

**EMPLOYMENT RELATIONS TRIBUNAL**

**RULING**

**ERT/ RN 4/24**

**Before**

<b>Indiren Sivaramen</b>	<b>Acting President</b>
<b>Alain Hardy</b>	<b>Member</b>
<b>Kirsley E. Bagwan</b>	<b>Member</b>
<b>Muhammad N. Simrick</b>	<b>Member</b>

**In the matter of:-**

**Mr Mohamed Mossadek Roojee (Disputant)**

**And**

**Sanlam General Insurance Ltd (Respondent)**

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”). The terms of reference of the only point in dispute which has to be determined by the Tribunal read as follows:

*1. Whether I should have been drawing a basic salary that is at par with colleagues performing the same job. (underlining is ours)*

Both parties were assisted by Counsel. Reference has been made both in the Statement of Case of the Disputant and in the Statement of Defence of the Respondent to a specific former colleague of the Disputant. As per his Statement of Case, the Disputant seems to rely on certain averments which he made in relation to that one ex-colleague. However, later at paragraph 8 of the same Statement of Case, the Disputant prays “for an award declaring that I should been (sic) paid a basic salary that is at par with other Superintendents”. The Tribunal has already delivered a ruling in the same matter in the light of a *plea in limine litis* which was taken on behalf of the Respondent. In the said ruling, the name of the former colleague was deliberately edited since the latter was not a party before the Tribunal though averments in relation to the latter had been made on

either side. In the light of the averments made by both parties in relation to that officer in their respective pleadings, the Tribunal sought the stand of both parties as to whether the latter should be joined as a party in the present matter.

Counsel for Disputant then stated that he would probably consider that the ex-colleague who was mentioned in the pleadings has to be joined as a party though he conceded that her interests are not directly affected with the present proceedings. He then formally moved that the ex-colleague be joined as a Co-Respondent in the present matter. Counsel for Respondent informed the Tribunal that there was objection for the joining of the officer mentioned and grounds of objection were filed. They read as follows:

1. *Ms. [X – name edited] is not an interested party to the present application such that her presence is not necessary for the Tribunal to adjudicate upon the present dispute.*
2. *The mere fact that Ms. [X – name edited] has been referred to in the Disputant's Statement of Case does not automatically make her become an interested party.*
3. *Ms. [X – name edited] was not a party to the proceedings before the Commission for Conciliation and Mediation, which only means that the Disputant never regarded her as an interested party during the triggering process leading to the referral of the present matter to the Employment Relations Tribunal.*
4. *The addition of the Ms. [X – name edited], at this stage of the proceedings, is prejudicial to the Respondent.*

The Tribunal thus proceeded to hear arguments from both counsel in relation to whether the former colleague of Disputant should be joined as a party. The Tribunal has examined the arguments of both counsel, the terms of reference and the pleadings before it.

The terms of reference do not mention the name of that officer at all but refers to "colleagues performing the same job". No other officer apart from Ms X (name edited) has been mentioned in the pleadings. The Disputant has the burden of proof before the Tribunal and he is entitled to call any witnesses he may deem fit to satisfy this burden.

Section 6(2) of the Second Schedule to the Act reads 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;*

It is agreed by both counsel that the officer mentioned will not be affected by any order or award which the Tribunal may deliver in the present case. Thus, the officer cannot be joined as a party on the basis of section 6(2)(d)(i) of the Second Schedule to the Act.

Counsel for Disputant suggested that the officer ought to be joined as a party in the interests of justice. The Tribunal does not share this view. Firstly, it is clear that the said ex-colleague is not an interested party in the matter and that her interests are not at stake. Also, this is not a case where the latter should be joined as a party to ensure that any award of the Tribunal will have “l’*autorité de la chose jugée*” against that party (**vide Wong Min Fong L.F.C v Centre Gaming House Ltd & others 2024 SCJ 246**). In **The Financial Services Commission v Independent Commission against Corruption & Ors 2020 SCJ 164**, the Supreme Court stated that the joinder of parties to a cause or matter is governed by Rule 19 of the Supreme Court Rules 2000. The Supreme Court then stated the following:

*The essence of Rule 19(2)(b) of SCR 2000 is that the Court will permit only necessary and proper person(s) or legal entity (ies) who has an interest in the matter to be made a party to the proceedings in order to enable it to reach an effectual and complete determination of the questions or issues arising in the proceedings.*

Though the Tribunal is governed by section 6(2)(d) of the Second Schedule to the Act (see above), the Tribunal finds no reason why guidance should not be sought from relevant judgments of the Supreme Court in interpreting the requirements of “in the interests of justice” in the said section. Whilst the Disputant prays at paragraph 8 of his Statement of Case for an award declaring that he should be paid a basic salary that is at par with other Superintendents, reference is made only to Ms X (name edited) in the said Statement of Case.

The Disputant has the carriage of the process and it can call witnesses or relevant documentary evidence to support his claim. Also, in the light of the manner in which the terms of reference (of the only point in dispute which the Tribunal has to determine) has been drafted, the Tribunal is not satisfied that Ms X is “a necessary and proper person who has an interest in the matter to be made a party to the proceedings in order to enable the Tribunal to reach an effectual and complete determination of the questions or issues arising in the proceedings”.

Lastly but not the least, the Tribunal finds that this is a long standing case and that the period of time for the Tribunal to make an award has already been extended with the consent of the parties under section 70(2) of the Act, as it was then drafted at the relevant time. Any joining of another person as a party at this stage of the proceedings will only protract matters and not be in the interests of justice.

For all the reasons given above, Ms X is not joined as a party to the present matter, and the Tribunal will proceed to hear the case on its merits.

**(SD) Indiren Sivaramen**

**Acting President**

**(SD) Alain Hardy**

**Member**

**(SD) Kirsley E. Bagwan**

**Member**

**(SD) Muhammad N. Simrick**

**Member**

**22 November 2024**