

## EMPLOYMENT RELATIONS TRIBUNAL

### RULING

RN 15/15

In the matter of:-

**Mrs Dineshwaree Ramyead-Banymandhub (Disputant)**

**And**

**Air Mauritius Ltd (Respondent)**

The above case has been referred to the Tribunal for arbitration in terms of Section 69(7) of the Employment Relations Act 2008 (the "Act"). The terms of reference read as follows:

- (1) *"Whether Air Mauritius should have appointed me in the post of Senior Administrative Officer in a permanent capacity since 2001 or otherwise; and*
- (2) *Whether Air Mauritius should compensate me with back-pay, dating from 2001 or otherwise, the relevant wages, all the relevant increments, allowances, benefits, salary increases and adjustments thereto pertaining to the post of Senior Administrative Officer, as advertised, evaluated and assessed on the prevailing scale of AM5/LS4."*

Respondent has raised preliminary points in law which read as follows:

- A. *The respondent avers that "ex-facie" the averments of the Applicant, the Tribunal cannot be seised (seized) of this matter and has no jurisdiction to entertain the present Dispute since the first limb of the Dispute, as couched, is time barred to the extent that it is in the nature of a "personal action".*
- B. *The Respondent avers that the Tribunal cannot even proceed to entertain the second limb of the Dispute in as much as the remedy being sought is, in itself, time barred.*
- C. *Act No 5 of 2013 - The Employment Relations (Amendment) Act 2013 has amended Section 2 of the Employment Relations Act 2008 by adding a new paragraph 2(c) to the definition of a "Labour Dispute" namely:*

*"does not include a dispute that is reported more than 3 years after the act or omission that gave rise to the dispute."*

The Disputant and Respondent were assisted by counsel and the Tribunal proceeded to hear arguments from both counsel on the preliminary points taken.

The Tribunal has examined the lengthy arguments submitted on both sides and the case law and materials referred to by counsel. Counsel for Respondent argued that ex facie the Statement of Case of Disputant, the grievance of the Disputant would have arisen in 2001. Article 2271 of our Civil Code provides as follows:

*2271. Le délai de prescription court à compter du jour où le droit d'action a pris naissance.*

Counsel for Disputant argued that the right of action in the present case arose in 2010 following a proposal which the Respondent would have made to Disputant (as per Annex I to Disputant's Statement of Case) whereby Respondent would have worked backwards to propose increments to Disputant for as far back as year 2001. According to counsel, this would constitute a waiver of the three year limitation period (under Article 2279 of the Code Civil Mauricien). In the alternative, the ten year limitation period (under Article 2270 of the Code Civil Mauricien) also relied upon by Counsel for Respondent would start to run as from 2010 because of Annex I to Disputant's Statement of Case. Counsel for Disputant also hinted to "suspension de la prescription" because of things Respondent stated it will do at the last paragraph of the same Annex I. If there is "suspension de la prescription" then the lapse of time from the day the right of action arose until the "suspension" was triggered would not be lost. This lapse of time will still be counted once the condition for the "suspension" lapses and the clock starts ticking again as far as the limitation period is concerned. In any event, there is no evidence before us, including Annex I (above) which could lead to a "suspension de la prescription".

Also, Annex I (above) does not constitute "une renonciation à la prescription". Indeed, Article 2220 of the Code Civil Mauricien provides as follows: « *On ne peut, d'avance, renoncer à la prescription: on peut renoncer à la prescription acquise.* » In this particular case, « la prescription décennale n'était pas acquise » in 2010. Also, Annex I (above) cannot be considered as « une renonciation à la prescription » inasmuch as Respondent did not make any payment to Disputant in relation to the post of Senior Administrative Officer or in any manner admit that Disputant was occupying the said post.

