

EMPLOYMENT RELATIONS TRIBUNAL

RULING

ERT/ RN 7/24

Before

Indiren Sivaramen	Acting President
Bhawantee Ramdoss	Member
Dr Sunita Ballah-Bheeka	Member
Ghianeswar Gokhool	Member

In the matter of:-

Mr Kunalsingh Purmah (Disputant)

And

Cargo Handling Corporation Ltd (Respondent)

i.p.o 1. Mr Damendrasingh Bhujan (Co-Respondents)

2. Mr Prashant Kumar Bisnauthsingh

3. Port Louis Maritime Employees Association

The above case has been referred to the Tribunal by the Commission for Conciliation and Mediation under Section 69(9)(b) of the Employment Relations Act, as amended (hereinafter referred to as “the Act”). Co-Respondents Nos 1, 2 and 3 were joined as parties by the Tribunal following a motion made by Counsel for Disputant and to which there was no objection on the part of the Respondent. The terms of reference of the points in dispute read as follows:

- i. “My seniority position should have been restored as second on the Seniority list dated 2 August 2022, de facto, as a result of the retrospective merging of the posts of Planning Officer and Planning Assistant on 3 March 2008;*
- ii. My seniority position could not be downgraded retrospectively on the seniority list dated 2 August 2022, by my employer as a result of the introduction of the criterion of ‘physical posting’ in the Collective Agreement of 2016*

- iii. *I should therefore be restored as second on the Seniority List dated 2 August 2022, or any eventual Seniority List, the more so that the Collective Agreement signed on 1st August 2023, effective as from 1 January 2021, no longer includes 'physical posting' as a criterion for promotion."*

Co-Respondents Nos. 1 and 2 informed the Tribunal that they will abide by the decision of the Tribunal and that they will not be assisted by counsel. The other parties were assisted by Counsel and the Respondent has taken preliminary objections in law which read as follows:

Preliminary Objections

- (A) *The act which triggered the present labour dispute is as from the date of the Job Evaluation Appeals Committee for the Salary Restructuration (JEAC) exercise that took place in the year 2010, whereby the posts of Planning Officer and Planning Assistant were merged retroactively with effect from 03 March 2008;*
- (B) *Consequently, the present claim has been made outside the prescribed time limit so that the Tribunal is barred from adjudicating upon the matter; and*
- (C) *For the above reasons, the present dispute should be set aside.*

The Tribunal proceeded to hear arguments from all counsel on the preliminary objections. All the averments made on behalf of the Disputant in his Statement of Case are deemed to be accepted for the purposes of the preliminary objections taken. Counsel for Respondent relied on the JEAC exercise which took place in the year 2010 to suggest that the facts giving rise to the alleged labour dispute, which we understand to mean all the points in dispute, date back to more than three years as from the time of the lodging of the dispute. The Tribunal has perused the terms of reference of the points in dispute and it appears based solely (underlining is ours) on the terms of reference that the act or omission which gave rise to the present points in dispute is the Seniority List dated 2 August 2022. This is what appears to have triggered the present points in dispute which as per the letter of referral from the President of the Commission for Conciliation and Mediation was reported to him on 11 October 2023.

On the other hand, the Respondent is suggesting that the JEAC exercise is the act which triggered the present dispute. Based on the own averments of the Disputant, the Tribunal finds that without the JEAC exercise or merging of the posts, the present points in dispute as drafted would not have arisen at all since Disputant was only appointed as Planning Assistant and was not a Planning Officer prior to the merging of the posts. However, the Tribunal also bears in mind that the Disputant is not challenging or trying through the present dispute to contest the JEAC exercise or the merging of posts. His points in dispute have more to do with and seem to arise from the Seniority List dated 2 August 2022 as mentioned in the terms of reference.

However, the Tribunal takes note of paragraphs 10 and 11 of the Statement of Case of Disputant which provide as follows:

10. Following the said report, the posts of Planning Officer and Planning Assistant were merged retroactively so that the Disputant is deemed to have been appointed Planning Officer since 3 March 2008. The Disputant, in fact, received his back pay as a consequence of the merging of the two posts.

*A copy of an extract of the Job Evaluation Appeals Committee for the Salary Restructuration Exercise is herewith annexed and marked as **Annex B**.*

11. After the posts of Planning Officer and Planning Assistant had been merged retroactively, given that the anomaly and discrepancy in the different titles for the post were resolved and the Disputant received his backpay, the Disputant, quite legitimately, understood that any disparity, which the different posts would possibly have created in the seniority list which existed at the time, was also resolved.

Paragraph 11 has been drafted in a vague manner, where reference is made to “any disparity, which the different posts would possibly have created in the seniority list which existed at the time”, without more precision in relation to that seniority list or the exact date of the said seniority list. The Tribunal notes that as per the own averments of Disputant in his Statement of Case, several years elapsed since the retroactive merging of the posts and the seniority list of 2022.

Though the JEAC exercise or merging of the relevant posts may be relevant in the present matter, there is nothing, so far, to indicate on a balance of probabilities that it is indeed the JEAC exercise or merging of posts which gave rise to the present points in dispute. At this stage of the proceedings and without hearing at least some evidence, it would be premature for the Tribunal to hold that the act or omission that gave rise to the points in dispute is the JEAC exercise which took place in the year 2010 or the retroactive merging of the relevant posts. Evidence will have to be adduced for the Tribunal to be able to ascertain whether the act or omission which gave rise to the present dispute arose prior to the seniority list of 2022 or whether, if at all applicable, this may be a case where the Disputant sat on his rights for years. The Tribunal cannot, at this stage of the proceedings, make any assumption on such issues. For the reasons given above, the Tribunal finds that the preliminary objections (under paragraphs (A), (B) and (C) above taken together) are at best premature and cannot stand. The preliminary objections are thus set aside at this stage of the proceedings.

