

EMPLOYMENT RELATIONS TRIBUNAL

APPEAL

ERT/RN 151/2018

Before:

Shameer Janhangeer	-	Vice-President
Raffick Hossenbaccus	-	Member
Rabin Gungoo	-	Member
Ghianeswar Gokhool	-	Member

In the matter of:

- 1. Port Louis Maritime Employees Association**
- 2. Union of Employees of Port Louis Harbour**

Appellants

and

The President of the Commission for Conciliation and Mediation

Respondent

lpo:

Mauritius Cane Industry Authority

Co-Respondent

The Appellant Unions are appealing, pursuant to *section 66* of the *Employment Relations Act* (the “*Act*”), the decision of the President of the Commission for Conciliation and Mediation (the “*CCM*”) rejecting the report of a labour dispute under *section 64 (2)* and *section 65(1)(c)* and *(d)* of the *Act*.

As per the Statement of Case submitted by the Appellants, the grounds of appeal against the impugned decision of the President of the CCM read as follows:

1. *The Respondent was wrong to determine that the dispute reported to the Commission for Conciliation and Mediation had yet to reach stage whereby “meaningful negotiations” had taken place and a stage of deadlock had yet to be reached.*
2. *The Respondent was wrong to opine that sufficient particulars had not been disclosed in the application to particularise the issues giving rise to the dispute.*
3. *The Respondent was wrong to opine that the procedures of the dispute as stated in the Employment Relations Act had not been complied with.*

All the parties have submitted their respective Statement of Case in the present matter. The Appellant Unions were assisted by Mr N. Thakoor, of Counsel, whereas Mr R. Yerrigadoo, of Counsel, assisted the Respondent. The Co-Respondent was assisted by Miss B. M. Maherally, State Counsel, instructed by Ms R. Camiah, Deputy Chief State Attorney.

THE EVIDENCE OF WITNESSES

Mr Clarel Dodin, Workers Representative of Appellant No.1, deposed on behalf of the two Appellant Unions. He has been present in every meeting with the management of the MCIA. Following a letter dated 12 October 2017 sent to the Mauritius Cane Industry Authority (the “MCIA”), there was a first meeting whereby the Chief Executive Officer (“CEO”) stated that the issues in dispute would be referred to the Board. As there was no response from the Board of the MCIA, they wrote to the Ministry of Labour and Industrial Relations (the “Ministry”) on 28 February (2018). A few days later, there was a first meeting at the Conciliation and Mediation Section followed by several other meetings. The last meeting was on 6 April 2018, which ended in a deadlock with management maintaining its decision. They received a letter dated 5 April 2018 from management on the day of the meeting, which stated that management will not go ahead with their demands and that the Board had met on 6 March. At the meeting, the representative of the MCIA maintained the contents of the letter and they arrived at a deadlock. The letter was received after the meeting of 27 March 2018 referred to by the Respondent. At the meeting of 13 June 2018, the MCIA maintained its decision as mentioned in the letter dated 5 April 2018. Regarding the second ground of appeal, they did not have access to the minutes of the meeting held at the Conciliation and Mediation Section of the Ministry. If information were missing, it would have been normal to call for a meeting to ask for additional information.

Mr Dodin was cross-examined by Counsel for the Respondent. He notably stated that at section 5 of the Report of Dispute Form (Annex C to the Appellants' Statement of Case), the events have been set out in chronological order. At paragraph (5), it is stated that '*... the unions have decided to report the matter to the Ministry of Labour*' which was on 28 February 2018. At paragraph (4) of the chronology of events, the date stated is April 2018, whereas paragraph (5) was in February 2018. Despite April coming before February 2018 in the aforesaid section of the Form, Mr Dodin maintained the chronology set out. He then stated that he does not think that the events are in chronological order and it is not so stated. What he stated before the Tribunal is in chronological order. When put to him that he did not adduce any evidence of the deadlock to the Respondent, he maintained that there was a deadlock before the Conciliation and Mediation Section, where several meetings were held. When asked that he did not apply for the minutes, he stated that it was the duty of the CCM and that a *pro forma* meeting could have been held before rejecting the dispute. Under re-examination, Mr Dodin stated that they waited until April 2018 to report the dispute as they were awaiting the Board's decision since 12 October 2017.

Mrs Shakila Curmoula, Principal Labour and Industrial Relations Officer, was called to depose on behalf of the Respondent. She stood by the Statement of Case of the Respondent. Mrs Curmoula also produced a bundle of the annexes in chronological order (Document A) as well as a copy of an order of the Tribunal in the matter of *Hotels and Restaurants Employees Union and Commission for Conciliation and Mediation* dated 23 November 2017 (Document B). Under cross-examination from Counsel for the Appellants, the representative stated that in an application before the CCM, Disputants are in some cases asked to provide further information with regard to their application.