Ex facie the Statements of Case, the Tribunal does not agree that the limitation period starts only as from 2010. All along in the Statement of Case of the Disputant, reference is made to the long lapse of time over which Disputant would have allegedly been prejudiced. We may here refer to the following paragraphs:

2. *The dispute that the Applicant has with the Respondent and its préposés is that the latter have, by their acts and doings, deliberately neglected to give due consideration to the Applicant's post for more than a decade, and are still refusing to do so for no reason whatsoever.*

20. *As compared to all of the employees of the Respondent, the Applicant has, over the last 13 years, been deprived of her corresponding salary scale, salary increases, yearly increments and all adjustments and allowances relative to the post she has been occupying since 2001.*
25. *The Applicant has been performing as a full-fledged Senior Administrative Assistant over the last 13 years, but her remuneration stayed at the basic Rs10,000 per month with only the mandatory government increases.*
29. *In light of all the injustice the Applicant suffered over the last decade, she made several representations regarding her grievances to the Respondent, requesting it to give due consideration to the unfairness she was being subjected to but to no avail.*
31. *The Applicant naturally had the legitimate expectation to be appointed as Senior Administrative Officer during the last 13 years on account of all the duties and responsibilities she was responsible for, and which she has undertaken professionally and with dedication despite the precarious situation she was in.*
32. *The dispute that the Applicant has with the Respondent and its préposés is that it has, by their acts and doings, deliberately neglected to give due consideration to her post for more than a decade, and are still refusing to do so for no reason whatsoever.*
33. *Over the last 13 years, as shown below, the Applicant has made countless representations both orally and in writing to various officers of the Respondent to set out her grievances in the hope that same would be taken into consideration:*  
...
35. *The above state of affairs has been causing the Applicant and is still causing her immense inconvenience, embarrassment and financial prejudice over the last 13 years so much so that it is tantamount to the most blatant breach of natural justice. The Applicant suffered substantial stress and torment, and this in a very apparent manner.*

In Annex H to Disputant's own Statement of Case, there is a letter dated 14 June 2010 emanating from Disputant in relation to the present disputes where the latter wrote the following:

*"This situation has been brought to the attention of the HR executives now and again during the past nine years without any action."*

The salary of Disputant was reduced in 2001 to Rs 10,000- (which Disputant accepted and which was following Disputant's own request for ground duties) and Disputant even refunded an amount of money which was allegedly overpaid to her following the review

of her salary. Now, Disputant is averring at paragraph 7 of her Statement of Case that “the salary of Rs 10,000 referred to above is an arbitrary one inasmuch as this specific salary was not assessed on any prevailing salary scale at that material time.” The Disputant was posted right from October 2001 in the EPT section where she was required to assist in administrative duties. As per the terms of reference, an award covering the period as from 2001 is being sought even though the Tribunal bears in mind that the terms of reference also include “2001 or otherwise”. As per the averments in her own Statement of Case, Disputant could have asked Respondent for what is now in dispute right from 2001. Ex facie the pleadings and arguments submitted before us, the Tribunal is satisfied that “le droit d’action a pris naissance” in 2001.

Now, in the absence of Annex I (above), it is clear that the limitation period of ten years for Disputant to bring an “action personnelle” (under Article 2270 of the Code Civil Mauricien) would have ended in 2011, that is, well before the matter was reported to the Commission for Conciliation and Mediation on 18 December 2014 (as per the letter of referral). The Tribunal will now analyse the effect of the letter dated 24 June 2010 (Annex I to Disputant’s Statement of Case). The Disputant is informed in the said letter that her salary is being revised with immediate effect starting as from March 2001 whereby increments were granted to her. She was also informed in the said letter that the Pay Office was requested to effect applicable re-adjustments and back payments.

