

**EMPLOYMENT RELATIONS TRIBUNAL**

**ORDER**

**ERT/RN 133/17**

<b>Before</b>	<b>Indiren Sivaramen</b>	<b>Vice-President</b>
	<b>Vijay Kumar Mohit</b>	<b>Member</b>
	<b>Karen K. Veerapen</b>	<b>Member</b>
	<b>Yves Christian Fanchette</b>	<b>Member</b>

**In the matter of:-**

**Hotels and Restaurants Employees Union (Appellant)**

**And**

**Commission for Conciliation and Mediation (Respondent)**

The Appellant has by way of a letter dated 22 September 2017 (received on 29 September 2017) made an application under Section 66 against the rejection of a dispute by the Commission for Conciliation and Mediation (the "CCM"). The present matter is thus an appeal against the rejection of the report of a dispute by the President of the CCM (as per a copy of a letter dated 15 September 2017 annexed to the 'application') under Sections 64(2) and 65 (1)(d) of the Employment Relations Act 2008, as amended (the "Act"). The grounds of appeal of the Appellant read as follows:

- 1. The Union has requested an increase of salary of 17%. There were several negotiations with the management and letters addressed to the management (Annex 1 and 2). The management did not give any answer. We declared a dispute at the CCM dated 4 September 2017.*
- 2. Further and ultimately the employer's stand was that a Procedural Agreement was a pre-condition to start and carry out negotiations. This was a pretext to end collective bargaining.*
- 3. A Procedural Agreement is not a pre-requisite to collective bargaining.*
- 4. Following recognition of the Union, the parties (the employer and the union) are first and foremost required to go to collective bargaining exercise and thereon to a Collective Agreement.*

5. *There is no mandatory period setting law to go to a Procedural Agreement.*
6. *The making of a Procedural Agreement itself necessitates collective bargaining, suggesting again that a Procedural Agreement is not a pre-condition to collective bargaining.*

The Respondent has in turn replied to the grounds of appeal of the Appellant. Both parties were assisted by counsel and the Tribunal proceeded to hear the matter. Both parties intended to adduce some evidence for the purpose of the present appeal.

Mr Lutchoomanen, a trade unionist, deponed on behalf of the Appellant and he stated that the dispute reported related to an increase in salary sought for employees of a hotel. The request for the increase would date back to before the year 2014. The employer would have asked the Appellant to wait as the Association of Hoteliers and Restaurants in Mauritius (AHRIM) would have requested to wait for the relevant Remuneration Order which was due to come out. Eventually, when the relevant Remuneration regulations were published in 2014, AHRIM challenged part of the regulations in Court. The union again waited and then requested anew for negotiation with the employer by way of a letter dated 15 November 2016 (Annex 2 to the grounds of appeal of the Appellant). There was indeed a meeting held on 26 April 2017 between the Appellant union and the employer and a copy of the minutes of those proceedings was also annexed (with a copy of a letter dated 15 June 2017 from the employer) as Annex 1 to the grounds of appeal of the Appellant. The Appellant allegedly waited anew and eventually sent a letter dated 2 June 2017 (Doc B) whereby the union sought for a copy of the minutes of proceedings of the meeting of 26 April 2017 and for a reply to their demand for an increase in salary. The letter dated 15 June 2017 together with a copy of the minutes requested were then sent to the Appellant (Annex 1 to the grounds of appeal (see above)). The Appellant then decided to report the dispute to the President of the CCM.

In cross-examination, Mr Lutchoomanen agreed that no documents were annexed when the dispute was reported to the President of the CCM. He however averred that they had stated that they had documents in support of their claim and did produce same (including Annex 1 to the grounds of appeal) on 11 September 2017 at an informal meeting held at the Commission. He stated that the e-mails exchanged between the union and management relate to requests to fix meetings between the parties.

Mrs Dhanoopa, Senior Labour and Industrial Relations Officer, then deponed on behalf of the Respondent. She confirmed the accuracy of the contents of the Reply filed on behalf of the Respondent. She produced a copy of a form filled in by the representative of the Appellant when the dispute was reported to the President of the CCM (Doc C). The dispute was reported on 4 September 2017. She stated that there was no document annexed to the form (Doc C). There was an informal meeting with the Appellant on 11 September 2017 and another meeting with the employer on 15 September 2017. She produced a copy of the terms of reference as amended on 11 September 2017 (Doc D) and copies of e-mails exchanged between the Appellant and the employer produced before the CCM (Docs E to E5). Counsel for Appellant had no questions for Mrs Dhanoopa.

