

EMPLOYMENT RELATIONS TRIBUNAL

ORDER

ERT/RN 127/2016

Before:

Shameer Janhangeer	-	Vice-President
Ramprakash Ramkissen	-	Member
Rajesvari Narasingam Ramdoo (Mrs)	-	Member
Khalad Oochotoya	-	Member

In the matter of:

Mr Mario Georges THEODULE

Appellant

and

Commission for Conciliation and Mediation

Respondent

The present matter is an application for an appeal against a decision of the President of the *Commission for Conciliation and Mediation* (the “CCM”) rejecting the report of a labour dispute under *section 65 (1)(a)* of the *Employment Relations Act* (the “Act”).

The Appellant has by way of letter dated 4 November 2016 appealed to the Tribunal to set aside the decision of the President of the *Commission* of 26 October 2016 whereby he was informed that the dispute was rejected on the ground that the ‘*labour dispute does not include a dispute that is reported more than 3 years after the act or omission that gave rise to the dispute*’.

In the aforesaid letter, the Appellant has notably stated that he could not report the dispute within 3 years as he was extremely sick and became handicapped after being retired by the Cargo Handling Corporation Ltd on medical grounds on 05 September 2013. He joined the company in 2001 as a Driver and retired as a Port Worker. He does not agree with the decision of the Cargo Handling Corporation Ltd as he is in financial difficulties since he stopped working. It is only this year that his health improved and allowed him to undertake steps for his employer to take him back. He made representations to the *Ministry of Labour and Industrial Relations*. In a meeting on 8 September 2016, the Human Resources Executive of the company informed him that they are not willing to take him back at work. He then went to report the labour dispute to the CCM, which was rejected by letter dated 26 October 2016.

Annexed to the letter is a letter from the CCM dated 26 October 2016 and a letter from the Cargo Handling Corporation Ltd dated 5 September 2013.

The CCM is resisting the appeal and has submitted a Statement of Reply. It has been averred that the dispute is set out under three limbs and are interrelated arising from the retirement of the Appellant on medical grounds. The retirement of the Appellant was effective on 5 September 2013 and accordingly, the dispute has been reported '*more than 3 years after the act or omission that gave rise to the dispute*'. It has also been averred that the CCM was entitled to reject the dispute in light of the definition of a labour dispute and *section 65 (1)* of the Act.

The Appellant was self-represented in the matter. The Respondent was assisted by State Counsel instructed by the State Attorney.

The Appellant adduced evidence in the present matter. He stated that he sent a letter dated 4 November 2016 to the Tribunal together with two letters annexed. He was not able to report his dispute within a delay of 3 years as he was in difficulty and was extremely sick. His employer put him through a medical board on grounds of his sickness. He could not undertake any action and he suffered. He met with a Minister about three months ago and explained his problem. He was thereafter referred to the labour office and they listened to his issue. The Human Resources Manager of his former employer was also present and told him that what he was doing was light duty. He did not agree. It is not possible for someone who got injured at work to push a wheel barrow and go on the boat. He was hospitalized, was diagnosed with back problem and receives a pension from the *Ministry of Social Security*. He went to see the union

but did not receive light duty. The union took him to the Managing Director. He complained of three issues: discrimination, breach of his contract of work and that he was not given the job of Plant Operator despite having passed the test for forklift driver. He confirmed that what he stated in his letter dated 4 November 2016 is the truth.

Mr Theodule went on to state that he was refused light duty. He complained but he was not aware he could go to the *CCM*. He went to see Mr Seebaruth at the labour office and the HR Executive Mrs Patient told him that his case was rejected 3 years back. He then went to the *CCM* where he was told that 3 years have elapsed and that if he had come sooner, she would have helped him to have light duty. He took up all his complaints with the Manager. He cannot sue them directly as he has to see a lawyer and does not have the means.

Mr Theodule was questioned by State Counsel for the Respondent. He notably stated that he went to the *CCM* on 17 October of this year. He was retired and given a pension. He was not given the opportunity to work. He retired in September 2013. The lump sum he received is not enough. He has suffered a lot. He was not aware that the complaint must be made within 3 years and agreed that 3 years have passed.