Article 2248 of the Code Civil Mauricien provides as follows:

*2248. La prescription est interrompue par la reconnaissance que le débiteur ou le possesseur fait du droit de celui contre lequel il prescrivait.*

The Tribunal will refer to notes 376 and following of **Répertoire civil Dalloz, mars 2011** under “**Prescription Extinctive**” which read as follows:

*376. Si la reconnaissance peut évidemment se réaliser au moyen d’une convention passée entre le débiteur et le créancier, cela n’est pas une nécessité. Elle peut en effet résulter d’un acte émané du débiteur seul, même ignoré du créancier (Grenoble, 26 janv. 1855, DP 1855. 2. 206. – Civ. 27 janv. 1868, DP 1868.1. 200. – Poitiers, 30 juill. 1877, DP 1877.2.60. – Douai, 28 nov. 1879, S. 1881.1.32).*

*377. Encore faut-il, cependant, que la reconnaissance soit certaine (Req. 6 janv. 1869, DP 1869.1. 224. – AUBRY et RAU, t. 2, par ESMEIN, § 216, texte et note 41. – PLANIOL et RIPERT, t. 7, par ESMEIN, n° 1366. – COLLIN et CAPITANT, t. 2, par JULLIOT DE LA MORANDIERE, n° 1623 – BAUDRY- LACANTINERIE et TISSIER, op. cit., n° 530) ....*

*378. Cela étant, aucune forme n’est imposée pour que la reconnaissance puisse produire son effet interruptif. Celle-ci peut donc avoir lieu verbalement (PLANIOL et RIPERT, t. 7, par ESMEIN, n° 1365. – AUBRY et RAU, t. 2, par ESMEIN, § 215, texte et note 39. - BAUDRY- LACANTINERIE et TISSIER, op. cit., n° 529) ou par écrit (RIPERT et BOULANGER, t. 2, n° 2026. – MARTY et RAYNAUD, op. cit. n° 336-b). Et,*

en ce dernier cas, un écrit quelconque suffit : une lettre missive, par exemple. (Req. 11 mai 1842, Jur. gén., v° Prescription civile, n°573. – Montpellier, 15 mai 1872, DP 1874. 2. 165. – Req. 12 mars 1883, DP 1884.1.111. – Paris, 14 juin 1899, S. 1900.2. 15. – Civ. 25 janv. 1954, S.1954.1. 199), pourvu qu'elle ne laisse aucun doute sur l'intention de celui qui l'a rédigée (Req. 21 déc. 1830 et 11 mai 1842, Jur. gén., v° Prescription civile n°573. – T.civ. Seine, 1<sup>er</sup> juin 1900, DP 1902. 2. 160. – Civ. 4 oct. 1972, Gaz. Pal. 1973. 1. 68, note H.M. – 24 oct. 1984, D. 1985. IR 131). [underlining is ours]

379. Sur le fond, la reconnaissance résulte de tout fait qui implique sans équivoque l'aveu de l'existence du droit du créancier (Req. 28 janv. 1885, DP 1885. 1. 358. – 13 avr. 1899, DP 1902. 1. 12). Elle peut donc être tacite et, par exemple, s'évincer : d'offres de paiement, pourvu qu'elles n'aient pas été faites à titre de transaction ou sous forme conditionnelle (Req. 3 juin 1835, Jur. gén., v° Prescription civile, n° 595-4<sup>o</sup>. - 4 janv. 1842, *ibid.*, eod. v°, n° 486. – 6 janv. 1869, DP 1869 1. 224. – Montpellier, 15 mai 1872, DP 1874. 2. 165. – Paris, 31 janv. 1946, D. 1946. 249) ; ou encore d'offres réelles, suivies ou non d'une consignation (Req. 29 déc. 1813, Jur. gén., v° Prescription civile, n°. 256. – Paris, 18 août 1820, *ibid.*, eod. v°, n°. 583), même si elles n'ont pas été acceptées par le créancier (T. civ. Seine, 28 août 1875, Jur. gén., suppl., v° Douanes, n°. 752) ou si elles ont été ensuite retirées par le débiteur faute d'acceptation (Req. 30 janv. 1865, DP 1865. 1. 235. – T. civ. Seine, 28 août 1875, *prec.*). [underlining is ours]

...