Mr Sunil Santbakshshing, Human Resource Manager at the MCIA, deposed on behalf of the Co-Respondent. He swore as to the correctness of the MCIA's Statement of Reply. The MCIA is abiding by the decision of the Tribunal in the present appeal. He also stated that the meeting was held before 5 April 2018 and the decision of the MCIA had not yet been taken. There was a further meeting in his office on 13 June (2018). There was a deadlock before the Conciliation and Mediation Section and after there was a meeting on 13 June as mentioned in his Statement of Reply.

When questioned by Counsel for the Appellants, Mr Santbakshshing notably stated that the meeting of 13 June was chaired by himself and many issues were brought to the attention

of the HR Department to look into, among which was the issue of salary increase. On this, the Board of the MCIA had already taken a stand, he was not allowed to negotiate and he recommunicated the Board's decision. Yet he stated that the complaint can be reported to higher management and the matter was reported to the CEO.

THE SUBMISSIONS OF COUNSEL

Mr N. Thakoor, Counsel for the Appellants, submitted on the first and third grounds of appeal together. He stated that as per the evidence of Mr Dodin, meaningful negotiations did take place and a situation of deadlock had been reached. There is evidence as to a situation of deadlock. However, the evidence was not available to the Appellants before their application was made. As they did not have same, they could not have attached it to the application at the time. Regarding the second ground, it was humbly submitted that sufficient particulars were given inasmuch as there were multiple annexes to the application before the CCM and one cannot only look at the application form to find the particulars of the dispute.

Mr R. Yerrigadoo, Counsel for the Respondent, briefly submitted that on the first ground of appeal, *ex facie* the documents before the CCM at the material time, there could not have been a deadlock. Regarding the second ground of appeal, there is no evidence of this alleged deadlock. On the third ground of appeal, Counsel referred to the definition of deadlock for the purpose of *section 64 (2)* of the Act from the order of the Tribunal produced as Document B.

Miss B. H. Maherally, State Counsel appearing for the Co-Respondent, submitted that the Co-Respondent is abiding by the decision of the Tribunal. She notably stated that as this is an appeal against the decision of the President of the CCM, the decision was taken *ex facie* the documents in front of the Commission. State Counsel also referred to the order being sought by the Appellants in the present matter.

THE MERITS OF THE APPEAL

In the present matter, the Appellant Unions reported a dispute relating to terms and conditions of employment to the President of the CCM on 3 October 2018. The terms of the dispute reported read as follows:

1. *Whether the terms and conditions of employment of the Bagged Sugar Storage and Distribution Co. Ltd as recommended by Ad-Hoc report of the Pay Research Bureau of August 2016 should be implemented although same is less favourable than the Edge Consulting Report 2014.*
2. *Whether the employees of Bagged Sugar Storage and Distribution Co. Ltd who have opted not to be governed by the Pay Research Bureau shall have their Wages and Condition of work upgrade through Collective Bargaining as proposed in Annex 2.*

Following the report of the dispute, the President of the CCM, via a letter dated 12 October 2018, rejected the labour dispute under *section 64 (2) and 65 (1)(c)(d) of the Act*. The Appellants have thereafter submitted three grounds of appeal (as reproduced above) dated 30 October 2018 in appealing the decision of the President of the CCM pursuant to *section 66 of the Act*.

The first and third grounds of appeal have been argued together. The first ground mostly relates as to whether the dispute had reached a stage of deadlock before being reported to the CCM. Whereas, the third ground questions the decision of the President of the CCM on whether dispute procedures specified in the *Act* have been complied with.

In relation to these two grounds, the Appellant's representative deposed to show that a stage of deadlock had been reached at the level of the Conciliation and Mediation Section of the Ministry in a meeting on 6 April 2018. The evidence of Mr Dodin notably pointed to a letter dated 5 April 2018 from the MCIA whereby the first Appellant was informed that *'the Board of Directors was of the view that a salary review had been effected by the PRB but the employees have not accepted same. Consequently, as per the recommendation of the PRB, they have been paid COLA.'* The Tribunal, at this juncture, notes that the letter does not expressly state that management will not go ahead with the demands of the Unions as has been contended by Mr Dodin in his evidence.

Moreover, despite the representative of the MCIA confirming that there was a deadlock reached before the Ministry on 6 April 2018, it has not been disputed that there was a further meeting held between the two sides on 13 June 2018, whereby the Unions were informed that their complaint can be reported to higher management. The Tribunal also notes that although

the matter was referred to the Conciliation and Mediation Section of the Ministry on 28 February 2018, there was a meeting held between the two sides on 27 March 2018 in Redit, which was not under the supervision of the Ministry, as per the Notes of Minutes annexed to the Appellants' Statement of Case.

In referring to dispute procedures not followed (under *section 65 (1)(d)* of the Act), the Respondent has elaborated, in its Reply to the Statement of Case of the Appellants, that *section 64 (2)* of the Act has not been complied with. This section provides as follows:

64. Reporting of labour disputes

...

