EMPLOYMENT RELATIONS TRIBUNAL

ORDER

ERT/RN 88/18

Before

Rashid Hossen	**-**	**President**
Marie Désirée Lily Lactive (Ms)	**-**	**Member**
Karen Veerapen (Mrs)	**-**	**Member**
Ghianeswar Gokhool	**-**	**Member**

In the matter of:-

ERT/RN 88/18	**-**	**Union of Post Office Workers**	**(Applicant)**
		And	
		Mauritius Post Limited	**(Respondent)**

This is an application for an Order for access to information under Section 41(4) of the Employment Relations Act 2008, as amended.

In its application, the Applicant states that it is presently engaged in a collective bargaining exercise over salaries and terms and conditions of employment of workers in the bargaining unit of the Respondent.

By way of letter dated 11 May 2018, the Federation of Civil Service and other Unions, appointed as Negotiator of the Union, requested the Employer to provide

information regarding the salaries of officers serving in the different grades from Operation Manager to the grade of Corporate Affairs and Administrative Manager.

In a letter dated 23 July 2018, the Union was informed by the Employer that the information requested for could not be provided as these were privileged under the Data Protection Law.

The Union claims that, in the interest of a fair and faithful bargaining exercise and in the determination of a proper and genuine salary ratio, these information are of crucial importance.

Pursuant to Section 41(4) of the Employment Relations Act 2008 (as amended), the Union prays the Tribunal for an order to enjoin the Employer to provide the information requested for.

The Respondent objects to the application as the disclosure of such information will cause prejudice to the holders of the post since it amounts to personal information.

Mr Narendranath Gopee, President of the Federation of Civil Service and Other Unions stated before the Tribunal that the Applicant is a recognised trade union and presently there is a collective bargaining exercise on the way and that such information will be crucial in establishing fairness in the distribution of salaries and in the calculation of a salary ratio. The salaries cover grades of Operational Manager, IT Manager, Accountant, Audit, Marketing Manager and the grade of Corporate Affairs and Administrative Manager. He denied that such information would be personal to the employee nor do they fall under any non-disclosure

agreement between the Applicant and the Respondent. He stressed that the union is not asking for any biometric data, bank codes, bank account or information on the personal life of an employee. The collective bargaining that is about to start concerns the grade of Postman, i.e from Handy Person to Corporate Affairs and Administrative Manager. He conceded that although the collective bargaining would not cover all grades, it is important that the union be made aware of the lowest and highest grade in order to work out a fair salary ratio.

Mr Jayraj Itoo, representative of the Respondent stated that there is a collective bargaining that is being done in relation to workers in the category of Handy Workers up to Assistant Operation Managers whereas the Union is requesting information from the Operation Managers up to Corporative Affairs and Administrative Managers. He also added that those in the latter category do not wish to disclose their salary.

Section 41 of the Employment Relations Act 2008, as amended provides that where an employee is engaged in collective bargaining with a recognised trade union or a joint negotiating panel, either party shall provide to the other party all relevant information required for the purposes of collective bargaining. The exception will be if there is a prohibition order in law or by order of any court, a prejudice that may be caused to the interest of the enterprise or worker or if the information being personal, consent is required.

We find apposite to refer to **Nassé v Science Research Council [1979] UKHL 9** in which Lord Wilberforce summarised the principles which should apply:-

"1….

2. There is no principle in English law by which documents are protected from discovery by reason of confidentiality alone. But there is no reason why, in the exercise of its discretion to order discovery, the tribunal should not have regard to the fact that documents are confidential, and that to order disclosure would involve a breach of confidence. In the employment field, the tribunal may have regard to the sensitivity of particular types of confidential information, to the extent to which the interests of third parties (including their employees on whom confidential reports have been made, as well as persons reporting) may be affected by disclosure, to the interest which both employees and employers may have in preserving the confidentiality of personal reports, and to any wider interest which may be seen to exist in preserving the confidentiality of systems of personal assessments.

3. As a corollary to the above, it should be added that relevance alone, though a necessary ingredient, does not provide an automatic sufficient test for ordering discovery. The tribunal always has a discretion. That relevance alone is enough was, in my belief, the position ultimately taken by counsel for Mrs Nassé thus entitling the complainant to discovery subject only to protective measures (sealing up, etc). This I am unable to accept.

4. The ultimate test in discrimination (as in order) proceedings is whether discovery is necessary for disposing fairly of the proceedings. If it is, then discovery must be ordered notwithstanding confidentiality. But where the court is impressed with the need to preserve confidentiality in a particular

case, it will consider carefully whether the necessary information has been or can be obtained by other means not involving a breach of confidence.

5. In order to reach a conclusion whether discovery is necessary notwithstanding confidentiality the tribunal should inspect the documents. It will naturally consider whether justice can be done by special measures such as "covering up" substituting anonymous references for specific names, or, in rare cases, hearing in camera.

6. The procedure by which this process is to be carried out is one for tribunals to work out in a manner which will avoid delay and unnecessary applications. I shall not say more on this aspect of the matter than that the decisions of the Employment Appeal Tribunal in Stone v. Charrington & Co. Ltd (unreported), February 15, 1977, per Phillips J., Oxford v. Department of Health and Social Security [1977] I.C.R 884, 887, per Phillips J. and British Railways Board v. Natarajan [1979] I.C.R 326 per Arnold J. well indicate the lines of a satisfactory procedure, which must of course be flexible."

We do not see prejudice being caused to the enterprise or to a worker if the information provided to the union is to work out a fair salary ratio. This interest overrides the information to be considered personal relating to the privacy of a worker and thus consent is not an issue. The information does not fall within the purview of Section 41(3) of the Employment Relations Act 2008, as amended. We accordingly order that the information be provided.

SD Rashid Hossen
President

SD Marie Désirée Lily Lactive (Ms)
Member

SD Karen Veerapen (Mrs)
Member

SD Ghianeswar Gokhool
Member

18th October 2018