382. Lorsque la reconnaissance a lieu, l'effet interruptif opère de façon indivisible. En d'autres termes, une reconnaissance portant sur une partie de la dette interrompt la prescription pour la totalité de celle-ci (Civ. 1<sup>re</sup>, 22 mai 1991, n° 88-17.948, Bull. civ. I, n° 164 ; D. 1991. IR 179. – Soc. 22 oct. 1996, n° 93-44.148, JCP 1996. IV. 2471 – Civ. 1<sup>re</sup>, 11 fevr. 1997, n° 95-13.134, Bull. civ. I, n° 53. – Req. 12 mars 1883, DP 1884. 1. 111. – Civ. 14 mai 1918, DP 1926. 1. 204), y inclus ses accessoires (Civ. 4 janv. 1965, D. 1965. Somm. 77, à propos de l'action résolutoire).

In the present case, Annex I is far from being « un aveu sans équivoque de l'existence du droit » of the Disputant. Indeed, only a yearly increment of 3% has been granted to Disputant and no back pay, salary increase or other allowances/adjustments pertaining to the post of Senior Administrative Officer (underlining is ours) had been granted or offered to her.

In fact, the last paragraph of Annex I reads as follows:

*“Management will evaluate the duties of your current post. Once evaluated and in the absence of a mechanism for direct appointment, the post will be advertised on the applicable grade and you will be invited to apply for same.”*

Respondent did not accept that Disputant was acting in the post of Senior Administrative Officer or should have been appointed in the said post. As per Annex I (above), even the evaluation of the duties of the post held by Disputant had yet to be carried out by Respondent. There is nothing to suggest that any “reconnaissance”, as

averred, in Annex I was in relation to the same “dette” or rights (if any) with which we are now concerned bearing in mind that the present terms of reference aim wholly at seeking an appointment in the post of Senior Administrative Officer and the necessary compensation pertaining to that post as from the date of appointment. Subsequent to Annex I, Disputant had to cause a letter to be drawn by an Attorney-at-law (Annex J to Disputant’s Statement of Case) and to be addressed to the Respondent.

The Tribunal will refer to French case law as guidance with the caveat that the cases cited (below) are in relation to a particular provision under French law, that is, Article L. 274 du « Livre des procédures fiscales » (prior to its amendment on 1 January 2011) : *Les comptables du Trésor qui n'ont fait aucune poursuite contre un contribuable retardataire pendant quatre années consécutives, à partir du jour de la mise en recouvrement du rôle perdent leur recours et sont déchus de tous droits et de toute action contre ce redevable. / Le délai de quatre ans mentionné au premier alinéa, par lequel se prescrit l'action en vue du recouvrement, est interrompu par tous actes comportant reconnaissance de la part des contribuables et par tous autres actes interruptifs de la prescription.*

The Conseil d’État has laid down the requirements for «une reconnaissance de dette» (**Conseil d’État du 7 septembre 2009, n° 316523**) : «la reconnaissance de dette interruptive de la prescription ne peut résulter que d’un acte ou d’une démarche par lequel le redevable se réfère clairement à une créance définie par sa nature, son montant et l’identité du créancier».

These requirements have been reiterated in another case of **Conseil d’État du 23 juillet 2010 n° 311857**. In the present case, Annex I cannot be interpreted as «une reconnaissance qui implique sans équivoque l’aveu de l’existence du droit » of the Disputant by the Respondent. Annex I to Disputant’s Statement of Case cannot stop the limitation period which was running as from 2001.