The Tribunal has examined the submissions made by both Counsel and the evidence produced before it. It is apposite to note that in the present matter, there was also an "application" by the

Appellant union under item 1 of their application letter to the Tribunal “for the determination of the Procedural Agreement as per application made.” Annexed to the “application” which also contains the appeal under section 66 of the Act, were copies of “The Procedural Agreement and The Collective Agreement” (presumably a draft emanating from the Appellant) and a “Procedural Agreement” (presumably a draft coming this time from the employer side) referred to as “employer proposals” in the application letter before us. Later, Counsel for Appellant made it clear as per the minutes of proceedings in the file that the application for the “determination of the procedural agreement” was removed so that the only issue before us is the appeal under section 66 of the Act.

As per Doc C, the terms of dispute before the CCM read as follows:

*“Whether the management should grant an increase in salary of 17% with arrears as from July 2014 to July 2017”.* As per Doc D, the Appellant proposed to amend the terms of dispute as follows: *“Whether the management should grant an increase of salary of 17% to all workers with effect from September 2014.”* The Tribunal proposes to quote verbatim paragraphs 5 and 6 of the form filled in by the representative of the Appellant (Doc C):

***5. Explain how the dispute arose and summarise the facts of the dispute:***

*The Union had several negotiations with the management. The Management till now did not grant any increase in salary across the board.*

*The hotel sector is doing well with an arrivals of more than 1.2 million of tourists.*

***6. Explain what has been done to try to solve the dispute.***

*The union had negotiations with the management but the management maintained its position.*

The Tribunal will reproduce extensively part of the letter dated 15 June 2017 emanating from the employer and a relevant extract of the minutes of proceedings of the meeting held on 26 April 2017 which, according to us, go to the crux of the appeal before us:

*“We refer to your letter dated 02 June 2017.*

*Please find enclosed the minutes of the meeting of 26 April 2017.*

*As regards the demand of increase, Management has sought advice and has been advised that the stand adopted by the Union at the very first meeting where this issue was raised is the appropriate stand and should be insisted upon.*

*You will recall that, during the meeting of 20 November 2014, the Union rightly pointed out that the periodic meeting between management and the union was not the proper forum to discuss salary increase and that ‘Union will discuss same with the Collective agreement’.*

*On a general note, periodic meetings are aimed at resolving punctual and/or individual issues that may arise or at the enhancement of industrial relations through proper and regular communication. Terms and conditions of employment are to be discussed and negotiated during collective bargaining within the parameters set by the Employment Relations Act.*

*Finally, we seize this opportunity to remind you that the Hotel and the Union are yet to finalize and execute the Procedure Agreement, which is the cornerstone that will allow the parties to start and carry out negotiations for a collective agreement.*

Extract of minutes of proceedings of the meeting of 26 April 2017:

*Point 1: We request an increase of salary of 17% across the board and arrears for 3 years.*

*Mr. Bhugoo asked where have they come to a figure of 17% increase on salary.*

*Mr. Lutchoomanen explained that same has been calculated depending upon the hotel category and that as per AHRIM, Union was asked to wait for the NRB report dated year 2014, then asked for hotel salary increase.*

*To this effect, Mr. Bhugoo clearly explained that the hotel has paid PSS 1.5 for the past 2 years as well as an increase of 1.3% on Govt. increase in January 2017.*

*Mr. Lutchoomanen, confirmed that he does understand the increase we made of 1.3% but to ask the board to review same and advise on the amount of % increase they can offer and also the 1.3% could be reduced to the agreed %. They also asked if an answer could be given to them within 14 days' delay.*

The President of the CCM has rejected the report of the dispute made by the Appellant in a letter dated 15 September 2017 (copy annexed to the application of the Appellant before us) by stating the following:

*"(...) I regret to inform you that the labour dispute is being rejected under Sections 64(2) and 65(1)(d) of the Employment Relations Act 2008 (ERA 2008), as amended, which read as follows:*

*Section 64(2) of the ERA 2008:*

*"No dispute referred to in subsection (1) shall be reported, except after meaningful negotiations have taken place between the parties and a stage of deadlock has been reached.*

*Section 65(1)(d) of the ERA 2008:*

*The President of the Commission may reject a report of a labour dispute made under section 64 where he is of opinion that ...*

*The party reporting the dispute has failed to comply with the dispute procedures specified in this Act or provided for in a procedure agreement".*

The main issue before us is whether the President of the CCM was right to reject the dispute reported to him under sections 64(2) and 65(1)(d) of the Act. No issue has been raised that the appeal made is *sensu stricto* against the CCM and not the President of the CCM and we will thus proceed on the basis that the appeal, which is clearly made under section 66 of the Act, is against the “rejection of the dispute under section 65 of the Act”.

Section 64(2) of the Act (above) lays down two conditions: (1) meaningful negotiations must have taken place between the parties and (2) a stage of deadlock has been reached. The Act does not provide any definition for “meaningful negotiations”. The relevant ordinary dictionary (Concise Oxford English Dictionary) sense of “meaning” is “worthwhile quality; purpose”, whilst “meaningful” is “worthwhile”. The ordinary meaning of “meaningful negotiations” would thus be worthwhile negotiations or negotiations with resolve and determination. The only guidance we may have from the Act will be the term “bargaining in good faith” (for example at Article 113 of the Code of Practice – Fourth Schedule to the Act) which necessarily includes and requires the employer and a recognised trade union to “meet and discuss meaningfully” say a collective agreement.