Mr Mahendrasingh Seeburuth, Senior Labour and Industrial Relations Officer, was called by the Appellant. He notably stated that there were two meetings on 11 August 2016 and 8 September 2016. The Appellant came to the labour office stating that he was retired and requested that he be reinstated. In the first meeting, there was the Human Resource Manager Mrs Patient and Mr Theodule. The Human Resources Manager stated that she had to report to the Board to see whether they can take him back or not. In the second meeting, Mrs Patient informed that the Board took a decision not to take him back as he was not well and has been paid all his dues. The question of light duty did not come up as the issue was whether Mr Theodule was fit to work on a medical basis. He also stated that Mr Theodule made representations to the Ministry on 27 July 2016 at the Conciliation Service.

Mrs Shenaz Mangrah, Senior Labour and Industrial Relations Officer, was called to adduce evidence on behalf of the Respondent. She confirmed the accuracy of the Statement of Reply of the *CCM*. Mr Theodule reported his dispute before the *CCM* on 17 October 2016. The *Commission* rejected his labour dispute inasmuch as he was retired on medical grounds on 5 September 2013 and the case is more than 3 years. The terms of dispute were unjustified termination, discrimination and allocation of work. As these three items were interrelated to his termination on medical grounds, the *CCM* rejected his case for the reason that it is over 3

years. She also stated that in the letter Mr Theodule received from the CCM, he was informed that he has the right to appeal under *section 66* of the Act.

In the present matter, it has not been disputed that the Appellant was retired from his employment on 5 September 2013. This may clearly be seen from the letter dated 5 September 2013 annexed to the Appellant's application letter of appeal to the Tribunal wherein it is stated that he was found clinically unfit to carry out his duties based on medical reasons.

However, it is only on 27 July 2016 that the Appellant has made a complaint to the labour office, which is almost 3 years from the date he was retired. There were two meetings held at the labour office, whereby on 8 September 2016 he was informed that his former employers were not prepared to take him back.

Thereafter, he reported the matter at the CCM on 17 October 2016. On 26 October 2016, the President of the CCM by way of letter informed the Appellant of the rejection of dispute. The material aspect of the aforesaid letter states:

I regret to inform you that the labour dispute is being rejected under Section 65(1)(a) of the Employment Relations Act 2008, Act No. 32 of 2008 as amended as it does not fall within definition (c) of "labour dispute" Section 2 – Interpretation of the said Act.

It may be noted that the President of the *Commission* has the discretion to reject the report of a labour dispute under the Act. As stated in his letter dated 26 October 2016, the dispute was rejected under *section 65 (1)(a)* of the Act, which provides as follows:

65. Rejection of labour disputes

(1) The President of the Commission may reject a report of a labour dispute made under section 64 where he is of the opinion that –

(a) the dispute is not a labour dispute or does not comply with section 67;

It may be clearly seen that the President of the *Commission* was of the opinion that the labour dispute reported by Mr Theodule did not fall within the definition of a labour dispute under *section 2* of the Act. The definition of a labour dispute under the aforesaid section '*does*

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

Although, the Appellant has not disputed that he reported the dispute to the *CCM* on 17 October 2016, which is more than 3 years from the date he was retired from employment, he has put forward health issues to justify why he could not report the dispute within the required 3 years.

The Tribunal having heard the arguments of the Appellant cannot find that his excuses should absolve him from having reported the dispute 3 years after the act that gave rise to the dispute. The Appellant was very well aware that he was retired for medical reasons on 5 September 2013. It is questionable for one to believe that for almost 3 years, he did not have the possibility of reporting his dispute to the labour office or to the *CCM*.

It cannot also be overlooked that the Appellant did consult with the trade union and with the General Manager on his issues. It is very likely that he should have been aware that he did have the possibility of taking his complaints to the *Ministry of Labour, Industrial Relations, Employment and Training* at the very least and thereafter he could have been directed to the *CCM*.

In the circumstances, the Tribunal having heard the appeal confirms the decision of the President of the *Commission* in rejecting the report of the labour dispute.

The application of appeal is therefore set aside.

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Shameer Janhangeer
(Vice-President)

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Ramprakash Ramkissen
(Member)

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Rajesvari Narasingam Ramdoo (Mrs)
(Member)

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Khalad Oochotoya
(Member)

Date: 20 December 2016