Now, can the letter dated 15 July 2010 from the Attorney-at-law (Annex J to the Statement of Case of Disputant) bring about a “suspension” or “interruption de la prescription”? The Notice “mise en demeure”, on its part, was issued only on 13 October 2014 (Annex M to Disputant’s Statement of Case) and was already after the limitation period of ten years as from the date the right of action arose. Articles 2244 and 2245 of the Code Civil Mauricien provide as follows:

*“2244. Une citation en justice, un commandement ou une saisie, signifiés à celui qu'on veut empêcher de prescrire, forment l'interruption civile.*

*2245. La citation en conciliation devant le bureau de paix, interrompt la prescription, du jour de sa date, lorsqu'elle est suivie d'une assignation en justice donnée dans les délais de droit.*

The letter from the Attorney-at-law dated 15 July 2010 is not a “citation en justice, un commandement ou une saisie” and cannot have interrupted the limitation period. “Un

commandement” indeed would have required “une sommation de s'exécuter”. There was also no « citation en conciliation devant un bureau de paix » at the relevant time.

Thus, even without considering the preliminary objection in law under limb C (see above), the first dispute as per the terms of reference would be time barred.

As regards the second dispute, the Tribunal notes that salary is a recurrent payment made to a worker and that each and every debt owed by the employer to the worker in terms of salary and its accessories will be affected by its own limitation period which will start to run as from the date the payment is due. We may here refer to **note 215 of Répertoire Civil Dalloz, mars 2002** under “**Prescription Extinctive**” which provides as follows:

215. ...

*Pour les intérêts d'un capital, chaque échéance marque le point de départ d'une prescription distincte (COLIN et CAPITANT, par JULLIOT DE LA MORANDIÈRE, t. 2, n° 1618, et les auteurs précités ; CA Rouen, 4 mai 1883, sous Cass. civ. 2 févr. 1886, S. 1887.1.5, note Labbé). Il en est de même, enfin, lorsqu'il naît entre deux personnes une série de créances par suite de prestations renouvelées ou continues (loyers ou fermages, salaires, prix de fournitures répétées). Chaque prestation donne lieu en principe à une créance distincte régie par son propre délai de prescription. C'est ce que confirme l'article 2274 du code civil en décidant que “la prescription (dans les cas des articles précédents) a lieu, quoiqu'il y ait eu continuation de fournitures, livraisons, service et travaux”. Chaque fourniture d'un marchand, chaque acte d'officier ministériel, chaque service accompli ou chaque journée ou mois de travail fourni donne lieu à une créance séparée, même si de semblables prestations sont encore exécutées par la suite (AUBRY et RAU, t. 12, par ESMEIN, § 774 ; PLANIOL et RIPERT, t. 7, par ESMEIN, n° 1353; BAUDRY-LACANTINERIE et TISSIER, n°s 752 et s. ; COLIN et CAPITANT, par JULLIOT DE LA MORANDIÈRE, t. 2, n° 1618 ; RIPERT et BOULANGER, t. 2, n° 2079 ; T. civ. Lisieux, 13 déc. 1944, D. 1945.178 ; Cass. soc. 13 déc. 1945, D. 1946.137 ; Cass. civ. 29 mai 1959, D. 1959.418).*

It is apposite to note that Article 2279 of the Code Civil Mauricien provides as follows:

*2279. Les arrérages des rentes perpétuelles et viagères; ceux des pensions alimentaires;*

*Les loyers des maisons, et le prix de ferme des biens ruraux;*

*Les intérêts des sommes prêtées, et généralement tout ce qui est payable par année, ou à des termes périodiques plus courts.*

*Se prescrivent par trois ans.*

The French counterpart of this article was Article 2277 (now amended) of the French Civil Code and it was drafted differently and specifically provided for a limitation period of five years for “les actions en paiement des salaires”. Thus, Article 2277 of the French Civil Code (“antérieur à la loi n°2008-561 du 17.06.2008”) read as follows:

*Se prescrivent par cinq ans les actions en paiement :*

*Des salaires ;*

*Des arrérages des rentes perpétuelles et viagères et de ceux des pensions alimentaires;*