Counsel for Disputant has also moved that four other parties namely Port-Louis Harbour Docks Workers Union, the Maritime Transport and Port Employees Union, Stevedoring and Marine Staff Employees Association and Docks and Wharves Staff Employees Association be also joined in the present matter. Both the Respondent and the Co-

Respondent No 3 objected thereto, and grounds of objection were filed on behalf of the Respondent and the Co-Respondent No 3. The grounds of objection for Respondent read as follows:

(A) Cargo Handling Corporation Limited objects to the motion to join four other trade unions to the present dispute on the following grounds:-

- (i) Port-Louis Maritime Employees Association is the sole bargaining agent for all bargaining units at Cargo Handling Corporation Limited except for Top Management;*
- (ii) being given that the Disputant forms part of a bargaining unit whereby Port-Louis Maritime Employees Association is the sole bargaining agent, Port-Louis Maritime Employees Association is therefore the only interested party to the present dispute; and*
- (iii) allowing the alleged interested parties to be joined will not assist the Tribunal in determining the real issues in the present dispute in light of Section 56(1) of the Employment Relations Act.*

The grounds of objection for Co-Respondent No 3 read as follows:

- 1. Co-respondent No. 3 is the sole recognized trade union which has the sole bargaining right with the Respondent for all manual workers and staff employees excluding top management whether these employees are members of Co-Respondent No.3 or not;*
- 2. The motion made by the Disputant is frivolous as he is already represented by Counsel and has already put into cause those parties whose rights would be directly affected by any award of the Tribunal namely Co-respondents No. 1 and 2;*
- 3. To put a party into cause is the sole prerogative of the Employment Relations Tribunal and not that of the disputant and this prerogative has to be used judiciously and not by just mere asking;*
- 4. The Disputant is not precluded from bringing any witnesses to (which may include the other trade unions if need be) enable him to make his case.*
- 5. Co-Respondent No. 3 therefore prays that the motion made by the Disputant to be set aside.*

Section 6(2) of the Second Schedule to the Act provides as follows:

6(2) The Tribunal may in relation to any dispute or other matter before it-

(a) ...

...

(d) order any person to be joined as a party to the proceedings who, in the opinion of the Tribunal-

(i) may be affected by an order or award; or

(ii) ought in the interests of justice to be joined as a party;

and to do so on such terms and conditions as the Tribunal may decide.

The Tribunal notes that neither the terms of reference of the disputes before it nor the detailed Statement of Case filed on behalf of the Disputant make any reference to the trade unions which Counsel for Disputant is asking the Tribunal to join as parties. There is no award or order which is being sought against any of those trade unions. The Tribunal notes that this dispute has been reported by the Disputant to the President of the Commission for Conciliation and Mediation (as per the letter of referral of the points in dispute to the Tribunal), and that the dispute which has thus been referred to the Tribunal pursuant to section 69(9)(b) of the Act is a dispute reported by an individual worker. The arguments of Counsel for Disputant on this issue are as follows:

“With regards to, the contention of my Learned Friend, with regards to the addition of the other trade unions to the present case, he submits that the PLMEA has sole recognition and therefore, this is a reason for not adding the other trade unions to this present labour dispute. Well, the reason of being a trade union of sole recognition is only applicable when there is collective bargaining and here we are not in such context. We are not in a context of collective bargaining we are just saying here that there are other employees of the Respondent just like the Disputant who are not members of the PLMEA, so that for their interest to be preserved and for them to be represented fairly in these proceedings, those trade unions must be joined to these proceedings and the question of whether the trade union has sole recognition or sole bargaining power would not apply here.”

There is nothing on record or averment in the Statement of Case of Disputant which would be in line with the arguments of Counsel for Disputant. The argument that for the interest of the Disputant to be preserved and for the Disputant to be represented fairly in the proceedings, a trade union or more trade unions must be joined as parties cannot stand the more so that the Disputant is assisted by counsel before us. As rightly mentioned in the grounds of objection of Co-Respondent No. 3, the Disputant is not precluded from bringing any witnesses to enable him to make his case.

Also, the Disputant has annexed to his Statement of Case, a copy of a letter from the Human Resource Manager of the Respondent to the effect that the Co-Respondent No. 3 has sole recognition (Annex E) and a copy of an extract of the Collective Agreement entered into in the year 2023 between Respondent and Co-Respondent No. 3 where it is mentioned that Co-Respondent No. 3 “is the sole bargaining agent to represent the

workers in the bargaining unit comprising of manual employees and staff employees excluding top management at the Cargo Handling Corporation Limited”.

There is no averment that any of those trade unions may be affected by an award from the Tribunal based on the terms of reference which are before it. The Tribunal is also not satisfied at all that any one or more of the trade unions mentioned should be joined as parties in the interests of justice.

For all the reasons given above, the motion made to join the other trade unions as parties is set aside. The Tribunal will proceed with the hearing of the matter on its merits with the parties already before it.

(SD) Indiren Sivaramen

Acting President

(SD) Bhawantee Ramdoss

Member

(SD) Dr Sunita Ballah-Bheeka

Member

(SD) Ghianeswar Gokhool

Member

28 June 2024