(2) *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.*

In the present matter, it has not been disputed that meaningful negotiations took place between the parties. However, what is in issue is whether a deadlock was reached as is being contended by the Appellants. Although, the Appellants have adduced evidence as to a deadlock, the Tribunal cannot take into account matters which were not brought to the attention of the President of the CCM when the dispute was reported to him on 3 October 2018.

From a perusal of the Report of Dispute Form dated 3 October 2018, it has notably been stated that *'the dispute was sent to the Conciliation and Mediation Section of the Ministry of Labour and a stage of deadlock has been reached.'* at paragraph (6) of section 5 of the Form. It has not been stated when was the deadlock reached and nor has it been mentioned that a deadlock was allegedly reached in a meeting on 6 April 2018 before the Conciliation and Mediation Section of the Ministry as has been expanded by Mr Dodin before the Tribunal. Moreover, the meeting of 13 June 2018 held between the two sides has not been mentioned in the aforesaid section.

The Tribunal, in view of the meeting of 13 June 2018 whereby the Appellants were informed that their complaint can be reported to higher management and the Appellant's omission of the meeting of 6 April 2018 in the Report of Dispute Form, cannot therefore be satisfied that there was an actual deadlock before the Ministry on 6 April 2018 between the

Appellants and the MCIA. Moreover, if a deadlock had been reached on 6 April 2018, the Tribunal finds it strange for the Appellants to have waited till 3 October 2018 to report their dispute to the CCM.

The Tribunal has also noted that the President of the CCM relied on the Notes of Minutes of the meeting dated 27 March 2018 to find that another meeting was envisaged between the two parties on issues in dispute in finding that a stage of deadlock has not yet been reached. In view of the fact that the Appellants did not state when the deadlock had occurred; did not mention the meeting of 6 April 2018 in the Report of Dispute Form when reporting their dispute; and that the aforesaid Notes of Meeting state that another meeting was to be held, the decision of the President of the CCM, in rejecting the labour dispute under *section 65 (1)(d)* of the Act, cannot therefore be faulted.

The Tribunal therefore finds that the first and third grounds of appeal cannot succeed.

As regards the second ground of appeal, the Appellants have argued that the Respondent was wrong to opine that sufficient particulars had not been disclosed on the issues giving rise to the dispute. The President of the CCM, in his letter dated 12 October 2018, based himself on *section 65 (1)(c)* of the Act in rejecting the dispute under this particular ground. This section reads 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 –*

...

(c) *the report does not contain sufficient particulars of the issues giving rise to the labour dispute;*

The Respondent, in its Reply to the Statement of Case of the Appellants, has notably referred to paragraphs (5) and (6) of section 5 of the Report of Dispute Form dated 3 October 2018 where it is stated that '*... a stage of deadlock has been reached.*'. The Respondent has notably averred that no evidence of the alleged deadlock has been produced to the CCM to sustain same. The Appellants, on the other hand, have contended that they did not have access to the minutes of meeting held before the Conciliation and Mediation Section of the Ministry

and that if information was missing, the President of the CCM should have called for a *pro forma* meeting asking for more information.

The Tribunal has noted, particularly from the evidence of the Appellants' representative, that the Appellants have recognised that they did not enclose any evidence as to the deadlock. It has not been disputed that the situation of deadlock is one of the issues which has given rise to the dispute. Thus, failure to particularise same when reporting the dispute on 3 October 2018, by e.g. producing a document to sustain same, would entitle the President of the CCM to opine that the report does not contain sufficient particulars of the issues giving rise to the labour dispute.

Although the Appellants have contended that the notes of minutes of the meetings were not available from the Conciliation and Mediation Section of the Ministry, no evidence has been adduced to show that an effort was made to obtain same. The Tribunal also notes that no letter or other document was produced to show that the Appellant Unions applied for same from the Ministry and were told that same was not available.

Furthermore, although the Appellants have stated that a *pro forma* meeting could have been held at the CCM to ask for missing information, there is no legal obligation on the President of the CCM to hold such a meeting. The Tribunal has also noted that this particular contention does not form part of any of the grounds of appeal nor has it been averred in the Appellants' Statement of Case.

Moreover, despite having attached nine annexes to the Report of Dispute Form dated 3 October 2018, the Appellants have only referred to Annexes 1, 2 and 5 at section 5 of the Form. One cannot expect the President of the CCM to embark upon a fishing expedition to uncover the particulars of the issues, notably the deadlock, giving rise to the labour dispute being reported.

The Tribunal therefore finds that the second ground of appeal cannot succeed.

Upon having heard the appeal, the Tribunal confirms the decision of the President of the Commission for Conciliation and Mediation in rejecting the report of a labour dispute.

The appeal is therefore set aside.

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SD Shameer Janhangeer
(Vice-President)

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SD Raffick Hossenbaccus
(Member)

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SD Rabin Gungoo
(Member)

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SD Ghianeswar Gokhool
(Member)

Date: 8th January 2019