*Des loyers, des fermages et des charges locatives ;*

*Des intérêts des sommes prêtées,*

*et généralement de tout ce qui est payable par année ou à des termes périodiques plus courts.*

*Se prescrivent également par cinq ans les actions en répétition des loyers, des fermages et des charges locatives*

This provision was supplemented by other provisions under the French Code du Travail (Articles L.143-14 and L. 721-18 which are now repealed). The repealed Article L. 143-14 was along the same line as the previous Article 2277 of the French Civil Code (« *L'action en paiement du salaire se prescrit par cinq ans conformément à l'article 2277 du code civil.* »). The previous Article L.721-18 of the French Code du Travail provided as follows:

*« Les réclamations des travailleurs touchant le tarif appliqué au travail exécuté par eux, les frais d'atelier et les frais accessoires, les congés payés se prescrivent par cinq ans à compter du paiement de leur salaire. »*

The amendment brought to the Act by Act No. 5 of 2013 has amended the definition of “labour dispute” under section 2 of the Act by expressly removing from the ambit of “labour dispute” “a dispute that is reported more than three years after the act or omission that gave rise to the dispute”. “Labour dispute” is now defined in the Act as:

*“labour dispute” –*

*1(a) means a dispute between a worker, or a recognised 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;*

*(b)... ;*

*(c) does not include a dispute that is reported more than 3 years after the act or omission that gave rise to the dispute.*

Thus, irrespective of whether a “créance” is uncertain or indeterminate (vide **L.B Veerasamy v. Quality Beverages Ltd 2013 IND 12**), this Tribunal cannot enquire into a dispute which is reported more than three years after the act or omission giving rise to the dispute. Sections 64 and 67 of the Act contain provisions which deal with “Reporting of labour disputes” and “Limitation on report of labour disputes” respectively. In this particular case, the act or omission which gave rise to the dispute arose in 2001 and the dispute was reported only on 18 December 2014 to the Commission for Conciliation and Mediation. Clearly, the dispute was reported more than three years after the act or omission giving rise to the dispute.



At this stage, the issue is whether the amendment brought to the definition of “labour dispute” in the Act by Act No. 5 of 2013 can indeed apply in the present matter. Counsel for Disputant has argued that the amendment brought to the law cannot be applied in the present case since it will affect directly the right of the Disputant. Counsel argued that at the material time, the cause of action existed for Disputant and that the 2013 amendment Act cannot take away that right of the Disputant with retrospective effect. The Tribunal will here quote extensively from the Supreme Court case of **R. D’Unienville & Anor. v Mauritius Commercial Bank 2013 SCJ 404** where the Court stated:

*17.19 It is still helpful however to refer to the French doctrine which does not depart in essence from what obtains in other jurisdictions to which reference has been made above.*

*The following passages from **Aubry & Rau, Droit Civil Français, Vol. 1 para. 30 p. 101** explains the application of the principles relating to “retroactivité des lois” and explains in particular the distinction to be made in that connection between “droits acquis” and “simples expectatives”:*

*“En principe, toute loi nouvelle s’applique même aux situations et rapports juridiques établis ou formés dès avant sa promulgation. Ce principe est une conséquence de la souveraineté de la loi et de la prédominance de l’intérêt public sur les intérêts privés.”*

*“Les avantages accordés par la loi seule ne forment, à moins qu’ils ne se rattachent comme accessoires légaux à un droit principal irrévocablement acquis, que de simples expectatives tant que l’événement ou le fait auquel (elle) en subordonne l’acquisition ne s’est point réalisé, et sont jusque-là susceptibles d’être enlevés par une loi postérieure. Après l’accomplissement de cet événement ou de ce fait, ils revêtent le caractère de droits acquis”*

*The following note from **Dalloz Répertoire Pratique Vo Lois et Décrets** also explain the difference to be drawn between “simples expectatives” and “droits acquis”.*