The second condition is that a stage of deadlock must be reached. “Deadlock” is defined in the Concise Oxford English Dictionary as “a situation in which no progress can be made.”

The above ordinary dictionary meanings will be in line with the extracts from Hansard referred to by Counsel for Respondent whereby a dispute shall be reported to the President of the CCM only after the parties have exhausted, within a reasonable timeframe, all avenues for a settlement within an enterprise.

The Tribunal has examined all the evidence produced and is not satisfied that there had been meaningful negotiations on the issue of salary increase. Management has not even given its stand on the merits of a salary increase. Management was instead suggesting the finalization and signing of a Procedure Agreement and negotiations for a Collective Agreement. The Tribunal fails to see how this can be interpreted as a deadlock in negotiations. In his six grounds of appeal, the Appellant has referred to a Procedural Agreement in four of them. He even went on to say at ground of appeal 5 that “*There is no mandatory period setting law to go to a Procedural Agreement.*” This is not true and in fact all along in the Employment Relations Act, emphasis is on collective bargaining and on the need for parties to enter into a procedure agreement. Section 51 of the Act reads as follows:

#### **51. Procedure agreements**

*(1) Where recognition has been obtained under section 36(3), 37(5) or 38, the trade union or group of trade unions or joint negotiating panel and the employer shall draw up and sign a procedure agreement to regulate their relations within 30 days from the date of recognition or any such longer period as may be agreed.*

*(2) Where any party referred to in subsection (1) refuses to draw up and sign a procedure agreement within the specified period, the other party may apply to the Tribunal for the making of a procedure agreement by way of an award.*

...

The legislator goes further and provides two additional provisions in the Transitional provisions at section 108 of the Act. Section 108(5) and 108(6) of the Act read as follows:

*(5) Where a procedure agreement which is in force before the commencement of this Act, does not contain any of the provisions specified in section 42(2) or 52, the parties to the procedure agreement shall, within 90 days of the commencement of the Act, include such provisions in the procedure agreement.*

*(6) Where a trade union or a joint negotiating panel has obtained recognition from an employer before the commencement of this Act and no procedure agreement is in force, the employer and the trade union or the joint negotiating panel, as the case may be shall, within 90 days of the commencement of this Act, draw up and sign a procedure agreement.*

Section 42(2) of the Act relates to conditions of paid time-off whilst section 52 of the Act relates to provisions (including minimum service where applicable) to be included in procedure agreements.

Whilst we do agree that collective bargaining includes negotiations in relation to the subject-matter of a procedure agreement (section 2 of the Act) and that a procedure agreement is thus not a prerequisite to collective bargaining, the Tribunal finds that what is essential is for an employer and a recognised trade union to engage in collective bargaining. From the evidence before us, this is what we understand the employer was trying to convey in his letter of 15 June 2017. More importantly, there is nothing on record to suggest that:

- (1) there had been meaningful negotiations between the parties on the request for a salary increase of 17% to all workers; and
- (2) that a stage of deadlock had been reached in the negotiations concerning the salary increase requested by the Appellant.

The answers given at paragraphs 5 and 6 of the form filled in (see above) when the dispute was reported are indeed very vague (to say the least) and avoid referring to the actual stand of management as to the merits of a salary increase or the percentage of salary increase requested.

From the evidence adduced before us, we are unable to find that the President of the CCM was wrong on the basis of materials available to him to reject the dispute under sections 65(1)(d) and 64(2) of the Act. It is apposite to note that the Act already provides that an application may be made directly to the Tribunal where one party (be it the recognised trade union/s or the employer) refuses to start negotiations with a view to reaching or reviewing/revising a collective agreement within the delay prescribed by law (section 53(5) of the Act).

There is no evidence that this procedure has been used in the present case even though the Appellant tried wrongly to join in an application under section 51(2) of the Act (where one party refuses to draw up and sign a procedure agreement within the specified period) with the current appeal. The present appeal is very different from the applications mentioned above and, very importantly, is directed against the President of the CCM and not the employer as is the case with the other applications and to which are ascribed short time limits (for obvious reasons) within which such applications must be disposed of by the Tribunal.

For all the reasons given above, the Tribunal is not satisfied that the President of the CCM wrongly rejected the dispute and the appeal is set aside. The Tribunal thus confirms the decision of the President of the CCM.

**SD Indiren Sivaramen**

**Vice-President**

**SD Vijay Kumar Mohit**

**Member**

**SD Karen K. Veerapen**

**Member**

**SD Yves Christian Fanchette**

**Member**

**23 November 2017**