfied that the Disputant has proved even on a balance of probabilities that he was employed by Société Noël Frères since 1970. The dispute is thus set aside.

**Indiren Sivaramen (Sd)**  
**Vice-President**

**Raffick Hossenbaccus (Sd)**  
**Member**

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

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

**24 February 2015**