*“167. on admet généralement en doctrine et en jurisprudence que la loi nouvelle peut modifier les **simples expectatives** résultant d’actes ou de faits **anterieurs**, mais ne peut pas porter atteinte aux **droits acquis**,.... ..”*

*The concept is not different from what had been formulated by the Privy Council in **Director of Public Works v Ho Po Sang [1961] AC (901)** with regard to the determination of an acquired right: “It must be a right which is acquired and/or has accrued and not a “mere hope” that the right will be acquired at some future time if certain events occur”. The right must have become vested by the date of repeal i.e it must not have been a mere right to take advantage of the enactment now repealed.*

### **18. When is there an “acquired right”?**

*The whole basis of the plaintiffs’ claim rest upon the fact that they had already acquired,*

under the provisions of the Income Tax Act 1995, a right to tax-free interest which had accrued to them prior to its repeal by the Finance Act 2006, with effect from 1 July 2006. It was submitted that the plaintiffs had availed themselves of the right to tax-free interest since they had made all the deposits in compliance with all the conditions laid down under the Income Tax Act prior to its repeal in 2006 and they had thus acquired a right under the repealed legislation, in respect of the whole of the term of the deposits, which had not in any way been taken away by the amending legislation.

**18.1** The legal basis of the plaintiffs' claim for their "acquired right" is founded on **section 17(3)(c) of the Interpretation and General Clauses Act** which was enacted in 1974 and which was first introduced in our law by Section 11 of **the Interpretation and Common Form Ordinance 1898**. This section was borrowed from English legislation, more precisely Section 38 of the Interpretation Act 1889 which provided that where an Act is repealed "The repeal shall not affect any right, privilege, obligation or liability acquired, accrued, or incurred under any enactment so repealed". It is abundantly clear that the legal principles governing the operation of retrospective tax legislation in the various comparable jurisdictions, to which we have referred earlier, rejoin substantially the principles enunciated under English Law. The protection against interference with "acquired" or "vested" rights by the operation of retrospective legislation in these jurisdictions formulate in essence what are contained in the provisions of **Section 17(3)(c) of our Interpretation and General Clauses Act** which, as it has been seen, has been borrowed from the English legislation on the subject.

**18.2** A right however does not automatically accrue or is vested in any person merely because of the existence of a legal right under the repealed legislation. In **Hamilton Gell v White 1922 2K.B. 422** the Court (Atkin L.J) explained that **section 38 of the English Interpretation Act 1889** "only applies to the specific rights given to an individual upon the happening of one or other of the events specified in the statute". The Court referred to the following extract from **Abbott v Minister of Lands [1895 AC 425] at p 431**:

"The mere right (assuming it to be properly so called) existing in the members of the community or any class of them to take advantage of an enactment without any act done by an individual towards availing himself of that right, cannot properly be deemed to be a "right accrued" within the meaning of the enactment".

**18.3** What would constitute in law an "acquired right" or "vested" right was also extensively examined by the Supreme Court of Canada in the case of **Dikranian v Quebec (Attorney-General) 2005 SCC 73**. The Canadian Interpretation Act spells out in its Section 12, in terms which are comparable to section 17(3)(c) of our Interpretation and General Clauses Act, that "The repeal of an act shall not affect rights acquired .... And the acquired rights may be exercised .... notwithstanding such repeal". The Court re-affirmed that the principle against interference with vested rights has long been accepted in Canadian law [Para. 32, 33]. It added that these presumptions against interference with vested rights and the presumption against retroactive legislation "were designed as protection against interference by the state with the liberty or property of

*the subject. Hence, it was “presumed”, in the absence of a clear indication in the statute to the contrary that Parliament did not intend prejudicially to affect the liberty or property of the subject.”*

**18.4** *The Court however went on to state that in order to determine the existence of a vested right with respect to the duration of the exemption period, the following conditions must exist:*

- 1. The right must be vested in a specific individual whose legal situation must be “tangible, concrete and distinctive” rather than general and abstract. The mere possibility of availing oneself of a specific statute is not a basis for arguing that a vested right exists;*
- 2. Vested rights result from the crystallisation of the party’s rights and obligations. This legal situation must have been sufficiently constituted and materialized at the time of commencement of the new statute; and*
- 3. If retroactivity is not specified it cannot be imposed. It is presumed, in the absence of a clear indication in a statute to the contrary in the light of the entire context that the legislature did not intend to violate the principle against interference with vested rights.*

The present matter can be distinguished from the case of **Mr Rama Valaydon And Cargo Handling Corporation Ltd, RN 49/13** where the disputant had already reported a dispute to the President of the Commission for Conciliation and Mediation before the 2013 amendment to the definition of “labour dispute” came into force. In that case, the Tribunal referred extensively to relevant case law on the matter including the Supreme Court cases of **The Director of Public Prosecutions v Sewprasad Ramrachheya 2009 SCJ 434** and **R. D`Unienville & Anor (above)** and the judgment of their Lordships of the Privy Council in the case of **Yew Bon Tew and anor v Kenderaan Bas Mara ([1982] 3WLR 1026, [1983] 1 AC 553)**. The Tribunal came to the conclusion that the subsequent amendment to the law could not impair the vested right or legitimate expectation of the disputant to have his already duly reported labour dispute dealt with in accordance with the previously existing law, that is, proceed to arbitration, after same was referred to the Tribunal by the Commission. There was already crystallisation of the disputant’s rights and obligations. By reporting his dispute before the amendment to the law, Mr Valaydon could not be deprived of a “legal situation which was sufficiently constituted and materialized” (**vide R. D`Unienville & Anor (above)**), at the time of the commencement of the amended provision.

In the present matter, at the time the amendment to the law came into effect in 2013, more than ten years had already elapsed since 2001 when the right of action arose. Though the present disputes do not amount *stricto sensu* to litigation, yet either dispute constitutes clearly “une action personnelle” (as opposed to “action réelle” or “action mixte”) as contemplated by Article 2270 of the Code Civil Mauricien. Even in the absence of the amendment brought to the definition of ‘labour dispute’ by Act No. 5 of 2013, the disputes in the present matter were at best for Disputant subject to the said Article 2270 which provides as follows:

*2270. Sous réserve des dispositions particulières de la loi, les actions personnelles se prescrivent par dix ans.*

Disputant was thus in any event already out of time to institute proceedings. In 2013, Disputant did not have an “existing cause of action” as referred to by their Lordships in the case of **Yew Bon Tew and anor (above)**. There was no crystallisation of Disputant’s rights. The amendment brought by Act No. 5 of 2013 did not affect an accrued right of the Disputant. The second dispute, besides being intricately linked to the dispute under the first limb, arises following the same act that gave rise to the first dispute. For the reasons given above, the Tribunal finds that the dispute under the second limb of the terms of reference is not a labour dispute for not having been reported within three years after the act that gave rise to the dispute. In fact, both disputes are excluded from the definition of ‘labour dispute’ by the proviso at paragraph (c) of the definition of ‘labour dispute’ under section 2 of the Act. The Tribunal thus has no jurisdiction to hear the present matters. We do not accept the proposition of Counsel for Disputant to the effect that the Tribunal has no choice than to hear a dispute referred to it by the Commission for Conciliation and Mediation (under section 69(7) of the Act). Indeed, section 70 of the Act provides for the referral of a ‘labour dispute’ (as defined) to the Tribunal under section 63 or 69(7) of the same Act. The Tribunal cannot enquire into any other matter under those particular sections of the law. The Tribunal has only powers granted to it under the law and any exercise of powers in excess of those granted to it would result in the Tribunal exceeding its jurisdiction.

For the reasons given above, both disputes are set aside.

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

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

**Denis Labat (Sd)**  
**Member**

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

**10 June 2015**